

EXPROPRIATION LAW CENTRE

DECISIONS SERVICE

| | | | |
|---------------------|--|--|---------------------------------------|
| CASE NAME: | Amdue Holdings Ltd. v. Calgary (City) | | |
| EXLAW CITE: | [1976] EXLAW 9 | | |
| NEUTRAL CITE: | | | |
| DATE: | December 20, 1976 | | |
| PROVINCE: | Alberta | | |
| COURT: | Alberta Land Compensation Board | | |
| REGISTRY: | Edmonton | | |
| ACTION NO: | 10013 | | |
| ORDER NO: | 7 | | |
| PARTIES: | Amdue Holdings Ltd. Audem Construction Ltd. City of Calgary | | Claimant Claimant Authority |
| DECISION MAKERS: | Kenneth J. Boyd | | Chairman |
| LAWYERS: | Tell R.B. Stephen P.M. Furnival | | for the Claimant for the Authority |
| EXPERT WITNESSES: | | | |
| TAKING TYPE: | Full taking | | |
| VALUATION DATE: | | | |
| SUMMARY: | Application by the Claimants to the Alberta Land Compensation Board for an order fixing costs payable pursuant to the <i>Expropriation Act</i> , S.A. 1974, c. 27. The Board had previously awarded costs to the Claimants following a successful application to quash expropriation proceedings. The Claimant had submitted a bill of costs in the amount of \$500. The Board awarded costs in the amount of \$450 plus costs of the present application fixed at \$25. | | |
| STATUTE REFERENCES: | <i>Expropriation Act</i> , S.A. 1974, c. 27, ss. 33, 33(1), 33(2), 37, 37(1) | | |
| CASE REFERENCES: | | | |
| PREVIOUS DECISIONS: | [1976] EXLAW 8 (Alta. L.C.B.) | | |
| UPDATED: | March 6, 2005 (JBM) | | |

1 In its Order No. 3 dated June 29, 1976, the Board ordered inter alia, that "the City of Calgary shall pay the claimant's reasonable costs of the notice of motion and hearing thereof before this Board in such amount as may be agreed upon and failing such agreement at such amount as may be subsequently fixed by the Board".

2 The parties have been unable to agree on the amount of Amdue's costs.

3 Amdue Holdings Ltd. and Audem Construction Ltd. (hereinafter called "Amdue") made application by way of Notice of Motion to the Board to fix the amount of Amdue's costs which the City of Calgary (hereinafter called "the City") was directed to pay pursuant to Board Order No. 3.

4 Counsel for the parties appeared at the hearing which took place at the Board's offices in the City of Calgary on December 15, 1976.

5 Counsel for Amdue submitted a summary bill of costs as follows:

| | | |
|----|--|-----------|
| 1. | To commencement of proceedings by Originating Notice of Motion | \$ 150.00 |
| 2. | To Motion before the Land Compensation Board | \$ 250.00 |
| 3. | To incidental correspondence | \$ 100.00 |
| | | ----- |
| | Total | \$ 500.00 |

6 Under questioning by the Board, Counsel for Amdue stated that approximately 10 to 15 hours had been incurred in researching and preparing the application and that this would be charged at an hourly rate of \$25.00. The hearing involved a half day and this would be charged at \$75.00 per hour. Counsel advised that the correspondence amounted to approximately 10 letters which it would appear were charged at \$10.00 per letter. Counsel further advised that the bill of costs was based on the tariff in the Rules of Court for Alberta for matters of a similar nature.

7 Counsel for the City took the position that the bill of costs was prepared on a solicitor and client basis and should properly have been submitted on a party and party basis.

8 The application which resulted in Board Order No. 3 challenged the efficacy of the Notice of Proposed Payment made by the City of Amdue in connection with the expropriation by the City from Amdue of certain land owned by Amdue. Consequently the Board finds that Section 33 of the *Expropriation Act* is applicable to the matter of costs. Section 33 reads as follows:

Section 33. (1) The owner may obtain an independent appraisal of his interest that has been expropriated and the expropriating authority shall pay the reasonable cost of the appraisal.

(2) The owner may obtain advice from any solicitor of his choice as to whether to accept the proposed payment in full settlement of compensation, and the expropriating authority shall pay the owner's reasonable legal costs therein.

9 The governing words of that section are "the expropriating authority shall pay the owner's reasonable legal costs therein". Section 37 which deals with costs "incurred by the owner for the purposes of determining the compensation payable" provides in sub-section (1) as follows:

Section 37. (1) The reasonable legal, appraisal and other costs actually incurred by the owner for the purpose of determining the compensation payable shall be paid by the expropriating authority, unless the Board determines that special circumstances exist to justify the reduction or denial of costs.

Again the governing words are "reasonable costs".

10 As previously stated the issue was raised by counsel as to whether such "reasonable costs" should be determined on a "solicitor and client" basis or on a "party and party" basis. The Board does not find this distinction as to costs to be particularly helpful in determining "reasonable costs". Where land has been taken compulsorily it does not follow that the method of determining costs in ordinary litigation should be followed. In the case of expropriation of land there is an expropriating authority which under statutory authority is empowered to compulsorily take away the interest in land of the owner. The taking must be carried out in strict compliance with the provisions of the *Expropriation Act* and the owner is entitled to exercise the rights and remedies afforded to him by that Act. As previously set out the *Expropriation Act* specifically provides that the owner shall be awarded his "reasonable costs" for exercising such rights and remedies. The Board finds that the general principles to be followed in determining such reasonable costs may be summarized as follows:

1. Full costs of and incidental to an application properly made pursuant to the Act by the owner should be paid by the expropriating authority. The costs should however reflect such reasonable, economical and straightforward preparation and presentation as is necessary to properly present the owner's case to the Board.
2. The owner should not be allowed the cost of unnecessary work or other expenses or costs incurred through over caution or over preparation.
3. The owner should not be allowed costs which are the result of misconduct, omission or neglect by the owner.
4. The tariff of costs prescribed for ordinary litigation may be accepted as a general guide, but where, in the opinion of the Board, the fees fixed by that tariff are either inadequate or inordinately high to compensate for the services necessarily and reasonably rendered the Board is not bound by such tariff and should not follow it.

11 Bills of Costs prepared pursuant to the *Expropriation Act* should be sufficiently itemized and contain sufficient detail to permit the application of the foregoing principles. Without limiting the generality of the foregoing such bills should:

1. Set out the number of hours spent in preparation and presentation of the matter to the Board and the rate or rates charged therefor.
2. Set out in detail costs incurred for reports of appraisers and other experts with verification of such costs.
3. Set out the costs incurred or charges made for attendance by expert and other witnesses at the hearing before the Board.
4. Itemize correspondence, telephone calls and attendances in connection with the matter and the charges made therefor.
5. Itemize and verify other disbursements made in connection with the matter.

12 With respect to the Bill of Costs before the Board in the present case, the Board finds that the amount of legal fees set out in items 1 and 2 namely \$150.00 and \$250.00 are reasonable and allows these charges. The statement of counsel for Amdue was that the correspondence comprised approximately 10 letters. The Board finds that \$5.00 per letter is a reasonable charge for this item and consequently reduces the item from \$100.00 to \$50.00.

It is Ordered that:

13

1. Amdue's costs of and incidental to the application resulting in Board Order No. 3 are hereby fixed at the sum of \$450.00 which sum shall be paid by the City to Amdue.

2. The City shall pay Amdue's costs of the within hearing of December 15, 1976 and such costs are hereby fixed at the sum of \$25.00