

SUPREME COURT OF NOVA SCOTIA

Citation: Dataville Farms Ltd. v. Colchester County (Municipality), 2014 NSSC 9

Date: 20140113

Docket: Hfx No. 416566

Registry: Halifax

Between:

Dataville Farms Ltd.

Applicant

v.

Municipality of the County of Colchester

Respondent

v.

Jonathan Baha'i (aka Jonathan Tranter
dba Server Balance Data Solutions)

Respondent

- and -

Docket: Hfx No. 417390

Registry: Halifax

Between:

Jonathan Baha'i

Applicant

v.

Municipality of the County of Colchester

Respondent

Judge: The Honourable Justice Michael J. Wood

Final Written Submissions: December 16, 2013 (Re Costs)

Written Decision: January 13, 2014 (Re Costs)

Counsel: David T. S. Fraser, for the Applicant, Dataville Farms Ltd.
Jeffrey R. Hunt and Dennis James, for the Respondent, Municipality of the County of Colchester
Charles Thompson and Amy Thomas (articled clerk), for the Applicant, Jonathan Baha'i

By the Court:

[1] On November 14, 2013, I issued a decision in two proceedings relating to properties located in Debert, Nova Scotia which had been sold by the Municipality of the County of Colchester (“Colchester”) for tax arrears. That decision is reported at 2013 NSSC 355 and sets out a more detailed description of the circumstances giving rise to this litigation. The parties have been unable to agree on the cost consequences of my decision and have made written submissions. This is my cost decision.

[2] The initial proceeding was an application in court by Dataville Farms Ltd. (“Dataville”) for a determination of whether it had redeemed the properties within the meaning of the *Municipal Government Act*. The second proceeding was an application for judicial by Jonathan Baha’i (“Mr. Baha’i”) for an order requiring Colchester to deliver a tax deed in accordance with the *Municipal Government Act*.

[3] In my decision, I dismissed the application by Dataville and granted the order for judicial review sought by Mr. Baha’i.

[4] The two applications were heard together, although the vast majority of hearing time was devoted to the Dataville application. All parties filed detailed affidavits in relation to the Dataville application. The only specific evidence filed in relation to Mr. Baha’i’s judicial review was the record filed by Colchester. Colchester did not dispute Mr. Baha’i’s right to a tax deed in the event that it was determined that Dataville had not redeemed the properties.

POSITIONS OF THE PARTIES

Colchester

[5] Counsel for Colchester says that in accordance with *Civil Procedure Rule 77.06(2)* party and party costs of an application in court should be assessed in accordance with Tariff A as if the hearing were a trial. In determining the “amount involved” pursuant to the Tariff, they note that the draft which Dataville attempted to tender for purposes of redemption was \$40,058.45. If one uses that for tariff purposes and applies the Basic Scale 2, the costs would be \$7,250.00. In

addition, the Tariff requires that an additional \$2,000.00 be added for each day of trial. In this case, the hearing lasted one day and therefore the total cost claimed is \$9,250.00.

[6] Colchester also noted that the hearing required considerable legal research and briefing, and that there was cross-examination of one deponent out of court. Counsel argues that there is no reason to vary from the tariff calculation.

[7] With respect to Mr. Baha'i's application for judicial review, Colchester submits that no separate costs should be awarded since there was little, if any, additional work involved in dealing with that proceeding. Although there were two applications, Colchester says that, in substance, all legal issues were resolved within the original Dataville application. They submit that Colchester should not have any separate cost obligation to Mr. Baha'i, notwithstanding his success on the judicial review.

[8] Colchester also seeks disbursements of \$500.00, comprising discovery costs, binding, postage/courier and photocopies. Their brief indicates that their actual disbursements totalled in excess of \$1,300.00, but did not specify what is included in that amount.

Mr. Baha'i

[9] Counsel for Mr. Baha'i agrees that the costs of the hearing should be fixed at \$9,250.00 by application of Tariff A. He differs slightly from the position advanced by Colchester and suggests that the main issue in this case was not a monetary claim and therefore the "amount involved" needed to be determined based upon the complexity of the proceeding. Mr. Baha'i's submission reviewed the procedural steps, the multiplicity of parties, the nature and extent of the evidence, and the length of the hearing, as well as the amount proposed to be tendered by Dataville and Mr. Baha'i's expenses in maintaining the properties in concluding that the amount determined for Tariff A purposes should generate costs of \$9,250.00.

[10] Mr. Baha'i argues that his cost entitlement should be allocated equally between Dataville and Colchester because he was successful in both proceedings.

[11] With respect to disbursements, he seeks \$959.21 for the same items claimed by Colchester, as well as additional costs in having counsel travel to Halifax from Truro for the hearing. He says that these counsel related costs are justified because Dataville chose to have the matter heard in Halifax despite the fact that the properties and other parties were located in Colchester County.

Dataville

[12] Counsel for Dataville agrees that Tariff A is applicable, but says that the “amount involved” should be less than \$25,000.00. The reason for this is that Dataville was disputing the amount required for redemption, and although it attempted to tender the amount demanded by Colchester (\$40,058.45), the legitimate expenses for redemption are much lower.

[13] Using an amount involved of less than \$25,000.00, the Tariff would generate costs of \$4,000.00, plus \$2,000.00 for the full day hearing, for a total of \$6,000.00.

[14] Dataville says that travel expenses for Mr. Baha’i’s counsel should not be recoverable, nor should the cost of the transcript for the cross-examination out of court since none of that evidence was used at the hearing. He also submits that the application for judicial review was entirely unnecessary since the outcome of Dataville’s application would determine all of the issues. As a result, the filing fees associated with that proceeding should not be allowed.

DECISION ON COSTS

[15] I agree with Colchester and Mr. Baha’i that the appropriate amount for costs in accordance with Tariff A is \$9,250.00. I come to this conclusion based upon a consideration of the factors relied upon by counsel for Mr. Baha’i with respect to the complexity of the proceeding. There were extensive materials filed and lengthy argument. There were also two proceedings, although the judicial review took much less time.

[16] With respect to disbursements, the only items disputed by Dataville are the transcript cost, judicial review filing fees and travel for Mr. Baha’i’s counsel. I agree with Dataville that the transcript cost should not be recoverable. At

conclusion of the cross-examination, counsel for the other parties would have been in a position to determine if there was any useful evidence which should be filed on the hearing. If there was, a transcript would be ordered and the evidence filed. Since there was no evidence from the transcript included in the application materials, I can only conclude that nothing came from the cross-examination. As a result, incurring the cost of a transcript seems unreasonable and should not be paid by Dataville.

[17] I also agree with counsel for Dataville that the travel costs for Mr. Baha'i's counsel should not be recoverable. Dataville was entitled to commence the proceeding in Halifax and Mr. Baha'i was free to retain his counsel of choice where ever they may practice. There was nothing unreasonable in Dataville's decision to proceed as it did, particularly since its counsel practiced in Halifax and so I will disallow this expense.

[18] With respect to Mr. Baha'i's judicial review proceeding, I believe it may have been started out of an abundance of caution and a desire to have the matter completely concluded from Mr. Baha'i's prospective. There was nothing in the materials to suggest that Colchester would refuse to issue the tax deed once the claim of Dataville was resolved. However, I am not prepared to conclude that it was unnecessary or unreasonable for Mr. Baha'i to commence his judicial review, and so I will not deny him the costs associated with it.

[19] With respect to both Colchester and Mr. Baha'i, I will award them a lump sum for disbursements of \$250.00. Mr. Baha'i will also be entitled to his filing costs for the judicial review proceeding in the amount of \$236.70.

[20] On the issue of allocation, I do not agree that Mr. Baha'i's costs should be split equally between Dataville and Colchester. Clearly, the Dataville proceeding was the dominant one. Very little documentation and time was spent on the judicial review. Mr. Baha'i will be entitled to costs in the judicial review proceeding from Colchester in the amount of \$1,000.00, plus disbursements of \$125.00 and filing costs of \$236.70. The balance of his costs being \$8,250.00, plus disbursements of \$125.00 will be payable by Dataville.

[21] The decision by Colchester not to issue the tax deed to Mr. Baha'i at the conclusion of the redemption period was the result of Dataville's claim that

redemption had occurred and the commencement of these proceedings. This led directly to Mr. Baha'i's judicial review and as a result Colchester is entitled to recover the additional costs payable to Mr. Baha'i from Dataville. This means that it is entitled to \$10,250.00 in costs and \$611.70 in disbursements.

[22] I will leave it to counsel for Mr. Baha'i and Colchester to prepare the appropriate form of orders to reflect this cost decision.

Wood, J.