

SUPREME COURT OF NOVA SCOTIA
Citation: *Frothingham v Perez*, 2010 NSSC 134

Date: 20100412
Docket: Hfx No 306209
Registry: Halifax

Between:

Elizabeth Frothingham

Plaintiff

v.

Charles Perez and Wickwire Holm

Defendant

Judge: The Honourable Justice Gregory M. Warner

Heard: By Written Submissions dated March 3, 2010 and April 1, 2010

Counsel: **Elizabeth Frothingham**, self-represented plaintiff
Michael J. Wood, Q.C., counsel for the defendants

By the Court:

[1] This is a decision on costs arising from the defendants' successful summary judgment motion.

[2] Ms. Frothingham is a 72-year-old self-represented litigant. In a lengthy unfocused Statement of Claim, she alleges that the defendants represented her, on a *pro bono* basis, respecting the sale of property owned by her at Liscomb, Nova Scotia, the purpose of the sale being to finance her candidacy for election as President of the United States in 2008. She claims that the defendants breached their contract with her, breached their fiduciary duty to her, and acted negligently.

[3] In opposition to the defendants' motion, Ms. Frothingham filed lengthy affidavits and cross-examined Mr. Perez at a hearing that lasted most of one day.

[4] The Court gave an oral judgment at the end of the hearing granting summary judgment to the defendants.

[5] The defendants seek costs on the basis of Tariff C.

[6] Defendants' Counsel notes that while the Court has discretion on whether, and how much, costs should be awarded, normally costs follow the result. In this case, the large volume of unfocused factual allegations and legal arguments of the plaintiff added considerably to the complexity of the matter and the effort required by the defendants.

[7] The Court's decision was determinative of the action. Citing as similar matrices, *Cherubini Metal Works v. Nova Scotia*, 2008 NSSC 322, and *Vaughn v. Hayden*, 2009 NSSC 236, the defendants seek costs at the top end of the "more than half day" category; that is, \$2,000.00 x 4 (on the basis the decision determined the matter) for a total of \$8,000.00.

[8] The plaintiff's response brief contains many old and new factual allegations, argued as five reasons for not awarding costs.

[9] First, due to Mr. Wood's improper conduct, the plaintiff was denied procedural fairness at the February 22, 2010, hearing. This allegation appears to centre around Ms. Frothingham's contact with Mr. Wood before the hearing resulting in her claim that neither she nor the cross-examined witness (Mr. Perez) was ready for cross-examination. My observation is that Ms. Frothingham appeared to be ready for cross-examination and conducted it well. On the other hand, Mr. Perez appears to have been surprised by the request, and unprepared, for cross-examination. I conclude that Ms. Frothingham was not denied procedural fairness.

[10] Second, Ms. Frothingham claims to be unable to pay costs. The award of costs would be an impediment to her pursuing her claim, including the appeal of the summary judgment decision. She cites *CPR 77.04* and *Gardiner v. Gardiner*, 2007 NSSC 282. I agree that Ms. Frothingham appears

to be insolvent, although neither the value of her Liscomb's properties nor her "balance sheet" were put in evidence before the Court.

[11] Third, the plaintiff argues that she has an arguable case on the issue of migration of the property that renders the Court's judgment for summary judgment invalid. This argument, rejected in the summary judgment decision, is not relevant to the Court's analysis on costs.

[12] Fourth, the plaintiff argues that the plaintiff Wickwire Holm is a powerful law firm doing business with an unnamed "third party" in an effort to financially ruin the plaintiff. At best, this argument is unsubstantiated and speculative; at worst, it raises concerns respecting the plaintiff.

[13] Fifth, under the category of "importance of the matter," Ms. Frothingham compares the importance of the issues in this litigation with current world issues such as the war in Afghanistan, health legislation, police powers and the tragedy of children deprived by repressive medication.

Analysis

[14] I agree with the defendants that the plaintiff's claim against the defendants contained volumes of unfocused allegations of fact and law that had no merit whatsoever. The complexity to the defendants caused by the large volumes of unfocused allegations increased the effort required by the defendants in meeting the allegations.

[15] A successful Chambers' motion for summary judgment, of more than one-half day in duration, normally entitles the winner to party-party costs, per Tariff C, of between \$1,000.00 and \$2,000.00. In my view, costs should be awarded at the top end of the scale in light of the volume of unorganized and, in some cases, scandalous allegations that were entirely unproven.

[16] The summary judgment determined the action. Normally I would agree that this fact, in the circumstances of this case, should merit the requested multiplier of four resulting in an award of costs of \$8,000.00; however, the evidence before the Court on February 22, 2010 and the affidavits of Ms. Frothingham (on which she was not cross-examined) led the Court to conclude that she cannot afford the litigation she has commenced. She has her "principles" but appears to live like a pauper.

[17] In light of my determination that her case has no merit, a reduction in normal costs' award should not be considered for the purpose of enabling her to pursue her claim. I surmise that it is unlikely that a costs' award would deter the plaintiff; however, I find merit in the argument that she is unable to afford to pay costs.

[18] In summary, I find no merit in her first, third, fourth and fifth reasons for denying costs to the defendants. It is unreasonably self-important for the plaintiff to equate this claim against the defendants with the world issues that she cites. It is equally unfortunate that her arguments include allegations about how "third parties," out to ruin her, have used the defendant Wickwire Holm as its instrument (fourth issue).

[19] The Court awards costs to the defendants in the amount of \$4,000.00.

J.