NOVA SCOTIA COURT OF APPEAL
Citation: ***Howes v. Bank of Nova Scotia***, 2012 NSCA 122

Date: 20121212
Docket: CA 389579
Registry: Halifax

Between:

Ashley S. Howes

Appellant

v.

Bank of Nova Scotia

Respondent

Judges:	MacDonald, C.J.N.S.; Hamilton and Fichaud, JJ.A.
Appeal Heard:	December 4, 2012, in Halifax, Nova Scotia
Held:	Appeal dismissed with costs to the respondent in the amount of $500 including disbursements, per reasons for judgment of Hamilton, J.A.; MacDonald, C.J.N.S and Fichaud, J.A. concurring.
Counsel:	Appellant, in person Joshua Santimaw, for the respondent

Reasons for judgment:

[1] The appellant, Ashley S. Howes, appeals the September 8, 2011 default judgment against him granted by Justice Patrick J. Duncan, the September 13, 2011 execution order that followed the default judgment and the February 27, 2012 order granted by Justice Frank C. Edwards dismissing his motion to have the default judgment and execution order set aside.

[2] Mr. Howes, representing himself, argues that (1) the court process is unlawful on the basis of estoppel by acquiescence, (2) there is no cause of action, (3) the court lacks jurisdiction, (4) the judges disregarded the common law maxims he referred them to and (5) the execution order is unconstitutional. He states in ¶ 25 of his factum that the heart of the problem is that the respondent bank lost its right to collect the debt he owes on his line of credit and credit card when it failed to provide him with the accounting he requested after the bank demanded payment.

[3] Justice Edwards' reasons (2012 NSSC 60) indicate he applied the correct test when considering Mr. Howes' motion to set aside the default judgment:

> [3] To succeed, Mr. Howes must show that (a) he has a fairly arguable defence or that there is a serious issue to be tried, and (b) he has a reasonable excuse for failing to file a defence [see ***Temple v. Riley*** 2001 NSCA 36].

[4] His reasons continue:

> [4] Mr. Howes has failed to meet both parts of the test. He now acknowledges that it "was an error in judgment due to legal inexperience" not to file a defence (Affidavit para. 34). Even if I give him the benefit of the doubt on that, I am satisfied that he has no arguable defence and that there is no serious issue to be tried.
>
> [5] In his oral presentation before me, Mr. Howes acknowledged that he had operated the line of credit account and used the credit card. He acknowledged that he had "no problem with the numbers" in reference to the amount claimed. His problem seems to be that he resents being labelled a "defendant" and that a credit card debt is somehow not actionable. He quotes a number of purportedly "legal maxims" which he acquired on the internet to justify his position.

> [6] Mr. Howes also argued that he should have been provided with proof of the claim ***after*** the action had been commenced. I am satisfied that Mr. Howes would have been well aware of the nature of the debt the Bank was pursuing. If that were not the case, he could have filed his defence and obtained all the detail he required through the discovery procedures in the Civil Procedure Rules.

[5] An appeal is not a rehearing of the motion. We are not to interfere with a motions judge's interlocutory decision unless he or she applied a wrong principle of law or the decision results in a patent injustice; **Innocente v. Nova Scotia (Attorney General)**, 2012 NSCA 36.

[6] Having reviewed the record, heard oral argument and considered the law, including the standard of review, I am satisfied the judge did not apply a wrong principle of law or make a decision that is patently unjust. He did not err in concluding Mr. Howes does not have a fairly arguable defence and that there is no serious issue to be tried.

[7] I would dismiss the appeal and order the appellant to pay costs in the amount of $500 including disbursements to the respondent forthwith.

Hamilton, J.A.

Concurred in:

MacDonald, C.J.N.S.

Fichaud, J.A.