

SUPREME COURT OF NOVA SCOTIA

Citation: GE Canada Equipment Financing G.P. v. 3068485 Nova Scotia Ltd., 2010 NSSC 204

Date: 20100527

Docket: Hfx No. 264303

Registry: Halifax

Between:

GE Canada Equipment Financing G.P.

Plaintiff

v.

**3068485 Nova Scotia Limited, DRL Coachlines Limited,
DRL Vacations Limited and
Ruth Roberts-Tetford**

Defendants

LIBRARY HEADING - COSTS DECISION

Judge: The Honourable Justice John D. Murphy

Written Decision (Costs): May 27, 2010

Subject: Costs and Disbursements following motions and trial.

Summary: Plaintiff obtained joint and several judgment, after four-day trial, against personal and corporate guarantors for \$810,373.00 comprising debtor's principal amount owing of \$635,511.00 plus special damages of \$2,000.00 and interest of \$174,861.00. Plaintiff sought costs of \$103,000.00 based on Trial Tariff A Scale 3 plus four days trial allowance, motion costs, and disbursements. Defendants suggested court award lump sum of \$30,000.00, based on 50 per cent of Defendants' estimate of Plaintiff's legal fees, plus reduced disbursements.

Issue: Proper basis for and quantum of award.

Result: Total costs and disbursements of \$69,473.42 awarded, consisting of \$49,750.00 trial costs using Tariff A Scale 2 based on "Amount in

issue” limited to principal debt owing, plus four trial days allowance of \$8,000.00, two motion days allowance of \$4,000.00, and adjusted disbursements.

The following determinations were made:

party/party costs should represent reasonable, predictable and substantial indemnity for expenses incurred, and awards should encourage settlement and promote sensible conduct of proceedings.

Civil Procedure Rules revised in 2009 applied, as trial took place during July 2009, and 2004 Tariff applied to proceeding commenced in 2006.

Tariff scale award could properly reflect objective determination honouring the substantial but only partial indemnity principle, and it was not necessary for court to diverge from predictable scale and make lump sum award.

Proceeding was not so simple that tariff-based award would be excessive; scale-based award could be made without details of legal fees incurred by Plaintiff; Defendants’ claim that her financial circumstances were limited was not credible, and in any event being of modest means does not provide a right to litigate without responsibility for costs consequences, particularly for a debtor who attempts to avoid liability by giving evidence which was inconsistent, contradictory and not credible.

Defendants’ conduct advancing different and conflicting positions did not make case so complicated or prolonged that the Scale 3 award sought by the Plaintiff was warranted.

Where special damages and interest components were readily agreed by Defendants when they were found liable for the principal debt, “amount involved” under tariff scale was limited to principal debt, to achieve result consistent with substantial but partial indemnity principle.

Photocopy disbursements reduced to \$2,000.00 from approximately \$3,500.00 claimed, as Plaintiff did not itemize number of pages, and cost per page, or provide counsel’s representation that charges were reasonable and necessary.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***