

**NOVA SCOTIA COURT OF APPEAL**  
**Citation:** *Doncaster v. Field*, 2016 NSCA 81

**Date:** 20161108  
**Docket:** CA 434858  
**Registry:** Halifax

**Between:**

Ralph Ivan Doncaster

Appellant

v.

Jennifer Lynn Field

Respondent

**Judge:** Farrar, J.A.

**Motion Heard:** October 6, 2016, in Halifax, Nova Scotia in Chambers

**Held:** **Motion dismissed with costs to the respondent in the amount of \$500.**

**Counsel:** Appellant in person  
Janet M. Stevenson, for the respondent

**Decision:**

**Background**

[1] In a decision dated September 3, 2015 (reported at 2015 NSCA 83), I granted Ms. Field's motion for security for costs in the amount of \$15,000.00 for an appeal on this matter to be heard on December 10, 2015. On or before October 1, 2015, Mr. Doncaster paid the funds into Court.

[2] The appeal was heard as scheduled and by decision dated April 12, 2016 (reported at 2016 NSCA 25), Mr. Doncaster's appeal was allowed, in part, and no costs were awarded to either party.

[3] Mr. Doncaster filed a Notice of Motion on September 9, 2016, seeking to have the funds returned to him. Ms. Field objected as she is owed in excess of \$80,000 in costs and has significant unpaid child support.

[4] The motion was heard on October 6, 2016. At that time I requested the parties make further submissions as to the effect of the existence of execution orders, if any, against Mr. Doncaster. Those additional submissions were received from Ms. Field on October 13, 2016 and from Mr. Doncaster on October 18, 2016.

[5] In Ms. Field's submissions she provided the Court with copies of issued Execution Orders totalling \$29, 834.81. Ms. Field says that the amounts held in Court should be paid to the Sheriff to satisfy a portion of the execution orders.

[6] Mr. Doncaster counters in his supplemental submission saying that there is no evidence that any judgments were registered against him in the Personal Property Registry, as required under the *Personal Property Security Act*, S.N.S. 1995-96, c. 13 (*PPSA*). Although Mr. Doncaster does not articulate his argument in this way, I take it to be that the failure to register the judgments under the *PPSA* (or the lack of evidence that they are registered) cannot bind his funds under s. 2B of the *Creditors' Relief Act*, R.S.N.S. 1989, c. 112.

[7] Finally, he says that if I find that the execution orders attach to the \$15,000 he asks that the monies not be paid to the Sheriff but requests that the money remain as security for costs in proceedings in the Supreme Court where Justice Jamie S. Campbell ordered Mr. Doncaster pay security for costs of \$8,000 before

he can proceed with a motion for custody of or access to his children and \$3,000 on any other motion (reported 2015 NSSC 310).

**Issue: Should the monies presently held by the Registrar of the Court of Appeal as security for costs be returned to Mr. Doncaster?**

### **Analysis**

[8] Mr. Doncaster's motion is pursuant to Rule 46.07(2):

A party may make a motion to a judge for an order requiring payment of money by the prothonotary and the affidavit for the motion must include evidence from the prothonotary of the payment into court, interest earned on it, and any payments out of court from the same fund.

[9] Although the Rule references the prothonotary, by operation of Rule 90.02 it would also apply to funds paid as security for costs on an appeal with the necessary modifications. The modification being the reference to prothonotary would be the Registrar of the Court of Appeal

[10] There are very few cases that have considered Rule 46.07 and none that have considered it in circumstances where funds paid into court may be the subject of execution orders.

[11] Whether Mr. Doncaster is entitled to a return of the funds requires a review of the interaction between the *Civil Procedure Rules*, the *PPSA* and the *Creditors' Relief Act*.

[12] Under that *Creditors' Relief Act*, Mr. Doncaster is a judgment debtor. That term is defined as:

2(d) Judgment debtor means a person against whom there is a subsisting money judgment.

A money judgment is defined as:

2(e) Money judgment means a judgment or order for the recovery or payment of money or that part of a judgment or order that requires a person to pay money and includes a certificate pursuant to this Act;

[13] Section 2A(1) of the *Creditors' Relief Act* provides:

2A (1) A judgment creditor who has obtained a money judgment may register a notice of the judgment in the Registry in accordance with the regulations made pursuant to the *Personal Property Security Act*.

[14] The *Creditors' Relief Act* provides that if the judgment is not registered under s. 2A(1), it does not bind the property of the judgment debtor:

2B (1) Personal property of a judgment debtor shall not be bound except by registration of a notice of judgment pursuant to subsection (1) of Section 2A.

[15] If the judgment is registered it binds the personal property of the judgment debtor:

2B(2) Registration of a notice of judgment binds all of the judgment debtor's non-exempt exigible personal property on registration and all non-exempt exigible personal property acquired by the judgment debtor after registration from the time of its acquisition.

(3) Registration of a notice of judgment binds all non-exempt attachable debts owing to the judgment debtor on or after registration from the time the debt becomes an attachable debt except as against the person who owes the debt to the judgment debtor.

[16] Finally, s. 23 of the *Creditors' Relief Act* refers specifically to funds held by a court:

23 Where there is in any court a fund belonging to an execution debtor, or to which he is entitled, the same or a sufficient part thereof to meet the claims in the sheriff's hands may, on the application of the sheriff or any party interested, be paid over to the sheriff, and the same shall be deemed to be money levied under execution within the meaning of this Act.

[17] The *Creditors' Relief Act* incorporates the definitions contained in the *PPSA* and, without citing the definitions, it is clear that personal property includes money (*PPSA*, s. 2(1)(aa) and (ad)).

[18] Mr. Doncaster says there is no evidence that the judgments have been registered under the *PPSA* and, therefore, the funds are not bound under s. 2B of the *Creditors' Relief Act*. With respect, I disagree. It is apparent that the judgments have been registered under the *PPSA* otherwise the execution orders would not have been issued under the *Civil Procedure Rules*.

[19] Rule 79, which deals with the enforcement of execution orders, provides as follows:

79.04 A person who obtains a judgment and wishes to bind a moveable under the *Creditors' Relief Act* and the *Personal Property Security Act* may deliver to the prothonotary a draft document that is entitled "Notice of Judgment" and that conforms with Section 2A of the *Creditors' Relief Act*.

(Emphasis added)

[20] The issuance of an execution order is an enforcement proceeding within the meaning of the *Creditors' Relief Act*:

2(ab) "enforcement proceeding" means any proceeding authorized by this Act, the *Assignments and Preferences Act*, the *Collection Act*, *Judicature Act* or the *Civil Procedure Rules* to be taken for the purpose of enforcing a money judgment or for the purpose of enforcing the claims of creditors against the personal property of a debtor;

[21] An enforcement proceeding cannot be commenced until a Notice of Judgment has been filed evidencing the judgment has been registered pursuant to s. 2A of the *Creditors' Relief Act*:

**2B(9)** An enforcement proceeding for the purpose of enforcing a money judgment shall not be commenced until a notice of judgment relating to the judgment has been registered pursuant to subsection (1) of Section 2A.

[22] Rule 79.12 addresses the content of an execution order and provides:

(4) Part 2 - Total Due to Creditor must contain each of the following subtitles and show the following amounts:

(a) **registration expenses** - the amount paid for recording and registering judgments under the Land Registration Act, the *Creditors' Relief Act*, and the *Personal Property Security Act* plus disbursements expended for these purposes;

...

[23] In each of the execution orders which were provided by Ms. Field's counsel, there is an amount for registration expenses and each of the execution orders also includes the "date of judgment".

[24] Therefore, I am satisfied the judgments were registered and the execution orders properly issued.

[25] The execution orders issued pursuant to Rule 79 of the *Civil Procedure Rules* provide:

7. A judgment debtor, a person who controls property of the judgment debtor, and a person who is obligated or becomes obligated to pay a debt or other liquidable obligation to the judgment debtor must not give up control of the property or make the payment unless one of the following applies:

- The property or obligation is exempt from this execution order;
- The Sheriff, in writing, permits otherwise;
- This execution order or further order provides otherwise.

8. The person must, instead, allow the property to be seized by, or make the payment to the Sheriff. A person who fails to obey these injunctions may be punished under Nova Scotia *Civil Procedure Rule 89 – Contempt.*

(Emphasis added)

[26] The process by which the execution orders were obtained and their effect may be summarized as follows:

- Ms. Field obtained a money judgment against Mr. Doncaster.
- In order to obtain an Execution Order and to bind Mr. Doncaster's personal property it was necessary to file the judgments under the *PPSA*.
- The judgments were registered under the *PPSA* and pursuant to Rule 79.04 the Notice of Judgment was provided to the Prothonotary, as is required under s. 2B(9) of the *Creditors' Relief Act* before any enforcement proceeding can take place.
- Upon being satisfied that the judgment has been registered the Prothonotary then issues the Execution Orders.
- Anyone who has notice of the execution orders and has property belonging to the judgment debtor is required to pay that money to the Sheriff or they may be subject to contempt proceedings.

[27] As a result, upon being aware of the execution orders and with Mr. Doncaster seeking to have the funds paid out to him, I have no alternative but to order the monies be paid to the Sheriff in accordance with the *Creditors' Relief Act* and the *Civil Procedure Rules* relating to execution orders.

[28] Finally, I will deal with Mr. Doncaster's argument that if I found that the funds were subject to the execution orders that I order them to remain in Court to satisfy the order of Justice Campbell requiring security for costs.

[29] That is something I cannot do. Simply put, the funds were paid into court as security for costs. When no costs were awarded against Mr. Doncaster in that proceeding, the funds became returnable to him. However, the outstanding execution orders attach to the funds which require they be paid to the Sheriff.

[30] The provisions of the execution order and the *Creditors' Relief Act* do not permit the funds to be paid or used for any other purpose, including paying those funds into the Supreme Court as security for costs in another proceeding.

### **Conclusion**

[31] Mr. Doncaster's motion is dismissed. The Registrar will be ordered to pay the funds and any interest accrued thereon to the Sheriff in and for the County of Colchester in partial satisfaction of the outstanding execution orders.

[32] Ms. Field is entitled to costs on this motion in the amount of \$500 inclusive of disbursements.

Farrar, J.A.