

SUPREME COURT OF NOVA SCOTIA

Citation: *Geophysical Service Inc. v. Sable Mary Seismic Inc.*, 2011 NSSC 71

Date: 20110216

Docket: Hfx No. 190408

Registry: Halifax

Between:

Geophysical Service Incorporated

Plaintiff

v.

Sable Mary Seismic Incorporated and Matthew Kimball

Defendants

Judge: The Honourable Justice M. Heather Robertson

Heard: February 9, 2011, in Halifax, Nova Scotia

**SUPPLEMENTARY
WRITTEN DECISION:** February 16, 2011

Counsel: Colin Piercey and Tricia Barry, for the plaintiff,
respondent
Stephen Kingston and Justin Kimball, for the
defendants, moving parties

Robertson, J.:

[1] By a motion dated December 16, 2010, the defendants sought an order confirming their ability to pay certain amounts for billed and unbilled time of their respective legal counsel, as well as retainers with respect to ongoing litigation, without such payments violating the terms of two execution orders previously issued February 18, 2010, as Hfx No. 190408 against the defendant judgment debtors to the plaintiff herein, who were successful litigants in this action. My

written decision in this matter (2011NSSC67) was rendered on February 15, 2011.

[2] This is a supplemental decision issued following correspondence dated February 16, 2011 received from Mr. Stephen Kingston, solicitor for the defendants, moving parties. Mr. Kingston wished to correct “. . . aspects of the Decision where I believe the Court had misapprehended my oral submissions made during the Motion hearing.” And further states, “It was not my intention in my submissions to expand on the evidence otherwise before the Court in Ms. Cochrane’s affidavit.” The Court gratefully receives this clarification.

[3] Ms. Cochrane’s affidavit sworn December 16, 2010, identified in para. 41.a the loans proposed to be used to pay for billed and unbilled time of the respective legal counsel, as well as retainers with respect to ongoing litigation:

I am advised by Matthew Kimball and do verily believe that:

- a. With a loan or loans from a third party or third parties he believes he and SMSI will be able to pay the retainers and legal fees referred to above;

[4] The Court can now only rely upon the affidavit evidence of Ms. Cochrane relating to the third party loans. The affidavit evidence does not reveal where the loans come from or if they will reduce the exigible assets of the defendants, available for execution. I am therefore unable to grant the proposed order which accompanied the notice in this matter.

[5] I will be happy to hear submissions in writing on the matter of costs, failing any agreement.

Justice M. Heather Robertson