

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: MacLean v. Williams, 2008 NSSC 320

Date: 20081027

Docket: SPHa 257339

Registry: Port Hawkesbury

Between:

Joan MacLean of R.R. #1, Orangedale, in the County of Inverness, Province of
Nova Scotia, B0E 2K0

Plaintiff

v.

Hector Williams, Laurie Williams and James Williams of R.R. #1, Orangedale, in
the County of Inverness, Province of Nova Scotia, B0E 2K0

Defendants

Judge: The Honourable Justice Frank Edwards

Heard: October 2 and 3, 2008, in Port Hawkesbury, Nova Scotia

**Final Written
Submissions:** October 20, 2008

Counsel: Nash T. Brogan, for the plaintiff
Joel Sellers, for the defendants

By the Court:

[1] In my decision dated October 6, 2008, I invited the parties to make written submissions on costs. I have now received and reviewed those submissions.

[2] The Defendants seek a total of \$16,503.87 in costs. That figure represents a calculation under Scale 3 of Tariff A. The Defendants submit that departure from the Scale 2 (basic) is justified by the Plaintiff's intransigence and rejection of offers to settle, and the fact that two proceedings (consolidated) were in play. I do not consider the latter proposition to be a tenable argument. The consolidation was done so that both proceedings could be heard in the most expeditious manner. The issues were straightforward and intertwined. No increase in costs is justified.

[3] As for the Plaintiff's intransigence, I have to look at the big picture. The Plaintiff received absolutely no benefit from the construction of the access road. On the other hand, the Defendants gained a very substantial benefit. The Defendants gained access to a very desirable waterfront location by the shortest, most convenient, and most inexpensive route. While the access cost them approximately \$8,000.00 in construction costs, that is a fraction of what it would have cost them to construct a road on the alternative route. More to the point, the

Defendants have not had to pay a cent to the Plaintiff for access for which she could have charged top dollar.

[4] The dispute arose in July 2003. It was obviously not resolved by October 2004 when the Defendants decided to proceed with construction of their house. I do not understand why they would proceed with the question of access undetermined. The decision to do so made the subsequent injunction application almost inevitable. I therefore will not be factoring the injunction costs into my assessment.

[5] Offers to settle in property dispute cases are often not comparable to offers to settle in other types of litigation. In a personal injury case, for example, there is room for compromise. The parties can offer and counteroffer until they reach a figure both sides can live with. In property disputes, there is often little room for compromise. Acceptance of the offer may effectively amount to total capitulation by the offeree. That would have been the case in particular with the 41A offer in this case. I therefore do not give the existence of such an offer much weight.

[6] The Defendants have calculated their entitlement to costs under the basic scale at \$13,802.50. For the reasons I have outlined above, I do not think that that is an appropriate figure. I would set costs at \$6,000.00. In addition, the Defendants shall have their disbursements in the amount of \$2,771.80. (I have disallowed claims for mileage, hotel and title search - total \$1,076.36.) They are also entitled to Justice Wright's award of \$500.00.

[7] Summary:	\$6,000.00	costs
	2,771.80	disbursements
	<u>500.00</u>	Wright, J.
	\$9,271.80	Total

Order accordingly.

J.