

Claim No. SCCH 211908
Date: 20040822

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as Boyne Clarke v. Fraser Brook Farm Ltd. , 2004 NSSM 10

BETWEEN:

BOYNE CLARKE

CLAIMANT

- and -

FRASER BROOK FARM LIMITED

DEFENDANT

Adjudicator: David TR Parker
Heard: June 25, 2004
Decision: August 22, 2004

Taxation of Lawyer's account -Use of Civil procedure Rules in Small Claims Court and considerations in Taxing accounts.

ORDER

This matter was heard by the Small Claims Court at Dartmouth, on the 25th day of June, A.D., 2004, as a Taxation of a solicitor's account and originally the matter was brought as a Claim in the Small Claims Court for payment of legal fees.

M. Ann Levangie appeared on behalf of the Claimant law firm and Jamie MacNeil provided evidence.

The Defendant was not represented during the taxation however in the original action of the law firm the Defendant did file a defence and counterclaim.

The defence stated:

- 1) Defendant had to perform most of the case research and educate the Claimant as per the relevant legislation and generally accepted practices vis-à-vis the legal seizure of a vehicle from a bona-fide farmer.
- 2) The Claimant failed to protect the Defendant's rights and interests, under the law.
- 3) The Claimant failed in their fiduciary obligations and responsibilities to the Defendant.
- 4) We, the Defendant only received the Claimant's Notice of Claim, (1 copy only), via regular mail, on December 24, 2003.
- 5) We are seeking to have the Claimant's claim, taxed.

We hereby counterclaim for \$20,000.00 + due to the loss of a farm vehicle whereby the Claimant's actions and inactions did not adequately protect our legal rights as per specific Federal legislation and furthermore did so cause a major negative mark to appear on our Credit Bureau file, which has resulted in substantial monetary loss to us. Furthermore the Claimant failed to follow the legal requests, directions and advice of the Defendant as pertaining to the Defendant, directly.

A solicitor may sue on their account which is a right pursuant to s. 41 of the *Barristers and Solicitors Act*, R.S.N.S., 1989, as amended (referred to hereafter as the "BSA") The Claimant in this case also asked for a taxation of the account.

Therefore this Court proceeded to tax this account.

Section 42 of the BSA as amended by s. 3 of the Justice Administration Amendment (1999) Act, SNS 1999 (2nd session), c. 8; by s. 11 of the *Justice and Administration Reform (2000) Act* allows the taxation of a solicitor's account to take place before an adjudicator of the Small Claims Court. The taxation includes any bill for fees, costs, charges or disbursements.

The Small Claims Court is not governed by the Civil Procedure Rules on taxation however the Supreme Court has suggested the rule can be used in the Small Claims Court where applicable for guidance. *Malloy et al. v. Alton et al.* 2004, NSSC 110 where Murphy stated:

"The Nova Scotia Civil Procedure Rules, although not directly applicable in Small Claims Court, may be consulted for guidance in the absence of an applicable Small Claims Court rules."

Rule 63.16(1) of the Civil Procedure Rules outlines some of the considerations, which should be taken into account when taxing an account of a solicitor. The considerations enumerated under Rule 63.16(1), which I have considered in this taxation, are:

- a) The nature, importance and urgency of the matters involved;
- b) The circumstances and interest of the person by whom the costs are payable;
- c) The funds out of which they are payable;
- d) The general conduct and costs of the proceeding;
- e) The skill, labour and responsibility involved; and
- f) All other circumstances, including, to the extent hereafter authorized, the contingencies involved.

There are of course other considerations, which may be considered in determining what the final outcome of a solicitor account should be to their client. These considerations would include:

- a) Is there a letter of retainer between the solicitor and the client that provides an estimate and the hourly rate of the solicitor or a fixed contract price?
- b) Has the solicitor kept the client apprised of matters as they proceed and the costs involved?
- c) Has the solicitor completed work that was not required?
- d) Is there an accurate time record of the work that was completed?
- e) Was the client fully informed as the matter proceeded?
- f) Does the bill(s) provide enough information to determine what was

completed and was it reasonable?

The overriding umbrella that covers all considerations is the fee "reasonable and lawful."

The Defendant's president and secretary Murray Hubley contacted the Claimant law firm on December 23, 2002, concerning a truck seized by the bailiff, which was required for use on the farm. The Claimant law firm was retained through John Young, Q.C., a partner who had James MacNeil, an associate lawyer, deal with the matter. The matter took the course of making recommendations under the review of farm debt legislation, which was not accepted by the Defendant as steps to stop the sale of the vehicle, and eventually other farm equipment that was also seized. Applications and required affidavits were prepared and had to be revised due to incorrect information provided to the Claimant by the Defendant.

A number of items on the statement of account such as reviewing e-mails from the Defendant and consultation between lawyers may be considered not necessary for all of the time charged to the Claimant. However, the Claimant on its own reduced the account by \$1,000.00, which would be more than reasonable. There are some disbursements that appear to be related to overhead and I would eliminate these from the bill. The amount here would be \$30.00. The hourly rate for an associate is reasonable. The balance owing on the invoices is \$3,296.25, which I would reduce to \$3,266.25. I have no information that the invoices were sent out on a regular basis or that interest was to be part of the agreement with the law firm. Therefore I shall not allow interest claimed of \$389.88. I will allow for service of \$132.25 respecting the original claim of \$143.75 for the taxation of the account

plus filing fees of \$75.00.

DATED at Dartmouth, this 22 day of August, A.D. 2004.

David T.R. Parker
Small Claims Court Adjudicator