

NOVA SCOTIA COURT OF APPEAL

Jones, Matthews and Freeman, J.J.A.

Cite as: MacCulloch v. Price Waterhouse Ltd., 1993 NSCA 58

BETWEEN:

MRS. PATRICIA B. MacCULLOCH)	the appellant appeared
)	in person
Appellant)	
)	
- and -)	
)	Carl A. Holm, Q.C.
)	Daniel M. Campbell, Q.C.
)	for the Respondents
PRICE WATERHOUSE LIMITED)	
and THE BANK OF NOVA SCOTIA and)	
EMPLOYEES R. DOUGLAS AND D.)	
MacLEOD)	
)	
Respondents)	Appeal Heard:
)	April 8, 1993
)	
)	
)	Judgment Delivered:
)	April 22, 1993
)	

THE COURT: Appeal dismissed except to the extent that the last paragraph in the order of the trial judge dated the 13th day of August, 1992, barring any further actions is struck out and further that there will be no costs on the appeal per reasons for judgment *per coram* by Jones, J.A.; Matthews and Freeman, J.J.A. concurring.

PER CORAM:

This is an appeal from a decision of a trial judge in two proceedings striking out the appellant's statements of claim against the respondents pursuant to **Civil Procedure Rules** 14.25(1)(a), (b) and (d) on the grounds, inter alia, that they disclosed no reasonable causes of action, that the actions were frivolous and vexatious and were otherwise an abuse of the process of the court. Those **Rules** read:

"14.25(1) The court may at any stage of a proceeding order any pleading, affidavit or statement of facts, or anything therein, to be struck out or amended on the ground that,

(a) it discloses no reasonable cause of action or defence;

(b) it is false, scandalous, frivolous or vexatious;

...

(d) it is otherwise an abuse of the process of the court;

and may order the proceeding to be stayed or dismissed or judgment to be entered accordingly.

(2) Unless the court otherwise orders, no evidence shall be admissible by affidavit or otherwise on an application under paragraph 91(a)."

Briefly put, the estate of the late Charles E. MacCulloch was petitioned into bankruptcy by the respondent bank. The respondents Douglas and MacLeod are two of the inspectors of that estate in bankruptcy. The respondent, Price Waterhouse Limited, was

appointed trustee under the **Bankruptcy Act**. The appellant is the widow of Charles E. MacCulloch.

The appellant alleges, in the main, that her side of the case was not heard by the trial judge and that there was bias on the part of the trial judge and other members of the courts before whom she has appeared at trial and on appeal in her numerous actions. Her main thrust, however, is that she, in effect, wishes this court or a trial judge to carry out a complete and exhaustive investigation into all aspects of the handling of the affairs of her late husband's estate by the respondents. Unfortunately for the appellant we are not empowered to carry out that function.

Much of the complaints of the appellant are based and centered upon aspects of the administration of her husband's estate which have been adjudicated upon by courts other than the trial judge in this proceeding. They are **res judicata**, and as such are not subject to review by this court at this time.

In particular, Hallett, J. as he then was, in **Re MacCulloch (Bankrupt)** (1989), 93 N.S.R. (2d) 226, in a lengthy decision, reviewed and commented upon the various allegations of impropriety on the part of the trustee in bankruptcy and in particular the objection to the trustee's fees. On appeal, (1991), 108 N.S.R. (2d) 131, this court commented in part:

"Extensive evidence was called on the hearing before Mr. Justice Hallett by the parties. The trial judge carefully reviewed the evidence in his decision. His decision includes findings of fact and the acceptance of the evidence of certain witnesses. He stated at p. 30 of his decision:

'In summary, on the major point raised by the Objectors that the Trustee acted unreasonably or unnecessarily in the manner in which it realized on the assets of the Estate, I respectively disagree. While one

can say the Trustee could have proceeded in other ways, from the evidence I heard I am satisfied that it proceeded in the most reasonable manner so as to maximize the amounts obtained for assets under the Trustee's control, both for the benefit of the creditors and for the Estate in Probate. As to the legal action against Mrs. MacCulloch, it was authorized by the Inspectors on the basis of the opinion of Mr. John Honsberger, a leading expert in the field of bankruptcy, that Mrs. MacCulloch had breached her fiduciary duties as Executor in purchasing and reselling at a profit the Monte Vista Farm and the Toronto condominium. The correctness of the Trustee's judgment in proceeding against her was confirmed by the Appeal Division of this court when it stated that it was incumbent upon the Trustee to have proceeded against Mrs. MacCulloch. A judgment of 1.8 million dollars was recovered. That is not an insignificant amount, notwithstanding that nothing was collected on the judgment by the Trustee. It is now an asset of the Estate in Probate and it will be for the Executors to determine how they wish to treat that asset."

...

This Court then remarked:

"I agree with the basic findings of the trial judge that the trustee acted reasonably throughout the administration of the estate."

There have been some twenty-five previous proceedings although not all were instituted by the appellant. In addition to the various court proceedings either instituted by the appellant or in which she was a defendant, the trial judge in this action commented:

"Mrs. MacCulloch filed ten letters of complaint with the Nova Scotia Barristers' Society against the Estate's solicitor. All the complaints were dismissed. She sent three letters of

complaint to the Canadian Institute of Chartered Accountants concerning the conduct of Price Waterhouse and these were all dismissed. She has also complained to the Superintendent of Bankruptcy, the Ombudsman, the Attorney General for the Province of Nova Scotia, the Minister of National Revenue and the Chairman of the Bank."

We have reviewed the extensive material placed before us, read the arguments of the appellant and counsel on behalf of the respondents and listened to the oral presentations. It is our unanimous decision that the trial judge did not err in exercising her discretion on the interlocutory applications striking out the statements of claim primarily as they disclose no reasonable causes of action. In addition the trial judge made no reviewable error in exercising her discretion under **Civil Procedure Rule 14.25** not to hear **viva voce** evidence on the applications before her. There was no evidence of animus on her part. She carefully considered the various allegations of the appellant and reviewed several of the previous decisions concerning the estate in rendering her twenty-eight page decision.

The trustee, Price Waterhouse, requested that the trial judge:

"bar the plaintiff from bringing any further actions against the Trustee concerning the Estate of Charles E. MacCulloch in Bankruptcy, in particular concerning the administration of the Estate, and the way in which Price Waterhouse dealt with the assets of the Estate."

The appellant has been litigious and has complained to various bodies. So many, that the trial judge remarked that although the remedy of barring the appellant from bringing further actions against the respondents "is a rather drastic remedy, in my opinion, it is appropriate given the extensive litigation background which currently exists".

The trial judge acceded to that request of Price Waterhouse. Her decision in that respect is reflected in the order in the Price Waterhouse proceeding:

"IT IS FURTHER ORDERED that the Plaintiff is barred from commencing any further action or actions against the Defendant concerning the Estate of Charles E. MacCulloch in Bankruptcy or the Defendant's administration of same."

And also in the order respecting the other respondents:

"AND IT IS ORDERED that the Plaintiff is barred from commencing any further action or actions against the Defendants, R. Douglas and D. MacLeod, with respect to matters arising from the estate of the late Charles E. MacCulloch.

AND IT IS FURTHER ORDERED that the Plaintiff is barred from bringing any new action or actions against the Defendant, The Bank of Nova Scotia, with respect to matters arising from the estate of the late Charles E. MacCulloch, without prior leave of the Court granted on application, on notice to the Defendant, The Bank of Nova Scotia."

Counsel were unable to cite authority which would enable a trial judge to make such orders other than the general proposition that the court has the authority to control the conduct of its own proceedings.

We cannot agree that this "drastic remedy" should be granted. In the future information may be obtained which would enable the appellant to lodge a reasonable cause of action. Thus we strike out those portions of the orders previously quoted and set aside the trial judge's comments thereon in her decision.

In all other respects we uphold the conclusions reached by the trial judge.

In all of the circumstances, there will be no order for costs on the appeal.

PER CORAM:

Jones, J.A.

Matthews, J.A.

Freeman, J.A.