

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Wile v. Glenelg Homestead Ltd.*, 2004 NSCA 1

**Date:** 20040105

**Docket:** CA 212994

**Registry:** Halifax

**Between:**

Kevin B. Wile

Appellant/Applicant

v.

Glenelg Homestead Limited

Respondent

**Judge:** Cromwell, J.A.

**Application Heard:** December 30, 2003, in Halifax, Nova Scotia, In Chambers

**Held:** Application granted.

**Counsel:** Appellant/applicant in person  
Michael Wood, Q.C., for the respondent

**Decision:**

[1] Kevin Wile applies for an extension of time to file a notice of appeal.

[2] Briefly, the background is this. In 1978, Leonard Wile, who is Kevin Wiles' father, conveyed some land at Rose Head, Lunenburg County, to Glenelg Homestead Limited. The deed was not recorded. In 1996, Leonard Wile intended to convey different land at Rose Head to his son Kevin, but the legal description in the deed was for the property previously conveyed to Glenelg. The 1996 deed to Kevin Wile was registered. Shortly after, Kevin Wile mortgaged his interest to Reginald Fahie and the mortgage was registered. In 2001, Kevin Wile quit claimed his interest in the land to Mr. Fahie.

[3] In 1998, Glenelg decided to sell its land at Rose Head and at that point, the failure to register its 1978 deed came to light as did the problem that the property

which was the subject of that deed had been conveyed to Kevin Wile in 1996 by a registered deed. Glenelg then sought a declaration in the Supreme Court concerning the priority of claims to the land among it, Leonard Wile, Kevin Wile and Reginald Fahie. Glenelg, Leonard Wile and Reginald Fahie were represented by counsel. Kevin Wile was self-represented.

[4] The matter was tried by Murphy, J. who determined that Glenelg had priority over Kevin Wile's registered deed because the land had been a gift to Kevin Wile and he therefore was not a purchaser for value entitled to priority under section 18 of the *Registry Act*, R.S.N.S. 1989, c. 392. However, Glenelg's title was subject to the mortgage held by Mr. Fahie as the mortgage was entitled to priority under the *Registry Act*.

[5] Murphy, J.'s written reasons are dated July 24, 2003 and his formal order issued on November 20, 2003. On December 22, 2003, Kevin Wile filed an application to extend the time to file a notice of appeal. This was accompanied by a brief sworn statement from Mr. Wile to the effect that he wishes to retain counsel and had been unable to do so by virtue of the complicated facts of the case, the Christmas season and for other reasons.

[6] In oral submissions in chambers, Mr. Wile stated that he had not decided to pursue an appeal but wished some additional time to obtain legal advice to determine if an appeal was warranted. Mr. Wood, appearing for Glenelg, opposed the request for an extension. While conceding that the application was filed very shortly after the 30 day appeal period measured from the formal order, Mr. Wood noted that the decision had been available to the parties since July. In addition, he submitted that Mr. Wile had no real stake in the appeal having quit claimed his interest in the land to Mr. Fahie in 2001. Mr. Wood advised me and I accept that none of the other parties are appealing or intend to appeal. However, Mr. Wile maintains that if the deed from his father to himself were found to have priority on appeal, he would be entitled to a share of the proceeds notwithstanding the quit claim deed to Mr. Fahie. Mr. Wood advises that this position is consistent with the testimony at trial by both Mr. Wile and Mr. Fahie. Mr. Wood also submitted that the existence of an appeal would further delay the closing of the sale of the property which has been pending since 1998.

[7] The application does not meet the traditional three part test for an extension: there is no arguable issue advanced and Mr. Wile did not have the intention to appeal

within the appeal period. However, the granting of an extension of time is discretionary even if the traditional test is not met: *Tibbetts v. Tibbetts* (1992), 112 N.S.R. (2d) 173 (C.A. Chambers) at p. 177. The question is whether the interests of justice require the extension.

[8] Here we have a self represented litigant who has missed the filing period by only a very short time and who has made some efforts, albeit unsuccessful, to obtain legal advice. I note that the trial judge made no adverse findings of credibility against Kevin Wile and there is no suggestion that he is acting otherwise than in good faith. The material filed does not satisfy me that he so clearly has no stake in the proposed appeal that I should deny him the brief extension he seeks on that basis. While any extension will further delay the closing, there is no evidence that a short extension will prejudice the parties and I note that the transaction has been pending for five years in any event.

[9] Taking all of these circumstances into account, the interests of justice require a short extension of time with strict conditions. The time for filing a notice of appeal is extended to January 30, 2004. If a notice of appeal is filed by that date, the appellant shall apply, with a properly completed certificate respecting the preparation of the appeal book, to set down the appeal no later than chambers on Thursday, February 12, 2004 at 10:00 a.m. In default of the appellant doing so, Glenelg may apply without notice for an order dismissing the appeal.

[10] There will be no order as to costs.

Cromwell, J.A.