

SUPREME COURT OF NOVA SCOTIA

Citation: iNOVA Credit Union Ltd. v. Giamac Inc., 2012 NSSC 400

Date: 20121120

Docket: Hfx No. 382080

Registry: Halifax

Between:

iNOVA Credit Union Limited

Plaintiff

v.

Giamac Inc.

Defendant

and

Gerald Giovannetti

Defendant/Guarantor

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Judge: The Honourable Justice Peter P. Rosinski

Heard: October 17, 2012, in Halifax, Nova Scotia

Subject: *CPR 77 - Costs; CPR 35 - Adding parties to a motion to set aside a Sheriff's sale conducted pursuant to an order for foreclosure, sale and possession, CPR 72.*

Summary: Mr. Giovannetti was the guarantor of a Giamac loan received from mortgagee, iNOVA. Foreclosure ordered and at Sheriff's sale Mr. Giovannetti, as agent for Mr. Smithers, was the successful bidder. Given an opportunity to present purchase price monies, Mr. Giovannetti did not return quickly enough and the Sheriff sold the property to the next highest bidder, Mr. Webber. Mr. Giovannetti and Giamac brought motion to set aside the foreclosure sale and to add Mr. Webber to the proceedings. Mr. Smithers brought a motion to be added "as party to the proceeding." The AGNS sought intervenor status.

During the hearing, the parties agreed to a “consented to as to form” order which effectively caused all the motions to have been successful.

Issue: What is a proper costs award in such circumstances?

Result: Although costs usually follow the result, it was fundamentally most important to do justice between the parties, and in these unusual circumstances, that requires that each party bear their own costs of these motions.

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