SUPREME COURT OF NOVA SCOTIA

Citation: MGL Consulting and Investments Ltd. v. Perks Coffee Ltd., 2010 NSSC 426

Date: 20100909
Docket: Hfx No. 334114, 332445
Registry: Halifax

Between:

MGL Consulting and Investments Limited

Applicant

v.

Perks Coffee Limited

Respondent

And Between:

Perks Coffee Limited

Applicant

v.

MGL Consulting and Investments Limited

Respondent

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Judge: The Honourable Justice John D. Murphy

Heard: September 9, 2010, in Halifax, Nova Scotia
{Oral decision rendered September 9, 2010}

Final Written Submissions (Costs): October 1, 2010; October 12, 2010

Written Decision (Costs): November 15, 2010

Subject: Costs following applications in court

Summary: Landlord and tenant each brought an application in chambers under *Civil Procedure Rule 5.05(2).* The tenant sought appointment of an arbitrator under a lease, and the landlord requested a declaration that a sublease and amendment were terminated and superseded by a subsequent sublease. The applications were akin to "cross-applications", and were heard concurrently during more than one hour but less than one half day of court time. The landlord obtained the declaration which it sought, and the tenant's application was dismissed.

Both parties suggested costs be determined by invoking Tariff A prescribed by the *Costs and Fees Act* - landlord suggested an award of $9,000 plus disbursements (a Tariff A Scale 3 award of $4,000 for each application plus trial attendance cost of $1,000) and tenant proposed one Tariff A Scale 1 award of $3,000 total for both applications.

Issues: Basis for and quantum of costs award.

Result: Landlord recovers costs of $3,000 total based on one Tariff C award for the hearing of the two applications.

Civil Procedure Rule 77.06(2) which states that costs of an *application* must, unless the judge who hears the application otherwise orders, be assessed in accordance with Tariff A as if the hearing were a trial, does not distinguish between *applications in court* and *applications in chambers*. The cost award following an *application in chambers* should normally be made under Tariff C, as the hearing is not conducted in court, and chambers applications have limited hearing duration and are not alternatives to actions. Applying a costs multiplier to the chambers Tariff C when the entire matter at issue is determined is a better method of exercising judicial discretion than arbitrarily assigning a dollar amount to a non-monetary claim in order to fit an award into a Tariff A scale.

In this case the applications were very closely connected and warranted costs of only one chambers hearing. As the matter was complex, important to the parties, required substantial effort and was completely resolved by the applications, the award was based on the $1,000 upper-level cost range suggested in Tariff C for one half a chambers hearing, with a three times multiplier.

The landlord's claim for disbursements for copy print/scan charges, fax transmission and binding charges was reduced by 60% in the absence of either information indicating the amount of documentation and billing rates, or a representation from counsel that the expense was reasonable and necessary.