

SUPREME COURT OF NOVA SCOTIA

Citation: Hants Realty Ltd. v. Travellers Guarantee Company, 2013 NSSC 279

Date: 20130911

Docket: Tru. No. 413331

Registry: Truro

Between:

Hants Realty Limited

Applicant

v.

Travellers Guarantee Company of Canada

Respondent

DECISION ON COSTS

Judge: The Honourable Justice J. E. Scanlan

Heard: June 11, 2013, in Truro, Nova Scotia

Written Decision: June 24, 2013

**Written
Submissions on costs:** August 8, 2013

Counsel: Michael P. Scott, Counsel for Applicant
Charles J. Ford, Counsel for Respondent
John Rafferty, Q.C., Solicitor for Hermiena Murphy

By the Court:

[1] This is a decision on costs in relation to an application by Hants Realty Limited and Hermiena Murphy requesting that Travellers Guarantee Company assume carriage of its defence under Real Estate Errors and Omissions Policies. Although the applications started as separate applications, the matters were heard together. The hearing of both matters was held on June 11, 2013. The hearing took less than one half day. The Court's decision was released on June 24, 2013. The Applicants, Hants Realty and Hermiena Murphy were successful in their application.

[2] Costs are in the discretion of the Court and are governed by Rule 77 of the **Civil Procedure Rules**. The counsel for Hants Realty urges the Court to apply a tariff considering the total possible exposure by the Applicants, Hants Realty, in relation to the claim as made in the main action. To do so would be wrong. The application in question relates to the duty to defend not the duty to indemnify. This means the amounts at issue are the legal fees in relation to the cost of defending the action.

[3] I understand the parties have reached an agreement in relation to fees and the terms of the cost of defending. Travellers has referred to a number of cases involving duty to defend, including:

1. **Sreit (Park West Centre) Ltd. v. ING Insurance Co. Of Canada**, 2008 NSSC 183 [Tab2], costs were awarded in the amount of \$1,500.00.
2. **ING Insurance Co. of Canada v. A.M.L. Painting Ltd.**, 2006 NSSC 203 [Tab 3], costs were awarded in the amount of \$4,000.00, following a full day Chambers application.
3. **Belmont Financial Group Inc. v. Trisura Guarantee Insurance Co.**, 2008 NSSC 109 {Tab 4}, costs were awarded in the amount of \$750.00.

[4] The Court is satisfied this is an appropriate situation in which the Court should award a lump sum amounts. This is more reflective of a significant contribution to costs having due regard to the complexity of the issues before the Court. In the present case I am satisfied that appropriate costs for each of the Applicants is \$2,000.00 plus disbursements.

[5] In addition to the issue of costs there is a dispute in relation to some of the disbursements claimed. Rule 77.10 (1) authorizes an award of “reasonable disbursements”. Travellers, has raised some concerns in relation to disbursements as claimed by Hants Realty. Absent an agreement, I would require an affidavit of disbursements from the Applicants in proof of those disbursements. Specifically, there is a difference in the discovery fees claimed by each party. It is my understanding that they shared the fees equally. I am not sure why there is a discrepancy.

[6] On the issue of photocopying the amount claimed would appear to be excessive in the extreme. While lawyers and their clients may well agree on a cost to be charged per copy in a file, any such agreement is not binding on the Courts or opposing parties when costs awards are being determined. In the present case there is no information as to the number of copies in question nor the fee per copy. The disbursement amount sought for copies is \$703.50. This is over 30% of the amount the Court awarded in costs. This Court will not impose upon opposing parties photocopying charges that are more in the nature of a money making undertaking for lawyers than a real cost of doing business. In the absence of any

rate per copy being set out, or the number of pages, I am prepared to allow \$40.00 for copying to Hants Realty. If information is provided as to the number of copies then the Court would approve the disbursement claim at the rate of five cents per page. To allow more than that rate is to pass on costs that cannot be appropriately categorised as reasonable disbursements pursuant to **Rule 77.10**.

[7] In relation to the claim for fax for \$9.00, I do not know whether this was a local fax or long distance fax but absent long distance fees, I am not prepared to allow any disbursement claim in relation to fax.

[8] Travellers does not take any issue with the \$905.00 disbursements submitted by Ms. Murphy and, as such, I am prepared to confirm those disbursements in the amount of \$905.53, without the need for filing an affidavit of disbursements.

J.