

Date: 20010620
Docket No.: CA 166921

NOVA SCOTIA COURT OF APPEAL

[Cite as: Smith v. Heron, 2001 NSCA 101]

Glube, C.J.N.S.; Roscoe and Saunders, J.J.A.

BETWEEN:

BRIAN S. HERON

Appellant

- and -

CHARLES A. SMITH

Respondent

REASONS FOR JUDGMENT

Counsel: The appellant on his own behalf
John E. MacDonell, for the respondent

Appeal Heard: June 14, 2001

Judgment Delivered: June 20, 2001

THE COURT: Appeal dismissed with costs and disbursements per reasons for judgment of Roscoe, J.A.; Glube, C.J.N.S. and Saunders, J.A. concurring.

ROSCOE, J.A.:

[1] This is an appeal from decisions and orders of Justice Walter Goodfellow granting summary judgment to the respondent in respect of two orders for costs made by courts in California against the appellant.

[2] The respondent has precisely summarized the background facts in his factum at § 49, as follows:

- the Respondent has two California judgments against the Appellant;
- the first judgment was granted on April 8, 1997, for costs of \$52,857 USD;
- the second judgment was granted on October 1, 1999, for costs of \$9,856.17;
- the first judgment (\$52,857.50 USD), and the decision which led to it, were appealed by the Appellant;
- the Appellant's appeal, his application for re-hearing, and his petition for re-hearing were all denied;
- the second judgment (\$9,856.17) was appealed by Notice of Appeal filed November 29, 1999, which states that the Appellant "hereby appeals this Court's Judgment of October 1, 1999"; no reference is made to the costs judgment of April 8, 1997;
- Justice Goodfellow has granted summary judgment in Nova Scotia for both amounts, but has stayed the second (\$9,856.17) judgment pending determination of the pending California appeal;
- the Appellant has failed to provide the Court with any current Notice of Appeal which mentions the April 8, 1997 judgment, despite repeated requests that he do so;
- the Appellant has failed to provide any documentation directly from the California courts to establish that either judgment is subject to a stay of execution.

[3] On appeal, the appellant offers several arguments challenging both the correctness of the California decisions and the orders made by Justice Goodfellow. After a complete review of the material filed, we are satisfied that the appeal

should be dismissed. The correctness of the California orders is not open for debate in this jurisdiction. (see **Mahon/Moore Group of Companies Limited et al. v. Mercator Enterprises Limited et al.** (1978), 31 N.S.R. (2d) 327 (S.C.)) It is clear from the record that all of the prerequisites for the enforcement of a foreign order by the courts of Nova Scotia have been satisfied, including:

- [1] the appellant was a resident of California at the time of the proceedings there and he fully participated in person and through counsel in the trials and appeals;
- [2] the subject matter of the lawsuit in California was real property situated in the State, and therefore there was a substantial connection with the forum;
- [3] the judgments of the California courts are final judgments on the merits, not subject to rescission or variation by the courts that made them; and
- [4] the judgments are for definite sums of money.

(see Canadian Conflicts of Laws, J.-G. Castel, Butterworths, 4th ed., (1997), paragraphs 153 - 175 and **Four Embarcadero Center Venture v. Mr. Greenjeans Corp.** (1988), 26 C.P.C. (2d) (Ont. H.C.))

[4] Furthermore, we are not persuaded that the Chambers judge committed any error in the application of the domestic law respecting summary judgment or any error in law, procedure or principle in either the scheduling of the application or in denying the request of the appellant to amend his defence at the hearing of the summary judgment application.

[5] We have carefully reviewed the record and we agree with the Chambers judge that the appellant failed to establish that he had any fairly arguable defence to the action for enforcement of the foreign judgments. Notwithstanding the ingenious and passionate arguments made by Mr. Heron, with respect, the new submissions and evidence tendered on the appeal add nothing. The appeal is accordingly dismissed with costs to the respondent in the amount of \$1500 plus disbursements.

Roscoe, J.A.

Concurred in:

Glube, C.J.N.S.

Saunders, J.A.