SUPREME COURT OF NOVA SCOTIA
Citation: MacRae Estate (Re), 2010 NSSC 197

Date: 20100520
Docket: PtH 301816
Registry: Port Hawkesbury

In the Estate of Mary Sarah MacRae

Decision on Costs

Judge:	The Honourable Justice Frank Edwards
Heard:	March 30 & 31, 2010, in Port Hawkesbury, Nova Scotia
Final Written Submissions:	May 19, 2010
Counsel:	Donald MacDonald and Catherine MacDonald, for the Claimant M. Ann Levangie for Respondent Heirs Patrick Lamey, Proctor of the Estate of Mary Sarah MacRae

By the Court:

[1] ***Costs:*** Since filing my decision on April 23, 2010, I have received and reviewed written submissions on costs from the parties and also from the Proctor of Sadie's Estate. Counsel agree upon the principles governing an award of costs and I will not repeat them. I would emphasize however that costs are at the discretion of the Court.

[2] The costs issue here is far from straightforward. It is not a simply a matter of saying that the successful party is entitled to costs and calculating an appropriate figure. Vinnie (and thus his Estate) are largely responsible for the legal mess which caused this litigation. Arguably, Sadie was also at fault. That determination however would ignore the reality of the situation which existed at the time of the execution of the 1995 deed. At that time, Sadie was relying upon Vinnie (and Vinnie's lawyer) to give her appropriate guidance. She did not get it. Consequently, fault ultimately rests with Vinnie's Estate.

[3] On the other hand, while it may have been initially reasonable for the Responding heirs to resist the claim, it was unreasonable for them to continue to do so. The Claimant made a written offer to the Proctor of the Estate on May 12,

2008. At that time, the Claimant offered 30 acres to the Estate. I assume that the Responding heirs and the personal representative of Sadie's Estate were made aware of that offer. At a minimum, they should have indicated a willingness to negotiate or caused the Estate to counter offer.

[4] Then, shortly before the hearing (which began March 30, 2010), the Claimant on March 19, 2010, made a further offer of 53 acres which included 28 acres of valuable shore-front property. It was totally unreasonable for the Responding heirs to reject that offer.

[5] While one might require time to reflect on the ultimate and specific decision in the case, it was apparent from the outset that the Claimant had a strong case. During the hearing, I encouraged the parties to negotiate and to be guided by reason rather than emotion. I hoped that a negotiated solution (in a family context) would be preferable to an imposed solution. In the circumstances the Responding heirs should have embraced the March 19, 2010 offer, or the verbal offer which I understand was made during the hearing.

[6] In the result, there is more than enough blame to go around, both for the necessity of this litigation and for its prolongation. The Claimant and the Responding heirs will each therefore bear their own respective costs.

[7] I sympathize with the Proctor's position. The Proctor agreed in good faith to act in Sadie's Estate which, at the time, possessed a significant asset. As a result of the Claim of Vinnie's Estate, Sadie's Estate is now insolvent. To date, the Proctor has run up a bill approaching $23,000.00. I am directing Vinnie's Estate to make a $10,000.00 contribution to the Proctor to defray that cost. The balance of the Proctor's costs will be borne by the personal representative of Sadie's Estate. Hopefully, he has an understanding with the other Responding heirs that they will share his financial liability.

[8] In paragraph 57 of my April 23, 2010 decision, I directed the personal representative of Sadie's Estate to quit claim the Estate's interest in the property to Vinnie's Estate. Should he fail to do so within 60 days of this decision, I hereby authorize the Sheriff to execute such a deed.

Order accordingly.

J.