

NOVA SCOTIA COURT OF APPEAL

Citation: *Deverell v. Scotia Mortgage Corporation*, 2015 NSCA 18

Date: 20150302

Docket: CA 436495

Registry: Halifax

Between:

Kimberly Deverell

Applicant

v.

Scotia Mortgage Corporation

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Motion Heard: February 26, 2015, in Halifax, Nova Scotia, in Chambers

Held: Motion to extend time to file notice of appeal dismissed,
without costs

Counsel: The Applicant, M. Kimberly Deverell, on her own behalf
Douglas Schipilow, for the Respondent

Reasons:

[1] Ms. Deverell moves for an extension of time to file a notice of appeal from four orders of the Supreme Court of Nova Scotia.

[2] Scotia Mortgage Corporation sued Ms. Deverell for foreclosure of Unit Number 3, Level A, Apartment Number 102B in the Condominium Corporation administered by Halifax County Condominium Corporation No. 264 (“Property”). The proceeding was docketed in the Supreme Court under 2014 Hfx No. 427080.

[3] Ms. Deverell filed a Defence.

[4] On June 26, 2014, further to Scotia Mortgage’s motion, Supreme Court Justice Duncan issued an Order that “Summary Judgment on the Evidence is hereby granted” and “The Defence is struck out”.

[5] On August 26, 2014, Supreme Court Justice Jamie Campbell issued an Order for Foreclosure, Sale, and Possession of the Property. The Order quantified the amount owing as \$92,124.84, plus interest, and other charges and costs to be approved by the Court or taxed.

[6] On November 17, 2014, the Deputy Prothonotary issued an Order Confirming the Foreclosure Sale, that ratified the foreclosure proceedings.

[7] Apparently, Ms. Deverell did not vacate at that time. On December 19, 2014, Supreme Court Associate Chief Justice Smith issued an Order for the Sheriff to Deliver Possession of Property.

[8] Ms. Deverell did not file a notice of appeal from any of these orders. The periods to appeal, prescribed by Civil Procedure Rule 90.13, have long expired.

[9] On February 18, 2015, Ms. Deverell filed a motion to extend the time for filing a notice of appeal. On February 26, 2015, I heard the motion. Ms. Deverell requests an extension to appeal from each of the four Orders.

[10] Rule 90.37(12) gives a judge discretion to grant the extension.

[11] In *Bellefontaine v. Schneiderman*, 2006 NSCA 96, para. 3, Justice Bateman referred to the “three-part test” for an extension, *i.e.* that: the applicant “had a

bona fide intention to appeal when the right to appeal existed”; the applicant “had a reasonable excuse for the delay”; and there are “compelling or exceptional circumstances” to warrant the extension, including “a strong case for error at trial and real grounds justifying appellate interference”. The three-part test has “morphed into being more properly considered as guidelines or factors which a Chambers judge should consider in determining the ultimate question as to whether or not justice requires that an extension of time be granted”: *Farrell v. Casavant*, 2010 NSCA 71 (Chambers), para. 17; *Deveau v. Fawson Estate*, 2013 NSCA 54 (Chambers), para. 15; *Tupper v. Nova Scotia Barristers’ Society*, 2014 NSCA 90, para. 22, leave to appeal denied February 26, 2015 (S.C.C.); *Cormier v. Graham*, 2015 NSCA 17 (Chambers), para. 12.

[12] The material that Ms. Deverell filed for the motion does not adequately address these criteria. So, at the chambers hearing, I questioned Ms. Deverell at some length.

[13] I asked Ms. Deverell why she did not appeal these Orders within the time limits. Ms. Deverell responded that, from June 30, 2014 to August 23, 2014, she was in Quebec.

[14] This left the questions – why did she not file a notice of appeal from Justice Duncan’s Order between June 26 and June 30, 2014, or take measures to appeal in her absence after June 30, 2014, or move to extend after her return in late August, 2014, or appeal the Orders of August 26, 2014, November 17, 2014 or December 19, 2014, within the time limits, while she was in Nova Scotia?

[15] Ms. Deverell replied that she didn’t understand that she could appeal. I asked – what changed to prompt her motion for an extension that she filed on February 18, 2015? She could not say anything specific, except that she just started to ask questions.

[16] I asked Ms. Deverell about the merits of her proposed appeal. Her view is that her appeal should succeed out of fairness because she has been unrepresented by counsel.

[17] Though I sympathize with Ms. Deverell’s circumstances, she has not satisfied the criteria for an extension. She has not squarely asserted that she intended to appeal within the time periods. She has given no reasonable excuse for the delay. She has not identified any ground of appeal that suggests error by the justices who granted the orders.

[18] I dismiss Ms. Deverell's motion for an extension, without costs.

Fichaud, J.A.