SUPREME COURT OF NOVA SCOTIA

Citation: *Jerome v. Akers*, 2014 NSSC 138

Date: 20140416
Docket: Hfx No. 391604
Registry: Halifax

Between:

Myra L. Jerome

Applicant

v.

Pearl E. Akers

Respondent

DECISION ON COSTS

Judge:	The Honourable Justice Arthur J. LeBlanc
Heard:	November 22, 2012, in Halifax, Nova Scotia
Final Written Submissions:	June 5, 2013
Counsel:	Myra L. Jerome, Self-Represented William Leahey, for the Respondent

By the Court:

[1] The Applicant sought a declaration that the right-of-way had been extinguished. The Respondent contested that, and also asked for an order prohibiting the Applicant from blocking access to the right-of-way, as well as another order relating to the Registry of Deeds.

[2] The hearing took place on November 22, 2012, and I issued a written decision on May 15, 2013. In my written decision, I found in favour of the Respondent and concluded that the right-of-way had not been extinguished.

[3] The parties have been unable to agree on the issue of costs and have made written submissions.

[4] The position of the Applicant is that costs should not be awarded since there were mixed results. She maintains that although her application was dismissed, I also refused to grant the relief sought by the Respondent.

[5] In the alternative, she submits that costs should be assessed as a ½ day hearing under Tariff C, without any multiplier. It should thus be $1,000.00, with $500.00 subtracted for her success defending the counterclaim.

[6] The position of the Respondent is that she is entitled to costs in the amount of $6,500.00. Counsel for the Respondent reaches that figure by saying that the hearing took a little over half a day, which puts costs in the range of $1,000.00 - $2,000.00, with multipliers available. He then makes a more general argument that the Court need not conform strictly to Tariff C, and that the costs should be between 50% and 80% of the actual costs to his client, which was slightly in excess of $10,000.00. From that, he suggests $6,500.00 is an appropriate sum.

[7] I have a number of cases provided by the Respondent, including the cases of: *National Bank Financial Ltd. v. Potter*, 2008 NSSC 213; *Corfu Investments Ltd. v. Oickle*, 2011 NSSC 223; and *Viehbeck v. Pook*, 2012 NSSC 113.

[8] The *Viehbeck* case involved a declaration respecting the permitted scope of the use of a right-of-way. It was an Application in Court, not an Application in Chambers, so Justice Wood applied Tariff A.

[9] At paras. 5 and 6, Justice Wood stated that:

> 5 The applicants were successful on the application and I see no reason to vary from the principle that costs should follow the result. As noted by the applicants, Civil Procedure Rule 77.06(2) provides that for an Application in Court costs should be determined in accordance with Tariff A as if the hearing were a trial, unless the judge orders otherwise.
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> 6 The underlying principle is that, unless there are exceptional circumstances, an award of costs should represent a substantial contribution to a party's expenses,

> but not complete indemnity. The tariffs provide guidance to the court in performing the assessment of costs, with the initial step being the determination of the "amount involved". This is to be based upon a consideration of the complexity of the proceeding and the importance of the issues to the parties where those issues are substantially non-monetary.

[10] In the *Viehbeck* case, there were no discovery examinations or production of documents. The hearing consisted of legal arguments without cross-examination on affidavits and lasted slightly more than half a day. There was no significant dispute on the legal issues and it is apparent that the hearing focused on the application of those principles to the facts set out in the affidavits. Justice Wood indicated that it was not a complex hearing and was less complex than the other cases to which he had been referred, but that it was important to the parties.

[11] Similar to that case, I find that the existence of the right-of-way was an important enough issue that the Respondent retained senior counsel to represent her. The Applicant, who is a lawyer, represented herself. However, I do not need to set an “amount involved” since Tariff A is not engaged.

[12] In this matter, there were four witnesses, all of whom were cross-examined at the hearing. Still, the hearing only took half a day to complete. I do not see a reason to depart from Tariff C, which gives a range of $750.00 to $1,000.00, with multipliers of 2, 3, or 4 available at the Court’s discretion since the hearing was

dispositive. Although the hearing was not unduly complex, I am satisfied that it was important to the Respondent and that a lot of effort was expended in preparing for the hearing. I am satisfied that costs should be $1,000.00, with a multiplier of 2.5 to bring it to $2,500.00. See also *Veno v. Ensor Estate* 2013 N.S.J. No. 617.

[13] I reject the Applicant's submission that costs should be reduced because the Respondent was not successful in obtaining the secondary orders she sought. The greater portion of that relief was essentially subsumed into the finding that a right-of-way existed. As well, very little time was spent dealing with those issues at the hearing and in the brief.

[14] With respect to disbursements, the Respondent asks for $411.38, and the Applicant does not contest that amount.

[15] However, $0.30 per page for photocopying seems excessive and likely includes overhead costs which are appropriate for the client to pay but not the other party, so I am reducing the charge for photocopying to $0.10 per page. That reduces the photocopying charges to $14.70.

[16] As well, counsel claims $277.69 for Quicklaw research. In my view, online research services are a convenience for the lawyer and should be considered to be part of the overhead of the firm. The other party should not be expected to pay

such charges in disbursements, just as the other party would not be expected to pay fees relating to the maintenance of the other firm's library. In *Bank of Montreal v. Scotia Capital Inc.*, 2002 NSSC 274, Justice Goodfellow said the following at para. 15:

> Prior to electronic research, some firms engaged outside firms or libraries to conduct non-electronic research and such a disbursement was never allowed and I see no basis for allowing an electronic research. I also take the approach of Hall, J. in *Elliot v Nicholson* (1999), 179 N.S.R. (2d) 264 that computerized legal research fees are (1) work that the lawyer would expect to do and possibly bill to a client, but not party and party; and (2) part of office overhead expense.

[17] More recently, in *Cunning v. Doucet*, 2009 NSSM 35, Adjudicator Slone said at paras. 32 and 33 that:

> 32 […] There was a time years ago when online research was a novel development and lawyers paid for this research by the time spent and could track individual client files. Most lawyers, including Mr. Richey, no longer do this. They pay the much less costly monthly fee and take advantage of the system's ability to track individual clients or files and bill out the amount that would have been charged, had the lawyer subscribed to the "pay as you go" plan. That amount is basically a fiction because it is not an actual expense to the lawyer.
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> 33 Performing legal research is part of a lawyer's job. In my view, the ability to do online research is merely a convenience to lawyers, which is now available for a minimal cost. Absolutely free services are quickly becoming available, eg. through CanLII, which will in time as their databases grow likely give the commercial services a run for their money. As such, it is my view that online research is part of overhead and is not a necessary disbursement that can be passed along on a party and party basis.

[18] That passage was also adopted by Justice Pickup of this Court in *Creighton v. Nova Scotia (Attorney General)*, 2011 NSSC 437 at para. 39.

[19] I agree with the above-cited authorities, and I do not accept the Quicklaw charges as necessary disbursements.

[20] In the result, I am awarding costs of $2,500.00 and disbursements of $104.29.

LeBlanc, J.