

IN THE SUPREME COURT OF NOVA SCOTIA
Cite as: Acme Environmentals v. Parkes, 1998 NSSC 91

IN THE MATTER OF: The Mechanics Lien Act, being Chapter 277 of the Revised Statutes of Nova Scotia, 1989;

BETWEEN:

KEN TIMMONS, carrying on business under the business name of **Acme Environmentals**

PLAINTIFF

- and -

TAMARA PARKES

DEFENDANT

DECISION ON COSTS

HEARD: at Halifax, Nova Scotia before the Honourable Justice Walter R.E. Goodfellow on May 1, 1998 and May 28, 1998

DECISION: July 14, 1998

COUNSEL: Karen A. Quigley and Eric G. Taylor
Solicitors for the Plaintiff

Donna Hollister Smith
Solicitor for the Defendant

Goodfellow, J.:

1. BACKGROUND

Ken Timmons filed a Mechanics Lien Claim October 20, 1995, with a Lis Pendens and Statement of Claim November 24, 1995. Tamara Parkes filed a Defence and Counter Claim on December 20, 1995.

Timmons claim was for services performed on a landscaping contract of \$2,622.19 plus \$560.00 unfinished work, for a total of \$3,180.19. The counter claim claimed losses for non-performance, breach of contract, cost to correct work, loss of stock and trade, loss of revenue due to a delay in opening the defendants business, and medical expenses. At trial, many of these headings were not advanced and Ms. Parkes suggested a loss of approximately \$3,500.00 on the sale of her property and an expenditure of \$1,000.00 for someone to look after her mother while she was in attendance at the trial, plus her costs of air fare from Calgary to Halifax, for the purpose of attending the trial. A Real Estate Agent was called but did not, in any way, substantiate or give any evidence whatsoever as to any diminution in the value of the property by virtue of the allegations advanced in the counter claim.

Mr. Timmons claim was allowed to the extent of \$2,545.00 and the counter claim dismissed.

2. ISSUES

What is the appropriate award of costs on the plaintiff's claim and dismissal of the counter claim?

This matter took two days and undoubtedly has been extremely expensive for both parties. Mr. Timmons had substantial success and is entitled to costs in accordance with Tariff A, based on the "amount involved", which I equate with the amount recovered.

Cost and Fees Act**Tariffs of Cost and Fees Determined by the
Costs and Fees Committee To Be Used
in Determining Party and Party Costs**

To be used in determining party and party costs in a proceeding commenced on or after January 1, 1989.

In these Tariffs, the "amount involved" shall be

- (a) where the main issue is a monetary claim which is allowed in whole or in part, an amount determined having regard to
 - (I) the amount allowed
 - (ii) the complexity of the proceeding, and
 - (iii) the importance of the issues;

The remaining question is, what additional costs, if any, should be granted on the dismissal of the counter claim. Prior to the adoption of Tariff A, the court would often determine the matter was so inextricably wound into the plaintiff's claim that one bill of costs would be sufficient. On the other hand, where there was additional time, effort and expense incurred, the court awarded additional costs, sometimes full costs on the dismissal of the counter claim, usually with the provision that there be no duplication of counsel fee, which was then on a per day in attendance basis.

There does not appear to be any guidance since the adoption of Tariff A, and the court must exercise its discretion judicially, bearing in mind C.P.R. 63. In this case, there was additional work, time and effort required by the plaintiff's solicitor, particularly in preparing for claims that were not in the final analysis, advanced at trial and therefore, some allowance for the additional cost to the plaintiff, is appropriate.

Tariff A, Scale 3 for the amount involved of \$2,545.00 would present an award of \$625.00

and moving to Scale 5, would present an award of \$875.00 and I conclude that that is an appropriate award of costs in the circumstances of this case.

Plaintiff is also entitled to his disbursements, taxed and allowed in the amount of \$527.20 and with respect to pre-judgment interest, the parties had, on a payment into court, to substitute for the lien so the property could be sold, made their calculations on a rate of 6% from October 20, 1995 and that is the appropriate rate to be applied on the amount outstanding.

3. FORM OF ORDER

The amount outstanding, plus the costs and disbursements taxed, and the pre-judgment interest shall be paid out to the solicitor for the plaintiff from the \$4,300.00 paid into court and the balance thereafter shall be paid out to the solicitor for the defendant.

J.