

SUPREME COURT OF NOVA SCOTIA

Citation: Thomas v. Yuille Auto Works, 2013 NSSC 142

Date: 20130503

Docket: Hfx. No. 408993

Registry: Halifax

Between:

Charlene Anne Thomas

Plaintiff

v.

Yuille Enterprises Limited carrying on business as “Yuille Auto Works” and
Robert Yuille

Defendants

Decision on Costs

Judge: The Honourable Justice Kevin Coady

Decision: May 3, 2013

Counsel: Kevin A. MacDonald, for the Plaintiff
M. Jean Beeler, Q.C. and LouAnn Chiasson, for the
Defendants

By the Court:

[1] This application for solicitor/client costs is brought by the defendant, Robert Yuille. It follows a one day hearing and a decision delivered on March 14, 2013. (2013 NSSC 97). Mr. Yuille was the successful party.

[2] The decision above referenced is rooted in a history of litigation. The first step along the way involved a divorce proceeding. Ms. Thomas settled on the “courthouse steps”, fired her counsel and reneged on the settlement. In 2011 Justice Beryl MacDonald ruled that the parties had reached a settlement and awarded Mr. Yuille \$20,000 in costs. Justice MacDonald commented that “what I see here is an individual who has never been able to accept certain realities that unfolded as the matter progressed.”

[3] The second step along the way involved a dispute over an investment property. Once again Ms. Thomas settled but later denied an agreement was achieved. On July 24, 2012 Justice Michael Wood concluded that the parties had achieved a binding and enforceable settlement which provided that Ms. Thomas

would receive \$200,000. Mr. Yuille did not pursue costs in order to avoid an appeal.

[4] On November 13, 2012 Ms. Thomas filed a Notice of Action against the defendants seeking a declaration that she was wrongfully dismissed by the corporate defendant. She further alleged that Mr. Yuille had interfered with her employment to her detriment. She claimed compensation and all manner of damages. The defendants plead that the causes of action and the issues set out in the Statement of Claim were *res judicata* and amounted to an abuse of process. I concluded that Ms. Thomas' action was *res judicata* and, as such, amounted to an abuse of process. I determined that the appropriate remedy was to strike the action. I invited submissions on costs.

[5] Mr. Yuille relies on the following factors to support his request for solicitor/client costs:

- i. The inflammatory and irrelevant language in the Statement of Claim.
- ii. The necessity of filing the Notice to Strike at the same time as the defence.

- iii. Late filing of affidavits by Ms. Thomas and the inflammatory language contained therein.
- iv. The unnecessary length of Ms. Thomas' affidavit and brief.
- v. Mr. Yuille's success on this application.

[6] Ms. Thomas responded that solicitor/client costs are inappropriate and not supported by the case law. She alleges that her position is supported by Mr. Yuille's alleged failure to meet his spousal support and corollary relief judgment obligations. Ms. Thomas submits that an award of \$2,000 is sufficient.

[7] Mr. Yuille submits that his costs on this matter are as follows:

Legal Fees	\$15,564.50
HST	\$2,334.68
Disbursements/HST	\$495.19
Total	\$18,394.37

[8] The rules and the case law allow this court to depart from the usual tariff and award solicitor/client costs where appropriate. All costs awarded are entirely discretionary.

[9] The award of solicitor/client costs are made in exceptional circumstances. The question is whether the circumstances herein warrant this relatively rare remedy. I can say that the issue of compliance with the spousal support and Corollary Relief Order do not form part of my consideration. There is insufficient firm evidence from which I can conclude that Mr. Yuille is in breach of those obligations. There is some evidence to suggest that if Mr. Yuille is late in his obligation on the property division that such was caused by the actions of Ms. Thomas.

[10] Solicitor/client costs were discussed by Justice Hood in *Smith's Field Manor Development Ltd. v. Campbell*, 2001 NSSC 44. She stated as follows:

480 It is not disputed that solicitor-client cost awards are made only in rare and exceptional circumstances. In *Amirault v. Westminer Canada Limited, et al* (1994), 127 N.S.R. (2d) 241, the Court of Appeal upheld the decision of Nunn, J.,

the trial judge, [1993] N.S.J. No. 129, with respect to costs. The Court of Appeal quoted from his decision at para. 170:

The plaintiffs in each of these actions are entitled to recover costs and on a solicitor client basis. The character of the allegations involved here, fraud and dishonesty, and the circumstances here of the length of time of the outstanding allegations, their national publicity, the length and extent of the pre-trial processes and the trial itself, the findings I have made regarding injury to reputations and the lack of any real proof of fraud or dishonesty all contribute to making this a proper situation to award costs on a solicitor client basis as, in my opinion, this does constitute one of those 'rare and exceptional' cases wherein such awards are, and should, be made.

481 In *The Law of Costs*, Orkin, 2nd Edition, the authors say at pp. 2-144-146:

An award of costs on the solicitor-and-client scale, it has been said, is ordered only in rare and exceptional circumstances to mark the court's disapproval of the conduct of a party in the litigation. The principle guiding the decision to award solicitor-and-client costs has been enunciated thus:

[S]olicitor-and-client costs should not be awarded unless there is some form of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, which make such costs desirable as a form of chastisement.

The Supreme Court of Canada has approved the following statement of principle:

Solicitor-and-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.

...

At the same time, it has been said that an award of solicitor-and-client costs is not reserved for cases where the court wishes to show its disapproval of oppressive or contemptuous conduct.

There is, as well, a factor frequently underlying such an award, although not necessarily expressed, namely, that the circumstances of the case may be such that the successful party ought not to be put to any expense for costs.... As well, an award of costs on the solicitor-and-client scale is an important device that the courts may use to discourage harassment of another party by the pursuit of fruitless litigation.

[11] While the court frowns on the incessant litigation advanced by Ms. Thomas, I am unable to include that her actions meet the “rare and exceptional” criteria. I am not able to attribute fraudulent or malicious motivation to her. It seems as if she really believed she is hard done by Mr. Yuille. I suspect that such an attitude is rooted in the dissolution of her marriage.

[12] I am of the view that a strict application of the tariff would be insufficient to address Ms. Thomas’ actions. *Civil Procedure Rule 77.07(1)* states that “a judge who fixes costs may add an amount to, or subtract an amount from, tariff costs.” *Civil Procedure Rule 77.08* states “a judge may award lump sum costs instead of

tariff costs.” An application of Tariff “C” provides for an award of \$1,000 - \$2,000 for an application that entails more than one-half day.

[13] After careful consideration, I am awarding Mr. Yuille \$5,000 in costs plus \$495.19 for disbursements, and HST on those disbursements.

Coady, J.

