

NOVA SCOTIA COURT OF APPEAL

Citation: *Christiansen v. Dominion Credit Union Ltd.*, 2016 NSCA 87

Date: 20161207

Docket: CA 452478

Registry: Halifax

Between:

Peter Christiansen

Appellant

v.

Dominion Credit Union Limited

Respondent

Judge: Beveridge, J.A.

Motion Heard: December 7, 2016, in Halifax, Nova Scotia

Held: Appeal dismissed

Counsel: Esther Cormier, agent for the appellant (not present)
Stephanie Myles, for the respondent

Reasons for judgment:

[1] The Registrar moved to dismiss this appeal due to a failure by the appellant to comply with filing deadlines. In other words, it is said that he has failed to perfect his appeal as defined in Nova Scotia *Civil Procedure Rule* 90.43.

[2] The Notice of Appeal was filed June 1, 2016. It set out various grounds of appeal challenging a decision by the Honourable Justice Patrick Murray granting an order for foreclosure. The Notice of Appeal was signed by Eric Christiansen, as agent for the appellant, Peter Christiansen. The order for foreclosure was dated May 5, 2016.

[3] An Amended Notice of Appeal was filed on June 14, 2016. It is signed by the appellant, and by his agent, Esther Kimberly Cormier. Accompanying this document were other documents. Among them, an Enduring Power of Attorney executed by the appellant in favour of Ms. Cormier, and an Appointment of Agent for Ms. Cormier to act for the appellant.

[4] Ms. Cormier was notified by the Registrar of the appellant's obligation to file a Certificate of Readiness and a motion for date and directions within 80 days from the filing of the Notice of Appeal dated June 1, 2016. The date for completion would be September 27, 2016.

[5] While Ms. Cormier disputed the calculation of the deadline (suggesting it should be October 11, 2016), she tried to file a Certificate of Readiness on August 31, 2016. It was rejected as incomplete. Ms. Cormier also made attempts to arrange a tele-chambers appearance to advance a motion for date and directions. A motion was not filed. A proper Certificate of Readiness did not appear.

[6] The respondent wrote on October 6, 2016 to the Registrar if a motion to dismiss would ensue. The letter was copied to Ms. Cormier. Nothing was heard from Ms. Cormier.

[7] On November 23, 2016, the Registrar sent a Notice of Motion to the appellant c/o Ms. Cormier that she would make a motion on Wednesday December 7, 2016 at 10:00 a.m. (by telephone), to dismiss the appeal pursuant to *Rules* 90.43(3) and (4). It is deemed served that day by virtue of *Rule* 31.16(4). I am satisfied that the Notice was also sent by mail to Ms. Cormier, which is deemed received at the designated address within three days. Either way,

Ms. Cormier had more than the requisite five days notice of the motion. Indeed, follow-up notification was given via email on December 5, 2016.

[8] On Wednesday, December 7, 2016, Ms. Myles was present for the scheduled tele-chambers appearance. Ms. Cormier was not. Ms. Myles advised that she had heard nothing from Ms. Cormier. After multiple attempts to reach Ms. Cormier at her designated phone number, I indicated that I would grant the Registrar's motion.

[9] I am satisfied that the appellant, through his designated agent has failed to comply with the *Rules* with respect to advancing his appeal as required by *Rule* 90.43. In those circumstances, the Registrar is obliged by *Rule* 90.43(3) to bring a motion to dismiss.

[10] On hearing the Registrar's motion, a judge may either direct perfection of the appeal, set the appeal down for a hearing or dismiss the appeal. No guidance is provided by the *Rules* on how a judge should exercise his or her discretion in selecting the appropriate outcome.

[11] I accept as a general rule, a judge should be hesitant to deny an appellant his or her statutory right to appeal to this Court. The appellant has failed to comply with the *Rules*. I am satisfied he was served. The Notice of Motion, in plain language, advises that if he is not present I may proceed to hear the Motion without him. He chose to forego his opportunity to try to convince me that his appeal should not be dismissed.

[12] In the circumstances, the appeal is dismissed.

Beveridge, J.A.