NOVA SCOTIA COURT OF APPEAL
Citation: *Tupper v. Nova Scotia (Attorney General)*, 2014 NSCA 60

Date: 20140610
Docket: CA 425814
Registry: Halifax

Between:

Thomas Percy Tupper

Appellant

v.

The Attorney General of Nova Scotia Representing Her Majesty the Queen in Right of the Province of Nova Scotia and Judgment Recovery (N.S.) Ltd. and Harold F. Jackson Q.C. and Paul L. Walter Q.C. and Bob Stewart Q.C. and John Kulik Q.C.

Respondents

Judge:	Scanlan, J.A.
Motion Heard:	June 5, 2014, in Halifax, Nova Scotia, in Chambers
Held:	**Motion for security for costs granted.**
Counsel:	Appellant in person Duane Eddy, for the respondent Attorney General of Nova Scotia Michael R. Brooker, Q.C., for the respondent Judgment Recovery (N.S.) Ltd. Jason T. Cooke and Ann E. Smith, Q.C., for the respondents Harold F. Jackson Q.C. and Paul L. Waater, Q.C. and Bob Stewart, Q.C. and John Kulik, Q.C.

Decision:

[1] On June 5, 2014, I heard motions wherein the respondents have asked the Court direct the appellant to pay security for costs. At the time I indicated I was satisfied that there should be an order for security for costs in the amount of $7,500 payable to the Court Registrar in relation to the respondents Harold F. Jackson, Q.C., Paul L. Water, Q.C., Bob Stewart, Q.C. and John Kulik, Q.C. In addition there will be security for costs paid to the Registrar in relation to the respondent Attorney General of Nova Scotia in the amount of $500. There will also be security for costs paid to the Court Registrar for the respondent, Michael Brooker, Q.C. in the amount of $1,000. I ordered that the monies in relation to security for costs would be payable within 30 days and that no proceedings in relation to this file can be instituted until the security for costs are paid. I had indicated that my reasons would follow.

[2] My reasons are set out below.

Background

[3] The appellant, Mr. Tupper has, for over two decades, been involved in various lawsuits, all stemming from a motor vehicle accident wherein Mr. Tupper was the driver of a motorcycle and he struck a pedestrian in 1983. The various legal proceedings since that time allege conspiracy of one sort or another and the history of those proceedings is described by Justice Glen G. McDougall (reported as **Tupper v. Nova Scotia Barristers' Society**, 2013 NSSC 290). In ¶4-9 Justice McDougall sets out the history as follows:

> [4] **The Accident**: The alleged conspiracy began on the night of June 4, 1983 when Mr. Tupper struck a pedestrian while driving his motorcycle on the highway in Kentville, Nova Scotia. The pedestrian brought an action in negligence against Mr. Tupper. Mr. Tupper was uninsured and did not defend the claim. The claim against him was defended by Judgment Recovery (N.S.) Ltd. The pedestrian was represented by Paul Walter, Q.C. Judgment Recovery was represented by Harold Jackson, Q.C.
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> [5] At trial, [1985] N.S.J. No. 287, Justice Grant found that both Mr. Tupper and the pedestrian had been negligent. Liability was apportioned 75 percent to Mr. Tupper for driving his motorcycle without headlights on and 25 percent to the pedestrian whose inebriated state limited his ability to avoid the collision.

> Damages were awarded to the pedestrian and paid by Judgment Recovery. Judgment Recovery then pursued Mr. Tupper for repayment.
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> [6] Mr. Tupper sought advice from lawyer Robert Stewart, Q.C. on whether or not to appeal the trial decision. Mr. Stewart recommended against an appeal.
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> [7] At some point after his discussions with Mr. Stewart, Mr. Tupper became convinced that the pedestrian's claim against him had been fraudulent. In Mr. Tupper's view, the pedestrian had intentionally placed himself in the path of the oncoming motorcycle in order to sue for damages. To support this theory, Mr. Tupper cites several portions of the trial decision including reference by the judge to the pedestrian's statement that "it was not up to him to move" when he heard the motor bike approaching.
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> [8] In Mr. Tupper's mind, each of the lawyers who participated in his trial and Mr. Stewart were aware, by virtue of their legal training, that damages should be awarded only to victims of genuine accidents. Accordingly, Mr. Tupper asserts that these lawyers became party to the insurance fraud by allowing him to be victimized by the pedestrian.
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> [9] **The 2007 Action**: As a result of Mr. Tupper's inability to make payments to Judgment Recovery, his driver's licence has been suspended since August of 1985. In 2007, Mr. Tupper filed an action against the Province, Judgment Recovery and Judgment Recovery's lawyers, Mr. Jackson and John Kulik, Q.C., for damages flowing from the suspension of his license. The Nova Scotia Supreme Court dismissed the action against all parties except the Attorney General, [2007] N.S.J. No. 341. The Nova Scotia Court of Appeal upheld the dismissal, [2008] N.S.J. No. 187. By defending the parties sued by Mr. Tupper in this action, lawyers Catherine Lunn, Michael Brooker, Q.C., and Michael Wood, Q.C. (as he then was) were added by Mr. Tupper to the list of those knowingly involved in the conspiracy against him.

[4] The original trial which dealt with the accident is reported as **Hake v. Tupper**, 1985 CarswellNS 270 (S.C.T.D.). In that case the trial judge found that Mr. Tupper was driving his motor bike and struck an intoxicated pedestrian. The lights on Mr. Tupper's motor vehicle had been disconnected and were not operational at the time of the accident, which occurred approximately 1:30 a.m. on June 4, 1983. Mr. Tupper was found to have been travelling at an excessive rate of speed and was driving without a valid driver's license. Mr. Tupper was found to be negligent and 75% liable for the accident. Mr. Hake received an award based on 75% of approximately $37,500.

[5] Also, starting in 2002 it appears that Mr. Tupper started blaming his girlfriend, Toni Wheeler for the accident and took action against his ex-girlfriend, Ms. Palmer as well as her brother Mr. Watson and their lawyer Ritchie Wheeler.

That matter proceeded through to an appeal and in a decision reported **Tupper v. Wheeler**, 2005 NSCA 74, this Court dismissed the appeal having determined that it was absolutely unsustainable and of no merit whatsoever.

[6] In **Tupper v. Nova Scotia (Attorney General)**, 2007 NSSC 232, there was a successful motion by the defendants including the Attorney General, Judgement Recovery and Mr. Kulik to strike the Statement of Claim and deny a motion by Mr. Tupper to add further defendants including Mr. Jackson. The claims in that action were ultimately dismissed with the exception of a s. 15 **Charter** claim against the Attorney General. Justice Moir determined that any claims of negligence or breach of fiduciary duty against Mr. Kulik and Mr. Jackson were clearly unsustainable. Mr. Tupper appealed that decision and this Court found there was no merit to the appeal (**Tupper v. Nova Scotia (Attorney General)**, 2008 NSCA 44, leave to appeal ref'd [2008] 3 S.C.R. x).

[7] Mr. Tupper made complaints to the Nova Scotia Barristers Society against seven lawyers including the named solicitors in the motion now before the Court. The Barristers Society dismissed those complaints. A judicial review of the decision of the Nova Scotia Barristers' Society determined that the judicial review "has no chance of success and must not be entertained any further". That case is reported as **Tupper v. Nova Scotia Barristers' Society**, 2013 NSSC 290.

[8] In an affidavit prepared by Jason Cooke in support of the motions for security for costs now before the Court, Mr. Cooke detailed costs orders outstanding as against Mr. Tupper as follows:

1. Costs awards in the amount of $1,000 in favour of the respondents Bernard Scott Coldwell and Vernon Russell Ward, bearing CA No. 121987;
2. Costs awards in the amount of $500 in favour of the defendant Ritchie R. Wheeler and $250 in favour of the defendants Tony Palmer and Peter Watson, bearing S.K. No. 226787;
3. Costs awards in the amount of $1,500 in favour of the respondent Ritchie Wheeler and $750 in favour of the respondents Toni Palmer and Peter Watson, bearing CA No. 234788;
4. Costs awards in the amount of $100 in favour of the defendant John Kulik, $100 in favour of the defendant Judgment Recovery (N.S.) Ltd. and a total of $100 to the defendants The Attorney General of Nova Scotia and the Minister of Service Nova Scotia and Municipal Relations, bearing S.H. No. 255102;

5. Costs awards in the amount of $500 in favour of each of the respondents The Attorney General of Nova Scotia, The Minister of Service Nova Scotia and Municipal Relations – The Honourable Barry Barnet, Judgment Recovery (N.S.) Ltd and Judgment Recovery's Lawyer – John Kulik, bearing C.A. No. 286230; and
6. Costs awards in the amount of $300 in favour of the defendant Judgment Recovery (N.S.) Ltd. and $300 in favour of the defendants Harold F. Jackson, Q.C., Paul L. Walter, Q.C., Bob Stewart, Q.C. and John Kulik, Q.C., and the proposed defendant Michael Brooker, Q.C., bearing Hfx No. 410543.

[9] Mr. Tupper acknowledged at the hearing of this motion that he has not paid those costs, although he did suggest that costs were owing to him. He argues those costs should be deducted from the amounts, or off-set against the amounts that are now outstanding in the costs awards as I have noted above (¶1-6).

[10] I am satisfied that any costs award that may have been made in Mr. Tupper's favour are of no relevance in terms of the issue of costs as between the parties now before the Court and Mr. Tupper.

[11] Mr. Tupper says he cannot pay costs. He does indicate that he has spent substantial sums of money in the various proceedings.

[12] A brief summary of some of the various applications and actions as set out above in relation to Mr. Tupper begin to paint the torturous picture of the various proceedings launched, and applications made by Mr. Tupper. Mr. Tupper challenged me in court, saying that if I could see 500 metres in the dark he would drop his appeal. The issue is not whether I can do the impossible; the issue is whether the various respondents should be left to fund appeals launched by Mr. Tupper, in this case an appeal which is implausible at best.

Security for Costs

[13] Rule 90.42 authorizes the granting of security for costs:

> **Security for costs**
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> **90.42** (1) A judge of the Court of Appeal may, on motion of a party to an appeal, at any time order security for the costs of the appeal to be given as the judge considers just.

> (2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

[14] This Court has noted on numerous occasions that security for costs will only be granted when an applicant can establish "special circumstances". This was noted by Bryson, J.A. in **Wolfridge Farm Ltd. v. Bonang**, 2014 NSCA 41, ¶16. Justice Bryson referred to **Bardsley v. Stewart**, 2014 NSCA 32 and **Sable Mary Seismic Inc. v. Geophysical Services Inc.**, 2011 NSCA 40 and described special circumstances as including the degree of risk that a respondent will be unable to collect monies from the appellant if the appellant is unsuccessful on appeal.

[15] In **Williams Lake Conservation Co. v. Chebucto Community Council of Halifax Regional Municipality**, 2005 NSCA 44, Justice Fichaud noted the risk that an appellant may be unable to afford costs is by itself, insufficient reason to establish special circumstances. Justice Fichaud suggested that it is usually necessary there be evidence that in the past the appellant had acted in an insolvent manner towards the respondent. That type of evidence can form an objective basis for a court to be concerned about recovery of prospective appeal costs. Justice Fichaud referred to continuing failures by an appellant to pay costs awards.

[16] I have noted above the numerous orders for costs made against the appellant herein. Mr. Tupper, by his own admission, is impecunious. Such a plea should not be the sole basis upon which this Court would decline to order security for costs. I am alive to the fact that courts should be loath to deny impecunious litigants of their day in court by erecting financial barriers in the form of security for costs.

[17] In this case and in earlier related proceedings and complaints as against the named respondents, they have been alone and bearing the costs of the many failed trials, applications, appeals complaints as made by Mr. Tupper.

[18] Mr. Tupper, throughout the various proceedings, has made accusations of dishonesty, unethical, even criminal behaviour; suggesting that those counsel and litigants who stood in his way conspired to deny him justice. He went so far as to suggest the justice system itself was part of the conspiracy to destroy him. The attacks not only included counsel but were also directed against justices of the various courts including Justices Nunn, Duncan, Boudreau and Farrar.

[19] It is clear that Mr. Tupper has no respect for the courts, other litigants, counsel or the judges in the various courts. Yet he uses the court system as an instrument of torture, with impunity. The lack of respect combined with his demonstration of the fact that Mr. Tupper is not prepared to abide by any court order including the costs orders that are now outstanding establishes special circumstances warranting an order for security for costs.

[20] It has been more than two decades since Mr. Tupper has started using up more than his fair share of this Court's time, the scarce resources of the courts and the hard earned assets of innocent justice participants. He has wasted the resources of this province, litigants, and counsel who have had the misfortune of somehow touching this file. All have been blamed for the motor vehicle accident for which Mr. Tupper was found to be 75% at fault.

[21] I refer to the comments of Justice Saunders in **Doncaster v. Chignecto-Central Regional School Board**, 2013 NSCA 59. In that case Justice Saunders said:

> [44] ... Mr. Doncaster appear to fall into a camp of persons who claim an unconditional, and unassailable "right to appeal" every step, in every case. Persons who hold such a view are seriously misguided or ill-informed. No right is absolute. In our free and democratic society every right, privilege or interest is balanced and held in check by other rights, privileges and interests. The opportunity to appeal is regulated by long held practices and rules, by which deadlines, substance, style and content are strictly enforced. Those unwilling or unprepared to follow those strictures do so at their peril.
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> [45] Litigants, self-represented or not, with legitimate interests at stake will be treated with respect and will quickly come to realize that judges, lawyers and court staff are prepared to bend over backwards to accommodate their needs, to explain procedures that may seem foreign, and to ensure that the merits of their disputes will be heard. They and their cases will be seen as the raison d'être for access to justice.
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> [46] Litigants, self-represented or not, with a different agenda designed to wreak havoc on the system by a succession of endless, mindless or mind-numbing paper or electronic filings, or meant to drive a spouse or opposite party to distraction or despair or financial ruin will quickly come to realize that the Court's patience, tolerance and largesse have worn thin. They and their cases will be seen as an affront to justice and summarily shown the door.
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> [47] More often than not, the individuals in this latter group whom I would dub "self-serving litigants" leave a trail of unpaid judgments and costs orders in their wake. Judges will not sit idly by as the finite resources of their courts are hijacked

> by people with computer skills or unlimited time on their hands; at the expense of worthy matters, waiting patiently in the queue for a hearing. Faux litigants will be exposed, soon earning the tag "vexatious litigant" or "paper terrorist" whose offerings deserve a sharp rebuff and rebuke.
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> [48] Over the past two months I have encountered several such cases. Their number is mounting. I find that troubling. The Bench, the practicing Bar and the public should be concerned. This trespass upon legitimate advocacy is not in the public interest. In the short term it frustrates the efficient passage and completion of litigation. In the long term it erodes and denigrates confidence in and respect for the administration of justice. It defeats a system of dispute resolution managed and overseen by people who are doing the best they can to serve the public in a way that respects and follows the law, and produces a result that satisfies the primary object of the Rules which is to provide "for the just, speedy and inexpensive determination of every proceeding".

[22] In a subsequent case, **Leigh v. Belfast Mini Mills Ltd.**, 2013 NSCA 86, the Court was dealing with a motion for security for costs against a self-represented litigant who refused to respect the court's procedures and the Court stated:

> [20] ... The appellants have pursued frivolous and futile motions, applications, and appeals, none of which have been successful. They refuse to accept court rulings on various issues and simply appeal each and every decision. Communication has been conducted by them in such a way as to complicate and prolong litigation. ...
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> [23] I would place the appellants in this case in that category of litigant. Being self-represented does not inoculate the appellants from the courts' processes. The appellants have no respect for court orders, have thumbed their noses at the request by the respondents to pay costs, failed to attend at a discovery and, in general, have conducted this litigation in a frivolous and vexatious manner. I pause here to comment that on my review of the record and the submissions of the parties there is absolutely no merit to the allegations of improper conduct on the part of Mr. Dickson in any of the proceedings. The appellants continued assertions that Mr. Dickson is acting inappropriately further highlights their lack of respect and understanding of the court's processes.

[23] The history of Mr. Tupper's proceedings in this Court, the courts below and the Barristers' Society suggests this case falls within that (**Doncaster** and **Leigh**) category of vexatious or abusive litigant. Mr. Tupper feels that he is immune both from court orders and costs. When confronted or challenged in any way he is prepared to make offensive, and meritless accusations that call into question the

integrity and character of all justice participants including not just the litigants but litigants' counsel and members of the judiciary.

[24] While the Court is loath to comment on the merits of the appeal, in this case certainly the courts below have made it clear that they thought the claim was without merit.

[25] I am satisfied, considering all the circumstances of this appeal, it is appropriate to order security for costs. This is also but one small step wherein this Court can take control of its own processes.

[26] The order requires the costs to be paid within a period of 30 days. There shall be no further steps taken in this proceeding until the security for costs has been paid into court by the appellant.

[27] The appellant shall pay costs of this motion to the respondent Judgment Recover (N.S.) Ltd. in the amount of $250.00 and to the respondents Harold F. Jackson, Q.C., Paul L. Walter, Q.C., Bob Stewart, Q.C. and John Kulik, Q.C. in the amount of $500.00

[28] If Mr. Tupper fails to post the costs within the required 30 days, the respondents are entitled to make application on the motion with notice to Mr. Tupper to have the appeal dismissed.

Scanlan, J.A.