

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Armour Group Ltd. v. United Brotherhood of Carpenters & Joiners of America, Local 83, 2007 NSSC 337

**Date:** 20071128

**Docket:** SH 152428

**Registry:** Halifax

**Between:**

The Armour Group Limited

Plaintiff

v.

United Brotherhood of Carpenters & Joiners of America,  
Local 83

Defendant

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**DECISION**

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**Judge:** The Honourable Justice Douglas L. MacLellan

**Heard:** November 7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup>, 2006, in Halifax, Nova Scotia

**Final Written  
Submissions:** September 7<sup>th</sup>, 2007

**Decision:** November 28<sup>th</sup>, 2007

**Counsel:** George W. MacDonald, QC, and Jane O'Neill, for the plaintiff  
Ray Mitchell, for the defendant

**By the Court:**

[1] On March 29<sup>th</sup>, 2007, I filed my decision on this matter after a two and a half day trial. I found in favour of the plaintiff on a number of issues and awarded costs. The parties have not been able to agree on the issue of costs and have made written submissions to me.

[2] Counsel for the plaintiff cites *Landymore v. Hardy*, [1992] N.S.J. No. 79, and asks for a lump sum award of costs of \$45,000.00. That request is based on the submission that the issues at trial were mainly non-monetary and that the plaintiff expended \$63,000.00 in dealing with the matter including successfully defending an interlocutory application to strike the action.

[3] The defendant argues that costs should be awarded considering that the Court awarded the plaintiff \$28,880.00 as compensation for its costs as a result of the breach of contract by the defendant. It suggests costs based on that monetary award and time spent in Court. That would according to the Defendant result in costs of \$13,900.00.

[4] In the alternative the Defendant suggests that if a lump sum is appropriate that the Court should simply increase that award by 40% resulting in costs of \$19,467.00.

[5] The *Civil Procedure Rules* provide the basis for an award of costs.

**“Costs in discretion of court**

63.02. (1) Notwithstanding the provisions of rules 63.03 to 63.15, the costs of any party, the amount thereof, the party by whom, or the fund or estate or portion of an estate out of which they are to be paid, are in the discretion of the court, and the court may,

- (a) award a gross sum in lieu of, or in addition to any taxed costs;

**When costs follow the event or are determined by the Rules**

63.03. (1) Unless the court otherwise orders, the costs of a proceeding, or of any issue of fact or law therein, shall follow the event.

**Party and party costs fixed by the court**

63.04. (1) Subject to rules 63.06 and 63.10, unless the court otherwise orders, the costs between parties shall be fixed by the court in accordance with the Tariffs and, in such cases, the “amount involved” shall be determined, for the purpose of the Tariffs, by the court.

- (2) In fixing costs, the court may also consider
  - (a) the amount claimed;
  - (b) the apportionment of liability;
  - (c) the conduct of any party which tended to shorten or unnecessarily lengthen the duration of the proceeding;
  - (d) the manner in which the proceeding was conducted;
  - (e) any step in the proceeding which was improper, vexatious,

- prolix or unnecessary;
- (f) any step in the proceeding which was taken through over-caution, negligence or mistake;
- (g) the neglect or refusal of any party to make an admission which should have been made;
- (h) whether or not two or more defendants or respondents should be allowed more than one set of costs, where they have defended the proceeding by different solicitors, or where, although they defended by the same solicitor, they separated unnecessarily in their defence;
- (i) whether two or more plaintiffs, represented by the same solicitor, initiated separate actions unnecessarily; and
- (j) any other matter relevant to the question of costs.

**Costs on interlocutory applications**

63.05. (1) Unless the court otherwise orders, the costs of any interlocutory application, whether ex parte or otherwise, are costs in the cause and shall be included in the general costs of the proceeding.

**Disbursements**

63.10A Unless the court otherwise orders, a party entitled to costs or a proportion of that party's costs is entitled on the same basis to that party's disbursements determined by a taxing officer in accordance with the applicable provisions of the Tariffs."

[6] I agree with counsel for the plaintiff that the main issues dealt with in this case were not monetary and while the Court did award damages to compensate the plaintiff for legal costs it incurred in defending an application made by the defendant to the Labour Relations Board, that was not the major issue at trial. Nor was the plaintiff's claim for punitive damages which was rejected in my decision.

[7] This matter went on for a long period of time. The action was started in 1998 and the matter took two and a half days to hear. An interlocutory application by the defendant to strike the action was dismissed and no costs were awarded to the plaintiff on that application.

[8] Counsel for the defendant argues that the case law in lump sum awards do not support the plaintiff's position in this case. He points to *D. W. Matheson & Sons Contracting Ltd. v. Canada (Attorney General)*, [1999] N.S.J. No. 267, where after a 9 day trial and a judgment of \$433,000.00 with legal fees approaching \$100,000.00 the trial judge instead of awarding the tariff amount of \$26,975.00 awarded lump sum costs of \$50,000.00

[9] In *Jachimowicz v. Jachimowicz* (2007 N.S.S.C. 303) Lynch J. of the Family Division reviewed the issue of costs and considered an approach suggested by Goodfellow J. in *Urquhart v. Urquhart* (1998), 169 N.S.R. (2d) 134, where he suggested that if there was no monetary amount involved the Court consider an amount for each day of trial. In that case he suggested \$15,000.00 for each day of trial and applied the appropriate tariff to that figure. Lynch J. increased that per

diem amount of \$20,000.00 per day to reflect the increase of litigation since the *Urquhart* decision in 1998.

[10] In *McGarrigle v. Dalhousie University* (2007 N.S.S.C. 310) Boudreau J. of this court dealt with a claim for costs following an 11 day civil jury trial involving a claim for defamation. The action was dismissed by the jury and the evidence was that the defendant had incurred legal expenses of \$200,000.00 in defending the claim. Justice Boudreau awarded costs of \$45,000.00.

[11] I conclude that the request of the plaintiff here for \$45,000.00 costs is excessive and would award instead the sum of \$25,000.00. Plaintiff will have its reasonable disbursements.

J.