

**IN THE SUPREME COURT OF NOVA SCOTIA**

Citation: Trim v. City Motors - 2003 NSSC 238

Date: 20031219

Docket: S.H. No. 178515

Registry: Halifax

Between:

**Faye Trim**

Plaintiff

-and-

**Nathan Beaudet and City Motors Limited c.o.b. City Mazda**

Defendants

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice Robert W. Wright

**Written**

**Submissions:** November 17, 25 and 26, 2003 in Halifax, Nova Scotia

**Written**

**Decision:** December 19, 2003

**Subject:** Civil Procedure Rule 63 - Costs

**Summary:** The plaintiff sued the defendant dealership for the return of her deposit and for general, aggravated and punitive damages following the collapse of an intended car purchase transaction. The defendant brusquely refused the plaintiff's initial demand for the return of the deposit without even properly checking the contract documentation. At discovery more than a year later, the co-owner of the dealership upon reviewing the documents realized that the dealership had made a mistake by inadequate disclosure to the plaintiff of the nature and terms of the intended transaction. He thereupon caused to be paid into court the plaintiff's \$500 deposit and added a \$125 contribution in costs later on, all of which was offered in satisfaction of the whole of the plaintiff's claim. That offer was unacceptable to the plaintiff who proceeded to trial seeking an award of damages together with solicitor-client costs. For the reasons given in the trial decision (reported as 2003 N.S.S.C. 216), the plaintiff's claim for damages was dismissed. The court then invited written submissions on costs.

**Issue:** What costs award should be made?

**Result:** Although costs normally follow the event, the court has a wide discretion to depart from that general rule and may take into account a party's conduct both before and during the litigation process. Here, the court expressed disapproval of the defendant dealership's conduct both in respect of its poor business practice of inadequate disclosure which lead to this litigation, its late disclosure of a key document during the litigation, and its careless and irresponsible manner in responding to the plaintiff's demand for the return of her deposit. A party who has full disclosure of his opponent's case should be obliged to assess whether he has any evidence on which to make a reasonably arguable case. That was not done in a timely manner in this case even though the key documents were already in the defendant's possession. This was, by extension of the words of Civil Procedure Rule 63.04(2)(g), the neglect of a party to make an admission which should have been made earlier.

Because of the court's disapproval of the dealership's conduct, but for which this litigation would have been totally unnecessary, the finding was made that the plaintiff ought to be awarded costs notwithstanding that her damages claims were unsuccessful at trial. This was not an appropriate case, however, for an award of solicitor-client costs. Rather, the court exercised its discretion to award the gross sum of \$10,000 in lieu of taxed costs together with taxable disbursements in the aggregate of \$1,342 (any applicable HST to be allowed for qualifying disbursements only, and not to the fee component of the party and party costs - see *Roose v. Hollett* (1997) 154 N.S.R. (2d) 161). This represented a substantial contribution to the legal costs of the plaintiff whose solicitor-client bill from her counsel totalled approximately \$15,000.

---

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S  
DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**

---