

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Layes v. MacDonald, 2008 NSSC 100

Date: 20080407

Docket: S.H. No. 133518

Registry: Halifax

Between:

Kevin J. Layes, of Antigonish, County of Antigonish, Province of Nova Scotia and
Sugarloaf Spring Rain Limited, a body corporate, incorporated in the laws of
Nova Scotia, with head office in Cloverville, Antigonish, in the County of
Antigonish, Province of Nova Scotia

Plaintiffs

v.

Joseph A.F. MacDonald, Peter M. S. Bryson and Marcia Brennan

Defendants

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: October 1, 2, 3, 4, 5, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 2007,
November 6, 7, 8, 9, 13, 14, 15, 16, 29, 30, 2007
December 3, 4, 2007 in Halifax, Nova Scotia

Subject: Solicitor/Client Relationship

Summary: Layes engaged McInnes Cooper, November 16, 1995 and discharged McInnes Cooper, December 27/28, 1995. Initial retainer for Layes to respond to shotgun clause and, second stage, preparation documentation for investors who from the outset were to have a controlling interest in Layes' water business. Layes alleged multi problems with investors, none of which were brought to the attention of McInnes Cooper. No confidential information provided to McInnes Cooper and anything of a confidential nature would have been provided by Layes directly to the investors.

Investors conclude post December 28, 1995 that Layes had made serious misrepresentations underestimating debts and overestimating assets etc. Layes advances major contracts with Walmart, Loblaws when, in fact, no such actual contracts existed. There existed a vendor agreement which permitted Walmart to set the price, the quantity etc. and if Layes water sold to any competitor for a lesser price, duty bound to provide such to Walmart. Layes previous partner through shotgun disposes of his interest for \$20,000 payable without interest by installments and assumption of business loans. Layes acquires full interest in company and then conveys 55% to investors per agreement. McInnes Cooper in January, acting for investors, sue Layes which brings into focus conflict of interest which ends within days by transfer of files to another solicitor. Layes claims damages totaling \$226,801,987.42.

Issue: Layes alleges negligence, breach of fiduciary duty, conflict of interest, misrepresentation etc.

Result: While McInnes Cooper in conflict position for a very short time, no loss or damages flow from such and total absence of credible evidence to support Layes' allegations whereby court determines that this was a lawsuit that should never have seen the inside of a courtroom and Layes/OldCo actions dismissed. Parties to be heard on costs.

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