

Date: 20011018
Docket No.: CA 162592
CA 167969

NOVA SCOTIA COURT OF APPEAL

[Cite as: Hoffman v. Lamb, 2001 NSCA 150]

Bateman, Hallett and Flinn, J.J.A.

BETWEEN:

BENJAMIN RALPH HOFFMAN

Appellant

- and -

CAROLYN JANE LAMB

Respondent

REASONS FOR JUDGMENT

Counsel: Craig M. Garson, Q.C. for the appellant
Elizabeth Van den Eynden and Leisa T. MacIntosh for
the respondent

Appeal Heard: October 18, 2001

Judgment Delivered: October 18, 2001

THE COURT: Appeal allowed per oral reasons for judgment of Flinn,
J.A.; Bateman and Hallett, J.J.A. concurring.

FLINN, J.A. (Orally):

[1] On March 10, 2000 Justice Scanlan of the Supreme Court of Nova Scotia, in Chambers, issued a contempt order against the appellant pursuant to the provisions of **Civil Procedure Rule 55**. The contempt order provided that the appellant:

...be committed to the Colchester Correctional Center to be there imprisoned until he is brought before this Court.

[2] The contempt order was granted on the strength of an *ex parte* application of the respondent seeking the contempt order on the basis that the appellant:

...failed to comply with the Order of The Honourable Justice MacLellan dated the 31st day of May 1999 by transferring shares in Wi-LAN Inc. and Cell-Loc Inc., without the written consent of the Petitioner [respondent] or the approval of the Court, contrary to paragraph 4(a) of the said Order.

[3] The respondent gave no notice of the application to the appellant or his counsel. Further, although the respondent had previously been granted leave to bring an application for a contempt order against the appellant in respect of another matter, the respondent did not obtain leave of the court to bring the application which is the subject of the order under appeal.

[4] In view of the drastic nature of the order of the Chambers judge - that the appellant be imprisoned - strict compliance with the **Civil Procedure Rules** is necessary (see **Keeping v. Wood** (1982), 108 N.S.R. (2d) 305 (N.S.C.A.)).

[5] **Civil Procedure Rule 55.02(1)** provides:

An application **shall not be made** to the court for a contempt order unless the court on an *ex parte* application first grants leave to make the application.

[6] It is on the hearing of such an application for leave that the court makes provision, under **Civil Procedure Rule 55.02(3)**, for service of notice of the application on the party sought to be committed.

[7] Since, in this case, the respondent failed to obtain the leave of the court to make the application which is the subject of the order under appeal that order must be set aside.

[8] The respondent's application to quash the appellant's appeal is dismissed. The appeal is allowed. The contempt order of the Chambers judge, dated March

10, 2000, and the Warrant based thereon, issued March 10, 2000, are hereby set aside, without prejudice to the respondent bringing a new application after obtaining leave of the court under **Civil Procedure Rule 55.02(1)**.

[9] Under all of the circumstances, this court will make no order as to costs.

Flinn, J.A.

Concurred in:

Bateman, J.A.

Hallett, J.A.