

NOVA SCOTIA COURT OF APPEAL

Citation: Armoyan v. Armoyan, 2011 NSCA 110

Date: 20111206

Docket: CA 351722

Registry: Halifax

Between:

Lisa Armoyan

Appellant

v.

Vrege Armoyan

Respondent

Judges: Saunders, Fichaud and Bryson, JJ.A.

Appeal Heard: December 1, 2011, in Halifax, Nova Scotia

Held: Leave to appeal granted and appeal is dismissed with costs to the respondent in the amount of \$2,500 inclusive of disbursements, per reasons for judgment of Bryson, J.A., Saunders and Fichaud, JJ.A. concurring.

Counsel: Christine J. Doucet and Mary Jane McGinty, for the appellant
Gordon R. Kelly and Stacey O'Neill, for the respondent

Reasons for judgment:

[1] After hearing submissions from the appellant, Ms. Armoyan, and without calling upon the respondent, we dismissed the appeal with reasons to follow. These are those reasons.

[2] The parties are engaged in extensive matrimonial litigation in Nova Scotia and Florida. Although litigation has been ongoing for two years now, there has been no jurisdictional decision in either Florida or Nova Scotia. Nova Scotia jurisdictional hearings began in October of this year and resume in March of 2012.

[3] In December, 2010, and in the context of a motion by Mr. Armoyan to disqualify his wife's counsel, the 15th Judicial Circuit Court of Florida determined that privilege claimed by Mr. Armoyan in certain electronic communications had been waived. They were therefore admissible in Florida at the instance of Ms. Armoyan. Mr. Armoyan appealed that decision.

[4] On May 24, 2001, Ms. Armoyan brought a motion before Justice Douglas C. Campbell of the Nova Scotia Supreme Court (Family Division) for an order that questions of privilege and waiver of privilege were *res judicata*, and that Nova Scotia should follow the Florida court's determination of admissibility.

[5] By decision dated May 31, 2001 (2011 NSSC 242), Justice Campbell dismissed Ms. Armoyan's motions and, in particular, found that the doctrine of *res judicata* did not oblige him to follow the Florida court's determination of privilege, waiver of privilege and admissibility of documents flowing from those issues. Justice Campbell concluded:

[34] In his brief, counsel for the husband has suggested that if I get to the answer that I have now rendered, I should wait until the jurisdictional hearings to freshly determine whether the documents ought to be admitted for reasons other than the application of the doctrine of *res judicata*. I will do so.

[6] Justice Campbell's July 26, 2011 Order following his decision provided:

1. Lisa Armoyan's Motion for a determination that the question of waiver of privilege/exception to privilege is *res judicata* shall be and is hereby dismissed.

2. Lisa Armoyan's Motion for an adjournment of this Motion shall be and is hereby dismissed.

3. The costs of this Motion shall be in the cause.

[7] Ms. Armoyan appealed, arguing that Justice Campbell misapplied the doctrine of *res judicata* or wrongfully assumed jurisdiction and made both substantive, procedural and evidentiary errors relating to those issues.

[8] On July 6, 2011, the 4th District Court of Appeal for the State of Florida quashed the lower court order and remitted Mr. Armoyan's motion to disqualify back to the trial court for an evidentiary hearing. It was conceded on this appeal that the decision by the Florida Appeal Court rendered the *res judicata* issue moot.

[9] Assuming, without deciding, that Ms. Armoyan has satisfied the test for leave to appeal, we are unanimously of the view that the appeal ought to be dismissed. While not necessarily endorsing all of Justice Campbell's findings or reasons, we see no error in principle or patent injustice in his decision or Order.

[10] Justice Campbell's dismissal of Ms. Armoyan's motion is not a prejudgment with respect to questions of privilege, waiver of privilege or admissibility of evidence generally. Nothing in Justice Campbell's decision precludes Ms. Armoyan from fully arguing these issues in the jurisdictional hearing that is underway. That hearing may well include issues of jurisdiction, *forum non conveniens*, privilege, waiver of privilege, admissibility, and whatever other substantive, procedural or evidentiary matters that Justice Campbell considers necessary to dispose of the issues before him.

[11] Mr. Armoyan shall have costs of this appeal in the amount of \$2,500, inclusive of disbursements.

Bryson, J.A.

Concurred in:

Saunders, J.A.

Fichaud, J.A.