Docket.: CA159150
Date: 19991027

NOVA SCOTIA COURT OF APPEAL

[Cite as: Labourers' International Union of North America, Local 1115 v. Cape Breton (Regional Municipality), 1999 NSCA 128]

BETWEEN:

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1115 (hereinafter referred to as the "Union" Applicant/Appellant	)	
- and -	)	Blaise MacDonald for the Union
PERSONS UNNAMED	)	
- and -	)	Demetri Kachafanas for the respondent
CAPE BRETON REGIONAL MUNICIPALITY ("CBRM") Respondent	)	Application Heard: October 21, 1999
	)	Decision Delivered: October 27, 1999

BEFORE THE HONOURABLE JUSTICE RONALD N. PUGSLEY
IN CHAMBERS

Pugsley, J. A. (In Chambers):

[1] Labourers' International Union of North America, Local 1115 (the Union) applies for leave to appeal, and if granted, appeals

- from the order of Justice Tidman of the Supreme Court, dated September 23,1999, granting to Cape Breton Regional Municipality (CBRM), intended plaintiff, an interlocutory *ex parte* injunction against the Union, and "Persons Unnamed, Intended Defendants", returnable on Thursday 30, 1999, as well as from
- Justice Tidman's order of October 1, 1999, wherein he ordered that the injunction of September 30, 1999, be continued as against the "Intended Defendant, Persons Unnamed", until further order of the Court.

Background

[2] An originating notice (*ex parte* application) was issued on September 23, 1999, by CBRM, against the Union and "Persons Unnamed", giving notice that an application would be made on September 23, to the Chambers judge, at the Courthouse at Sydney, Nova Scotia, at 2:00 p.m., for an interim injunction, restraining and enjoining the intended defendants, essentially from interfering with work being carried out in the Municipality either by, or on behalf of, CBRM and its employees.

[3] The order was signed by Justice Tidman on September 23, issued on that date, and a copy was served on the Union's business agent on September 24.

[4] On September 30, the return date, counsel on behalf of Dexter, and on behalf of the Union, appeared before Justice Tidman.

[5] At the commencement of the hearing, counsel for CBRM advised that he would be filing a statement of claim.

[6] CBRM then adduced *viva voce* evidence from Floyd MacAulay, who testified that the order of September 23 was posted at all of CBRM's work sites.

[7] After counsel for the Union cross-examined Mr. MacAulay, the following exchange then occurred:

> The Court:
> All right. Before, so that the court record will be clear, Mr. MacDonald, I understand you to say that, that you are appearing here today and representing [the Union], is that true?
>
> Mr. MacDonald:
> Yes, my Lord.
>
> The Court
> Now, are you also representing Unnamed Persons?
>
> Mr. MacDonald:
> No, I'm not, my Lord. ... I don't know who the Unnamed Persons are.

[8] After submissions on behalf of counsel for CBRM and the Union, Justice Tidman determined that the injunction should not continue against the Union, but should continue against Persons Unnamed until further order of the Court.

[9] The order of October 1st, 1999, was issued on motion of counsel for CBRM. Counsel for the Union apparently played no part in the drafting of the order, nor was the order consented to by counsel for the Union.

[10] The order provided in part:

> It is ordered and directed that the injunction be lifted as against the Intended Defendant, Labourers' International Union of North America, Local 1115.

[11] The order did not provide that the proceeding be dismissed against the Union.

[12] The grounds of appeal filed by the Union provide:

> 1 The justice herein erred in law in that he denied the natural justice and a fair hearing by permitting the Intended Plaintiffs to proceed in an interlocutory proceeding against "Unnamed Persons" as the defendants;
>
> 2. By failing to require notice and pleadings to be served in the usual manner, or through substituted service, upon both the Appellant, and Unnamed Persons, and each of them.
>
> 3. That the learned justice erred in law by allowing the sole defendant "Unnamed Persons" to stand as the sole defendant in the proceeding, or a purported proceeding.

[13] The relief requested that the judgment be varied by deleting "Persons Unnamed" as defendants, or Intended Defendants, in the proceedings.

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[14] The notice of appeal of October 6, 1999, provided that the Union would apply to a judge of this Court:

> ...for an order setting the matter down for hearing and giving directions as to what appeal book and factums, if any, shall be filed.

[15] Counsel for CBRM opposes the application to set this proceeding down for hearing.

[16] At the time of the Chambers hearing, CBRM had not yet commenced an action in the Supreme Court.

Submissions of the Parties

[17] CBRM submits the notice of appeal should be quashed since the

> ...action and injunction against the Union was dismissed by the trial judge. Consequently, there is no decision with respect to the Union to appeal. With regard to the Unnamed Persons, persons unnamed cannot bring an appeal before the Court. ... As the Union does not have standing as a party or intervener, it has no right to file an appeal on behalf of the Unnamed Persons. Unnamed Persons cannot themselves bring an appeal before the Court. Therefore, the notice of appeal is invalid.

[18] CBRM further points out that Mr. MacDonald has advised the Court that he does not act for the Persons Unnamed.

[19] Counsel for the Union, however, submits that the Union:

> ...had a real interest in having the restraining order removed entirely from anyone in the scope of the terms of the injunction, including [the Union] its members, other building trade unions, members of the other building trades, and generally all friends and supporters of the worker. [The Union] and its officers and members did not wish to practice their trade unionism under the cloud of a court restraining order with all the implications there are from a legal point of view, including potential contempt charges against it and its members, and the whole fear of double jeopardy. ... [The Union] has a distaste for labour injunctions in general and specific distaste for those that are obtained “ex parte” against anyone, and even a stronger antipathy for “ex parte” injunctions against [the Union] itself. ... [The Union] has problems with the due process and the failure to protect the system from the potential abuses of the limited usage of the John Doe defendants of what should be very specific description. [The Union] also notes that it is still a defendant and named on the October 1st order’s hearing and style of cause.

Analysis

[20] **Rule 62.19(1)** provides:

> A judge may on application or on his own motion set a time for the hearing of any appeal, whether perfected or not, and if the appeal has not been perfected, may direct what appeal book or factums or other material shall be filed.

[21] The authority of a judge of this Court sitting in Chambers, as opposed to the Court itself, is limited. (See Hallett, J. A., in **Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)** (1996), 154 N.S.R. (2d) 358.)

[22] Although the injunction was “lifted” against the Union, the order of October 1, 1999, does not provide that the action against the Union be dismissed.

[23] In my opinion, the submissions advanced on behalf of CBRM in essence constitute an application to quash or dismiss the appeal, an application which comes within the provisions of **Rule 62.18(1)**.

[24] That Rule provides:

> 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 that no appeal lies to the Court or that the appeal is frivolous, vexatious or without merit or that the appellant has unduly delayed preparation and perfection of the appeal.

[25] As noted by Justice Hallett, at p. 363, an application to quash for these reasons may only be determined by a panel of the Court and not by a Chambers judge.

[26] CBRM's submission is not assisted by reliance on **Rule 62.11(d),** or **Rule 62.17(1)**, which authorize a Chambers judge of the Court to consider applications dealing with the failure of an appellant to perfect an appeal.

[27] I conclude that I have no authority, sitting as a Chambers judge, to consider the motion to quash advanced by CBRM.

[28] The Union is a party to the action. The question of its interest in the issues raised by the appeal are matters to be determined by a panel of this Court.

[29] I would accordingly set down the appeal for hearing on Wednesday, December 1st, 1999, at 2:00 p.m. The case book should be filed by November 2nd, the Union's factum by November 5th, and CBRM's factum by November 10th.

[30] If the scheduling of the hearing of the appeal, or the other time stipulations, are not convenient to counsel, they should apply to the Chambers judge.

[31] I will reserve the issue of costs of this application for determination by the panel.

Pugsley, J.A.