

NOVA SCOTIA COURT OF APPEAL

Citation: *Smith v. Hailey*, 2014 NSCA 2

Date: 20140107

Docket: CA 416474

Registry: Halifax

Between:

Darren K. Smith

Appellant

v.

Elizabeth Marie Hailey, Arthur Earl Ewing,
Donald Christopher Ewing and Dundee Securities Corporation

Respondents

Judge: The Honourable Chief Justice J. Michael MacDonald

Appeal Heard: December 9, 2013, in Halifax, Nova Scotia

Subject: Abuse of process, issue estoppel, cause of action estoppel,
collateral attack

Summary: The late Paul Duggan, through his attorney, registered a retirement income fund (RRIF) with the respondent Dundee. This same attorney directed Dundee's employee, the appellant Smith, to designate the respondents Hailey, Ewing and Ewing as beneficiaries.

Mr. Smith took steps to effect the requested change prior to Mr. Duggan's death. However, upon Mr. Duggan's death, the Public Trustee, as administrator of the estate, concluded that the purported designation was invalid and that the RRIF should form part of the residue of the estate, thereby disentitling these respondents. The Probate Court agreed, without challenge from the respondents.

The respondents have now sued Smith and Dundee

(vicariously) in negligence for failing to effect a valid designation. However, Smith insists that because the respondents failed to defend their designation in Probate Court, their claim against him constitutes an abuse of process. He asked the Supreme Court of Nova Scotia to dismiss the claim accordingly. It refused and Smith now appeals to this Court.

Issue: Does the present action constitute an abuse of process?

Result: Appeal dismissed. The present negligence claim is not an abusive action. It represents a different claim with a different set of issues from those dealt with in Probate court. Therefore neither estoppel nor collateral attack are in play.

<p><i>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 5 pages.</i></p>
