

SUPREME COURT OF NOVA SCOTIA

Citation: MacBurnie v. Halterm Container Terminal Limited Partnership ,
2011 NSSC 322

Date: 20110811
Docket: Hfx. No. 341635
Registry: Halifax

Between:

Tim MacBurnie

Plaintiff

-and-

Halterm Container Terminal Limited Partnership, a body corporate

Defendant

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Judge: The Honourable Justice Robert W. Wright

Heard: August 11, 2011 in Chambers at Halifax, Nova Scotia

Oral

Decision: August 11, 2011

Written

Decision: September 15, 2011

Subject: Civil Procedure Rule 77.04 - Motion by plaintiff for an order that he is to pay no costs in this proceeding.

Summary: The plaintiff, after the close of pleadings in his wrongful dismissal action, brought a motion for a costs immunity order under Rule 77.04. His supporting affidavit outlined his dire financial circumstances which were said to be directly attributable to his dismissal without any severance (and continued unemployment), compounded by the denial of his appeal for E.I. benefits (the employer having asserted just cause). The plaintiff maintained that he met the criteria set out in Rule 77.04 being a party who cannot afford to pay costs and for whom the risk of an award of costs is a serious impediment to pursuing his claim.

Issue: Whether the court should exercise its discretion to make a costs immunity order in favour of the plaintiff?

Held: Because of the imbalance that a costs immunity order would create, the court should exercise its discretion to grant such an order only as an extraordinary remedy where it is fully satisfied that to deny costs immunity would effectively deny the applicant access to justice. The two criteria set out in Rule 77.04 should therefore be stringently applied. Here, the court was not satisfied on the evidence before it that the applicant met the burden of showing that he could not afford to pay costs and that the risk of an award of costs would effectively deny him from pursuing his claim. The plaintiff had entered into a contingency fee agreement with his counsel who gave no indication that his services would be withdrawn unless a costs immunity order were to be granted.

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER
SHEET.**
