

NOVA SCOTIA COURT OF APPEAL

Citation: *Innocente v. Canada (Attorney General)*, 2012 NSCA 36

Date: 20120411

Docket: CA 350439

Registry: Halifax

Between:

Daniel Innocente

Appellant

v.

Attorney General of Canada

Respondent

Judge:

The Honourable Justice Joel E. Fichaud

Appeal Heard:

March 21, 2012, in Halifax, Nova Scotia

Subject:

Summary Judgment - Standard of Review

Summary:

Mr. Innocente sued the Attorney General for damages for alleged loss and damage to Mr. Innocente's property while the property was under seizure and restraint under ss. 462.32 and 462.33 of the *Criminal Code*. The Attorney General moved for summary judgment on the pleadings. The judge of the Supreme Court concluded that the claim as pleaded was absolutely unsustainable and should be summarily dismissed under Rule 13.03(1)(c). The judge did not allow a further amendment to Mr. Innocente's Amended Statement of Claim, despite the request for an opportunity to amend by Mr. Innocente's counsel. Mr. Innocente appealed to the Court of Appeal.

Issue:

What is the standard of review? Did the judge err in granting summary judgment? Should Mr. Innocente have a further opportunity to amend his Amended Statement of Claim?

Result:

The Court of Appeal reviews a summary judgment on the pleadings for error of law, and reviews a discretionary ruling whether to allow an amendment for error of law or patent injustice. The judge did not err in his ruling that the Amended Statement of Claim did not disclose a sustainable cause of action under Rule 13.03(1)(c). At the appeal hearing, Mr. Innocente provided particulars of a portion of his claim that, if pleaded, would survive a challenge under Rule 13.03. To deny him the opportunity to amend would result in a patent injustice. The Court of Appeal allowed the appeal in part, and set aside the summary judgment in part, to permit the further amendment respecting that portion of the claim, with costs payable by Mr. Innocente. Otherwise the Court of Appeal affirmed the summary judgment..

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 17 pages.