

NOVA SCOTIA COURT OF APPEAL
[Cite as: Halifax Port Authority v. Halterm Ltd., 2000 NSCA 70]

Freeman, Hallett and Cromwell, JJ.A.

BETWEEN:

HALIFAX PORT AUTHORITY

Appellant

- and -

HALTERM LIMITED

Respondent

REASONS FOR JUDGMENT

Counsel: Robert G. Belliveau, Q.C. and Jane E. O'Neill for the
appellant
John David Murphy, Q.C. and Robert S. MacGregor for the
respondent

Appeal Heard: May 25, 2000

Judgment Delivered: May 25, 2000

THE COURT: Leave to appeal is granted and the appeal is allowed per oral
reasons for judgment of Cromwell, J.A.; Hallett and Freeman, JJ.A.
concurring.

CROMWELL, J.A.: (Orally)

[1] As a result of the thorough and helpful submissions of counsel, both orally and in their facta, we have been able to reach a decision. So as not to delay the parties, we will give our conclusion and brief oral reasons now.

[2] Halterm is a marine container terminal operator within the Port of Halifax. The Halifax Port Authority was created pursuant to the **Canada Marine Act**, S.C. 1998, c. 10 and letters patent and has the power to manage and lease the federal lands which comprise the commercial Port of Halifax. Halterm leases premises from the Authority and these leases terminate on December 18, 2000. The Authority has communicated to Halterm its agreement to provide Halterm with an option to renew its leases subject to satisfactory renegotiation of the lease. Halterm refers to this as its option to renew. Negotiations for the new leases reached an impasse and litigation ensued.

[3] Halterm commenced proceedings in the Federal Court pursuant to s. 18.1 of the **Federal Court Act**, R.S.C. 1985, c. F-7, as amended, for judicial review of what Halterm characterizes as a decision of the Port Authority setting fees, rates, charges and terms and conditions to be imposed by the Authority in respect of a certain lease renewal for the Port of Halifax. In that proceeding, commenced on December 7, 1999, Halterm seeks various forms of relief including an injunction restraining the Authority from interfering with its occupancy and use of the port facilities currently under lease and specifically that the Authority be enjoined from "... any action inconsistent with the exercise of Halterm's renewal option ...". The Authority's position is that it has made no

decision and that what Halterm refers to as a decision is simply a stated negotiating position.

[4] The Authority applied to a judge of the Federal Court to strike out the application for judicial review on grounds including that the Court has no jurisdiction because the Authority is not a federal board, commission or tribunal when negotiating leases and has not made a decision within the meaning of the **Federal Court Act**. This preliminary motion has been argued in the Federal Court on February 8th and the decision is reserved. It would not be appropriate for us to anticipate the outcome of that application and we express no opinion on it. It is relevant to the matter before us, however, that there are issues yet to be resolved about the jurisdiction of the Federal Court.

[5] Halterm has also commenced proceedings by application dated December 8, 1999 before the Canadian Transportation Agency regarding what it alleges to be the discriminatory effects of the lease rates set by the Authority. In its material, Halterm says that the Authority granted a ten-year lease renewal subject to satisfactory renegotiation of the lease and that it has exercised the option.

[6] On December 7, 1999, the Authority commenced proceedings in the Supreme Court of Nova Scotia seeking a declaration that Halterm has no legal right to

renew the existing leases. Counsel for the Authority clarified at the hearing of this appeal that the Nova Scotia proceeding relates to the existence or non-existence of a legally enforceable option to renew. At this point, Halterm has filed nothing taking a position on the merits in that proceeding. While Halterm refers to the so-called renewal option in its material before the Federal Court and the Canadian Transportation Agency, it stops short in that material of asserting that there is any legally enforceable option to renew, although we are advised by counsel that will be its position.

[7] Halterm applied to Nunn, J. in chambers to stay the Nova Scotia proceedings. The chambers judge granted the order on terms holding that the Federal Court proceeding is more comprehensive in scope, that the matter of whether or not there is an option to renew is going to be raised in those proceedings and that a declaratory action is not appropriate where the same point of law will be posed in pending court proceedings. The Authority seeks leave to appeal the judge's decision.

[8] In our view, the learned judge erred in principle in staying the Nova Scotia proceedings. The right to commence and pursue proceedings in the courts is an important one and should be limited only for clear and important reasons. Such reasons include avoidance of the possibility of inconsistent decisions and unnecessary duplication of proceedings. At this very preliminary stage of these proceedings, it is far from clear that there is significant overlap among them or that the legal rights relating to

the so-called renewal option are central to the administrative law issues raised in the Federal Court or before the Canadian Transportation Agency. The jurisdiction of the Federal Court is in doubt and it may take considerable time finally to resolve that issue. As a result of the stay, the scope of the Nova Scotia proceedings has yet to be defined. At this early stage, when there is uncertainty as to the scope of the proceedings and, in the case of the Federal Court proceedings, the jurisdiction of the Court, substantial reasons for staying the Nova Scotia proceedings were not made out. It was, in our view, premature to order a stay at this time. We, therefore, set it aside. The question of whether the Nova Scotia proceedings should be stayed may be revisited once the scope of the proceedings in the Nova Scotia court and in the Federal Court and the jurisdiction of the Federal Court have been clarified.

[9] We are lifting the stay on the understanding that our doing so is unlikely to impede the progress of the proceedings before the Canadian Transportation Agency scheduled to be heard in June and having been advised by counsel for the Authority that, as presently advised, there would appear to be no basis to delay the Canadian Transportation Agency proceedings if the Nova Scotia stay were to be lifted.

[10] Leave to appeal is granted, the appeal is allowed and the order of the chambers judge is set aside. Costs will be to the appellant fixed at \$1500.00 inclusive of disbursements.

Cromwell, J.A.

Concurred in:

Hallett, J.A.

Freeman, J.A.