

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Lawton's Drug Stores Ltd. v. Zinck,  
2009 NSSC 243

**Date:** 20090813

**Docket:** Hfx No. 309879

**Registry:** Halifax

**Between:**

Lawton's Drug Stores Limited, a body corporate

Plaintiff

v.

Paul Zinck, an individual, Jill MacLean an individual

Defendants

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DECISION ON COSTS

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**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** May 6, 14, 15, 26, 2009, in Halifax, Nova Scotia

**Counsel:** William L. Ryan, Q.C. and Grant Machum, for the plaintiff  
Harold A. MacIsaac and Cory Binderup, for the defendants  
John Kulik, Q.C. and Robert Mann, for the intervenors

**By the Court**

[1] Lawton's Drug Stores Limited (henceforth "Lawton's") started an action against the defendants, Paul Zinck and Jill MacLean (henceforth "Zinck and MacLean").

[2] Lawton's sought immediate injunctive relief against Zinck and MacLean. An interim injunction was granted pending the hearing of an interlocutory motion which, although only scheduled for one day, required a total of four days to be presented.

[3] Approximately one-half day was devoted to the hearing of a preliminary motion to allow Gerry and Susan MacDonnell (henceforth "the MacDonnells") to intervene in the process. Earlier, the MacDonnells had been granted intervenor status by Justice C.R. Coughlan who heard the motion for an interim injunction along with a motion for adjournment of the interlocutory injunction brought by counsel for Zinck and MacLean.

[4] Lawton's continued its opposition to the granting of intervenor status to the MacDonnells. I granted the motion allowing their counsel to fully participate in the hearing pursuant to **Civil Procedure Rule 35.10**. It was made sufficiently clear to the Court that the MacDonnells had an interest in the proceedings and could be adversely affected by any ruling made.

[5] Including the one-half day devoted to the question of granting intervenor status, a total of four days was spent in presenting the evidence and hearing the submissions of counsel. My oral decision was delivered on May 29, 2009.

[6] In addition to actual court time, a teleconference hearing was conducted with all counsel a few days prior to the hearing. Neither this time nor the time taken to give my oral decision will be included in computing the time consumed in dealing with the motion. Justice Coughlan declined to order costs in the matter that came before him. It is not appropriate for me to re-think his decision. Therefore, any time pertaining to the interim motion will not be considered by me in assessing costs on the interlocutory motion.

[7] The approximately one-half day taken to deal with the issue of granting intervenor status will be included. Despite the fervent opposition of Lawton's, counsel for the MacDonnells succeeded in convincing the Court that his clients had a genuine interest in the proceedings. Their participation in the hearing did not cause any significant increase in the amount of time needed to dispose of the motion.

[8] Lawton's was not successful in its' motion save for the Court's order requiring Zinck and MacLean to return all papers, electronic files (however stored) and other materials, if any, in their possession, power or control which might contain any of

Lawton's patient information, financial information or other confidential information provided it would not result in a breach of the *Pharmacy Act* or its Regulations. Indeed this is virtually the same conditions which the parties had previously agreed to as part of Justice Coughlan's order.

[9] Although an intervenor is generally not entitled to costs, in this particular case I feel it is appropriate to use the general discretion codified in **Civil Procedure Rule 77.02**. My reason for doing so is based on the very significant interest that the MacDonnells had in the proceeding. If the injunction had been granted, the sale of the MacDonnell Pharmacy to Zinck and MacLean would have been further delayed and perhaps frustrated entirely.

[10] Furthermore, Lawton's were seeking to enjoin Zinck and MacLean from working in their chosen profession within the limits of the Village of St. Peter's. This would have prevented the MacDonnells from hiring either Zinck or MacLean for a 24-month period. Mrs. MacDonnell was the only licensed pharmacist at MacDonnell Pharmacy. The pharmacy could only be open while a licensed pharmacist is on duty. To disentitle Zinck and MacLean from working at MacDonnell Pharmacy would have severely compromised the MacDonnells' business and perhaps even Mrs. MacDonnell's health.

[11] I award costs to the MacDonnells to be paid by Lawton's at the rate of \$1,000.00 per day for four days, along with disbursements for photocopying of \$158.48 (one-half of the amount claimed) plus HST of \$20.60 for a total of \$4,179.08. Lawton's shall pay this amount to counsel for the MacDonnells within 30 days of the date of this decision.

[12] I also order costs payable by Lawton's to counsel for Zinck and MacLean at the full Tariff C per diem rate of \$2,000.00 per day for four days which totals \$8,000.00.

[13] In addition, Lawton's shall pay 50 percent of the disbursements claimed by Zinck and MacLean's counsel for photocopies, faxes, meals, hotel, parking, courier and other travel expenses. This amounts to  $(\$1,944.27 \div 2)$  \$972.14 for a total of \$8,972.14.

[14] **Civil Procedure Rule 77.03(4)(c)** provides for payment of costs to a party in any event of the cause. It also allows the Court to order immediate payment or at the end of the proceeding. I choose to exercise my discretion to order payment of the full

amount within 30 days of the date of this decision. I do so based on the fact that both Zinck and MacLean were prevented from working as pharmacists within the community where they live for several weeks based on the interim injunction. They should not have to wait for the final determination of this matter to receive payment.

[15] Counsel for Zinck and MacLean should prepare the order reflecting the costs which they have been awarded. Likewise, with counsel for the MacDonnells.

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Justice Glen G. McDougall