Date: 20020927
Docket: CA 178078

NOVA SCOTIA COURT OF APPEAL
Citation: Ofume v. CIBC Mortgage Corporation, 2002 NSCA 114

Roscoe, Freeman and Cromwell, JJ.A.

BETWEEN:

DR. PHILLIP OFUME and MAUREEN OFUME

Appellants

- and -

CIBC MORTGAGE CORPORATION

Respondent

REASONS FOR JUDGMENT

Counsel:	Dr. Phillip Ofume in person for the appellants John A. Keith for the respondent
Application Heard:	September 20, 2002
Judgment Delivered:	September 27, 2002

THE COURT: The application to quash the notice of appeal is granted with costs payable by the appellants to the respondent in the amount of $1,000.00 including disbursements.

ROSCOE, J.A.:

[1] This is an application brought by the respondent, CIBC Mortgage Corporation, to quash the appellants' appeal from an order and decision of Justice Glen McDougall made pursuant to **Civil Procedure Rule** 41A.08 declaring that a foreclosure action had been settled in accordance with minutes of settlement signed by the parties on December 22, 2001.

[2] The application to quash is brought pursuant to **Civil Procedure Rule** 62.18 which provides:

> 62.18 (1) Any party to an appeal may apply in accordance with rule 62.30 to the court at any time before or at the hearing of the appeal for an order quashing the notice of appeal or dismissing the appeal on the ground the appeal is frivolous, vexatious or without merit or that the appellant has unduly delayed preparation and perfection of the appeal.

[3] The respondent submits that the appeal is frivolous, vexatious and without merit. The notice of appeal contains 17 grounds of appeal which generally allege that the foreclosure action was secret, fraudulent, racially motived and in furtherance of a plot among the bank, the federal government and the neighbourhood of Bedford and that the settlement agreement, based on the plot, was "mock and highly defective". Furthermore, the appellants allege that the lawyer who advised them during the negotiations leading to the signed minutes of settlement was pressured into advising them to settle by the bank and the Canadian Government as part of a "white power of Colour Gang", and that the settlement was rushed and forced under duress.

[4] Dr. Ikechi Mgbeoji, the lawyer, chosen by the appellants to assist them during the settlement process, swore in an affidavit filed by the bank on the application heard by Justice McDougall, that the appellants had been given independent legal advice, understood the documentation, and in full knowledge of the risks and implications thereof signed the minutes of settlement and supporting documents. He swore that there was ample time to consider the proposed agreement, that there was no fraud, conspiracy, collusion, compulsion, coercion or undue influence involved in the settlement.

[5] The appellants did not elect to cross-examine Dr. Mgbeoji on his affidavit

and did not present any sworn evidence to rebut it.

[6] There was absolutely no evidence before Justice McDougall and none before this court to support any of the allegations made by the appellants.

[7] In **Perry v. Perry**, [1987] N.S.J. No. 305 (C.A.), the test on applications pursuant to **Rule** 62.18 was determined to be similar to that for applications to strike pleadings pursuant to **Rule** 14.25, and as set out in **Curry v. Dargie** (1984), 62 N.S.R. (2d) 416 (C.A.), where the appeal is absolutely unsustainable, the notice of appeal will be quashed.

[8] After a careful review of the procedural history of this matter, the affidavit of Dr. Mgbeoji, the settlement documents, the notice of appeal, the written and oral submissions, and all the material filed, we conclude that the respondent has satisfied us that the appeal is absolutely unsustainable and of no merit whatsoever.

[9] The application to quash is granted with costs payable by the appellants to the respondent which we fix in the amount of $1,000.00 including disbursements.

Roscoe, J.A.

Concurred in:

Freeman, J.A.

Cromwell, J.A.