

Court of King's Bench of Alberta

Citation: Rawanco Inc. v 617271 Saskatchewan Ltd., 2025 ABKB 437

Date: 20250717
Docket: 2306 00728
Registry: Lethbridge

2025 ABKB 437 (CanLII)

Between:

Rawanco Inc.

Applicant

- and -

617271 Saskatchewan Ltd.

Respondent

**Reasons for Decision
as to Costs of the
Honourable Justice J.C. Kubik**

INTRODUCTION

[1] Rawanco Inc. (the “Tenant”) was the successful party in an action seeking performance by the landlord, 617271 Saskatchewan Ltd. (the “Landlord”) under a commercial Lease Agreement.

[2] The Tenant seeks costs on either a solicitor and own client basis, or alternatively in an amount equivalent to 40-50% of its fees incurred in accordance with *McAllister v Calgary (City)* 2021 ABCA 25 [*“McAllister”*].

[3] The Landlord disputes the Tenant’s entitlement to costs arguing that there was mixed success such that each party should bear its own costs.

LITIGATION PROCEEDING

[4] In the originating action, the Tenant obtained an order requiring the Landlord to pay the replacement cost of the HVAC unit at the leased premises as well as a declaration that the Tenant was not in breach of the lease for failing to pay this cost.

[5] The Tenant also argued that the Landlord failed to meet its good faith contractual obligations. The Tenant had not pleaded this in their claim but framed its argument as an entitlement to enhanced costs. I rejected this argument, finding that an award of enhanced costs would have amounted to an award of damages not pleaded.

[6] Following my decision, the parties provided oral and written submissions regarding costs, including a breakdown of the solicitor-client fees incurred.

THE TENANT’S POSITION

[7] In support of its claim to costs, the Tenant advances three arguments.

[8] First, it argues that it should be entitled to solicitor-client costs because clause 30 of the Lease Agreement entitled the Landlord to recover such costs in any action arising from the Tenant’s default under the lease.

[9] Second, it argues that the matter was not straightforward, and Schedule C, Column 1 costs would not reflect 40-50% of the fees incurred to achieve successful recovery.

[10] Finally, it argues the litigation conduct of the Landlord, including its bad faith conduct, justified an enhanced costs award.

THE LANDLORD’S POSITION

[11] The Landlord advances three arguments as to why costs should not be awarded.

[12] First, the Landlord asserts that the parties had mixed success; while the Tenant was successful with respect to the recovery of the cost of the HVAC system, it was not in regard to its claim that the Landlord had breached its good faith obligations under the contract.

[13] Second, the Landlord argues that there is no evidence of litigation misconduct which would give rise to solicitor-client costs. Furthermore, it says that the question of enhanced costs arising from bad faith conduct has already been considered and rejected.

[14] Finally, the Landlord submits that the costs sought by the Tenant, even on a *McAllister* basis, are disproportionate to the nature and complexity of the claim.

THE LAW

[15] Rule 10.29 provides that a successful party to an application, proceeding or action is entitled to a costs award against the unsuccessful party. This rule is subject to the court's general discretion to award costs under r.10.31, after considering the factors set out in r.10.33.

[16] In exercising its discretion, a court may award the reasonable and proper costs a party incurred to carry on an action or any other amount the court considers appropriate, including costs on an indemnity basis or in a lump sum. Such costs maybe with or without reference to Schedule C and relate to all or any part of an action.

[17] The factors to be considered under r.10.33 include but are not limited to: a) the result of the action and the degree of success of each party; b) the amount claimed and recovered; c) the importance of the issues; d) the complexity of the action; e) the apportionment of liability; f) the conduct of a party that shortened the action; and g) any other matter the court considers appropriate. The court can also consider (amongst other things) unnecessary conduct which delayed an action, a party's refusal to make an admission or misconduct.

[18] As noted in *McAllister*, reasonable and proper costs are a matter of discretion for the trial judge. Since *McAllister*, a series of appellate decisions have discussed "reasonable and proper costs" from the perspective of proportionality, noting that costs awards should strike a balance between indemnity of the successful party and access to the courts, and reflect an amount the losing party should reasonably expect to pay the winning party. Costs awards should not be punitive where the parties have reasonably engaged in litigation of the issues between them and not engaged in misconduct: *Barkwell v McDonald*, 2023 ABCA 87; *Sunridge Nissan Inc v McRuer*, 2023 ABCA 128; *Sutherland v Sutherland*, 2023 ABCA 185; *Kantor v Kantor*, 2023 ABCA 329.

[19] With respect to solicitor-client costs, I note the guidance provided in *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16, wherein the court indicated that lack of success on a claim is not sufficient to justify solicitor-client costs, noting that solicitor-client costs are reserved for circumstances in which there has been reprehensible, scandalous, or outrageous conduct by a party. A departure from party-party costs should only occur in rare and exceptional circumstances.

DECISION

[20] I start by noting that the Tenant is not contractually entitled to recover solicitor-client costs and there is no basis upon which to read such a term into the Lease Agreement. As such, I reject the Tenant's argument on this point and will assess entitlement to costs in accordance with the *Rules of Court*.

[21] In this case I am satisfied that the Tenant was the successful party on the issues of primary importance to the parties: who was responsible for paying to replace the HVAC unit and whether the Tenant was in breach of the lease for failing to do so.

[22] The Tenant's failure to succeed on the allegation that the Landlord breached its good faith contractual obligations does not amount to mixed success, as argued by the Landlord. While the Landlord was not required to pay additional damages, the finding did not detract from the Tenant's overall success, including that fact that the Lease Agreement remains in good standing

and the Tenant can exercise options to renew for subsequent terms. As a result, the Tenant is entitled to a costs award.

[23] During the course of the litigation, the Landlord asserted, and then withdrew, certain allegations of breach. While this ultimately narrowed the issues for the hearing, it increased the cost to the Tenant in responding to the allegations of breach, particularly in relation to the Landlord's refusal to accept ongoing rental payments.

[24] This is a distinct issue from the question of whether the Landlord breached its good faith contractual obligations because it involves conduct in the litigation, which delayed or unnecessarily complicated the proceedings and caused increased legal costs to the Tenant. This conduct, however, was not reprehensible, scandalous or outrageous, and does not rise to a level attracting solicitor-client or substantially enhanced costs. As such, I will consider this factor in my overall assessment of reasonable and proper costs.

[25] In assessing reasonable costs, I bear in mind that costs should be proportionate and reflect an amount that the losing party would reasonably expect to pay.

[26] In this case, the Tenant's taxable costs based on Schedule C, Column 1, total \$7,450.19 inclusive of GST, disbursements and other charges. The fee portion totals \$5,125, demonstrating that the number of steps taken in the action were modest.

[27] The Tenant's solicitor and own client costs, on the other hand, total \$132,401.94 inclusive of GST, disbursements and other charges. The fee portion totals \$124,423. Applying the 40-50% calculation contemplated in *McAllister*, costs would range from \$49,769.20 to \$62,211.50.

[28] As part of the Landlord's cost submissions, I received the Landlord's solicitor-client fee bill, which totals \$16,575.84 inclusive of GST, disbursements and other charges. While there is no breakdown by hour or hourly rate, I bear in mind that it reflects the work of a single legal counsel with respect to all steps in the litigation, whereas the Tenant's solicitor-client fee bill reflects time for senior and junior counsel, what appears to be articling or summer student assistance and paralegal/legal assistant type services.

[29] As I have previously indicated, this case does not warrant solicitor-and-own-client costs as there is no litigation misconduct so egregious to give rise to this. While taxable costs calculated on Schedule C, Column 1 are not proportionate to the value of the Tenant's overall recovery or the additional costs incurred to address the allegations of breach, which were later withdrawn, costs based on 40-50% of the solicitor-client fee account are similarly disproportionate when one considers that this was not a complex case. The court proceedings were straightforward and essentially involved proceedings akin to a special chambers application.

[30] I am satisfied that reasonable, proper and proportionate costs are reflected by a lump sum cost award to the Tenant in the amount of \$20,000 inclusive of GST, disbursements and other charges. In coming to this determination, I have considered the taxable costs the Tenant would recover under Schedule C, Column 3 which most closely reflects the monetary value of the Tenant's overall success. I have grossed this up to reflect additional costs associated with the legal services required to deal with the allegations of breach which were later withdrawn. This included significant communications between counsel, client and opposing counsel, as well as

multiple efforts to pay the rent which were rejected by the Landlord, and the filing of additional affidavits to address these issues.

Oral Submissions Heard on the 8th day of May, 2025.

Written Submissions Received on May 22, 2025 and June 3, 2025

Dated at the City of Lethbridge, Alberta this 17th day of July, 2025.

J.C. Kubik
J.C.K.B.A.

Appearances:

Joshua Sadovnick and Stephen Vincent
for the Applicant

Richard Low
for the Respondent