

NOVA SCOTIA COURT OF APPEAL

Citation: *Cluett v. Metro Computerized Bookkeeping Ltd.*,
2005 NSCA 84

Date: 20050511

Docket: CA 234055

Registry: Halifax

Between:

Jeannette Cluett

Appellant

v.

Metro Computerized Bookkeeping
Limited, a body corporate and Ian Hill

Respondents

Judges: Cromwell, Saunders and Fichaud, JJ.A.

Appeal Heard: May 10, 2005, in Halifax, Nova Scotia

Held: Appeal dismissed per reasons for judgment of Cromwell,
J.A.; Saunders and Fichaud, JJ.A. concurring.

Counsel: Kevin A. MacDonald, for the appellant
Raymond Riddell, Q.C., for the respondents

Reasons for judgment:

[1] This is an appeal from an order of Richard, J. refusing to disallow a limitation defence and dismissing the plaintiff's action as statute barred. The action was started 9 years after the events giving rise to it and 3 years after the expiry of the applicable 6 year limitation period.

[2] As pointed out by the Court during oral argument, the decision made by Richard, J. is a discretionary one. An appeal from such an order is not simply an occasion to permit this Court to reweigh the various relevant considerations and exercise its discretion in place of his. This Court is only entitled to intervene if there has been an error in legal principle, a palpable and overriding error of fact or if the decision gives rise to a patent injustice.

[3] Having considered the appellant's submissions, both written and oral, I am not persuaded that Richard, J. made any error that would entitle us to interfere with the exercise of his discretion. Accordingly, I would dismiss the appeal. I would not order the appellant to pay the respondents' costs, but would order that the appellant pay the respondents' reasonable disbursements in connection with the appeal.

Cromwell, J.A.

Concurred in:
Saunders, J.A.
Fichaud, J.A.