

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Geophysical Service Inc. v. Sable Mary Seismic Inc.*, 2013 NSSC 424

**Date:** 20131220

**Docket:** Halifax No. 203124

**Registry:** Halifax

**Between:**

Geophysical Service Incorporated

Plaintiff

v.

Sable Mary Seismic Incorporated, Abbott Contracting Limited, Windsor Sales and Rentals Limited, Matthew Kimball, and Mary Claire O'Hara Kimball

Defendants

**DECISION ON COSTS**

**Judge:** The Honourable Justice Kevin Coady

**Written Submissions:** October 22, 2013

**Decision:** December 20, 2013 in Halifax, Nova Scotia

**Counsel:** Colin D. Piercey and Karen N. Bennett-Clayton,  
for Geophysical Service Incorporated  
Tim Hill, for Mary Kimball  
Matthew Kimball, self-represented, not appearing

**By the Court:**

[1] The Plaintiff, Geophysical Service Incorporated (GSI), have been involved in protracted litigation with the corporate Defendants and Mr. Kimball since 2003. There was a lengthy trial after which the Plaintiffs were the successful party. Large damages were awarded as were costs of the action. The Plaintiff has not realized on its judgments as of the date of this application.

[2] Subsequent to the trial the Plaintiff took steps to recover on its awards. It came to the conclusion that Mr. Kimball fraudulently conveyed property in anticipation of a damage award. The Plaintiff started a second action aimed at reversing the fraudulent conveyances. Ms. Kimball was a named Defendant as she held title to real property at Cribbons Beach, Nova Scotia. This property was the subject of GSI's summary judgment application heard on August 29, 2013. On August 30, 2013 I granted the Plaintiff's motion which allowed it to take steps to realize on the subject property. The Plaintiff now seeks a cost award in relation to this application.

[3] Mr. Hill received notice of this costs application but has not made submissions. Mr. Kimball resides in Thailand and was served by e-mail. He has not made submissions on costs.

[4] The starting point on an application for costs is that a successful litigant is entitled to costs. *Civil Procedure Rule 77.03(3)* states:

Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise.

In *Landymore v. Hardy*, (1992), 112 N.S.R. (2d) 410 Saunders J. (as he then was) commented as follows:

Costs are intended to reward success. Their deprivation will also penalize the unsuccessful litigant. One recognizes the link between the rising cost of litigation and the adequacy or recoverable expenses. Parties who sue one another do so at their peril. Failure carries a cost. There are good reasons for this approach. Doubtful actions may be postponed for a sober second thought. Frivolous actions should be abandoned. Settlement is encouraged. ...

[5] This interlocutory summary judgment motion was determinative of the matter as between GSI and Mary Kimball as it relates to the Cribbons Point Road property. It was heard in less than one-half day. Assessment of cost for motions are governed by Tariff “C” which provides as follows:

Tariff C - *Tariff of Costs* payable following an application heard in Chambers by the Supreme Court of Nova Scotia.

For applications heard in Chambers the following guidelines shall apply:

- (1) Based on this Tariff C costs shall be assessed by the Judge presiding in Chambers at the time an order is made following an application heard in Chambers.
- (2) Unless otherwise ordered, the costs assessed following an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A.
- (3) In the exercise of discretion to award costs following an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.
- (4) When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amount in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:
  - (a) the complexity of the matter,
  - (b) the importance of the matter to the parties,
  - (c) the amount of effort involved in preparing for and conducting the application.

The range of costs for an application that takes more than one hour but less than a half day is \$750 to \$1,000. Subsection 4 of Tariff “C” allows this range to be multiplied by 2, 3, or 4 times when the decision was determinative of the entire matter.

[6] I set the basic cost award at \$1,000. I set the multiplier at 3 allowing a total cost award in favor of GSI at \$3,000. I am not persuaded to increase tariff costs pursuant to *Civil Procedure Rule 77.07(3)(b)* notwithstanding a written offer to settle. I view Ms. Kimball as somewhat of a victim of her husband’s choices.

It would be unreasonable to expect her to voluntarily surrender her family home in the midst of all she has lost.

[7] GSI seeks recovery of their disbursements in the amount of \$1897.71. I have reviewed their detail and will allow \$1,500. GSI will have a total award of \$4,500.

Coady, J.