

Dated: 19970520

Docket: CA 136544

NOVA SCOTIA COURT OF APPEAL

Cite as: Verreault Navigation Inc. v. Mallett and Associates. Engineering Ltd.,
1997 NSCA 119

Chipman, Freeman and Flinn, JJ.A.

BETWEEN:

VERREULT NAVIGATION INC.

)
Appellant

)
Michael S. Ryan, Q.C.
and Richard S. Niedermayer

- and -

MALLET AND ASSOCIATES ENGINEERING
LIMITED

)
Respondent

)
Stewart McInnes, Q.C. and
and John Kulik

)
Appeal Heard:
May 20, 1997

)
Judgment Delivered:
May 20, 1997

THE COURT:

The appeal is dismissed with costs as per oral reasons for judgment of Chipman, J.A.; Freeman and Flinn, JJ.A., concurring.

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

CHIPMAN, J.A.:

This is an application for leave, and if granted, an appeal from a decision of Hood, J. in Chambers dismissing an application by a third party to strike out the third party

proceedings brought against it by the defendant/respondent.

The principles governing appellate review of an interlocutory order are well established. Generally, the appellant must show that wrong principles of law were applied or that a patent injustice resulted.

The principles governing a chambers judge on an application to strike out pleadings are also well settled. Only the pleadings must be looked at to determine whether the claim or defence advanced is or is not sustainable. Only if no arguable issue arises, may the pleadings be struck out.

Here, the Chambers judge carefully dealt with three principal issues raised by the appellant. In her well-reasoned judgment, with which we are in general agreement, the Chambers judge concluded that the pleadings disclosed arguable issues which should be left for trial.

We are therefore not satisfied that any reversible error was made by the Chambers judge. Leave to appeal is granted and the appeal is dismissed with costs which we fix at \$1,500 inclusive of disbursements payable forthwith.

Chipman, J.A.

Concurred in:

Freeman, J.A.

Flinn, J.A.