

SUPREME COURT OF NOVA SCOTIA

Citation: *O'Connell v. Farr*, 2015 NSSC 85

Date: 2015-02-18

Docket: Halifax No. 297703

Registry: Halifax

Between:

Heather Jane O'Connell

PLAINTIFF

v.

Constance Farr, Chelsea Farr and Anton Lorde

RESPONDENTS

LIBRARY HEADING

Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: February 11th, 2015 in Halifax, Nova Scotia

Oral Decision: February 18th, 2015

Written Decision: March 24th, 2015

Subject: Motion for an order setting aside the dismissal of an action and for renewal of the Originating Notice (Action) and Statement of Claim.

Summary: Motor vehicle accident occurred in 2005. Action commenced in 2008. Two of the Defendants were notified of the action, but not the third. None of the Defendants were formally served. The Plaintiff's action expired. In July of 2009, the action was renewed until June 20th, 2010. Again, no attempts were made to serve any of the Defendants. In June of 2013, the Prothonotary forwarded an Appearance Day Notice to the Plaintiff's solicitor seeking to have the action dismissed pursuant to Civil Procedure Rule 4.22. At Appearance Day, the court directed the Plaintiff's solicitor to file a motion to renew the originating documents by September 30th, 2013, upon notice to all of the Defendants. This was not done. The matter returned to court for a status update on February 14th, 2014. On that day, the Appearance Day judge gave the Plaintiff's solicitor 90 days to file a motion to renew the originating documents, failing which the action would be dismissed. The Plaintiff's solicitor arrived at the Prothonotary's office to file the said documents after the office had closed on the 90th day. The Plaintiff retained new counsel who brought a motion to set aside the previous Order and to renew the Originating Notice (Action) and

Statement of Claim.

Issues: Does the court have jurisdiction to set aside the Order in these circumstances? If so, should it exercise that jurisdiction? Should the Plaintiff's Originating Notice (Action) and Statement of Claim be renewed?

Result: The court determined that it had the inherent jurisdiction to set aside the previous Order. The court set aside the Order and renewed the Originating Notice (Action) and Statement of Claim in relation to the two Defendants who had received notice of the proceeding. The court declined to set aside the Order or renew the originating documents in relation to the third Defendant who was unaware of the action for 9 ½ years. Costs were ordered to be paid personally by the Plaintiff's original solicitor.

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