

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *B2B Bank/B2B Banque v. Shane*, 2019 NSSC 39

**Date:** 20190204

**Docket:** Hfx No. 449922

**Registry:** Halifax

**Between:**

B2B Bank/B2B Banque

*Plaintiff*

v.

Wilma Shane

*Defendant*

<b>COSTS DECISION</b>
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**Judge:**

The Honourable Justice Ann E. Smith

**Final Written**

**Costs Submissions:** January 8, 2019 (Plaintiff); January 4, 2019 (Defendant)

**Counsel:**

Thomas M. Macdonald, Justin E. S. Adams; for the Plaintiff  
Angeli Swinamer, Angus T. Smith; for the Defendant

By the Court:

### **Introduction**

[1] On December 10, 2018, after a four-day trial, the jury found that Wilma Shane did not owe any amount to B2B Bank. The issue now is the amount of costs to be paid by the Bank as the unsuccessful party in the litigation.

[2] There is no need to review the details of trial and the claims themselves except to say that the Bank claimed that Ms. Shane had failed to repay an investment loan funded by the Bank that Ms. Shane said was taken out in her name without her consent through a fraud perpetrated by her financial advisor, John Allen. The jury found that the loan agreement had not been ratified by Ms. Shane's conduct and she had not been unjustly enriched by receiving the loan proceeds.

[3] Ms. Shane was the successful party.

[4] Counsel on her behalf claim solicitor/client costs. This is not a case in which that exceptional remedy should be granted. The conduct of the Bank in this case was not worthy of condemnation. It was seeking to recover money that had been advanced through a fraud. Ms. Shane's argument is that this is a case in which solicitor/client costs should be awarded because justice can only be done with complete indemnification for costs. Counsel says that Ms. Shane was completely blameless in the proceeding. She was a fraud victim and the Bank continued to pursue recovery from her even after it knew that she was a victim of John Allen's fraud.

[5] The Bank in this case had advanced money to Ms. Shane. She received the benefit of that money in that investments were purchased on her behalf. The Bank was also a victim of the fraud and the case was essentially about which of the blameless parties, Ms. Shane or the Bank, should suffer more of the consequences. An award of solicitor/client costs in this case would not do justice in those circumstances.

[6] In the alternative, Ms. Shane argues that a lump sum award should be made to allow for a more substantial contribution toward her costs. A substantial contribution has been interpreted to mean the recovery of more than 50 per cent but less than 100 per cent of a party's reasonable legal bill. A range of two-thirds to three-quarters of the lawyer's bill has been considered to be a reasonable range for

party/party costs. That amount should be compared to the amount of costs that would be calculated using the appropriate tariff.

[7] The legal fees paid by Ms. Shane in this case, including HST are \$60,000. Those fees were incurred over the course of three years of litigation and a jury trial. Ms. Shane claims that costs of \$45,000 or 75 per cent of the legal bill would be fair.

[8] The tariff costs in this case would be based on Tariff A, Scale 2, given the amount involved. The amount claimed is toward the higher end of the range between \$90,001 and \$125,000. The matter was of moderate complexity. The Scale 2 amount is \$12,250. To that would be added \$2,000 for each of the four days of trial for a total of \$8,000. The Tariff A costs that would be awarded to Ms. Shane would then be \$20,250.

[9] The Bank has argued that there should be no costs paid and asserts that this was a runaway jury. They say that a jury acting reasonably could not have reached the conclusion that this jury reached. This is not an appeal of the jury's conclusion. The jury found as it did. Costs should be payable to the successful party by the unsuccessful one.

[10] The amount of those costs is a matter for the exercise of judicial discretion. Tariff A costs would not reflect reasonable, adequate compensation to Ms. Shane. The amount of actual legal fees incurred was \$51,350 and with HST, that is about \$60,000. I am satisfied that a lump sum of \$25,000 would reflect reasonable compensation while also being close to the range of the Tariff A costs. It does not quite reach the level of 50 per cent recovery of legal fees expended.

[11] The amount of disbursements claimed is \$2,137.78. The Bank disputes the payment of \$625 for five nights of accommodation in Halifax for the lawyers who practice in New Glasgow. The Bank says that the apartment used is owned by the law firm and in any event, the lawyers should have commuted daily from New Glasgow. In these circumstances, having regard to the uncertainties of winter travel in the context of a jury trial and the reasonable amount of the claim, I am prepared to allow it. Disbursements should be paid in the amount claimed.

[12] From the total amount, the costs of \$1,000 payable by Ms. Shane to the Bank from the pre-trial motion should be deducted.

[13] The total costs award is \$26,137.78.

Smith, J.