

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Sprague v. Spencer*, 2018 NSSC 125

**Date:** 2018-05-28  
**Docket:** SKPA 107147  
**Registry:** Kentville

**Between:**

Jason William Sprague

Applicant

v.

Paula Denise Spencer

Respondent

**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** April 5, 2018, in Kentville, Nova Scotia

**Final Written  
Submissions:** May 16, 2018

**Counsel:** Joseph Cuffari, counsel for the applicant  
Judith Schoen, counsel for the respondent

**By the Court:**

**Background**

[1] This is a costs decision.

[2] By Application in Court, the applicant sought the sale of a jointly-owned residence occupied by the parties as common-law partners for six years, and by the respondent and her children since 2013, as well as for an equal division of the net proceeds after the payment of the mortgage balance. This proceeding was commenced after the applicant made previous offers to convey his interest in the property to the respondent if she would get him off the mortgage and pay him his share of the equity in the residence. Early after their separation, the parties had each paid one-half of their joint debts that were not related to the property and the applicant was seeking to recover his share of those debts.

[3] The respondent contests the application. Her first goal was to keep the house, release the applicant from the mortgage and pay him nothing on the basis that there is no equity in the house. Her alternative submission was that if the house is sold, because she was unable to refinance the mortgage, there was still no equity in the residence to divide.

[4] After cross-examination of the parties on their affidavits and oral submissions, the court rendered an oral decision on April 5, 2018.

**Summary of oral decision**

[5] There was no dispute that the only appraisal before the court valued the residence between \$115,000.00 and \$120,000.00. The midpoint accepted by the court, based on the evidence at the hearing, as the fair market value was \$117,500.00. There was no dispute that, whether the respondent kept the property or if it was sold, the fair market value should be reduced for the real estate commission and legal fees, leaving a net value of \$109,744.00.

[6] The three areas of contention between the parties were:

1. The respondent sought to deduct the mortgage balance at the time the parties separated their finances on December 31, 2013. The balance was about \$72,000.00. The applicant submitted that it should be the balance owing at the time of sale or transfer. His reason was that the respondent and her children had had

exclusive possession of the house for about five years in exchange for a mortgage payment of about \$500.00 per month and real property taxes of about \$60.00 per month, while he had to pay separately for shelter.

On this issue, the court agreed with the applicant and held that the balance owing on the mortgage at the time of transfer for sale should be deducted from the value of the house.

2. The respondent claimed that she should receive credit for \$40,000.00 paid by her after CRA assessed her income tax, as the family had benefitted by her income during the years of cohabitation – 2007 to 2013, upon which she had not paid the correct amount of tax. The applicant's position was that he had no knowledge of any underpayment during the years of cohabitation, and had contributed substantially more to the household than the respondent; furthermore, she produced no evidence proof that any CRA debts for any of those years were paid other than from their joint account (into which all his income went) before their account was separated on December 31, 2013.

The court held that, to the extent that the respondent proved that she paid after December 31, 2013 any CRA debt that accrued during the period of cohabitation, she should be repaid before division of the net property proceeds. The only CRA debt she proved to be outstanding after December 31, 2013 was a notice of assessment, dated September 2017, for the year 2012 in the amount of \$4,595.51. The court inferred that she was likely assessed after December 31, 2013, for a similar amount for the year 2013, even though no evidence was produced as to her 2013 income or CRA assessment for unpaid taxes. The court therefore granted her claim against sale proceeds in the amount of \$9,200.00 before division of the equity between the parties.

3. The respondent claimed to have made improvements to the property after December 31, 2013, and before the date of the appraisal fixing the fair market value of the property. The applicant challenged this claim.

The court separated the costs to the respondent to occupy and maintain the property after December 31, 2013, from the cost of improvements. The court held that she had established expenses of \$5,600.00 for materials spent on improvements that may have affected the appraisal, which the court then rounded up to include personal labour, to \$6,800.00.

[7] In summary, giving credit to the respondent for her proven post-2013 assessments for pre-2014 CRA debts of \$9,200.00, as well as the property improvements of \$6,800.00, and deducting the estimated mortgage balance as of the date of the hearing, the court found that the equity in the residence should be divided equally between the applicant and the respondent. The court found the equity to be \$41,744.00, of which the applicant's entitlement was \$20,872.00.

[8] The court reserved to the respondent the opportunity to produce documentation to prove that the \$4,600.00 CRA debt inferred for the 2013 year, not paid from the joint account before December 31, 2013, differed from the imputed \$4,600.00, and to adjust the figure accordingly. No such evidence has been filed with the court.

[9] The court gave the respondent a short period to refinance the purchase of the applicant's interest in the property for his release from the mortgage and receipt of \$20,872.00, after which it was to be listed and sold.

### **Submissions on costs**

[10] In his costs submission, the applicant directs the court's attention to three offers to settle made between the parties:

1. On December 5, 2017, the respondent offered to settle on the basis that the applicant would convey his interest in the residence to the respondent, she would obtain his release from the mortgage and no money would change hand. An earlier offer from the respondent had even tougher terms.

2. On January 2, 2018, the applicant made a without prejudice offer to convey the property to the respondent if she would refinance and obtain his removal from the mortgage and pay him \$20,000.00.

3. On March 14, 2018, the applicant made a formal offer to settle to the effect that he would convey his interest to the respondent if she had his name removed from the covenant on the mortgage and paid him \$15,000.00.

[11] The decision of the court was more favorable to the applicant than his March 14, 2018, formal offer of settlement.

[12] The applicant seeks costs in accordance with Tariff A, Scale 3, on an 'amount less than \$25,000.00' of \$5,000.00 plus \$2,000.00 for a one-day hearing.

[13] The respondent submits that she was successful with regards to the issue of whether the respondent should get credit for her income tax liability, she lost with respect to whether the balance on the mortgage should be as of December 31, 2013 or the current time, and, with regards to the quantum of the debts outstanding, that there was mixed success. She submits that there should be no costs award, but if she is wrong, costs should be \$1,750.00.

### **Analysis**

[14] *CPR 77.02* says that any costs order should seek to “do justice between the parties”. The starting point is that the successful party is usually entitled to costs.

[15] *CPR 77.07(2)(b)* provides that a court may increase a tariff amount to take into consideration factors, such as a written offer of settlement, whether made formally under *CPR 10* or otherwise. *CPR 10.09* provides that where a party obtains a favorable judgment following a formal offer to settle, where the offer was made after the finish date but more than a week before trial, the party may have their costs increased by 25%.

[16] The purpose of *CPR 10* is to promote pretrial resolution of disputes and discourage unnecessary court hearings which often, as in this case, involve combined legal costs as great as, or larger than, the amount in dispute. The applicant represents that his actual legal costs to date are \$13,884.34.

[17] Tariff A provides that the successful party involved in a proceeding, involving less than \$25,000.00, should receive costs based on Scale 2 (Basic) of \$4,000.00. Scale 3 is reserved for especially complex proceedings. The appropriate scale in this case is Scale 2.

[18] Because the applicant was more successful at trial than his formal offer to settle, it is within the court’s discretion, and reasonable in this case, to increase the \$4,000.00 basic scale by 25%.

[19] The court awards costs of \$5,000.00.

Warner, J.