

Court of King's Bench of Alberta

Citation: Prather v Tower Engineering Group, 2024 ABKB 466

Date: 20240731
Docket: 2001 02677
Registry: Calgary

Between:

Brad Prather, Valerie Prather and Bradon Equestrian Ltd.

Plaintiffs

- and -

Tower Engineering Group Limited Partnership, Tower Engineering Group Inc, Tower Engineering Group (Calgary) Limited Partnership, Tower Engineering Group (Calgary) Inc, Mike Nowlan, Nowlan Bluenose Design Ltd, Hillier Manufacturing Ltd, Bradon Construction Ltd and ABC Corporation Ltd

Defendants

Costs Desk Endorsement of Justice N.F. Dilts

[1] The Tower Defendants brought an application to compel responses to objected to questions arising from the questioning of the Plaintiffs Brad Prather on June 23, 2022 and May 11, 2023, and Valerie Prather on August 3, 2022. After significant diligence between Plaintiffs' counsel and counsel for the Tower Defendants, the areas in dispute were reduced and only four undertakings remained unanswered. The application came before me as case management Justice on May 9, 2024. Following counsels' submissions, the application of the Tower Defendants was dismissed. Costs were awarded to the Plaintiffs as the successful party. The parties were invited to make written submissions as to costs if they were unable to agree.

[2] There appear to be two areas of disagreement with respect to the award of costs. First, the parties disagree whether the Plaintiffs' costs should be subject to a multiplier of Column 5 of Schedule C. They also disagree whether the costs should be payable by the Tower Defendants forthwith.

[3] The Plaintiffs submit that the application was unnecessary and yet was time intensive in preparation and argument. They say that given the amount at stake in the litigation, a multiplier of 1.5 or 2 to Column 5 is appropriate.

[4] The Tower Defendants say that the application was not complex and as an interlocutory application should not attract a multiplier to Column 5. They say there are no unique conditions that would warrant a multiple of Column 5: the application was not complex; the amount in dispute is not significantly in excess of the value contemplated by Schedule C; and the Tower Defendants' conduct would not attract a heightened award.

[5] The Court has broad discretion with respect to an award of costs. As always, that discretion must be exercised judicially, anchored by the principles established in the *Rules* and with consideration given to the nature of the application including how it is framed and argued.

[6] I agree with the Tower Defendants that there is nothing in the nature or complexity of the application that would warrant an award of costs greater than what is contemplated under Column 5 of Schedule C. The Plaintiffs appear to argue that because the Tower Defendants brought an unsuccessful application, increased costs are warranted. The success of one party over another is the presumptive foundation of the costs regime. While the efforts of counsel and the parties to prepare and respond to the application may have been significant, that effort is reflected in the tariff. The Plaintiffs are to calculate their costs under Column 5 of Schedule C.

[7] Under Rule 10.29(1) of the *Rules*, where the Court is otherwise silent, costs are payable forthwith. The underlying policy reason for an award of costs being payable forthwith is to discourage ill-considered proceedings and to ensure the Justice most familiar with the application addresses the issue of costs. In addition, the cost consequence is immediate and relates directly to the step in issue. The Tower Defendants have not offered any compelling reason to depart from this presumption in the *Rules*. Costs to the Plaintiffs are payable forthwith.

Dated at the City of Calgary, Alberta this 31st day of July, 2024.

N.F. Dilts
J.C.Q.B.A.

Appearances:

D.R. McKinnon and A. Steel, Bennett Jones
for Brad Panther

Don Dear, KC and Kass Freeman, Clyde & Co Canada
for Tower

L.M. Hanson, Alexander Holburn Beaudin
for Bradon Construction

Anika Winn, Gowling WLG
for Williams

D. Rathgeber, Warnock & Associates
for Michael Nowlan