

NOVA SCOTIA COURT OF APPEAL

Citation: *Jacobsen v. 1358751 Nova Scotia Ltd.*, 2008 NSCA 45

Date: 20080513

Docket: CA 285744

Registry: Halifax

Between:

Alex L. Jacobsen

Appellant

v.

1358751 Nova Scotia Limited (formerly MacLellan
Lincoln Mercury Sales Limited)

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: April 16, 2008

Subject: *Corporations Registration Act, R.S.N.S. 1989, c. 101, s. 17 -
Civil Procedure Rule 52.04 (Leave to issue an execution
order)*

Summary: More than 19 years after obtaining a judgment and an execution order against the appellant, and the registration of that judgment, the corporate respondent was granted leave for the issuance of an execution order pursuant to *Rule 52.04*. It then sought to sell the appellant's home under that execution order. The respondent was incorporated under the *Companies Act* of Nova Scotia and its registration pursuant to the *Corporations Registration Act* (the "*CRA*") had been revoked and never reinstated. When the respondent applied to amend its name in the style of cause for the proceeding, the Chambers judge rendered an oral decision that before there is a sale, the respondent should register pursuant to the *CRA*. Before an order issued, the respondent asked him to reconsider. The judge reversed his previous ruling on the application of s. 17 of the *CRA*, and held that the respondent did not have to hold a certificate of registration before it could amend its name and proceed with the sale of the appellant's property. He

also dismissed the appellant's emergency application seeking to amend or vary the order granting leave to issue the execution order and to stay the execution order itself.

- Issue:**
- 1) Whether the Chambers judge erred in law in his interpretation of s. 17(1) of the *CRA*.
 - 2) Whether he erred in law by failing to strike or stay the leave order and the execution order.

Result: Appeal allowed against the decision and order dismissing the application to stay the leave order and execution order, and the leave order and execution order were struck. The Chambers judge did not err in relying on *I.A.C. Limited v. Hirtle Transport* (1977), 27 N.S.R. (2d) 416 (S.C.T.D.), affirmed at (1978), 29 N.S.R. (2d) 482 (S.C.A.D.) and in determining that the respondent did not have to be registered pursuant to s. 17 of the *CRA* to proceed. However, reasons for the lengthy delay in enforcement of the judgment were not fully explored at the hearing when the leave order was granted, nor was there evidence in regard to the prejudice that may have been or would be suffered by the appellant or by the respondent. On the application to strike or stay the leave order, the Chambers judge erred in determining that the reasons for delay were not material on such a leave application.

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.