

NOVA SCOTIA COURT OF APPEAL

Citation: [*Fero Waste and Recycling Inc. v. MacNeill*, 2002 NSCA134]

Date: 20021024

Docket: CA179161

Registry: Halifax

Between:

Fero Waste and Recycling Inc., et al.

Appellant

v.

George Hubert MacNeill, Q.C.

Respondent

Judge:

The Hon. Justice Jamie W. S. Saunders, in Chambers

Appeal Heard:

October 24, 2002, Halifax, Nova Scotia

Held:

The application is dismissed with costs to the respondent, per reasons for judgment given orally by Saunders, J.A. in chambers.

Counsel:

Douglas B. Shatford, Q.C., for the appellant/applicant
Eric LeDrew and Micheline Gleixner, for the respondent

Reasons for judgment (given orally):

[1] The application for a stay of execution is dismissed for two reasons. First, with respect, there is not any proper affidavit evidence before the court to sustain it. I accept Mr. LeDrew's submissions as counsel for the respondent with respect to why the affidavit is deficient and improper and not in accordance with either the Rules or how those Rules have been interpreted in such cases as **Waverley (Village) v. Nova Scotia (Acting Minister of Municipal Affairs)** (1993), 123 N.S.R. (2d) 465 (N.S.S.C.) Aff'd (1994), 129 N.S.R. (2d) 198 (C.A.); application for leave to appeal dismissed (1995), 34 C.P.C. (3d) 130 (note) (S.C.C.).

[2] Because of those failures to comply, I have ignored ¶12, 13, 14, 15 and 16 and exhibit 7 attached thereto. They are nothing more than counsel for the appellants' opinion or pleading. They are not facts. Some assertions are third hand hearsay with the source undeclared. After purging the offending material there is nothing left to support the application on the merits.

[3] Even if I were prepared to consider those objectionable paragraphs of the affidavit, I would find that the appellants have failed to establish any harm were the stay refused. Further, even if harm were shown, I am not at all persuaded that the harm is irreparable as those words have come to be defined by jurisprudence in this province. Irreparable harm suggests consequences that are not quantifiable and compensable in dollars. See, for example, the decision of Justice Chipman of this court in **R. Baker Fisheries Ltd. v. Widrig**, [1998] N.S.J. No. 193 (N.S.C.A. [In Chambers]) at ¶25 and 26:

Widrig would say that the transfer of the license puts him out of business between now and the decision in this appeal and possibly longer. That may be but it is a loss that could be measured in money and compensated thereby. The meaning of irreparable harm here takes shape in the context of this case. The harm can probably be compensated by the respondent if need be. It can probably be minimized by the appellant or would have been by him using reasonable foresight.

[4] Those remarks are apposite to the matter before me.

[5] I will award costs to the respondent in the amount of \$800.00, inclusive of disbursements, to be paid forthwith.

[6] The appeal will be heard as scheduled on January 23, 2003.

Saunders, J.A.