SUPREME COURT OF NOVA SCOTIA

Citation: *Chadraoui v. Chedrawy*, 2015 NSSC 24

Date: 20150122
Docket: Hfx No. 338266
Registry: Halifax

Between:

Ronald Chadraoui, of Halifax Province of Nova Scotia

Plaintiff

v.

Jehad Chedrawy, of Dartmouth Province of Nova Scotia

Defendant

Judge: The Honourable Justice M. Heather Robertson

Heard: December 11, 2014, in Halifax, Nova Scotia

Counsel: Michele S. Poirier and Owen Bland, for the plaintiff
Jehad Chedrawy, self-represented, for the defendant

Robertson, J.:

[1] This application for summary judgment pertains to a personal loan of $150,000 lent by the plaintiff, Ronald Chadraoui, to the defendant, Jehad Chedrawy. The defendant invested the funds in a new adventure.

[2] In addition to the pleadings the court has examined the affidavit evidence of both the plaintiff and the defendant and heard cross-examination on their affidavit evidence.

[3] The defendant was associated with a company called Cangra Natural Stones Inc. ("Cangra"). Indeed, the principal of Cangra, Ashish Janmeja, was at first introduced to the plaintiff by the defendant as their business, Cangra, was new and required start-up funds. The defendant was leaving his job, CGI Consulting, to join Cangra in the granite countertops and branded plumbing products business. They had high hopes of landing large contracts to supply materials for high end condo projects (bathrooms and kitchens). They had secured product supply from Asia.

[4] The funding of $150,000 was advance to the defendant, Jehad Chedrawy, in his personal capacity and he signed a note dated January 2, 2008. It is attached to the plaintiff's affidavit dated November 30, 2011 as Schedule A.

[5] The defendant endorsed the funds received over to Cangra for their ongoing business needs.

[6] There had been earlier discussions with the plaintiff concerning a possible alternate lending arrangement where Cangra principals would also sign the note, but were required to pledge personal guarantees. That did not occur and at the end of the day, Ronald Chadraoui informed the defendant he would lend the money to him personally and noted "you are fully responsible for the loan and must do what you think is in your best interest."

[7] This ended up being an improvident business adventure. Although the defendant worked for Cangra and managed in the first year of its operation to pay back some of the borrowed funds (see plaintiff's affidavit, November 30, 2011, as Schedule C), the business eventually failed having had grave troubles with the quality of the product supplied to them from Asia.

[8] The defendant has not made any payments on the loan since January 12 2009 and owed $165,685.02 as of the date of the plaintiff's sworn affidavit of November 30, 2011.

[9] The defendant does not deny that he was the sole signator on the promissory note or disagree with the calculation of the outstanding loan.

[10] The defendant's defence is that the monies were intended for use by Cangra, in financing the business; that the funds were endorsed over in their entirety to the company; and that he, the defendant, should not be liable for this "business debt", notwithstanding that the funds were loaned to him alone.

[11] The defendant says he felt pressured by the principals of Cangra to accept the terms set out by the plaintiff and sign solely for the funds advanced.

[12] In recent cases the law of summary judgment motions has been addressed. The Nova Scotia Court of Appeal extensively canvassed the principles extant on a motion for summary judgment on the evidence in *Coady v. Burton Canada Co*., 2013 NSCA 95. As noted by the court "(T)he legal principles applicable to a motion for summary judgment are not complicated." At para. 87, the Court of Appeal laid out the principles related to summary judgment as follows:

[87] Before turning to the final issue raised on appeal, I wish to provide a quick summary of the law as it presently stands in Nova Scotia concerning summary judgment litigation. From the jurisprudence to which I have referred as well as the case law cited therein, a series of well-established legal principles have emerged. I will list these principles in the hope that their enumeration will serve as a helpful checklist or template to guide counsel and judges in their application. In Nova Scotia:

1. Summary judgment engages a two-stage analysis.

2. The first stage is only concerned with the facts. The judge decides whether the moving party has satisfied its evidentiary burden of proving that there are no material facts in dispute. If there are, the moving party fails, and the motion for summary judgment is dismissed.

3. If the moving party satisfies the first stage of the inquiry, then the responding party has the evidentiary burden of proving that its claim (or defence) has a real chance of success. This second stage of the inquiry engages a somewhat limited assessment of the merits of the each party's respective positions.

4. The judge's assessment is based on all of the evidence whatever the source. There is no proprietary interest or ownership in "evidence".

5. If the responding party satisfies its burden by proving that its claim (or defence) has a real chance of success, the motion for summary judgment is dismissed. If, however, the responding party fails to meet its evidentiary burden and cannot manage to prove that its claim (or defence) has a real chance of success, the judge must grant summary judgment.

6. Proof at either stage one or stage two of the inquiry requires evidence. The parties cannot rely on mere allegations or the pleadings. Each side must "put its best foot forward" by offering evidence with respect to the existence or non-existence of material facts in dispute, or whether the claim (or defence) has a real chance of success.

7. If the responding party reasonably requires disclosure, production or discovery, or the opportunity to present expert or other evidence in order

to "put his best foot forward", then the motions judge should adjourn the motion for summary judgment, either without day, or to a fixed day, or with conditions or a schedule of events to be completed, as the judge considers appropriate, to achieve that end.

8. In the context of motions for summary judgment the words "genuine", "material", and "real chance of success" take on their plain, ordinary meanings. A "material" fact is a fact that is essential to the claim or defence. A "genuine issue" is an issue that arises from or is relevant to the allegations associated with the cause of action, or the defences pleaded. A "real chance of success" is a prospect that is reasonable in the sense that it is an arguable and realistic position that finds support in the record, and not something that is based on hunch, hope or speculation.

9. In Nova Scotia, CPR 13.04, as presently worded, does not create or retain any kind of residual inherent jurisdiction which might enable a judge to refuse to grant summary judgment on the basis that the motion is premature or that some other juridical reason ought to defeat its being granted. The Justices of the Nova Scotia Supreme Court have seen fit to relinquish such an inherent jurisdiction by adopting the Rule as written. If those Justices were to conclude that they ought to re-acquire such a broad discretion, their Rule should be rewritten to provide for it explicitly.

10. Summary judgment applications are not the appropriate forum to resolve disputed questions of fact, or mixed law and fact, or the appropriate inferences to be drawn from disputed facts.

11. Neither is a summary judgment application the appropriate forum to weigh the evidence or evaluate credibility.

12. Where, however, there are no material facts in dispute, and the only question to be decided is a matter of law, then neither complexity, novelty, nor disagreement surrounding the interpretation and application of the law will exclude a case from summary judgment.

[13] The principles thus summarized lead to a two-step process:

1. Firstly, the applicant must show that there is no genuine issue of material fact requiring trial.

2. Once this is shown, the respondent must demonstrate that their claim or defence has a real chance of success.

[14] The Supreme Court of Canada in *Hryniak v. Mauldin,* 2014 SCC 7, discussed the first state of the test as being a determination of whether there is a "genuine issue requiring trial" at paras. 49-50:

> 49 There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
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> 50 These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[15] The plaintiff is not under any disability. He accepted the terms set out by the plaintiff, that he would lend the money to him personally to invest as he saw fit.

[16] The plaintiff has satisfied the evidentiary burden of proven there are no facts in dispute. Despite earlier discussions, the plaintiff chose to lend solely to the defendant because he knew him and not the principal of Cangra.

[17] The defendant made a very poor business decision in agreeing to be personally responsible for the loan of $150,000, which he then invested in Cangra having failed to secure his own position.

[18] Mr. Jehad Chedrawy's defence has simply no chance of success.

[19] The motion for summary judgment is granted.

[20] I will be happy to hear submissions on costs in writing failing any agreement between the parties.

Justice M. Heather Robertson