

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Tetreault v. Curtmar Farms Ltd.*, 2006 NSCA 94

**Date:** 20060721

**Docket:** CA 268232

**Registry:** Halifax

**Between:**

Norman Tetreault and Barbara A. Tetreault

Applicants/Appellants

v.

Curtmar Farms Limited

Respondent

**Judge:**

The Honourable Justice Thomas Cromwell in Chambers

**Application Heard:**

July 20, 2006, in Halifax, Nova Scotia

**Held:**

**Application for extension of time to file and serve notice of appeal granted; application for security for costs dismissed.**

**Counsel:**

Gary Richard, for the applicants/appellants  
Robert Carruthers and Kerri-Ann Robson, for the respondent

Reasons for judgment:

[1] The appellants apply for an extension of time within which to serve and file a notice of appeal. The order which they wish to appeal was issued on May 9<sup>th</sup>, 2006 and, although their solicitor on June 2 advised the respondent's solicitor that he had instructions to appeal, the notice of appeal was not presented for filing until June 20, roughly 12 days late. The appellants' solicitor deposes that he simply overlooked the fact that the formal order had been issued and that time had begun to run.

[2] The respondent opposes the application and also applies for security for costs.

[3] As indicated in chambers, the application for the extension of time is granted on conditions and the application for security for costs is dismissed.

[4] In my view, the appellants have shown that time should be extended. There has been a very short delay – less than 2 weeks. There is uncontradicted evidence of an intention to appeal formulated within the appeal period and actual notice to the respondent within the appeal period of the appellants' intention to appeal. The proposed notice of appeal contains arguable grounds. The appellants have therefore met the traditional three part test as set out in **Nova Scotia (Attorney General) v. Mossman et al** (1994), 133 N.S.R. (2d) 229 (C.A. Chambers) at p. 231. In any event, this is in my view clearly a case in which the interests of justice require the extension having regard to the solicitor's oversight, the short delay and the actual notice given to the respondent within time of the intention to appeal.

[5] The order extending the time will be subject to the condition that the filing dates set in chambers be observed by the appellants.

[6] The time for filing the notice of appeal will therefore be extended until July 28<sup>th</sup>, 2006.

[7] The respondent applies for security for costs but has filed no evidence to support the application. It is common ground that the appellants are residents of the United States but own real property in Nova Scotia. The respondent bases the application on the "special circumstances" that the appellants' land is "probably

worth considerably less than the amount of the current judgment” and refers to the evidence at trial about the appellants’ strained financial condition. There is no evidence before me in relation to either of these points and the respondent, as applicant, of course, has the burden to show that the order it seeks is justified by the facts. It has failed to do so.

[8] The application for security for costs is dismissed.

[9] The costs of both of these applications will be fixed in total at \$600.00 plus disbursements as taxed or agreed and will be costs in the cause of the appeal.

Cromwell, J.A.