

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Armoyan v. Armoyan*, 2015 NSSC 347

Date: 2015-12-02

Docket: *Halifax* No. 1201-064144

Registry: Halifax

Between:

Vrege Armoyan

Applicant

v.

Lisa Armoyan

Respondent

Judge: The Honourable Justice Theresa M. Forgeron

Submissions August 5 and September 23, 2015

Received:

Costs Decision: December 2, 2015

Counsel: Vrege Armoyan on his own behalf
Harold Niman for the Respondent
Leigh Davis for the Respondent

By the Court:

Introduction

[1] Lisa Armoyan seeks solicitor and client costs for four motions which were heard in February and May 2015. Vrege Armoyan's position is not known, although it is assumed that he would object to the request.

Issue

[2] Should solicitor and client costs be awarded on the motions?

Analysis

[3] On August 5 and September 23, 2015, Lisa Armoyan filed submissions in which she sought costs on a solicitor and client basis in the amount of \$136,560.09 in relation to four motions which are briefly described as follows:

- The abuse of process motion was heard on February 26 and May 8, 2015. Lisa Armoyan was wholly successful as noted in the court's decision reported at **Armoyan v. Armoyan**, 2015 NSSC 191.
- The motion for disclosure was heard on February 26, 2015. Vrege Armoyan eventually consented to the order for disclosure prepared by Lisa Armoyan.
- The suit costs motion was heard on February 26, 2015. Lisa Armoyan was substantially successful as noted in the court's decision reported at **Armoyan v. Armoyan**, 2015 NSSC 92.
- The motion by correspondence filed by Vrege Armoyan was heard on February 26, 2015. An oral decision was rendered on the same day. Vrege Armoyan was unsuccessful in his efforts to admit the expert report of Dr. Genest. Lisa Armoyan was wholly successful in defending the motion.

[4] The court will now review each of the motions individually to determine whether solicitor and client costs are appropriate in the circumstances of this case.

Abuse of Process Motion

[5] Solicitor and client costs are awarded for the abuse of process motion for the following reasons:

- **Rules** 77.01 (1)(b) and 77.03 (2) are applied.
- The law stated in **National Bank Financial Ltd. v. Barthe Estate**, 2015 NSCA 47 is followed.
- Solicitor and client costs are awarded to highlight the court's disapproval of Vrege Armoyan's litigation conduct: **Brown v. Metropolitan Authority** 1996 NSCA 91.
- Exceptional circumstances are present such that it is necessary to fully compensate Lisa Armoyan for all expenses associated with the successful abuse of process motion in keeping with the various factual findings set out in the decision of **Armoyan v. Armoyan**, 2015 NSSC 191.
- Vrege Armoyan misused the court process and procedures.
- The abuses were manifestly unfair to Lisa Armoyan.
- Vrege Armoyan's misconduct was so tainted that it brought the administration of justice into disrepute.
- The integrity of the court's adjudicative functions was compromised.
- Costs of **\$47,796.03**, inclusive of tax and disbursements, are awarded to Lisa Armoyan on a solicitor and client basis.

Motion for Disclosure

[6] Solicitor and client costs are awarded for the motion for disclosure for the following reasons:

- **Rules** 77.01 (1)(b) and 77.03 (2) are applied.
- Solicitor and client costs are awarded to highlight the court's disapproval of Vrege Armoyan's litigation conduct: **Brown v. Metropolitan Authority**, *supra*.
- Exceptional circumstances are present such that it is necessary to fully compensate Lisa Armoyan for all expenses associated with the successful motion for disclosure.
- Disclosure is at the heart of family law proceedings. Significant costs awards ordinarily flow from a failure to provide meaningful and timely disclosure:

Cameron v. Cameron, 2014 NSSC 224 and **Cameron v. Cameron**, 2014 NSSC 325.

- Disclosure was a persistent identified concern, for which little ownership was assumed by Vrege Armoyan: **Armoyan v. Armoyan**, 2013 NSCA 99 at para 281.
- Despite the passage of time, repeated requests for disclosure, and admonitions from the court, Vrege Armoyan cavalierly ignored his responsibility to disclose relevant financial information. Lisa Armoyan was left with no other option than to file a motion for disclosure.
- Vrege Armoyan challenged the motion to disclose until the contested hearing was in progress, at which time he provided his consent. Legal fees and expenses were thus unnecessarily incurred as affidavits and submissions had already been filed, hearing preparation concluded, and travel undertaken.
- Costs of **\$20,484.01**, inclusive of tax and disbursements, are awarded on a solicitor and client basis.

Motion for Suit Costs

[7] Solicitor and client costs are awarded for the motion for suit costs for the following reasons:

- **Rules 77.01 (1)(b)** and **77.03 (2)** are applied.
- Solicitor and client costs are awarded to highlight the court's disapproval of Vrege Armoyan's litigation conduct: **Brown v. Metropolitan Authority**, *supra*.
- Exceptional circumstances are present such that it is necessary to fully compensate Lisa Armoyan for all expenses associated with the successful motion for suit costs.
- The motion was necessitated because Vrege Armoyan refused to supply the court ordered maintenance and costs awards to Lisa Armoyan. Vrege Armoyan owed Lisa Armoyan millions in uncollected maintenance arrears and costs orders, notwithstanding his ability to pay.
- Lisa Armoyan was financially dependent on Vrege Armoyan.

- Had Vrege Armoyan made the court ordered payments, the suit costs motion would not have been needed as Lisa Armoyan would have been able to fund the litigation.
- Lisa Armoyan sought suits costs, in part, to retain an expert to value the various corporate assets which Vrege Armoyan, directly and indirectly, controlled – an obligation which Vrege Armoyan elected not to fulfill: **Armoyan v. Armoyan**, 2015 NSSC 92, para 21, and contrary to **Homsi v. Zaya**, 2009 ONCA 322.
- Costs of **\$47,796.03**, inclusive of tax and disbursements, are awarded on a solicitor and client basis.

Motion by Correspondence

[8] Tariff C costs are awarded for the motion by correspondence for the following reasons:

- There is no evidence that the motion was an egregious litigation tactic, although the motion was not successful.
- The fact that the motion had little merit is no basis for awarding solicitor and client costs: **Hardman v. Alexander**, 2003 NSSC 151, quoting **Young v. Young**, [1993] 4 S.C.R. 3.
- There is insufficient evidence to support a finding that this motion falls within that category of rare and exceptional cases where an award of solicitor and client costs is appropriate.
- The motion hearing took about a half day to complete. Costs of \$1,000 is appropriate, together with a multiplier of four, given the matter's complexity, importance, and the amount of effort expended to prepare and defend the motion: **Rule 77.18 (4)**.
- A *voir dire* was held to determine the admissibility of Dr. Genest's lengthy report, which the court ultimately ruled was inadmissible for various reasons, including its lack of relevance.
- Costs of \$4,000, plus all disbursements to be confirmed by affidavit, are awarded pursuant to Tariff C.

Conclusion

[9] Total costs of **\$120,076.07**, plus disbursements, are to be paid by Vrege Armoyan to Lisa Armoyan, which costs are payable forthwith and in any event of the cause. Lisa Armoyan's request to have the costs paid out of the funds currently posted as security for costs under the provisions of the order dated May 15, 2014 is granted for the following reasons:

- The costs relate to the *Matrimonial Property Act* litigation for which the security for costs was posted.
- The costs are ordered payable regardless of success in the proceeding and must be paid forthwith.
- Such an order will do justice between the parties in the unique and unfortunate circumstances of this case.

[10] Counsel for Lisa Armoyan is to prepare the necessary orders to give effect to this decision.

Forgeron, J.