

NOVA SCOTIA COURT OF APPEAL

Citation: Sable Mary Seismic Inc. v. Geophysical Service Inc.,
2007 NSCA 124

Date: 20071213
Docket: CA 283048
Registry: Halifax

Between:

Sable Mary Seismic Incorporated, Abbott Contracting Limited,
Windsor Sales and Rentals Limited, Matthew Kimball and
Mary Claire O’Hara Kimball

Appellant

v.

Geophysical Service Incorporated

Respondent

Judge: The Honourable Justice Jamie W. S. Saunders

Appeal Heard: November 30, 2007

Subject: **Statute of Elizabeth**, 13 Eliz. c. 5 (made perpetual, 20 Eliz. c. 5§ 1, 2). Application to strike. **Civil Procedure Rule** 14.25. Separate but collateral proceedings. Fraudulent conveyances. Judgment in hand.

Summary: The appellants are defendants in two separate but collateral proceedings. They appealed the decision of the Chambers judge dismissing their application pursuant to **CPR** 14.25 to strike out the respondent’s pleadings on the grounds that they disclosed no reasonable cause of action; were false, scandalous, frivolous or vexatious; or were otherwise an abuse of process.

The appellants’ principal argument was that the second action is nothing more than a plea in aid of execution to the first action. The respondent’s claim for relief under the **Statute of Elizabeth** was said to be based upon an action that had not yet accrued. It was a “deviation in pleading” that was “fundamentally flawed” because the entire action was predicated upon its obtaining a

successful conclusion in the first action. The appellants argued that before a plaintiff could be entitled to seek to set aside a conveyance under the **Statute of Elizabeth**, he or she must first have obtained judgment.

Held: Appeal dismissed. The law with respect to the application of the **Statute of Elizabeth** has evolved, such that a party need not have a judgment in hand prior to commencing an action and seeking the relief afforded by that statute. This view is consistent with the approach that has been taken in other jurisdictions for the better part of a century. Such an approach ought to now be adopted in Nova Scotia.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.