

Date: 20010510
Docket No.: CA 161064

NOVA SCOTIA COURT OF APPEAL
[Cite as: Ofume v. Southwest Apartments, 2001 NSCA 90]

BETWEEN:

PHILLIP OFUME

Applicant/Appellant

- and -

SOUTHWEST APARTMENTS

Respondent

DECISION

Counsel: The applicant/appellant on his own behalf
 The respondent by its agents, Donald Clow and Gert
 Lafonte

Appeal Heard: May 10, 2001

Judgment Delivered: May 10, 2001

**BEFORE THE HONOURABLE JUSTICE LINDA LEE OLAND
IN CHAMBERS**

OLAND, J.A. (In Chambers) (Orally):

[1] Mr. Ofume, by asking for a subpoena you have raised an interesting question for the court. Ordinarily the court of appeal does not hear witnesses. As the Registrar indicated to you in her correspondence, the court of appeal is a reviewing court. Our work is largely confined to looking at the documents, that is the transcript, the order and the decision and all the other materials which were heard in the court or the Tribunal below which is being reviewed by the court of appeal. Generally the only people that we actually hear are the lawyers or the parties who are representing themselves making argument before us. We do not have witnesses before the court of appeal.

[2] What I had to do in response to your request was to look to see if I could find anything which gives the court of appeal authority to subpoena anybody. I'm not simply talking about the people that you listed, Mr. Ofume, but anybody, any witnesses to come to the court of appeal.

[3] I could find no such authority in my research of the law, Mr. Ofume. What I did find was a decision of the British Columbia Court of Appeal in a case called **Gazdeczka**. In case I'm not pronouncing that correctly it's spelled g-a-z-d-e-c-z-k-a. It's a decision of the British Columbia Court of Appeal in Chambers dated September 9th, 1986 and cited in [1986] B.C.J. as No. 655. The issue of subpoenas also arose before the justice in Chambers in that case and his decision read as follows:

I cannot make any such order. There is no proper basis shown for allowing any new evidence although some of the written material that is in the appeal book may be treated by the court on a hearing as fresh evidence. . . . it would simply be contrary to all practice of the court to permit subpoenas to be issued to witnesses. I, therefore, dismiss the application with respect to fresh evidence although if the court on the hearing is of the opinion there should be any such evidence received, it will be open for it to authorize it in spite of this order.

[4] So essentially what I see Mr. Ofume is the decision of another court of appeal where he has recounted what has been my understanding, that the court of appeal does not hear witnesses and does not subpoena witnesses. I appreciate that is not a decision of our court of appeal, that is, of the Nova Scotia Court of Appeal. It is not necessarily binding but the thinking and the analysis is the same as mine.

[5] In addition, Mr. Ofume, what I would point out is that this is an appeal of a residential tenancies matter which you are bringing to the court of appeal, and that the parties to the matter are yourself and Southwest Properties, indeed the parties who are here today. The people that you have asked to be subpoenaed are not parties to the dispute. They do not appear on the court documents, in the style of cause as a party. None of those people was personally involved in any of the proceedings that the court of appeal is being asked to review, or if they were, there is no indication in the materials that had been provided to me.

[6] So I not having been able to find any authority for us to issue a subpoena and in my view there being no such practice or authority and alternatively, that these people are not and have not been involved in the proceeding, Mr. Ofume I must dismiss your application for the issuance of subpoenas. That being the case Mr. Ofume this matter will go ahead on appeal as originally scheduled and there is no need for any delay. Do you understand Mr. Ofume?

[7] Mr. Ofume you have heard my decision this morning. I will not be issuing any subpoenas today. What I suggest is this - if you think that there is an argument that you want to make at the beginning of your appeal to the panel and if the panel should agree to hear you and if they should decide in your favour, it may be that you can ask them for an adjournment if they have a view contrary to mine. But as far as a subpoena issuing before the hearing of the appeal, that will not be done Mr. Ofume.

Oland, J.A.