



Steven Mitchell and Steveco Construction Ltd.

Appellants
(Plaintiffs)

and

Resort Village of Candle Lake

Respondent
(Defendant)

Before: Amy Groothuis, Registrar (on July 12, 2021)

Fiat

[1] On July 7, 2020, Steven Mitchell and his company, Steveco Construction Ltd. [appellants] filed a notice of appeal from a Court of Queen's Bench order made pursuant to s. 23 of *The Uniform Building and Accessibility Standards Act*, SS 1983-84, c U-1.2 [Act] requiring that Mr. Mitchell comply with an earlier stop work order issued by the Resort Village of Candle Lake [respondent] relating to Mr. Mitchell's construction of a building without a building permit.

[2] The appeal was heard on December 15, 2020, and the Court's reserved decision, which dismissed the appeal, was released on March 24, 2021. Writing for the Court, and in dismissing the appeal, Schwann J.A. concluded by stating:

[85] The appeal is dismissed with costs to the Village in the usual way

[3] Following the above, the respondent took out an appointment for taxation of costs returnable before me on June 9, 2021, supported by a draft bill of costs. The June 9 hearing was adjourned on consent to July 12, 2021. This fiat is my decision on the taxation of costs.

Proposed Bill of Costs

[4] The respondent claimed the following fees under Column I of the Court of Appeal Tariff of Costs [Tariff]:

5.	Complex Motion (a) opposed	\$1,000.00
8.	Preparation of Factum	\$1,000.00
9.	All Other Preparation for Hearing	\$500.00

10.	Appearance to present Argument	\$400.00
12.	Correspondence	\$200.00
13.	Preparation of Bill of Costs	\$150.00

[5] The fees claimed total \$2,950.00. In addition, the proposed bill of costs included the following disbursements:

Fee to Respondent on receipt of Notice of Appeal	\$100.00
Costs of Service	\$236.50

[6] Finally, the proposed bill of costs included GST in the amount of \$164.33 and PST in the amount of \$183.00, for a global total of \$3,633.83.

Issue

[7] The appellant takes issue with the inclusion of item number 5(a), Complex Motion (opposed) and says it is incorrectly included on the draft bill of costs.

[8] As further described below, an issue also arose during the hearing as to the proper column of the Tariff, and the inclusion of item number 11, Preparing Formal Judgment or Order.

Analysis

[9] My authority to hear and decide this taxation stems from Rule 54 of *The Court of Appeal Rules* [Rules]. In preparing for the taxation hearing, I reviewed the court file and the Court's decision. I saw no evidence of any motion (complex or otherwise) on the court file. When asked, counsel for the respondent first indicated that item 5(a) was included on the draft bill of costs as it related to the hearing of the appeal on the merits, before agreeing that items 9 and 10 (preparing for and appearing at the hearing) of the Tariff captured that work. As a result, counsel for the respondent conceded that there was no complex motion and that amount should not be included. Counsel for the appellant confirmed that no motions or applications were heard with respect to this appeal. I therefore tax off the amount of \$1,000.00.

[10] I also inquired about the proper column since the draft bill of costs relied upon Column I of the Tariff, and yet it appeared to me that the appeal sought non-monetary relief. Rule 54 provides direction on the manner in which costs are taxed; more particularly, rule 54(1)(b) directs that Column II applies to the taxation of costs where non-monetary relief is involved, unless otherwise ordered. As the Court did not otherwise order, if the appeal involved non-monetary relief then it follows that the costs must be taxed on Column II.

[11] Determining whether non-monetary relief is involved requires examining the notice of appeal and appellant's factum (where one is filed), to see what relief is claimed. This was the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated*

v Bushell, 2013 SKCA 65, as well as that utilized by Registrar Baldwin (as she then was) in *Hanna v Beckman* (CACV3053, April 8, 2019, Melanie Baldwin).

[12] In the Court's decision dismissing the appeal, Schwann J.A. described the appeal as concerning "whether a person to whom an administrative order has been issued can collaterally attack the validity of that order in the context of subsequent administrative compliance proceedings" (at paragraph 1). The appellants identified the following three grounds of appeal in their notice of appeal:

- (a) Did the Chambers judge err by incorrectly applying s. 23 of the Act?
- (b) Did the Chambers judge err by failing to address an abuse of process argument Mr. Mitchell had raised in response to the Village's application and thereby fail to act judicially?
- (c) Did the Chambers judge err by failing to sever the mandamus application from the Village's application?

[13] There is no indication in the appeal or the lower court decision that any monetary relief was sought; both counsel agreed that the appeal involved non-monetary relief. Following some discussion, counsel for the respondent submitted that the bill of costs should be taxed on Column II, in accordance with rule 54(1)(b) and when asked, counsel for the appellant agreed that the costs be taxed on Column II given that the appeal involved non-monetary relief. Having considered the parties' submissions and applicable law, I find that the relief sought by the appellant was non-monetary. I will therefore tax the respondent's costs on Column II.

[14] Additionally, during the hearing it arose that the respondent had neglected to include item 11, Preparing Formal Judgment or Order, though the formal judgment was issued on May 19, 2021. Counsel for the appellant agreed this item was properly claimed. I therefore tax on the amount of \$200.00 for item 11.

[15] Having reviewed the Court file, I am otherwise satisfied that the items listed in the respondent's proposed bill of costs are appropriate and have been incurred, subject to the following comment. While the respondent included the "fee to respondent on receipt of Notice of Appeal" as being a disbursement, this is incorrect. That fee is item 3 under the Tariff. While it makes no difference to the total amount that is taxed, it ought to be reflected under the fees portion rather than the disbursements portion of the bill of costs. The respondent is entitled to receive the costs as claimed in the proposed bill of costs, calculated under Column II.

Decision

[16] The fees are therefore taxed and allowed as follows:

- | | | |
|----|--|------------|
| 3. | Fee to Respondent on receipt of notice of appeal | \$125.00 |
| 8. | Preparation of Factum | \$2,000.00 |

9.	All Other Preparation for Hearing	\$750.00
10.	Appearance to present Argument	\$400.00
11.	Preparing Formal Judgment	\$200.00
12.	Correspondence	\$200.00
13.	Preparation of Bill of Costs	<u>\$150.00</u>
	Total:	\$3,825.00

[17] With respect to the disbursements claimed, at the outset of the hearing counsel for the respondent confirmed that the claimed disbursements of \$236.50 for costs of service was a clerical error, which should be removed. I will therefore tax off that amount. As discussed above, the fee to the respondent on receipt of the notice of appeal is not properly considered a disbursement as it is an item included on the Tariff, and has been included with the fees. Taken together, counsel confirmed that the respondent was not seeking any disbursements.

[18] The proposed bill of costs is therefore taxed and allowed at \$3,825.00, plus GST in the amount of \$191.25 and PST in the amount of \$229.50, for a total of \$4,245.75.

[19] For enforcement purposes, the respondent may wish to prepare and file a certificate of taxation of costs in Form 11d in this amount for issuance.



Counsel: Mr. Peter Abrametz for Steven Mitchell and Steveco Construction Ltd.
Ms. Carla Dombowsky for Resort Village of Candle Lake