C.A. No. 133073

NOVA SCOTIA COURT OF APPEAL

Cite as: CBI Industries Inc. v. Global Petroleum Corp., 1997 NSCA 41
Roscoe, Matthews and Flinn, JJ.A.

BETWEEN:

CBI INDUSTRIES INC., STATIA TERMINALS INC., STATIA POINT TUPPER CORPORATION and STATIA TERMINALS POINT TUPPER, INCORPORATED, all bodies corporate Appellants - and - GLOBAL PETROLEUM CORP., a body corporate, TUPPER CORP. a body corporate as General Partner of Tupper Associates Limited Partnership, SCOTIA SYNFUELS LIMITED, a body corporate, and POINT TUPPER VENTURES LIMITED, a body corporate Respondents	Robert W. Carmichael for the Appellants David P.S. Farrar for the Respondents Appeal Heard: January 30, 1997 Judgment Delivered: January 30, 1997

THE COURT: Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Matthews and Roscoe, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

FLINN, J.A.:

On April 12th, 1996, the respondents commenced an action against the

appellants claiming damages for fraud and breach of fiduciary duty, all in respect of an agreement dealing with the re-activation of the Point Tupper oil terminal.

Prior to filing a defence to the action, the appellants made application to a judge of the Supreme Court for an order to set aside the originating notice under **Civil Procedure Rule** 11.05(a) or to strike out the originating notice under **Rule** 14.25.

The basis of the appellants' claim, as set out in the affidavit of its counsel, is:

1. In the agreement between the parties, which is the subject-matter of the litigation, the respondents have executed a comprehensive release, and covenant not to sue, in respect of the claims set forth in the statement of claim; and
2. The respondents rely, in this action, on documents which were obtained through the discovery process in another civil proceeding, and have, therefore, breached an implied undertaking of confidentiality with respect to that discovery process.

The Chambers judge, who in this case is also the Case Management judge, decided that the issues raised by the appellants were matters "for the trial judge to decide". The Chambers judge, while refusing to grant the appellants' application, adjourned the matter without day.

Civil Procedure Rule 37.10 provides, inter alia, as follows:

> "37.10 On a hearing of an application, the court may on such terms as it thinks just,
>
> . . . .
>
> (c) adjourn the application from time to time, either to a particular date or

> generally, and when the hearing is adjourned generally, any party may apply to have it heard on a particular dagte;
>
> (d) adjourn or transfer the hearing from chambers into court or from court into chambers, or to the Nova Scotia Court of Appeal, or to a locate judge; ....."

It is apparent that, rather than dismiss the appellants' application, the Chambers judge, by adjourning the matter without day, left the door open for the appellants to raise the matter again at trial.

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 (See **Exco Corporation Ltd. v. N.S. Savings & Loan et al** (1983), 59 N.S.R. (2d) 331 (N.S.C.A.) and **Minkoff v. Poole and Lambert** (1991), 101 N.S.R. (2d) 143 (N.S.C.A.).

There is no injustice to the appellants here. The concerns which they raise, in their grounds of appeal, are not foreclosed. They still can be raised, and dealt with, by the trial judge.

In refusing to grant the appellants' application, the Chambers judge applied no wrong principles of law, and his decision is in accordance with the principles set out by Roscoe, J.A., writing for this Court, in **Sherman v. Giles** (1995), 137 N.S.R. (2d) 52 (N.S.C.A.).

The appeal will, therefore, be dismissed. We reserve the question of costs pending judgment in the other interlocutory appeals being heard today.

Flinn, J.A.

Concurred in:

Matthews, J.A.

Roscoe, J.A.

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BETWEEN:

CBI INDUSTRIES INC., STATIA TERMINALS INC., STATIA POINT TUPPER CORPORATION and STATIATERMINALS POINT TUPPER, INCORPORATED, all bodies corporated Appellants	)	
- and -	)	REASONS FOR JUDGMENT BY:
GLOBAL PETROLEUM CORP., a body corporate as General Partner of Tupper Associates Limited Partnership, SCOTIA SYNFUELS LIMITED, a body corporate and POINT TUPPER VENTURES LIMITED, a body corporate Respondents	)	FLINN, J.A. (Orally)