

CACV3378

Grover Holdings Ltd.

APPELLANT



- and -

City of Saskatoon

RESPONDENT

Jagdish Grover appearing on behalf of the Appellant
Alan Rankine for the Respondent

Taxation before Melanie Baldwin, QC
Registrar, Court of Appeal for Saskatchewan
July 14, 2020

Background

[1] The appellant appealed a decision of the Court of Queen's Bench dismissing his appeal from a decision of the Property Maintenance Appeals Board upholding a municipal inspector's Order to Remedy Contravention 18-ORC-451. The notice of appeal was filed on February 12, 2019. On April 26, 2019, the respondent filed a letter indicating that the appeal was moot as the property had been sold and the Order to Remedy Contravention was no longer enforceable against the appellant. No steps were taken to advance the appeal and, on March 3, 2020, I issued a Notice to Show Cause referring the appeal to the Court for dismissal on the ground that it appeared to have been abandoned.

[2] On June 4, 2020, the appellant advised the Court in a letter dated May 29, 2020 that the property at issue had been sold and the appeal "was abandoned." The panel of the Court considering "show cause" files declined to treat the letter as an abandonment, holding that a show cause hearing would be held unless a Notice of Abandonment was filed. On June 12, 2020, I wrote to the appellant enclosing a blank Notice of Abandonment in Form 8 and drawing his attention to Rule 45 of *The Court of Appeal Rules* which reads as follows:

45 A party intending to abandon an appeal, cross-appeal or application shall serve on all other parties a copy of the notice of abandonment and file the original with proof of service. The other parties shall be entitled to their taxable costs without order.

[3] On June 24, 2020 the appellant filed a completed Notice of Abandonment in Form 8 and the court file was subsequently closed as abandoned.

[4] On June 25, 2020, the respondent served the appellant with an appointment for taxation returnable before me on July 14, 2020. The appointment was served and filed together with a proposed bill of costs and an affidavit of disbursements. An updated affidavit of disbursements was served and filed on July 10, 2020. The taxation hearing took place on July 14, 2020 with the appellant's representative and counsel for the respondent both appearing by telephone. This fiat is my decision on the taxation.

Proposed Bill of Costs

[5] The proposed bill of costs filed by the respondent lists the following fees under column 2 of the Court of Appeal Tariff of Costs (the "Tariff"):

3	Fee to respondent on receipt of Notice of Appeal	\$ 125
12	Correspondence	\$ 200
13	Preparation of Bill of Costs	\$ 150
14	Taxation of Bill of Costs	\$ 75

The fees claimed total \$550.

[6] At the taxation hearing, the respondent added a further claim for \$750 under fee item 5(b) of column 2 of the Tariff on the basis that it prepared a brief of law for the show cause hearing date after the Court declined to treat the appellant's letter of May 29, 2020 as an abandonment. This brings the total fees claimed to \$1300.

[7] The respondent also claims disbursements of \$91.75 comprising a \$20 court fee for issuing the appointment for taxation, \$3.50 for photocopying and \$68.25 in process server fees for serving the appointment on the appellant. The disbursements are supported by the affidavits of disbursements.

Positions of the Parties

[8] The respondent takes the position that it is automatically entitled to its costs in light of Rule 45 of *The Court of Appeal Rules*. In relation to its new claim under fee item 5(b) of the Tariff, the respondent cites my decisions in *Resch v Dufour*, CACV2324 (unreported), *Melnick v Tapp*, CACV3262 (unreported) and *Hanna v Beckman*, CACV3053 (unreported) as authority for the proposition that where a party has drafted, served and filed complete application materials, it is entitled to claim fee item costs for the application even if the application was not heard before the other party abandoned the appeal. The respondent says that it prepared a brief for the show cause hearing which is similar to the brief that would be filed on an application to quash (which is a complex motion) and that, as such, it is entitled to claim item 5(b) even though the show cause hearing did not proceed because the appellant abandoned the appeal.

[9] The appellant takes the position that the property at issue was sold shortly after the notice of appeal was filed and that the respondent knew that it had been sold. There was therefore no need for the respondent to incur costs by taking any action in connection with the appeal. In any event, the appellant says that it did abandon the appeal and therefore should not have to pay costs.

Analysis

[10] Rule 45 is clear – where an appeal is abandoned, the respondent is entitled to its taxable costs without an order of the Court. The appellant was aware of Rule 45 when the Notice of Abandonment was filed. The appellant abandoned the appeal more than a year after the notice of appeal was filed and is therefore responsible for the respondent's costs during that time period. The issue before me is which costs the respondent is entitled to claim.

[11] The respondent is entitled to claim all of the fee items listed in the proposed bill of costs. The respondent received the notice of appeal, wrote correspondence in connection with the appeal, prepared the proposed bill of costs and attended the taxation hearing. The respondent is also entitled to the disbursements claimed which are supported by the court file and the affidavits of disbursements.

[12] I am not convinced that the respondent is entitled to claim anything under fee item 5(b). In each of the taxation decisions cited by the respondent costs were awarded for applications that were not completed before the appeal was abandoned. In *Resch*, the respondent had brought an application to lift the stay before the appellant abandoned the appeal. In *Melnick*, the respondent had brought an application to quash before the appellant abandoned the appeal. In *Hanna*, the appellant made an application to show cause in response to a Notice to Show Cause and then abandoned the appeal before the application to show cause was argued.

[13] Each of the decisions cited by the respondent differs from the instant situation in one essential way – neither the appellant nor the respondent to this appeal brought or made an application before the appeal was abandoned. I issued a Notice to Show Cause but, unlike the situation in *Hanna*, the appellant did not make an application to show cause. There was therefore no outstanding application when the appellant abandoned the appeal. In fact, before the respondent prepared the brief for which it claims fee item 5(b), the appellant had confirmed that it did not intend to pursue the appeal. Under these circumstances, I will not permit the respondent's claim under fee item 5(b) of the Tariff and this amount will be taxed off.

Decision

[14] The fee items to which the respondent is entitled are taxed and allowed as follows:

3	Fee to respondent on receipt of Notice of Appeal	\$ 125
12	Correspondence	\$ 200
13	Preparation of Bill of Costs	\$ 150
14	Taxation of Bill of Costs	\$ 75

[15] The respondent is also entitled to the disbursements claimed in the proposed bill of costs.

[16] The respondent's costs are therefore taxed and allowed at **\$641.75**. The respondent may wish, for enforcement purposes, to prepare and file a certificate of taxation of costs in Form 11d in this amount for issuance.

[17] There is one final matter that I agreed to address in my written decision – the process for “appealing” my decision. While there is no appeal, there is potentially a review by a judge of the Court. Rule 54.1 of *The Court of Appeal Rules* says:

54.1 (1) A person with a pecuniary interest in the result of a taxation of costs who is dissatisfied with the taxation may apply to a judge for a review of the taxation of costs.

(2) An application pursuant to Subrule (1) must be made within 14 days after the date of the certificate as to taxation of costs.

(3) A review of the taxation of costs must be limited to items that have been objected to before the registrar and may include items with respect to which the registrar exercised discretion.

DATED at Regina, Saskatchewan, this 20th day of July, 2020.



REGISTRAR – COURT OF APPEAL