

SUPREME COURT OF NOVA SCOTIA

Citation: *Sheppard v. Deveaux*, 2017 NSSC 138

Date: 2017-05-23

Docket: Syd. No. 456896

Registry: Sydney

Between:

Lisa Sheppard

Applicant

v.

Robert Deveaux

Respondent

Decision on Costs

Judge: The Honourable Justice Robin C. Gogan

Heard: February 16, 2017, in Sydney, Nova Scotia

**Final Written
Submissions:** April 7, 2017

Counsel: Alan Stanwick, for the Applicant
William Burke, for the Respondent

By the Court:

Introduction

[1] This is a decision on costs further to an Application in Court. The decision on the Application is *Sheppard v. Deveaux*, 2017 NSSC 137.

Background

[2] This matter involves an Application in Court commenced by Sheppard seeking enforcement of an Agreement for the sale of residential property. Sheppard sought a Deed to the property on the basis that she had been compliant with the Agreement and paid the amount agreed to between the parties.

[3] The Application was heard on February 16, 2017. Each of the parties were cross-examined on their affidavits and the Respondent offered the evidence of one other witness. There was no expert evidence. The parties made oral submissions. The hearing took slightly more than two hours of Court time. The Application was dismissed.

[4] The parties appeared for Directions on November 21, 2016 and the Application was scheduled to proceed on December 20, 2016. Sheppard requested

an adjournment on that date due to illness. The adjournment was granted and the matter was rescheduled to January 12, 2017. On the second date, Sheppard once again requested an adjournment. A second adjournment was granted and a third date set.

[5] The matter proceeded on the third date set. On that date, the matter was scheduled to begin at 9:30 a.m. However, it did not begin until almost 11:00 a.m. This was because Sheppard's counsel had a commitment in another Court. No notice was given to this Court or counsel in this proceeding resulting in Deveaux and his counsel waiting from 9:30 a.m. onward.

Issues

[6] What is the appropriate cost award?

Position of the Parties

Lisa Sheppard

[7] It is Sheppard's submission that there was mixed success on the Application. On this basis, it is submitted that each party bear their own costs.

Robert Deveaux

[8] Deveaux seeks \$2000.00 in costs. He submits that *Tariff A* costs are not appropriate and seeks a lump sum cost award.

Analysis

[9] Costs are a matter in the discretion of the Court. However, *Civil Procedure Rule 77* guides the exercise of discretion. The relevant provisions in this case are as follows:

General discretion (party and party costs)

77.02 (1) A presiding judge may, at any time, make any order about costs as the judge is satisfied will do justice between the parties.

(2) Nothing in these Rules limits the general discretion of a judge to make any order about costs, except costs that are awarded after acceptance of a formal offer to settle under Rule 10.05, of Rule 10 - Settlement.

Liability for costs

77.03 (1) A judge may order that parties bear their own costs, one party pay costs to another, two or more parties jointly pay costs, a party pay costs out of a fund or an estate, or that liability for party and party costs is fixed in any other way.

(2) A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law.

(3) Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise.

(4) ...

(5) ...

...

Assessment of costs under tariff at end of proceeding

77.06 (1) Party and party costs of a proceeding must, unless a judge orders otherwise, be fixed by the judge in accordance with tariffs of costs and fees determined under the Costs and Fees Act, a copy of which is reproduced at the end of this Rule 77.

(2) Party and party costs of an application in court must, unless the judge who hears the application orders otherwise, be assessed by the judge in accordance with TARIFF A as if the hearing were a trial.

(3) Party and party costs of a motion or application in chambers, a proceeding for judicial review, or an appeal to the Supreme Court of Nova Scotia must, unless the presiding judge orders otherwise, be assessed in accordance with TARIFF C.

...

Lump sum amount instead of tariff

77.08 A judge may award lump sum costs instead of tariff costs.

[10] There was no claim for immunity from costs under ***Rule 77.04***.

[11] This proceeding was commenced as an Application in Court. It resulted in a final determination of the matter. In my view, Deveaux was the successful party and entitled to his costs. I disagree that this is a case of mixed success.

[12] **Rule 77.06** is the starting point for consideration of costs in this case. It requires the application of *Tariff A* unless the judge hearing the matter orders otherwise. If I were to calculate costs in this matter under *Tariff A*, the result would be a \$4,000.00 cost award. In my view, that is not appropriate given the length and complexity of the matter. Some amount lower than \$4,000.00 is appropriate. This is recognized by Deveaux in his submissions.

[13] The nature of this matter was much more comparable to a contested motion or an Application in Chambers which would see the application of *Tariff C* as a starting point. In my view, a straightforward application of *Tariff C*, considering the length of the actual hearing (less than half a day), would result in a cost award of \$750.00 to \$1000.00. I find this amount too low considering the multiple court appearances prior to the hearing and the delayed start to the hearing itself.

[14] If I were to assess costs based upon the actual time allocated to the hearing (more than a half day but less than one day), the scale would increase to a range of \$1000.00 to \$2,000.00.

[15] In the end, I am satisfied that a lump sum cost award of \$1,500.00 will do justice between the parties. I therefore award the amount of \$1,500.00 in costs payable by Sheppard to Deveaux, inclusive of disbursements.

[16] Order accordingly.

Gogan, J.