

NOVA SCOTIA COURT OF APPEAL

Citation: Ofume v. Citadel General Assurance Company, 2004 NSCA 109

Date: 20040921

Docket: CA 230309

Registry: Halifax

Between:

Dr. Phillip Ofume and Mrs. Maureen Ofume

Appellants

v.

The Citadel General Assurance Company

Respondents

Judge: Fichaud, J.A.

Application Heard: September 16, 2004, in Halifax, Nova Scotia, In
Chambers

Held: Application for stay of execution dismissed with costs in
the cause.

Counsel: Dr. Phillip Ofume, for the applicants/appellants
Rebecca Druhan, for the respondents

Decision:

- [1] Dr. Phillip Ofume and his wife Maureen Ofume have filed a notice of appeal from an order dated August 26, 2004, where Justice Cacchione dismissed the Ofumes' claim against the Citadel General Assurance Company. Justice Cacchione ordered the Ofumes to pay \$500 costs to Citadel.
- [2] Dr. and Mrs. Ofume applied for dates. I set a date for the filing of an appeal book, but did not set dates for factums and hearing of the appeal. After the appeal book is filed, Dr. and Mrs. Ofume may apply to chambers to schedule the filing of factums and the hearing.
- [3] The notice of appeal stated that Dr. and Mrs. Ofume applied for a stay of execution of the order which required payment of \$500 costs. Dr. Ofume spoke to this application at the Chambers hearing on September 16, 2004.
- [4] No affidavit or evidence was filed in support of the stay application. Dr. Ofume's unsworn statements of fact, contained in the notice of appeal or made at the Chambers hearing on September 16, are not evidence. I cannot consider those statements as evidence in support of the application for the stay.
- [5] An applicant for a stay of execution must, by evidence, establish the conditions for the stay which are stated in *Fulton Insurance Agency v. Purdy* (1990), 100 N.S.R. (2d) 341 (C.A.), at para. 28, and the numerous cases which have followed *Fulton*. In the absence of any evidence, the appellants have failed to establish those conditions.
- [6] This is the same result as occurred in the application for a stay brought by the same appellants in *Ofume v. Government of Nova Scotia*, CA 225780. In that appeal, Justice Oland, on September 3, 2004, dismissed the appellants' application for a stay of execution because the appellants had filed no affidavit or other evidence in support of the application.
- [7] I would dismiss the application for the stay of execution with costs in the cause.

Fichaud, J.A.