

SUPREME COURT OF NOVA SCOTIA

Citation: National Bank of Canada v. Weir, 2010 NSSC 212

Date: 20100603

Docket: Hfx No. 307548

Registry: Halifax

Between:

National Bank of Canada

Plaintiff

and

Lowell R. Weir

Defendant

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Written Submissions: April 14 and 29, 2010

Counsel: David G. Coles, Q.C., Martin-Pierre Boulianne,
and Lyle Howe, articulated clerk, for the plaintiff
W. Dale Dunlop and Scott Hughes, for the
defendant

Moir, J.:

[1] Mr. Weir successfully defended a contempt proceeding brought by the National Bank against him. Mr. Weir requests lump sum costs of \$7,500. The bank suggests \$1,000.

[2] The argument for a lump sum approaching solicitor and client costs turns on two points. Firstly, I found that the behaviour attacked by the bank fell well outside the purpose of the order it contended had been disobeyed.

[3] Secondly, it is said that, when understood in the context of the complicated litigation between the bank and Mr. Weir, the contempt proceeding appears to have been a bad faith tactic on the bank's behalf.

[4] The evidence before me does not establish bad faith, not even when understood in light of the decisions of Justice Scanlan and Justice Warner to which Mr. Dunlop referred. I do not see exceptional grounds justifying an award approaching solicitor and client costs, nor is it demonstrated that the tariffs are inadequate to the task of providing a substantial but partial indemnification.

[5] A contempt proceeding ought not to be regarded as an ordinary, interlocutory step. Although the proceeding may be started by motion in an action or application to which the contemptuous behaviour relates, Rule 89 - Contempt generally treats it as a stand alone proceeding. For example, Rule 89.05(4) requires notice "as if the notice of motion were an originating document" and Rule 89.07(1)(e) provides for "a reasonable time...to retain and instruct counsel".

[6] This view of the civil contempt proceeding as a proceeding independent of the action or application to which it relates accords with developments in the law of civil contempt since the *Charter*. The distinctions between civil contempt and criminal contempt have diminished substantially, see for example *Anthes v. Wilson Estate*, [2005] O.J. 1780 (C.A.), to the point that Rule 89 jettisons the very summary provisions of the 1972 Rules on contempt in order to conform with the *Charter*. Under modern law, civil contempt is a criminal proceeding. It is substantially distinct from an ordinary motion.

[7] Consequently, Tariff C(4) applies. It calls for multiplication of the tariff amount "[w]hen an order following an application in Chambers is determinative of

the entire matter at issue in the proceeding". (Of course, "application" refers to the old interlocutory application, now called a motion.)

[8] Mr. Coles and Mr. Santimaw submit that the contempt hearing was "More than one hour but less than ½ day". However, it was set as a half day hearing, not for less than a half day and I would apply the next level of tariff. Because of the importance to Mr. Weir of his being held in contempt, as well as the fine that was sought, I apply the high end of the "More than ½ day but less than 1 day" range and double the result.

[9] I will order that Mr. Weir recover costs of \$4,000 plus disbursements related to the contempt proceeding.

J.