

NOVA SCOTIA COURT OF APPEAL

Citation: Drum Head Estates Ltd. v. Chapin Estate, 2011 NSCA 93

Date: 20111018

Docket: CA 342923

Registry: Halifax

Between:

Drum Head Estates Limited, Celia McClure
and Angela Chapin

Appellants

v.

George E. Mills, Jr., Trustee of the Estate of
Stephen Beal Chapin, a Bankrupt

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: September 20, 2011

Subject: Section 3(2) **Limitation of Actions Act**; disallowing defence based on time limitation.

Summary: The respondent, the Florida trustee in bankruptcy for Stephen Chapin, commenced an action against the appellants more than six years and less than 10 years after Drum Head allegedly issued a promissory note payable to Mr. Chapin. The appellants amended their defence to claim that the action should be struck because it was started beyond the six-year limitation period. The trustee successfully applied to have this limitation defence struck. The appellants appealed.

Issue: Did the judge make an error of law resulting in an injustice?

Result: Appeal dismissed. The judge made no error of law when he balanced the prejudice to the parties, after he considered all of the circumstances including the factors set out in s. 3(4) of the **Limitation of Actions Act**, and determined that there was no prejudice to the appellants as a result from the trustee's delay in

commencing the action and accordingly found that it was equitable to allow the trustee's action to proceed.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 8 pages.