Cite as: Imperial Life Financial v. Langille, 1997 NSSC 111

1997 S.H. No. 143373

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

Imperial Life Financial

Applicant

- AND -

Hilda Langille

Respondent

DECISION

HEARD:	At Halifax, Nova Scotia before the Honourable Justice Michael MacDonald in Chambers
DATE HEARD:	December 19th, 1997
ORAL DECISION:	December 19th, 1997
WRITTEN RELEASE OF DECISION:	January 23rd, 1998
COUNSEL:	David B Ritcey, Q.C., for the Applicant Jerome Langille, for the Respondent

MACDONALD, J. (Orally):

This application raises a very interesting access to justice issue. Can an insured's claim for disability benefits be prosecuted in Small Claims Court on a piecemeal basis so as not to exceed that Court's monetary jurisdiction?

The facts are quite simple. The applicant issued a policy of insurance to the respondent. It provided for disability benefits of $796.00 monthly in the event of the respondent becoming disabled as defined in the policy. The respondent became disabled and claimed accordingly. The applicant paid the benefits for almost two years, up to and including June of this year. At that time, the applicant ceased paying because it felt that the respondent was no longer disabled according to the terms of the policy. In October of this year, the respondent commenced a Small Claims Court action claiming $3,980.00 representing the five months from July to November of 1997.

The applicant asserts that this claim, although technically falling within the monetary jurisdiction of the Small Claims Court, is an abuse of that Court's process. Specifically, the applicant feels the claim in reality involves an amount well in excess of the Small Claims Court's monetary jurisdiction if it is to be calculated over time. In other words, to allow the respondent to prosecute her claim in a piecemeal basis in Small Claims Court would unjustifiably deny the applicant the benefit of the more detailed Supreme Court process. Mr. David Ritcey, counsel for the applicant, explains the problem succinctly in paragraph 8 of his Affidavit:

THAT the Applicant wishes to exercise its rights under the Nova Scotia Civil Procedure Rules including the Rules with respect to discovery of documents, discovery of witnesses, the opportunity for a further independent medical examination if deemed necessary (an independent medical examination already having been performed by Dr. R.A. Yabsley, orthopaedic surgeon, of Halifax) as well as all other Rules which may apply to this type of action.

The resolution of this claim to a great extent involves a process of statutory interpretation. Specifically it involves an interpretation of s.9 of the **Small Claims Court Act** dealing with that court's jurisdiction:

A person may make a claim under this Act

(a) seeking a monetary award in respect of a matter or thing arising under a contract or a tort where the claim does not exceed five thousand dollars inclusive of any claim for general damages but exclusive of interest;

The issue from an interpretational point of view is whether or not the reference to "claim" as stated in s.9 refers to the respondent's actual claim as may be advanced from time to time, or does it mean the total potential claim.

To resolve this issue I am guided by the provisions of subsection 9(5) of the **Interpretation Act**, (1989) R.S.N.S. as amended:

Interpretation of enactment

(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

(a) the occasion and necessity for the enactment;

(b) the circumstances existing at the time it was passed;

(c) the mischief to be remedied;

(d) the object to be attained;

(e) the former law, including other enactments upon the same or similar subjects;

(f) the consequences of a particular interpretation; and

(g) the history of legislation on the subject.

As in any exercise of statutory interpretation, the Court should take a purposeful approach. In other words, the Court should identify the purpose of the provisions in question. In the case at bar, this leads me to an analysis of the objects of the Small Claims Court generally.

Our Small Claims Court serves an extremely useful purpose within the administration of civil justice in this province. It provides an informal and inexpensive forum for the resolution of claims within a limited monetary value. It provides access to justice for those who might not otherwise afford it. It makes perfect sense to have claims involving

smaller amounts of money processed in an efficient manner without the expense of extensive pre-trial proceedings.

That being said, one must not forget the benefits of our Supreme Court pre-trial process. That process provides for liberal discovery procedures designed to enhance settlement and/or narrow the issues. Therefore, it too serves a very significant purpose within the administration of civil justice.

Thus in approaching this issue, I must balance or consider the goals of each judicial regime. In so doing, I conclude that the reference to "claim" in s.9 of the **Small Claims Court Act,** supra, must refer to "claim" in the global sense. The legislators obviously felt that extensive pre-trial procedures could be avoided (so as to secure greater access to justice) provided the amount at stake was reasonably modest.

In this case the amount at stake is not modest but very high. Its potential value far exceeds the monetary limit of the Small Claims Court. To circumvent the discovery process by allowing claims like this to go forward on a piecemeal basis in Small Claims Court would represent a potential disservice to both sides and would be contrary to the stated purpose of the **Small Claims Court Act**.

Therefore, I feel that to allow this claim to proceed in Small Claims Court would be an abuse of that Court's process. In reaching this conclusion, I am persuaded

by the reasoning of Saunders, J., in **Paul Revere Life Insurance Company v. Herbin** (1996), 149 N.S.R. (2d) 200. In that case my learned colleague addressed an almost identical factual situation seeking identical relief. Beginning at paragraph 20, the Learned Trial Judge concluded:

> **I accept counsel's submission on behalf of the insurer that the very rationale for the establishment of the Small Claims Court was that small claims would be quickly and inexpensively adjudicated. Naturally, such claims are heard without access to the usual pretrial procedures, productions, discovery of parties and discovery of experts, as would be accommodated under our own Civil Procedure Rules.**
>
> **This case is anything but a small claim. Having found as I do that there is a real potential for this claim to lead to repeated and identically issue-based claims approaching half a million dollars, it seems to me that the Legislature could hardly have intended the statute to apply to cases such as this.**

And continuing at paragraph 24, he states:

> **I also agree with the submission of counsel for the insurer that a nice question involving res judicata arises here. I have been referred to the judgment of Roscoe, J. (as she then was) in *Big Wheels Transport and Leasing Ltd. v. Hanson et al.* (1990), 102 N.S.R. (2d) 371; 279 A.P.R. 371 (T.D.). Based on the conclusions she came to in that case, it may well be that if the Small Claims Court adjudicator found that Mr. Herbin were totally**

> **disabled, then in subsequent proceedings, Herbin might well argue that the issue of his disability had been resolved, and barring any change in his medical condition, that the issue having been decided, was res judicata. The result and consequences of such a finding to the defendant insurer would be, to say the least, profound.**

However, there remains a fundamental issue. Should this court be granting declaratory relief for alleged abuses of another court?

This issue was addressed head-on by Gruchy, J., in **Royal Insurance Company of Canada v. Legge** where the learned trial justice after referring to the decision of Saunders, J., in **Paul Revere**, noted at paragraph 12:

> **I am however concerned about the jurisdiction of this court to interfere with the process of the Small Claims Court.**

And at paragraph 14, Gruchy, J., continued:

> **I have concluded that the declaration and stay sought by the applicant herein would have the same effect as an injunction against the respondent prohibiting the trial of the action. The Small Claims Court, however, is a tribunal clearly established by the Legislature with its own authority. In my view it has status similar to that of an administrative or domestic tribunal to which this court owes curial deference. The relationship between such tribunals and this court was explored by the Nova Scotia Court of Appeal in *Ripley v. Investment Dealers***

> ***Association et al and McFetridge v. Nova Scotia Barristers' Society.***

Then, continuing at paragraph 18 he notes:

> **The Small Claims Court is not supervised by the Supreme Court, other than by prerogative remedies or judicial review. This court's relationship to the Small Claims Court is as an appellate tribunal only. The Nova Scotia Legislature removed from the jurisdiction of the Supreme Court the subject matter of actions properly taken pursuant to the Small Claims Court Act. It appears premature to interfere in the process of a matter being conducted by a duly constituted court. It is not for this court, at this stage, to decide whether the subject matter of the action is beyond the monetary limits of that court. That court must judge for itself the questions concerning the monetary value of the claim.**

And then, in addressing specifically the decision of Saunders, J., in Paul Revere, Gruchy, J., concluded at paragraph 20:

> **I recognize that in concluding this application must be dismissed I am reaching a conclusion opposite to that of my learned and respected confrere, Justice Saunders, in his oral decision in *Revere (Paul) Life Insurance Co. v. Herbin.* I take comfort, however, in that Justice Saunders did not address the question of the jurisdiction or authority of this court. I can only conclude that the precise subject which causes me concern was not raised or argued before him.**

With respect to my learned colleague, I disagree with Gruchy, J.'s conclusion that the Small Claims Court has **exclusive** jurisdiction for claims falling within its monetary jurisdiction. I know of no legislation or subsequent case law that takes away the Supreme Court's jurisdiction for all claims of this nature regardless of the amount involved. I refer specifically to the decision of Chief Justice Glube of this Court in **Haines, Miller & Associates Inc. v. Voss** (1996), 158 N.S.R. (2d) 389 wherein she concluded that the Supreme Court has jurisdiction **concurrent** to that of the Small Claims Court for claims involving an amount that would have ordinarily fall within the jurisdiction of the Small Claims Court.

I do agree, however, with Gruchy, J., that this Court should pay (and in fact has historically paid) significant deference to the Small Claims Court. In fact the legislation imports such deference in that appeals to this Court are limited to matters involving (a) errors of law; (b) excesses of jurisdiction; or (c) denials of natural justice.

Yet, regardless of the process, this court will ultimately be called upon to resolve this issue. In other words, whether this Court deals with the narrow legal issue now (by way of pre-emptive declaratory relief) or eventually by way of an appeal, the matter will eventually have to be decided by this Court.

Therefore, for purely pragmatic reasons, I see no purpose in having the parties take a circuitous route to this forum. This Court has concurrent jurisdiction over this issue and the ability to control its own process. I am prepared to deal with this matter today and to grant the relief requested by the applicant. In so doing, I agree with the conclusion of Saunders, J., in **Paul Revere** where at paragraph 25 he states:

> **Finally, I agree it is no answer to say that the defendant always has the right to appeal to this court, which might include a claim of breach of natural justice. In the words of Ms. Smith, such would be hollow relief in this case. An appeal is limited by statute to one of stated case and neither the plaintiff nor the defendant would have had the opportunity to avail themselves of the rights and protections afforded the parties in a Superior Court under our Civil Procedure Rules.**
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> **This Court has the inherent jurisdiction to protect its own integrity and prevent an abuse of process.**

For all of the above reasons, I will sign the Order in the form presented to me by counsel.

J.

Halifax, Nova Scotia