

NOVA SCOTIA COURT OF APPEAL
Citation: *Blinn v. Harlow*, 2008 NSCA 79

Date: 20080911
Docket: CA 291829
Registry: Halifax

Between:

Carmen Blinn and 3088106 Nova Scotia Limited

Appellants

v.

Joyce Case Harlow and Timothy Gillespie

Respondents

Judges: Roscoe, Bateman and Fichaud, JJ.A.

Appeal Heard: September 11, 2008, in Halifax, Nova Scotia

Written Judgment: September 12, 2008

Held: Appeal dismissed without costs per oral reasons for judgment of Bateman, J.A.; Roscoe and Fichaud, JJ.A. concurring.

Counsel: Stephanie Atkinson, for the appellants
respondent Timothy Gillespie in person
respondent Joyce Case Harlow not participating

Reasons for judgment: (Orally)

[1] This is an appeal from an interlocutory determination by Davison J. of the Supreme Court of Nova Scotia refusing a plaintiff's request for leave to apply for a contempt order (**Civil Procedure Rule 55.02(1)**) within a defamation action brought by the appellants against the respondents.

[2] The appellants (plaintiffs) had made applications to strike portions of the defences and counterclaims and for default judgment or, in the alternative, summary judgment.

[3] The application for leave was introduced by the appellants, orally, during the Chambers hearing of the other applications. The appellants' supporting affidavit had not yet been filed with the court. The appellants said they had learned, just the day before, that the respondent, Gillespie, had breached the implied undertaking rule by allegedly disclosing information learned at the discovery of Blinn. This was the foundation of the intended contempt application. After hearing the submissions of counsel for the appellants outlining the circumstances of the alleged contempt and the reply of the self-represented respondent Gillespie, the judge declined to grant leave.

[4] We are not persuaded that in so doing he erred. The manner in which the application came about was unusual: it was not properly supported by affidavit evidence; the respondent, who was present, denied the allegations; and the discovery transcript, which was relevant to the issue, was not yet available. In addition, the judge obviously accepted Mr. Gillespie's undertaking to the Court that there would be no inappropriate disclosure of information obtained on the discovery. He has made the same undertaking to this Court.

[5] The appeal is dismissed without costs. The appellants shall pay to the respondent his disbursements which we fix at \$200.00.

Bateman, J.A.

Concurred in:

Roscoe, J.A.

Fichaud, J.A.