IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Scaravelli v. Panagopoulos,
2006 NSSC 342

Date: 20061024
Docket: SH 267898A
Registry: Halifax

Between:

Lance Scaravelli and Terry Kelly

Appellants

v.

Maria (Marossis) Panagopoulos

Respondent

Judge:	The Honourable Justice Arthur W.D. Pickup
Heard:	October 24, 2006, in Halifax, Nova Scotia
Counsel:	Lance Scaravelli and Terry Kelly, for the appellants Maria Panagopoulos, self represented for the respondent

By the Court: [Orally]

[1] This is an appeal by Lance Scaravelli and Terry Kelly from an order made by an adjudicator of the Small Claims Court dated May 30, 2006 wherein the adjudicator, W. Augustus Richardson, Q.C., dismissed the appellants' application to strike out a notice of taxation and ordered a new hearing date for the taxation be set.

[2] At the beginning of the hearing the appellants applied to strike the notice of taxation on the grounds that:

> a) It had been made more than 6 months after the last account, and so was barred by Civil Procedure Rule 60.20(1); or,
>
> b) it was brought more than 6 years after the date of the account and so was barred by the *Limitations of Actions Act* R.S.N.S. 1989, c. 258 as amended (*Limitations Act*).

[3] The application to strike was denied.

Background

[4] The parties entered a contingency fee agreement, relating to a personal injury claim by the respondent, in 1998. The action was settled on or about February 24, 2000 and the appellants rendered their account the same day. The respondent applied for a taxation of the legal account before a Small Claims Court Adjudicator. The appellant sought to have the notice of taxation struck on the ground that it was filed too late. They relied upon Rule 63.20(1) referred to in the decision as Rule 60.20(1), which states:

> Any agreement as mentioned in rule 63.17 may, at any time after its making until the expiry of six (6) months from the last date on which a solicitor has received, on his own account, the fee or any part of it, be reviewed by the taxing officer at the instance of the client.

[5] The appellants argued that the Notice of Taxation was not brought until more than six months after the last account. They also argued that the notice was barred on account of being brought more than six years after the date of the account, pursuant to the *Limitations of Actions Act*.

[6] At the hearing, it appears that the parties made representations to the court which led the adjudicator to the conclusion that there was an "ongoing dispute" between the parties.

[7] The adjudicator rejected the appellants' Rule 63 argument on the basis of s.9A(1) of the *Small Claims Court Act*, which provides an adjudicator with all the powers that were exercised by taxing masters pursuant to the now-repealed *Taxing Masters Act* and states that an adjudicator "may carry out any taxation of fees, costs or disbursements that a taxing master had jurisdiction to perform pursuant to any enactment or rule". He acknowledged that Rule 63.20(1) would have limited the taxing power to six months. However, he continued, s. 9(e) of the *Small Claims Court Taxation of Costs Regulations* allows an adjudicator to extend or abridge any time period pertaining to taxation that is specified in any *Act*, regulation, rule or order, where the adjudicator considers the extension or abridgement to be justified in the circumstances.

[8] As such, the adjudicator held, Rule 63.20(1) did not bar a taxation of costs that is filed later than six months after the account is rendered. He abridged the time period, reasoning that the respondent did not appear to have been advised that she could tax the account and once she was advised "she appears to have moved quickly to file her claim". He added that the appellants did not appear to have been taken by surprise on account of the "ongoing dispute".

[9] With respect to the *Limitations of Actions Act*, the adjudicator held that the cause of action did not arise until the account had been taxed and certified. Alternatively, he held that the court could relieve against the limitation period, both under the four year grace period permitted by s. 3(2) of the *Limitation of Actions Act* and on account of s. 9(e) of the *Taxation of Costs Regulations* and, concluded, on the basis of the parties' representations that this was an appropriate case in which to do so.

Decision

[10] Section 32 of the *Small Claims Court Act* R.S.N.S. 1989 c. 430 sets out the powers of the Supreme Court in such an appeal as follows:

> A party to proceedings before the court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of:
>
> (a) jurisdictional error;
>
> (b) error of law
>
> (c) failure of follow the requirements of natural justice, by filing with the prothonotary of the Supreme Court a notice of appeal.

[11] The appellants filed a notice of appeal dated June 27, 2006 appealing from the order of the adjudicator on all three available grounds.

[12] I have reviewed the order and stated case of the adjudicator including the summary report of findings of law and fact.

[13] The appellants rely primarily on the adjudicator's alleged error with respect to the six month time limit under Rule 63. Their submission is that s. 9A of the *Small Claims Court Act* and the accompanying *Small Claims Court Taxation of Costs Regulations,* upon which the adjudicator relied in finding that he had jurisdiction to abridge the time limit, were proclaimed in force on April 1, 2001. Neither the *Taxing Masters Act* nor Rule 63.20 permitted a taxing master to abridge the six month time limit before April 1, 2001. As a result, they submit, the power to abridge time limits does not apply to the respondent's account which was rendered and paid in February 2000.

[14] I agree, the appellants' position is correct assuming that the legislation that went into force in April 2001 was not intended to have retroactive effect. As the appellants' argue, legislation is presumed not to apply retroactively. I am satisfied there is no indication in the legislation that it was meant to apply retroactively and, in fact, the *Regulations* are declared to be "effective on and after April 2001".

[15] Also relevant is the distinction between procedural and substantive legislation; purely procedural legislation is an exception to the rule against retroactivity. I see no particular objection to the law cited by the appellants to the effect that "substantive law" addresses issues that affect the rights of the parties and is not, as a rule, retroactive. I am satisfied that s. 9(e) of the *Regulations* is substantive law and cannot be applied retroactively and, therefore, I allow the

appeal. There is no power in the adjudicator on these facts to abridge time limits and the arbitrator is unable to tax the account which was rendered and paid in February 2000.

Pickup, J.