

SUPREME COURT OF NOVA SCOTIA

Citation: *Park Place Centre Ltd. v. Manga Hotels (Dartmouth) Inc.*
2022 NSSC 358

Date: 20221208

Docket: Hfx No. 489788

Registry: Halifax

Between:

Park Place Centre Ltd., a body corporate

Plaintiff

v.

Kevin MacKie and Manga Hotels (Dartmouth) Inc.,
c.o.b. as Doubletree Dartmouth

Defendants

COSTS DECISION

Judge: The Honourable Justice James L. Chipman

Written

Submissions: December 2, 2022

Written Decision: December 8, 2022

Counsel: Katherine Willyard, for the Plaintiff
Nasha Nijhawan, for the Defendant Manga Hotels
(Dartmouth) Inc., c.o.b. as Doubletree Dartmouth

By the Court:

INTRODUCTION

[1] By decision dated November 3, 2022, *Park Place Centre Ltd. v. Manga Hotels (Dartmouth) Inc.*, 2022 NSSC 317, I dismissed the lawsuit concluding with this para.:

[85] In the result I dismiss all of Park Place’s claims in their entirety and award costs to Manga. If the parties cannot agree on costs I will receive written submissions within 30 days.

[2] On December 2, 2022, the parties submitted briefs, authorities and affidavits of their counsel’s legal assistants. In arriving at my costs decision I have considered all of the submitted materials in the context of the trial and my decision of just over a month ago.

POSITIONS OF THE PARTIES

Manga Hotels (Dartmouth) Inc.

[3] Manga submits that an appropriate costs award is \$104,000, along with \$3,902.08 in disbursements. They argue that the case warrants a high-end order of lump sum costs to do justice between the parties. In support of their position Manga submits:

The Court’s dismissal of the plaintiff’s claim came after more than three years of litigation, during which time the plaintiff refused reasonable settlement offers, failed to fulfil its disclosure obligations under the Rules (even after being ordered to do so), and brought its case to trial without any evidentiary foundation. Manga submits that the litigation was frivolous and vexatious, brought by Park Place against its competitor for a collateral purpose – to inflict legal costs and to attempt to exert pressure to obtain a benefit from Manga which had no connection to the claim.

Park Place Centre Ltd.

[4] Park Place argues that an appropriate costs award is \$35,125. Park Place’s brief is silent on disbursements. They argue that costs are appropriately assessed in accordance with Tariff A, pursuant to Rule 77.06(a) which provides that party and

party costs, unless a judge orders otherwise, must be determined in accordance with the tariffs. In support of their position Park Place submits:

21. ... that the proceeding in question was a conventional case whose circumstances did confirm generally to the parameters assumed by the tariffs.

22. The matter heard was straight-forward; it concerned well-settled law, a limited set of facts, and issues which were not complex in nature. The scope of the issues the defendant was required to address at trial narrowed significantly following the dismissal of Mr. MacKie as a defendant on April 1, 2022, more than six months prior to trial.

23. The case was also heard quickly; while the trial was scheduled for three days, the Defendant ultimately elected not to open their case and the matter was fully heard in under two full days. There were only two witnesses called, both of which had already provided evidence in discovery.

24. The Defendant raised at trial complaints about the conduct of the Plaintiff with respect to document production. The Plaintiff submits that those costs were dealt with in the decision following the motion for production heard by Justice Boudreau who, in the circumstances, declined to award party and party costs and proceeded on the basis of the tariff.

25. The Defendant itself created unnecessary work and additional spend of time through the conduct of the Rule 88 motion which was brought in the last minute and necessitated written submissions, additional evidence and authorities, and the timing of the motion for production, brought after the finish date and months after the position of the Plaintiff on disclosure had been raised.

COSTS PRINCIPLES

[5] Very recently in *778938 Ontario Ltd. v. Annapolis Management, Inc.*, 2022 NSSC 232, Justice Gatchalian reviewed fundamental costs principles at paras. 8 – 12;

8 In determining costs, the court's overall mandate is to do "justice between the parties": *Armoyan v. Armoyan*, 2013 NSCA 136 at para. 10.

9 The starting point in determining the amount of costs is the Tariffs of Costs and Fees under Rule 77. 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: Rule 77.06(2).

10 A judge has the discretion to add or subtract from the tariff amount: Rule 77.07(1). Furthermore, a judge "may award lump sum costs instead of tariff costs": Rule 77.08. Tariffs are the norm, and there must be a reason to consider a lump sum: *Armoyan, supra* at paras.14-15.

11 The basic principle is that a costs award should afford a substantial contribution to, but not amount to a complete indemnity to, the party's reasonable fees and expenses: *Armoyan, supra* at para. 16.

12 The tariffs deliver the benefit of predictability by limiting the use of subjective discretion: *Armoyan, supra* at para. 17.

[6] I bear the above in mind as I consider the submissions in all of the circumstances. The objective of the Court is to strike a proper balance and do justice between the parties on the discretionary issue of costs.

ANALYSIS AND DISPOSITION

[7] Without question Manga was successful at trial as the Court dismissed all of Park Place's claims. Whereas Manga asserts that the lawsuit was vexatious and brought for a collateral purpose, I have no evidence to support these allegations and given all that is before me, I cannot make such inferences. What I do have and will bring to bear on my costs consideration are formal offers as referenced in the affidavits. Additionally, there is the matter of Manga's unsuccessful attempt to have the matter dismissed for an abuse of process under Rule 88.

[8] In all of the circumstances I am not persuaded that a tariff calculation will be inadequate (or as the cases often say "woefully inadequate"). In this regard, I accept Park Place's submissions on the efficiency of the trial that, inclusive of oral argument, concluded in less than two days. I would add that the oral submissions would have taken considerably less time had Manga not advanced the Rule 88 motion. Additionally, in terms of the time and effort dedicated to the motion, I refer to para. 18 of my merits decision:

[18] Rather than immediately advising the Court that they wished to bring the motion, Manga waited over one further month (counsel wrote the Court on September 14, 2022) before advising that they wished to advance the motion. Rather than "oral argument only", the motion evolved into the filing of a detailed written submission with fifteen authorities and a comprehensive affidavit with several attachments.

[9] Park Place claimed approximately \$55,000 in special damages, \$250,000 in punitive damages and an unspecified amount in disgorgement of Manga's profits. The matter was originally scheduled for a three-day trial but was concluded in one and a half days.

[10] According to Tariff A, the above combined figures bring the “amount involved” in Park Place’s claim into the range of \$300,001 - \$500,000. On the “basic” scale – which I find no reason to depart from – this provides a costs award of \$34,750, plus \$2,000 per day of trial, for a total amount of \$38,750.

[11] Additionally, Rule 77.07 allows for a judge fixing tariff costs to increase the amount payable based on a written offer of settlement, the conduct of a party affecting the speed or expense of the proceeding, or other conduct of a party that was improper. Further, Rule 10.09(2)(c) provides for an increase in the tariff amount by 50%, to account for a settlement offer made before the Finish Date (as occurred here).

[12] In all of the circumstances, I am of the view that the aforementioned scale amount of \$38,750 should be increased by fifty percent (\$19,375) for a total costs award of \$58,125. I am not persuaded that any costs award in excess of this amount would do justice between the parties.

[13] In this regard, I return to the matter of the Rule 88 motion and my comments above. In the final analysis, any argument for further increased tariff costs or a lump sum award is offset by Manga’s unsuccessful attempt to have the claim dismissed for abuse of process.

[14] In the result, I award \$58,125 costs plus \$3,902.08 disbursements. The total – \$62,027.08 – shall be payable by Park Place to Manga. I would ask Ms. Nijhawan to prepare a final order reflective of the merits and within costs (and disbursements) decision.

Chipman, J.