

NOVA SCOTIA COURT OF APPEAL

Citation: Hardy v. PG Hotel Ltd., 2004 NSCA 120

Date: 20041006

Docket: CA 224952

Registry: Halifax

Between:

R. Gregory Hardy

Appellant

v.

P.G. Hotel Ltd. and Centennial Hotel Management Limited

Respondents

Judge(s):

Roscoe, Bateman and Freeman, J.J.A.

Appeal Heard:

October 5, 2004, in Halifax, Nova Scotia

Held:

Appeal is dismissed with costs in the amount of \$2,000 plus disbursements to the respondents jointly.

Counsel:

Christopher Robinson, Q.C., and David Graves
for the appellant

Joey Palov and Peter Rumscheidt, for the respondents

Reasons for judgment:

[1] The issue in this appeal is whether Justice John Murphy, acting as the case management judge, properly exercised his discretion in denying an application by the appellant to amend his statement of claim to include an allegation of “inexcusable, outrageous, callous, reckless, and reprehensible” conduct and a claim for punitive and exemplary damages. The decision under appeal is reported at [2004] N.S.J. No. 274 (QL).

[2] The appellant was injured as a result of falling in the stairwell of the parking garage in the respondent’s hotel in January 1996 and commenced action for the recovery of damages in 1997. A ten-week jury trial is scheduled to begin in January, 2005.

[3] Justice Murphy, who had been the case manager of the file for more than a year, expressed several concerns respecting the application, including the timing of the application, the possibility that the trial dates would be jeopardized, that substantial new issues were being raised which would require examination of the respondent’s intentions and motivations which were not previously in issue, that there was no case law supporting the award of punitive damages in a similar case, and that the proposed amendment would change the character of the case after the respondents had elected a mode of trial, and that therefore the amendment would cause real prejudice to the respondents.

[4] The appellant submits that Justice Murphy erred in law by entering into an examination of the merits of the claim, by not considering that any prejudice caused to the respondents could be compensated for by an order of costs, by finding that the trial date would be jeopardized in the absence of evidence to support that finding, and by assuming that new issues were being raised by the amendment.

[5] This Court will not interfere with a discretionary interlocutory order, as is this, unless wrong principles of law have been applied or patent injustice would result (see **Exco Corporation Limited v. Nova Scotia Savings and Loan et al.** (1983), 59 N.S.R. (2d) 331(C.A.)).

[6] Generally, leave to amend pleadings will be granted unless it is demonstrated that the applicant is acting in bad faith or that the amendment would

cause the other party to suffer prejudice which cannot be compensated in costs (see **Stacey v. Electrolux Canada** (1986), 76 N.S.R. (2d) 182 (C.A.)).

[7] Having considered the arguments, and reviewed the pleadings and the history of this litigation, we are not persuaded that Justice Murphy erred in the application of the law to the circumstances of this case or that the result reached is manifestly unjust. As the case management judge, Justice Murphy was better positioned than this Court to consider issues of prejudice.

[8] Accordingly, the appeal is dismissed with costs in the amount of \$2,000 plus disbursements to the respondents jointly.

Roscoe, J.A.

Concurring:

Freeman, J.A.

Bateman, J.A.