

NOVA SCOTIA COURT OF APPEAL

Citation: *Lienaux v. Halifax (Sheriff)*, 2012 NSCA 104

Date: 20120927

Docket: CA 387585

Registry: Halifax

Between:

Charles D. Lienaux, Barrister, of the City and
County of Halifax

Appellant

v.

Laurel Purcell, Sheriff in and for the County of Halifax

Respondent

Judges: Hamilton, Farrar and Bryson, JJ.A.

Appeal Heard: September 20, 2012, in Halifax, Nova Scotia

Held: Appeal dismissed with costs in the amount of \$1,500 including disbursements payable by the appellant to the respondent forthwith, per reasons for judgment by the Court.

Counsel: Appellant, in person
Stephen T. McGrath and Sheldon Choo, for the respondent

Reasons for judgment:

[1] Charles D. Lienaux appeals Justice Peter P. Rosinski's February 1, 2012 order dismissing his proceeding against the respondent Sheriff on the basis it was *res judicata* and an abuse of process, following the Sheriff's motion pursuant to **Nova Scotia Civil Procedure Rule 88.02(1)(a)**.

[2] The application Justice Rosinski dismissed, was the second court matter the appellant commenced trying to prevent the sale of his home at 322 Purcell's Cove Road at a Sheriff's sale. The first sought to cancel the sale one week before it took place. In this proceeding, Mr. Lienaux sought to have the Sheriff's deed declared void.

[3] The context in which the Sheriff's sale took place is set out in Justice Rosinski's reasons (2012 NSSC 38) and also in Justice Cindy A. Bourgeois' recently released reasons (2012 NSSC 318) in the third court proceeding involving Mr. Lienaux relating to the Sheriff's sale. The facts need not be repeated here.

[4] The appellant seeks declaratory relief on matters that were not ruled on by Justice Rosinski and which impact the interests of persons not party to this proceeding. He also argues Justice Rosinski erred in finding the issues raised in this proceeding were *res judicata* and an abuse of process, given the first proceedings heard by Justice Gregory Warner one week prior to the Sheriff's sale.

[5] As Justice Rosinski's decision was discretionary and interlocutory, with a terminating effect, we are not to interfere unless he applied a wrong principle of law or his decision results in a patent injustice (**Innocente v. Nova Scotia (Attorney General)**, 2012 NSCA 36).

[6] We have considered the materials filed and the oral submissions and find there is no merit to the appeal. While we do not agree with all aspects of Justice Rosinski's decision with respect to *res judicata*, we are satisfied he made no error in finding it would be an abuse of process to allow Mr. Lienaux's application against the Sheriff to proceed. The substance of his claims involve persons who are not party to this proceeding as Mr. Lienaux acknowledges in his factum; "The naming of the parties in this proceeding is misleading. The proceeding has nothing to do with Sheriff Purcell . . . except for the fact that she is the grantor named in a

deed she executed as Sheriff on June 21, 2011. ...” To allow the matter against the Sheriff to proceed would be a misuse of the court’s procedures, bringing the administration of justice into disrepute. It would violate such principles as consistency and finality of decisions and would result in proceedings making unnecessary use of judicial resources.

[7] We dismiss the appeal with costs in the amount of \$1,500 including disbursements payable by the appellant to the respondent forthwith.

Per Curiam

Hamilton, J.A.

Farrar, J.A.

Bryson, J.A.