

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Waterside Auto Sales v. Halifax Nissan, 2003 NSSC 24

Date: 20030129

Docket: 113682

Registry: Sydney

Between:

Homewood Enterprises Limited, doing business under the firm
name and style of Waterside Auto Sales, and Douglas Forrest
Plaintiff / Defendant by Counterclaim

v.

147486 Canada Limited, operating under the firm name
and style of Halifax Nissan
Defendant / Plaintiff by Counterclaim

Judge: The Honourable Justice Frank Edwards

Heard: in Sydney, Nova Scotia

Written Decision: January 29, 2003

Counsel: Hugh R. McLeod, Esq., for the Plaintiff / Defendant by
Counterclaim
Steven G. Zatzman, Esq., for the Defendant / Plaintiff by
Counterclaim

By the Court:

- [1] The plaintiff, Home Wood Enterprises Ltd., discontinued its action against the defendant approximately one week prior to trial. The discontinuance was necessitated by the fact that the plaintiff did not hold a certificate of registration pursuant to Section 17 of the *Corporation Registration Act*. It had not paid its annual fees.
- [2] By the time of the discontinuance, the defendant had substantially completed its preparation for trial. That preparation included the filing of a pre-trial brief wherein it raised the Section 17 defence.
- [3] The plaintiff submits that an appropriate award of costs would be \$1,700.00, which would be approximately one half the entitlement under Tariff A. Plaintiff's counsel points out that three days of trial have been avoided despite the lateness of the discontinuance. I agree with his submission on this point.
- [4] Defendant's counsel asks that I stay any further proceeding brought by the plaintiff for the same or substantially the same claim until the costs are paid. Civil Procedure Rule 40.03 gives me a discretion to make such an order. The defendant has been put to considerable cost and inconvenience as a result of the original action. It would be unfair to oblige the defendant to

defend a subsequent action before it has at least recovered the taxed costs of the first. I am therefore directing the requested stay.

[5] In summary, the defendant will have its costs of \$1,700.00 plus reasonable disbursements of \$439.25. In addition, the plaintiff will not commence any further proceeding until the costs and disbursements are paid in full.

Order accordingly.

J.