SUPREME COURT OF NOVA SCOTIA

Citation: *Benjamin v. Landry*, 2019 NSSC 185

Date: 20190611
Docket: Ken No. 482439
Registry: Kentville

Between:

John Theodore Benjamin

Applicant

v.

Joseph Daniel Landry, Lorraine Landry

Respondents

And

Registrar General of Land Titles, the Municipality of the County of Annapolis

Intervenors

COSTS DECISION

Judge:	The Honourable Justice Ann E. Smith
Heard:	May 17, 2019
Final Written Costs Submissions:	Applicants – May 24, 2019; Respondent – May 28, 2019; *Intervenor,* Municipality of the County of Annapolis – *May 29, 2019*
Counsel:	Nicholas J. P. Moore, for the Applicant Raymond W. Kuszelewski and Daphne C. M. A. Williamson, for the Respondents Jack Townsend, for Registrar General of Land Titles (*Intervenor*) W. Bruce Gillis, QC, for the Municipality of the County of Annapolis (*Intervenor*) Jeremy P. Smith, for the Attorney General of Nova Scotia

By the Court:

Introduction

[1] On May 17, 2019 this Court heard the motion of Mr. John Benjamin seeking vacant possession of a property located at 41 Station Road, Wilmot, Nova Scotia ("the Property"). Mr. Benjamin also sought payment of rental income. Mr. Benjamin bought the Property at a tax sale on February 14, 2018 pursuant to the process laid out in the Nova Scotia *Municipal Government Act*, SNS 1988, c. 18.

[2] The Respondents did not vacate the Property. More than six months passed after the sale of the Property to the Applicant. Title to the Property passed to Mr. Benjamin by deed dated August 9, 2018 and recorded in the Land Registry for Annapolis County.

[3] There were two Intervenors on the motion. The first Intervenor was the Registrar of Land Titles ("Registrar General"). Pursuant to s. 92A of the *Land Registration Act*, 2001, c. 6, s. 1, the Registrar General has the discretion to intervene in a proceeding affecting a parcel registered under the legislation. The Registrar General was added as an Intervenor in this proceeding by way of a Consent Order, signed by counsel for all parties.

[4] The second Intervenor was the County of the Municipality of Annapolis ("the Municipality") who participated in the proceeding to support the validity of its tax sale processes.

[5] The Attorney General of Nova Scotia participated in the motion pursuant to s. 10(7) of the *Constitutional Questions Act*, RSNS 1989, c. 89. The Respondents filed a Notice of Constitutional Questions (as amended) which claimed that the circumstances surrounding the tax sale of the Property breached s. 15 of the *Charter*.

[6] The Respondents defended the motion primarily on the basis that Mr. Landry holds Aboriginal title to the property and is exempt from paying municipal taxes. Mr. Landry also claimed that the property should be deemed to be Reserve land which is exempt from municipal taxation.

[7] Mr. Landry also claimed that the Municipality breached his s. 15 *Charter* rights.

[8] Mr. Landry also alleged that s. 20 of the *Land Registration Act* is not "complete", as it does not reflect their Aboriginal title claim and that Mr. Landry's registered interest was improperly removed by the tax sale.

[9] On May 21, 2019, this Court rendered an oral decision allowing Mr. Benjamin's motion for vacant possession. His claim for lost rental income was dismissed.

[10] Mr. Benjamin was substantially successful on the motion. This Court awarded costs in his favour, payable by the Respondents. The Municipality and the Attorney General also sought costs.

[11] This Court permitted the parties and Intervenors to make written submissions on costs. I was provided with submissions from Mr. Gillis, Q.C. on behalf of the Municipality; from Mr. Moore, on behalf of the Applicant, Mr. Benjamin; and from Mr. Kuszelewski, on behalf of the Respondents.

Positions of the Parties and Intervenors

[12] The Applicant seeks $6,000, inclusive of disbursements, based on a Tariff "C" base amount of $2,000 multiplied by three.

[13] Counsel for the Applicant notes that the matters before the Court included Aboriginal title claims and alleged breaches of the *Charter*. He submits that this added considerably to the complexity of the matter and the effort required to respond.

[14] Counsel for the Attorney General also seeks Tariff "C" costs in the range of $1,000 - $2,000 with a multiplier.

[15] Counsel for the Municipality seeks $1,200 based on Tariff "C."

[16] Counsel for the Registrar of Land Titles (Intervenor) does not seek costs.

[17] Counsel for the Respondents says that no costs should be awarded because, although unsuccessful, the Respondents raised many serious, complex issues, none of which were frivolous or vexatious.

Analysis

[18] Costs generally follow the event. There are no reasons why that should not be the case here. The Court notes that the claim for Aboriginal title advanced by Mr. Landry as an individual, was done so without the Court being provided with a single Canadian case in support. The claim that the Property should be declared by the Court to be a Reserve was also made without any Canadian jurisprudence in support. The Respondents raised complex issues which required written responses, and lengthy ones, by the legal participants. There is no reason why the Respondents, having raised multiple complex issues, all unsuccessfully, should not have to pay costs.

[19] The Tariffs of Costs and Fees under *Rule* 77 is the starting point in determining the quantum of costs.

[20] When determining costs, the Court's overall mandate is to do "justice between the parties."

[21] *Rule* 77.02(1) reflects that principle, providing that

> **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.

[22] Given that this motion was heard in more than half a day, but less than a full day, Tariff "C" provides for a range of costs of $1,000 - $2,000.

[23] The Court's May 22, 2019 ruling was determinative of the entire matter. Therefore, paragraph (4) of Tariff "C" is triggered and a multiplier of two, three or four times may be applied to the basic amount. The relevant factors for determining a multiplier are the complexity of the matter, the importance of the matters to the parties and the amount of effort involved in preparing for and conducting the application.

[24] This Court sets the basic amount under Tariff "C" at $1,500 and applies a multiplier of two to that amount. The Applicant, the Attorney General and the Municipality were required to respond to complex and lengthy arguments concerning Aboriginal title and *Charter* breaches, none of which were successful.

Conclusion

[25] Costs of $3,000, inclusive of disbursements, are awarded to the Applicant payable by the Respondents within 60 calendar days of this decision.

[26] Costs of $3,000, inclusive of disbursements, are awarded to the Attorney General, payable by the Respondents within 60 calendar days of this decision.

[27] Costs of $1,200, inclusive of disbursements, are awarded to the Municipality, payable by the Respondents within 60 days of this decision.

[28] The Intervenor, the Registrar of Land Titles, did not seek costs, and none are awarded.

[29] I ask that counsel for the Applicant prepare a Costs Order, consented as to form, to be provided to this Court.

Smith, J.