

NOVA SCOTIA COURT OF APPEAL

Citation: Fares v. CIBC Bank, 2009 NSCA 124

Date: 20091204

Docket: CA 319713

Registry: Halifax

Between:

Omar Fares

Applicant

v.

CIBC Bank, CIBC Visa and Budget Rent-A-Car

Respondents

Judge: The Honourable Justice Elizabeth Roscoe

Application Heard: November 26, 2009, in Chambers

Held: The respondent's motion is allowed and the notice of appeal is set aside.

Counsel: No one appearing for the appellant
Amy MacGregor, for the respondents CIBC Bank and CIBC Visa
No one appearing for the respondent Budget Rent-A-Car

Decision:

[1] The respondents CIBC Bank and CIBC Visa applied in chambers to set aside the notice of appeal pursuant to Rule 90.40 on the basis that it failed to disclose any ground for an appeal and that it does not comply with the requirements of Rule 90.06. The application was scheduled to be heard on Thursday, November 26, 2009.

[2] The appellant, Mr. Fares, did not appear at the hearing of the motion. I am satisfied, based on the affidavit of Amy MacGregor filed on December 2, 2009, that Mr. Fares was personally served with notice of the time and place of the respondents' motion.

[3] The notice of appeal purports to appeal from an order of Justice Robert Wright of the Supreme Court of Nova Scotia dated September 29, 2009, dismissing the appellant's request for a date assignment conference and staying the action until his statement of claim was amended to comply with **Civil Procedure Rule 38**.

[4] The notice of appeal states the following grounds of appeal:

- 1 er of low and jerzdikting
- 2 denyel of accsan to serves bass on rachol proffiel
- 3 miscarej of justus for judjmant in leve of arring

[5] The respondents submit that the grounds of appeal are illegible. They cannot understand what they mean and therefore it is impossible to respond to them. They also assert that the notice of appeal does not comply with Rule 90.06(1)(c) because it does not cite the statutory authority for the appeal or include a concise description of the order sought.

[6] I agree with the respondents' submissions. The grounds of appeal are hardly comprehensible. While one might decipher the first ground as a claim that there was an error of law and jurisdiction, a ground of appeal must include some particularization or suggestion of what the alleged error of law or jurisdiction is. In the context of this case, where Justice Wright dismissed an application for a date

assignment conference because, among other things, the pleadings had not closed, a bare allegation of an error of law or jurisdiction is insufficient to disclose a valid ground of appeal.

[7] The second ground of appeal might be decoded to imply an allegation that the appellant was denied access to service based on racial profiling. In the absence of some further particular and reference to a specific ruling, finding, or statement of the Chambers judge, I am unable to understand how this ground discloses an error of law or fact.

[8] The third ground of appeal is completely inexplicable.

[9] In addition to failing to disclose a valid ground of appeal, the notice of appeal is also deficient because it does not cite the legislative authority for the appeal, state the relief requested or designate an address for service for the appellant. I would not strike the appeal solely because of minor procedural deficiencies or spelling errors. Those matters would be remediable by an amendment, had the appellant appeared in response to the notice of application. The critical deficiency is that the notice of appeal discloses no particulars that could support an appeal from the Supreme Court judge's ruling.

[10] I therefore allow the respondents' motion and set aside the notice of appeal.

Roscoe, J.A.