

Date: October 31, 2001
Docket: SH 143797

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

ARTHUR SPIROPOULOS, of Halifax Regional Municipality,
Province of Nova Scotia

Plaintiff

- and -

GASTON CHAGNON PROPERTIES LIMITED et al.

Defendants

[Cite as Spiropoulos v. Gaston Chagnon Properties Ltd., 2001 NSSC 153]

DECISION ON COSTS

HEARD: before the Honourable Chief Justice Kennedy, Supreme Court
of Nova Scotia, Halifax, Nova Scotia, July 10, 2001.

DECISION ON
COSTS: October 31, 2001

COUNSEL: W. Michael Cooke, C.D., Q.C. for the defendants
Michael C. Moore for the plaintiff

KENNEDY, C.J.:

- [1] This matter came before me in civil chambers on July 20, 2001.
- [2] On that date, I allowed the defendants' application to dismiss the plaintiff's action for want of prosecution.
- [3] I invited written application as to costs.
- [4] Security for costs in the amount of \$5,000.00 have been deposited by the plaintiff with the Prothonotary, subject to an order of Justice Moir dated August 18, 1998.
- [5] The successful defendants, by written submission, have now asked that, in this specific, costs of this application be awarded on a solicitor-client basis, or in the alternative, that "an elevated lump sum" award of costs be given.
- [6] The defendants argue that increased costs are justified because of the plaintiff's consistent failure to comply with the court rules and orders after having commenced the proceeding.
- [7] The defendants brought six applications of various nature seeking the Court's assistance before the dismissal.
- [8] The defendants acknowledge the position of the Court of Appeal in this Province, that an award of costs between solicitor and client is to be granted only "rare and exceptional circumstances and to highlight the courts disapproval of the conduct of one of the parties." *Merzbach v. McSween*, [1997] N.S.J. No. 418 (N.S.C.A.)
- [9] It is the defendants' submission that the plaintiff's persistent failure to comply with court directive, to move the matter forward, in this specific constitutes one of those "rare and exceptional" circumstance.
- [10] I find not. The plaintiff's failure, although deserving condemnation, was not the type of "reprehensible" conduct found by Justice Hood of this Court in *Smith's Field Manor Development Ltd. v. Campbell*, [2001] N.S.J. No. 230 (N.S.S.C.) S.H. 93-5567 (101803), to justify solicitor-client costs.
- [11] The applicants, defendants, will be granted costs on this application in the amount of \$500.00, payable forthwith from the funds held by the Prothonotary for security for costs in this matter.

Chief Justice Joseph Kennedy

Halifax, Nova Scotia