

Claim SCCH 347147

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: **McInnes Cooper v. Advanced Glazing Technologies Ltd., 2012 NSSM 2**

BETWEEN

McInnes Cooper

Applicant

-and-

Advanced Glazing Technologies Limited Respondent

Heard: November 7, 2011

Decision: January 3, 2012

Adjudicator: David TR Parker

Counsel: Daniel Watt represented the applicant
Sean Foreman represented the respondent

ORDER

**IN THE MATTER OF A TAXATION OF FEES, COSTS,
CHARGES AND DISBURSEMENTS**

This matter came before the Small Claims Court on November 7, 2011 on a

preliminary matter on whether or not this court had jurisdiction in this particular case to hear the taxation.

First let me mention at the outset, Counsel for both the applicant and the respondent submitted superior briefs to this court and dealt with this issue in a succinct manner when asked to do so by the court. It was most appreciated.

This case had some history behind it in the sense that it had already been through a taxation of the accounts and while the applicant appeared the respondent did not appear at taxation. The taxation took place at the Small Claims Court. Following the taxation the respondent apparently appeared and asked that it be heard on the taxation. There is no mechanism within the Small Claims Court Act which allows for a taxation be set aside. However it is my understanding that this was granted by the adjudicator and consented to by the applicant. At any rate it came before me, a different adjudicator from the initial taxation hearing and before proceedings commenced on the taxation the respondent moved that this taxation should be stayed for number of reasons. One being that the matter involved a breach of fiduciary duties by the applicant law firm and as such this court did not have the jurisdictional authority to deal with remedies involving fiduciary duties. Further this whole matter of breach of fiduciary duties was subject to a Supreme Court of Nova Scotia action [Hfx No. 358288] wherein it was alleged that the applicant law firm breached its fiduciary duties and as a result all invoices tendered by the applicant should be declared null and void. This is in essence what was involved.

There were other objections raised by the respondent. One being that part of the Solicitor's account to the respondent had already been paid and therefore

could not be taxed according to a recent decision of Justice LeBlanc.

The applicant takes the position that the court does have jurisdiction to hear this taxation as it must determine in all taxations of a Solicitor's account if there was a breach of the fiduciary duties of the solicitor. In other words these duties of the solicitor as prescribed by law always interweave themselves through out any taxation of a Solicitor's account.

I agree with counsel for the applicant, Daniel Watt. The Small Claims Court has jurisdiction to hear taxation matters that pertain to equitable notions, including breaches of conduct by solicitors related to their fiduciary duties to the client. Mr. Sean Foreman, counsel for the respondent when asked of the courts ability to deal with equitable remedies in particular unjust enrichment responded that such a remedy involved a quasi-contract whereas in this particular case we are dealing with not a contract but a fiduciary duty. However in my view it does deal with a breach of contract as a result of breaching a fiduciary duty. I make reference back here as well to the Statement of Claim in the Supreme Court which requested a declaration confirming that the applicant law firm was acting in breach of contract. Notwithstanding all this Mr. Freeman pointed out that by proceeding with the taxation would lead to a multiplicity of proceedings. It seems to me that this is exactly the point that I have to deal with in this fact situation. The Supreme Court of Nova Scotia are implored to make a ruling by way of a declaration confirming that the defendant was in breach of its fiduciary duties, it breached its contract with the defendant i.e. the applicant here and as such all the invoices rendered by the applicant should be null and void.

There are two overriding concerns that are to be dealt with in a taxation of Solicitor's account. Was the account reasonable and was the account lawful. If its the latter then the Supreme Court of Nova Scotia is going to have to deal with the issue. If the Small Claims Court is to consider this Solicitor's statement of account as lawful and the Supreme Court of Nova Scotia determines there was a breach of fiduciary duties and a breach of contract that would fly the face of a Small Claims Court ruling. Notwithstanding the Superior Court's have always given great deference to factual determinations made by the Small Claims Court a Supreme Court ruling would by its very nature overturn what the Small Claims Court ruled on. This co-mingling of issues within the courts is not necessary. Particularly when the Supreme Court has the ability to tax accounts as well. So the most expeditious route would be to have the statements of account taxed by that court if the court decides in favour of the respondent in The Supreme Court Action. Of course the Supreme Court of Nova Scotia can always send it back to the Small Claims Court here for taxation if it so chooses and of course if the Solicitor's account as lawful.

It is not necessary for me to go into the niceties of the legislation as I have already determined that the best way to proceed with this is through the Supreme Court of Nova Scotia. The applicant then can determine whether as defendant in that action it requests the court to tax the bills of account if the plaintiff is unsuccessful in its action or it can ask the court to referred to a taxing to the Small Claims Court or following the action if the respondent is unsuccessful in that action, the applicant can have a notice of taxation issued out of the Small Claims Court.

Therefore this Taxation is stayed.

Dated at Halifax this 3d day of January 2012