Date: 19980519 Docket: C.A. 143488

NOVA SCOTIA COURT OF APPEAL

Cite as: Vasnick v. Bank of Nova Scotia, 1998 NSCA 110

Hart, Jones, Freeman, JJ.A.

BETWEEN

RICHARD A. VANSNICK, PAULA E. IRVING AND WILLIAM ROY SMITH	)	
	)	Anthony J. Morley, Q.C.
	)	for the Appellant
Appellants	)	
	)	
- and -	)	
	)	Robert G. Belliveau, Q.C.
	)	for the Respondent
THE BANK OF NOVA SCOTIA	)	
	)	
	)	
Respondent	)	Appeal Heard:
	)	May 19, 1998
	)	
	)	
	)	Judgment Delivered:
	)	May 19, 1998
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THE COURT: The appeal is dismissed with costs per oral reasons for judgment of Freeman, J.A.; Hart and Jones, JJ.A., concurring.

FREEMAN, J.A.:

This is an appeal from a Chambers decision of Justice Scanlan of the Supreme Court of Nova Scotia refusing an application by the defendant appellants to dismiss the plaintiff respondent's action to void the effect of certain conveyances to them.

Richard M. VanSnick, an Amherst, N.S. businessman, is a defendant in the Bank's action but not a party to this appeal. In 1992 he consented to judgment in favour of the Bank of Nova Scotia in an action brought on a reimbursement agreement resulting from a letter of credit the Bank had issued so he could participate as one of the Canadian "names" of Lloyds of London. Lloyds had demanded payment and collected from the Bank.

The Bank then brought the present proceeding against Mr. VanSnick, his son Richard A. VanSnick, his common law wife Paula E. Irving, his friend William Roy Smith and a company with which he was alleged to be connected, VanSnick Property Management Limited.

The Bank alleged that Mr. VanSnick had made a number of conveyances without consideration to avoid obligations to creditors, including Mr. VanSnick's two former wives, to whom he was indebted for maintenance. The conveyances were made in 1989 and 1990 and included his home, cottage, furnishings and shares in his businesses. The Bank sought to have the conveyances declared void against itself. The three appellants filed a defence October 1, 1992. Mr. VanSnick and the company filed a separate defence about the same time.

At Mr. VanSnick's request, the Bank agreed to await the outcome of litigation in Ontario between some Lloyd's names and their banks. Shortly after the Ontario decision came down, the Bank gave notice of intention to proceed dated February 24, 1997, to all defendants. The three appellants claimed they had been prejudiced by the delay and applied under **Civil Procedure Rule** 28.13 for an order dismissing the Bank's claim against them for want of prosecution.

Justice Scanlan held that the applicants had not satisfied the burden upon them of proving inordinate delay and substantial prejudice. Applying the two-part test in **Minkoff v. Poole and Lambert** (1991), 101 N.S.R. (2d) 143, he considered that the delay had been explained to his satisfaction, and that the evidence did not disclose material or substantial prejudice to the defendants. Given the complexity of the underlying issues, the delay was not so long as to give rise to a presumption of prejudice. He cited **Canada v. Foundation Company** (1990), 99 N.S.R. (2d) 237 and **Moir v. Landry** (1991), 104 N.S.R. (2d) 281.

The position of this court in matters such as the present one is well known. After referring to the relevant cases Justice Flinn summed it up in **Global Petroleum Corp. et al. v. CBI Industries Inc. et al.** (1997), 158 N.S.R. (2d) 201 (C.A.):

> This is an interlocutory appeal, involving a discretionary order, and this court has repeatedly stated that it will not interfere unless wrong principles of law have been applied or a patent injustice would result.

The appeal is dismissed with costs which are fixed at $750.00 inclusive of disbursements payable forthwith.

Freeman, J.A.

Concurred in:

Hart, J.A.

Jones, J.A.

C.A. No. 143948

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

RICHARD A. VANSNICK, PAULA E. IRVING AND WILLIAM ROY SMITH

Appellants

- and -

THE BANK OF NOVA SCOTIA

Respondent

REASONS FOR JUDGMENT BY:

Freeman, J.A.
(Orally)