

Court of King's Bench of Alberta

Citation: AG Clark Holdings Ltd v 1352986 Alberta Ltd, 2024 ABKB 615

Date: 20241018
Docket: 1103 14128
Registry: Edmonton

Between:

A.G. Clark Holdings Ltd, Giebelhaus Developments Ltd and CB Partners Corporation

Respondents
(Plaintiffs)

- and -

**1352986 Alberta Ltd, Redleaf Properties Corporation, 1354178 Alberta Ltd
and 1352992 Alberta Ltd**

Appellants
(Defendants)

**Ruling on Costs
of the
Honourable Justice G.R. Fraser**

Appeal from the Decision by
L.R. Birkett, The Honourable Applications Judge

Dated the 23rd day of March, 2022
(2023 ABQB 219)

[1] This matter addresses the costs arising from *AG Clark Holdings Ltd v 1352986 Alberta Ltd*, 2024 ABKB 531. It was an appeal of an application justice’s decision regarding a builder’s lien. My decision upheld the decision of Applications Judge Birkett. Redleaf Properties Corporation, 1352986 Alberta Ltd, 1354178 Alberta Ltd, and 1352992 Alberta Ltd (collectively Redleaf) appeal was dismissed. My decision also allowed the parties to make written submissions to me regarding costs within 30 days of the decision. All parties have made their submissions within the required time period.

[2] This decision only relates to the costs arising from the appeal of Applications Judge Birkett’s decision. It does not affect Applications Judge Birkett’s cost decision, *AG Clark Holdings Ltd v 1352986 Alberta Ltd*, 2024 ABKB 180. In that decision, AG Clarke Holdings Ltd (Clark) was awarded \$20,000 plus Column 4, Schedule C costs, as determined by an assessment officer. Clark did not file an appeal of the costs decision. Regardless, I find that to have been an appropriate costs award.

[3] Clark submits that it should be entitled to elevated costs. It seeks 70% of its legal costs, which total \$42,536. It cites the lengthy timeline of this litigation, over 13 years. It also references its continued performance under the contract even though it was not receiving payment.

[4] Redleaf did not make submissions regarding the costs related to the appeal. Instead, it submitted that Applications Judge Birkett’s cost decision was appropriate and should not be overturned. On that point, I agree. However, Clark was the successful party on the appeal and should be entitled to costs related to the appeal.

[5] The *Rules of Court* state that a successful party is entitled to a costs award against the unsuccessful party. The *Rules of Court* also provide a number of factors to consider when making a costs award. It also provides some guidance regarding costs through Schedule C.

[6] In *McAllister v Calgary (City)*, 2021 ABCA 25, the Court stated at paragraph 53 “Schedule C provides little guidance as to what constitutes an appropriate level of indemnification”. If costs in this matter were awarded under column 5 of Schedule C, Clark would be entitled to \$2,194. I do not find this amount to be appropriate. Clark was completely successful in defending the appeal. The costs to defend the appeal represent over 10% of the award. This litigation has been going on for over a decade. These factors entitle Clark to enhanced costs.

[7] Clark seeks costs equaling 70% of its actual costs. In *McAllister*, at para 51, the Court stated that 40-50% indemnification provided a reasonable guideline regarding costs. It also affirmed the ability of the judge to move up or down from that range. In the same paragraph it also stated that costs must be “both meaningful and reasonable”.

[8] When I consider all of the factors related to the appeal of Application Judge Birkett’s decision, I find that 60% of the actual costs are appropriate. Clark is entitled to \$34,668.00 in costs.

Heard by way of written submissions received on the 4th day of October, and the 5th day of October, 2024.

Dated at the City of Edmonton, Alberta this 18th day of October, 2024.

G.R. Fraser
J.C.K.B.A.

Appearances:

Alexandra C. Bochinski
DLA Piper (Canada) LLP
for the Respondents (Plaintiffs)

Brent W. Mielke
MLT Aikins LLP
for the Appellants (Defendants)