

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Stein v. Omassi*, 2025 NSSC 265

**Date:** 20250814

**Docket:** Hfx 536882

**Registry:** Halifax

**Between:**

Peter Stein and Maria Stein

Applicants

and

Emmanuel Omassi and Maria Omassi Oldani

Respondents

<b>COSTS DECISION</b>
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**Judge:** The Honourable Justice Jamie Campbell

**Heard:** June 23 and 25, 2025, in Halifax, Nova Scotia

**Written Submissions:** July 25, 2025, brief from the Respondents  
July 29, 2025, brief from the Applicants  
August 7, 2025, reply brief from the Respondents

**Counsel:** Kerri-Ann Robson, for the Applicants  
Anna Giddy, for the Respondents

**By the Court:**

[1] Litigation is not a very cost effective way of making a point. It becomes particularly so when the point sought to be made is wrong.

[2] This is the costs decision with respect to an application in court, *Stein v. Omassi*, [2025 NSSC 223](#). In that application the Steins claimed that Mr. Omassi had trespassed on their land. They filed an expert report that suggested damages in the range of \$300,000. That was withdrawn when the expert would not testify. In oral argument damages were estimated by the Steins' counsel to be \$94,000. Mr. Omassi denied the trespass but notwithstanding that position put forth an offer to settle in the amount of \$2,500. That offer was open for acceptance during the application itself.

[3] The Steins say that they were the successful party because they proved the trespass and were awarded \$1,500 in damages. That is a far cry from \$94,000 and an even farther cry from \$300,000. They claim costs of \$8,591.80. Mr. Omassi says that the damage award was nominal, and he was successful because he was prepared to settle by paying an amount that turned out to be \$1,000 more than what the Steins ended up getting. He also claimed costs for an adjournment that arose when the expert retained by the Steins said that he was no longer willing to testify at the hearing. The total claim is \$54,679.29 representing 90% of the legal fees expended, costs on the adjournment of \$8,598.45 and disbursements of \$5,914.14. Mr. Omassi says that he was defending a claim of \$300,000 and should be compensated for the costs involved in doing that.

[4] As noted in the decision, the Steins were successful in the application in that trespass was found to have taken place but much of the focus of the application was on damages and the claim was "substantially outside the range of what could be reasonably considered". Costs of a proceeding follow the result, unless a judge orders otherwise and judges have the discretion to make an order about costs that will do justice between the parties. Making an award of costs in favour of the Steins, who initially claimed \$300,000 and in argument reduced it to \$94,000, declined an offer to settle of \$2,500 and received what could be described as a nominal award of \$1,500, would demonstrably not do justice between the parties. Whether the claim was \$300,000 or \$94,000, an award of \$1,500 is not what "success" looks like.

[5] The substantially exaggerated damage claim, Mr. Omassi's offer to settle the case, and the nominal damage award for \$1,000 less than the offer to settle, mean

that although Mr. Omassi in the end was required to make a payment to the Steins he was, in effect, the successful party. He should be compensated for the costs of defending against a claim of the magnitude put forward by the Steins.

[6] In determining the amount involved in litigation the court must assess the risk to which the successful party was exposed. And “one expects that a claimant’s demands for relief are intended to be taken seriously. Putting them forward invites consequences.” *Landymore v. Hardy* (1992), 112 N.S.R. (2d) 410 (N.S.S.C.T.D.), at para. 24. The “amount involved” can be a useful tool in reminding litigants of the financial risks that come from suing and losing. The Steins’ expert report was filed but not used in the application, indicated damages in the range of \$300,000 and that was the risk that Mr. Omassi was facing. In response he retained experts and prepared for serious litigation. That was not an unreasonable thing to do. He ended up spending more than \$53,000 in legal fees with close to \$6,000 in disbursements.

[7] The \$300,000 amount was not contained in the pleadings. It was, however, the only amount by which Mr. Omassi could assess the risk that he faced and the seriousness with which he should face preparation. That \$300,000 claim must be considered when assessing the amount involved. It is not determinative though. A claim that is substantially inflated must have consequences for the party putting it forward, but such a claim does not necessarily define the amount involved. It leaves the question of whether the amount involved was \$300,000, \$94,000, or some other amount. If the amount were set at \$300,000 and Tariff A were applied the result would be that Mr. Omassi would receive an award of costs that was more than what he paid in legal fees.

[8] The uncertainty regarding the amount involved, the offer to settle and the fact that costs are being awarded to the respondent despite the fact that the respondent has been ordered to pay a nominal damage award, suggest that a lump sum costs award would be more appropriate. A lump sum costs award should provide a substantial contribution of between 50% and 100% of the party’s legal fees. In this case, those fees were \$53,228.10. Mr. Omassi should receive a substantial portion of that, without getting full recovery.

[9] Seventy percent recovery would result in a costs award of \$37,259.67. Disbursements amount to \$5,914.14 for a total of \$43,173.81. That includes the costs of the adjournment sought by the Steins. Costs are awarded in favour of Mr. Omassi in that amount.

[10] This case involved a technical trespass. The damages were not of the magnitude claimed by the Steins. Their insistence on making the point to the extent of claiming that an access road should be built to rectify the damage that they claimed was not reasonable. Mr. Omassi should not be required to absorb all his legal costs in defending against a substantial claim the quantum of which was not supported by the evidence. Positions like that come with a cost.

Campbell, J.