

SUPREME COURT OF NOVA SCOTIA

Citation: *Gandhi v. Liao*, 2021 NSSC 247

Date: 2021 08 16

Docket: Halifax, No. 491519

Registry: Halifax

Between:

Uma Gandhi

Applicant

v.

Feng Liao, Julia Jia Liu, and Jili Liu

Respondents

COSTS DECISION

Judge: The Honourable Justice Ann E. Smith

Submissions: Respondents on July 6, 2021 and 19, 2021
Applicants on July 6 and 12, 2021

Counsel: Barry J. Mason, Q.C., for the Applicant
Feng Linda Liao, Respondent
Julia Jia Lui, Respondent
Jili Liu, Respondent

By the Court:

Introduction

[1] The Applicants sought a declaration and permanent injunction against the Respondents, barring them from operating a day-care centre which they said was contrary to the restrictive covenants governing the parties' subdivision.

[2] In a decision reported at 2021 NSSC 208 this Court dismissed the Application and awarded costs to the Respondents. The parties were unable to agree on costs. This is the Court's decision on costs.

Background

[3] This Application in Court took place on February 17, 2021 and took approximately one-half day to be heard. The Respondents acted on their own behalf at the hearing. The Applicant and two of the Respondents were cross-examined on their affidavits. There was no expert evidence. Counsel for the Applicant and one of the Respondents made oral submissions.

Position of the Parties on Costs

[4] The successful Respondents seek lump sum costs of \$9,999.88 which amount appears to be guided by reference Tariff “A” with an “amount involved” of between \$100,000.00 and \$200,000.00.

[5] The Applicant says that although this matter proceeded by way of Application in Court, it is appropriate for the Court to award costs on the basis of Tariff C in all of the circumstances. They say that Tariff C costs of \$1000.00 for a half day hearing should be reduced to \$750.00 on the basis that the Respondents were self-represented.

Analysis

[6] Rule 77.06(2) provides that “party and party costs of an application in court must, unless the judge who hears the application orders otherwise, be assessed by the judge in accordance with Tariff A as if the hearing were a trial”. A judge may award lump sum costs instead of tariff costs (Rule 77.08).

[7] The Court has the discretion to make any order concerning costs that it considers does justice between the parties to pursuant to Rule 77.02.

[8] There is no legal justification to award costs to the Respondents based on an “amount involved” of between \$100,000 and \$125,000. They rely upon a decision of the Nova Scotia Court of Appeal in *Cook v. Podgorski*, 2013 NSCA 47. In that case, Mr. Cook appealed the trial judge’s award of costs of approximately \$20,000 to the successful respondent. The matter was an application in court that was heard over three and one-half days. The trial judge set the “amount involved” at \$75,000. The claims before the court involved non-monetary issues, which meant that, pursuant to Rule 77.18(c), consideration of “the complexity of the proceeding” and “the importance of the issues” provided guidance. The trial judge, Justice Coady, did not specify in his reasons how he arrived at the amount involved as \$75,000, although he noted that Ms. Podgorski suggested an “amount involved” based on the \$199,999.00 listing price of her property and Mr. Cook suggested the \$18,800.00 assessed value of the water front lot at issue, both of which suggestions Justice Coady found unhelpful. The Court of Appeal upheld the trial judge’s assessment of costs.

[9] The Respondents here suggest that the Court should fix the length of the hearing at 1.5 days “given it was scheduled three times necessitating refilings, etc.” It is correct that the matter was re-scheduled from June 22, 2020 to November 25, 2020 due to Covid-related restrictions. The hearing on November 25 was adjourned

on November 24 and rescheduled to February 17, 2021 as a result of a snowstorm and scheduling error. However, the actual hearing of the application took approximately one-half day.

[10] The Respondents say that they have spent \$12,597 in responding to this Application. Of that they say they incurred legal fees of \$3,450, although it is not clear to this Court whether all of those fees were in relation to advise on the matters before the Court, or partly in relation to a hearing before the Nova Scotia Utility Review Board. Certainly, they represented themselves throughout the hearing of this Application. The Respondents say that they also paid disbursements of \$288.88 for expenses incurred for copying, binding, couriers, filing fees, parking, ink and paper, but even if all of these matters were recoverable expenses, no details were provided to the Court.

[11] The Respondents also claim for twelve (12) hours of consultant's fees at \$150.00 per hour, but no details of the work undertaken by the consultant was provided to the Court. Further the Respondents claim \$2999.97 for each Respondent by way of "self-representation fees" set by them at \$999.99 per day. They say that this is related to the "drain of our executive, management and personal time" in responding to the Application.

[12] They say they also incurred para-legal fees of \$3500.00 but details of that amount were not provided, apart from reference to paying the para-legal to update the case law, explain *Civil Procedure Rules* and assist in drafting certain documents.

[13] The Respondents also raise issues of delay which they attribute to the Applicant and make arguments about matters not before the Court, i.e., that they were defamed by the Applicant and suffered loss and damages well beyond the actual costs they incurred. They say that these matters should increase the costs they are awarded. The Applicant did not cause the matter to be delayed. The Respondents' arguments that the Applicant defamed them and interfered with their development agreement application are not matters before this Court and I take no account of them in setting costs. Nor do I take into account the allegation, which he denied, that counsel for the Applicant did not respond to the Respondents' offer to settle costs at just under \$10,000.00. As noted by the Applicant's counsel in his submissions on costs, costs in that amount exceeded any reasonable expectation that costs could be settled. Nor does the Court find any basis to the various personal aspersions that the Respondents cast on the Applicant and their counsel in the conduct of this matter.

[14] At the end of the day, this was a straight-forward Application in Court heard over approximately one-half day. The issues involved were not overly complicated, although important to both the Applicant and Respondents.

[15] The matter resembled a special time Chambers' motion more than a trial-like Application in Court.

[16] Self-represented litigants do not have an automatic right to recover costs, but in the circumstances, I am satisfied that the Respondents are entitled to some costs, having been successful in having the Applicant's claims dismissed and having demonstrated that they obviously devoted time and effort to the matter. They were represented by counsel at the motion for date and directions; he also apparently drafted the Notice of Contest and the Notice to Act in Person.

[17] If the Court applied Tariff C based on the time of the actual hearing, costs in the range of \$750.00 to \$1000.00 would result. I find that \$1000.00 is too low given the fact that there were affidavits prepared, affiants cross-examined and lengthy submissions filed. If a multiplier of 2 or 3 were applied, costs of \$2000.00 or \$3000.00 would result.

[18] If the Court applied Tariff A costs, with an "amount involved" of less than \$25,000, basic Scale 2 costs would be \$4000.00; Scale 1 costs would be \$3000.00.

An additional amount of \$1000.00 could be added for each half day of trial. This would result, depending on the Scale used, of costs in the range of \$4000.00 to \$5000.00.

[19] I find that \$4000.00 in costs is too high.

[20] Guided by all these considerations, I am satisfied that a lump sum cost award of \$2500.00, inclusive of disbursements, does justice between the parties.

Conclusions

[21] The Applicant shall pay the Respondents costs in the amount of \$2500.00 within thirty (30) calendar days of this decision.

Smith, J.