

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Clarke, C.J.N.S., Morrison and Pace, JJ.A.

BETWEEN:

CHARLES F. REARDON
Appellant

- and -

BELINDA JOLLIMORE
Respondent

) Raymond F. Wagner,
) for the appellant
)
) Michael A. Maddalena,
) for the respondent
)
)
) Appeal Heard:
) November 21, 1985
)
) Judgment Delivered:
) November 21, 1985
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COURT: Leave to appeal dismissed where no final decision or order has been issued by the County Court prior to the application, per reasons for judgment of Clarke, C.J.N.S., Morrison and Pace, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

The appellant seeks leave to appeal from action taken by the learned Chief Judge of the County Court, the Honourable Ian Palmetter, on June 12, 1985, at which time he referred a complaint made by the respondent against the appellant to the Residential Tenancies Board for further consideration.

At issue in the complaint of the respondent is her allegation that the relationship between her and the appellant is one of landlord and tenant. The appellant disputes that fact alleging that the relationship is one of vendor and purchaser. The Board held a hearing on March 19, 1985, after which it filed a report with the Court. The appellant filed a notice of objection to the report. The objection came on for hearing by the learned Chief Judge on June 12, 1985.

Upon discovering that the appellant had been given relatively short notice of the hearing and was unable to be present to argue his case before the Board and had informed the Board of his inability to attend and that he had serious issues to raise, the Chief Judge directed that the matter be remitted to the Board for its further consideration to give the appellant an opportunity to be present and to be heard. We observe that in so acting the Chief Judge was giving effect to one of the fundamental principles of natural justice.

After the Board so ordered the appellant appealed to this Court alleging that the Chief Judge erred (a) in failing to find the respondent had not paid rent within the meaning of the Residential Tenancies Act and (b) also erred in failing to find the matter was ultra vires the powers of the Board as conferred by the Act.

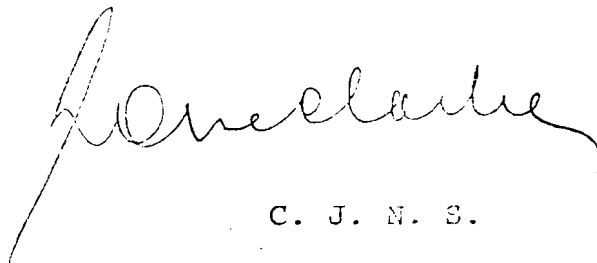
The crucial problem in this appeal is that there is no final decision or order of the court below from which the appeal is launched. The issues which prompted the complaint remain unresolved until, under s.11D of the Act, the decision or order of the Board has been made an order of the County Court. There is as yet no such order.

The Chief Judge said in part at p.17 of the transcript:

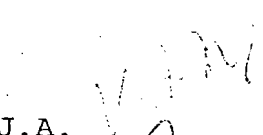
"... I think in order for this Court to properly accept or reject a recommendation, there has to be reasonable opportunity for the person to be heard. ... I am going to refer the matter back to the Board for a supplementary report; to hear Mr. Reardon; to peruse any documents that he may wish to put; and to allow examination of Mr. Reardon."

These words of the Chief Judge are clearly to give effect to the fundamental principle of audi alteram partem. While he appears to indicate his belief that the Board has jurisdiction to hear the complaint, that cannot be taken as predetermining the decision of the tribunal until after it has heard all that it ought. To say that after the further hearing the Chief Judge has directed it will report on the complaint in the same manner and with the same result as it did on March 19, 1985, is at present a matter of speculation and conjecture.

We find that without the final decision or order of the County Court before us the present appeal is premature. Accordingly the appeal is dismissed with costs to the respondent in the sum of two hundred dollars.


C. J. N. S.

Concurred in:

Morrison, J.A. 

Pace, J.A. 