

Docket: CA 141436
Date: 20000824

NOVA SCOTIA COURT OF APPEAL
[Cite as: Turner-Lienaux v. Campbell, 2000 NSCA 97]

BETWEEN:

KAREN TURNER-LIENAUX and SMITH'S FIELD MANOR
DEVELOPMENT LIMITED

Applicants/Appellants

- and -

WESLEY G. CAMPBELL

Respondent

DECISION

Counsel: Charles D. Lienaux for the applicants/appellants
C. Gavin Giles for the respondent

Application Heard: August 24, 2000

Decision Delivered: August 24, 2000

BEFORE THE HONOURABLE JUSTICE BATEMAN IN CHAMBERS

BATEMAN, J.A.: (in chambers)

[1] Karen Turner-Lienaux and Smith's Field Manor Development Limited, appellants in a former proceeding in this court (C.A. No. 141436), have applied to chambers asking that the court "set a date for an expedited hearing when the Court will consider an application to allow new evidence in this appeal and if the new evidence is admitted to reconsider this appeal" and related directions.

[2] The "appeal" referenced above was brought by the applicants from an interlocutory order of Saunders, J. of the Supreme Court (as he then was) wherein he dismissed the applicants' motion for Summary Judgment on a counterclaim. A panel of three members of this Court heard the appeal on March 24, 1998. Following a unanimous written judgment dated April 8, 1998, an Order issued denying leave to appeal.

[3] The applicants say that this Court should exercise its discretion to receive fresh evidence in that appeal, pursuant to **Civil Procedure Rule 62.22**. It is the submission of the applicants that Justice Saunders' decision to deny Summary Judgment was founded on "fraudulent" evidence proffered by the respondent Wesley G. Campbell. The allegedly fraudulent nature of the evidence only came to the knowledge of the applicants after the appeal was heard and decided.

[4] I am advised by counsel that the trial of the actions, including the counterclaim which was the subject of the unsuccessful summary judgment application

and appeal therefrom, is scheduled to be heard in the Supreme Court beginning on January 8, 2001.

[5] I cannot grant the relief requested by the applicants. This is a statutory court. No appeal in this matter is pending. The appeal having been decided on its merits, this court is now *functus* and without jurisdiction. The applicants have cited no authority for their proposition that we may reconsider a matter once the order has issued. Their reference to the proceedings in **R. v. Marshall** (1983), 57 N.S.R. (2d) 286 is not helpful. There the matter was reheard by the then Appeal Division of the Supreme Court pursuant to a reference by the federal Minister of Justice under s.617(b) of the **Criminal Code of Canada**, R.S.C. 1970, c. C-34. Similarly, I find no assistance in the House of Lords decision **Re Pinochet** (1998), 237 N.R. 201, also cited by the applicants.

[6] The respondent has requested an order for substantial costs of this application. The applicant has filed a considerable volume of material with the court. I accept the respondent's submission that preparation for the application has consumed some time. An order for costs is appropriate.

[7] The application is dismissed with costs to the respondent fixed at \$1500.

Bateman, J.A.