

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Hood Estate v. Young, 2008 NSSC 193

Date: 20080619

Docket: SN 249572

Registry: Sydney

Between:

Margaret Hood, Executrix of the Estate
of Robert Wilson Hood, Deceased

Plaintiff

v.

Melvin Young

Defendant

DECISION ON COSTS

Judge: The Honourable Justice Frank Edwards

Heard: February 13, May 1 and 2, 2008, in Sydney, Nova Scotia

**Final Written
Submissions:** June 3, 2008

Counsel: Lisa Fraser-Hill, for the plaintiff
M. Louise Campbell, Q.C., for the defendant

By the Court:

[1] This is my decision on costs. On May 23, 2008, after hearing three days of evidence, I rendered written reasons in the Defendant's favour. I invited Counsel to submit written submissions on the issue of costs. I have now reviewed and considered those submissions.

[2] I have already set out the pertinent facts in my written reasons. At the time of the hearing, the Plaintiff was 87 years of age. It was obvious that she felt that she had been unfairly treated by her late husband and the Defendant, her late husband's biological son. She felt that her husband should at least have consulted her before he gave all his money to his son.

[3] For her benefit, I want to say that my job was to determine *what* had occurred. It was not my function to say whether I liked, or agreed with, what Mr. Hood had done. Simply put, I had to decide whether Mr. Hood had given his money to Mr. Young and, if so, whether there had been undue influence. I decided the first issue in the affirmative and the latter in the negative.

[4] I have much more discretion on the issue of costs. Civil Procedure Rule 63.02(1)(a) reads as follows:

“Notwithstanding the provisions of rules 63.03, the costs of any party, the amount thereof, the party by whom, or the fund or estate of portion of an estate out of which they are to be paid, are in the discretion of the court, and the court may,

(a) award a gross sum in lieu of, or in addition to any taxed costs;”

[5] Civil Procedure Rule 63.04(2)(j) provides that, in addition to the usual considerations, “the Court may also consider ... (j) any other matter relevant to the question of costs.”

[6] As Counsel has pointed out, Mr. Hood intended that, as long as he was alive, he would continue to pay Mrs. Hood’s monthly living expenses. As so often happens, Mr. Hood died sooner than he had apparently anticipated. Mr. Young continued the monthly payments for three months following Mr. Hood’s death.

[7] Mr. Hood had originally authorized Mr. Young to transfer \$60,000.00 out of Mr. Hood’s account. I have no doubt but that, had he lived longer, Mr. Hood would have had Mr. Young return money required for Mrs. Hood’s expenses to his account. There is no question but that Mr. Young would have done so. Mr.

Hood's main concern was to ensure that his money did not go to Mrs. Hood's family *before* he died. Mr. Hood wanted to ensure that there would be money for Mr. Young after Mr. Hood died. Mr. Hood would also have ensured that he continued to have the funds necessary to pay Mrs. Hood's monthly expenses while he lived.

[8] Counsel for the Defendant now seeks in excess of \$15,000.00 costs plus disbursements. That amount is certainly justified on a strict reading of Tariff A plus the \$2,000.00 per day for trial. But, as I have noted, I am not bound by the tariff. I have a discretion to award a gross sum in lieu of any taxed costs and I intend to do so.

[9] In the circumstances, I cannot say that Mrs. Hood's decision to litigate this matter was unreasonable. I can readily understand why she found it difficult to believe that her husband would give all his money to his son. She is of advanced age with a fixed income. On the other hand, Mr. Young has borne the financial and emotional expense of the lawsuit. He is entitled to some contribution toward his costs. I therefore award Mr. Young \$5,000.00 costs inclusive of disbursements.

Order accordingly.

J.