

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Direct Cash ATM Processing Partnership v. Eastside Billiards and Lounge Ltd., 2008 NSSC 77

Date: (2008/03/14)

Docket: SH 279588(A)

Registry: Halifax

Between: Direct Cash ATM Processing Partnership &
Direct Cash ATM Management Partnership

Appellants

and

Eastside Billiards and Lounge Limited

Respondent

Judge: The Honourable Justice N. M. Scaravelli

Heard: January 8, 2008, in Halifax, Nova Scotia

Counsel: Jennifer Biernaskie, for the Appellants
Michael Maddalena, for the Respondent
and Bryna Fraser (Articled Clerk)

By the Court:

[1] This is an appeal from the decision of the Small Claims Court Adjudicator wherein he determined that he lacked jurisdiction to hear the action filed by the Claimants.

[2] The Claimants, Direct Cash ATM Processing Partnership & Direct Cash ATM Management Partnership (“Direct Cash”) is an Alberta based partnership engaged in the business of processing ATM transactions arising from privately owned or leased ATMs.

[3] The Respondent, Eastside Billiards & Lounge Limited (“Eastside”), a Halifax based company operates a billiard lounge which contains an ATM owned or leased by Eastside.

[4] In early 2003, Eastside entered into a contract for ATM processing services with a corporation engaged in a business similar to Direct Cash. That company assigned its agreement with Eastside to Direct Cash and their subsequent contractual relationship is the subject matter of this dispute.

[5] In November of 2005, Direct Cash commenced an action for breach of contract against Eastside in the Alberta Court of Queen's Bench. Eastside did not file a defence and consequently Direct Cash obtained default judgment for an amount not cited in either parties' submissions.

[6] According to submissions, Direct Cash commenced an action in the Small Claims Court of Nova Scotia for reciprocal enforcement of the Alberta judgment under the common law, and in the alternative, enforcement of the debt as contract. It appears Direct Cash's claim was reduced from the amount of its judgment to fall within the monetary limits established by the *Small Claims Court Act* (the *Act*). As part of its defence, Eastside claimed the Alberta Court did not have jurisdiction. Documentation regarding the claim, defence and counter-claim were not available for review.

[7] On January 18, 2007, the parties appeared before the Adjudicator for hearing on the issue of whether the Small Claims Court had jurisdiction to hear the claim filed by Direct Cash. The matter proceeded by way of argument.

[8] The Adjudicator found that Section 9 of the *Act* did not provide the Court with authority to enforce an Order arising from foreign jurisdiction. The Adjudicator further decided that, although the Court had jurisdiction to proceed with the claim for breach of the agreement under contract, it was prohibited as there was no evidence “that the Alberta action was withdrawn, abandoned, struck out or transferred” pursuant to Section 15 of the *Act*.

[9] The Adjudicator also made a finding that the Defendant did not attorn to the jurisdiction of the Alberta Court.

[10] The Appellant appeals the findings of the Adjudicator on the grounds that he committed errors in law in interpreting the relevant sections of the *Small Claims Court Act* and in his finding that Eastside did not attorn to the Alberta jurisdiction.

Standard of Review

[11] The parties agreed the issues on appeal are matters of law and the Standard of Review is correctness. In *Brett Motor Leasing Ltd. v. Welsford* (1999), 181

N.S.R. (2d) 76, the Court commented on the Standard of Review for a Small Claims Court adjudicator at paragraph 14:

One should bear in mind that the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the adjudicator. I do not have the authority to go outside the facts as found by the adjudicator and determine from the evidence my own findings of fact. 'Error of law' is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; ... or where the adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the adjudicator has failed to apply the appropriate legal principles to the proven facts.

Analysis

[12] Statutory authority for the recognition of judgments in foreign jurisdictions is found in the *Reciprocal Enforcement of Judgments Act*, R.S.N.S. 1989 c. 388.

However, the legislation also preserves a common law right of action. Section 11 states:

Right of action of judgment creditor preserved

11. Nothing in this Act deprives a judgment creditor of the right to bring a proceeding on the original cause of action or for the recovery of the amount of his judgment instead of proceeding under this Act. R.S., c. 388, s. 11.

[13] Section 9 of the *Small Claims Court Act* provides the Court with jurisdiction to hear claims arising under contract. Section 9 states:

Jurisdiction

9. 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 twenty-five thousand dollars inclusive of any claim for general damages but exclusive of interest;

[14] The common law enforcement of a judgment obtained in another province is considered litigation arising from contract. In *Ross Ritchie Ltd. v. Sydney Steele Corp.*, [2001] N.S.J. No. 229 (NSCA), the Court of Appeal commented at paragraph 37:

In Canadian Conflict of Laws- J.G. Castel, 4th, 1997, dealing with the subject of enforcement at common law of foreign judgments *in personam*, the author states at p. 271, para. 153:

153. Actions on Foreign judgments

Subject to certain qualifications, a judgment *in personam* of a foreign court of competent jurisdiction is capable of recognition and enforcement in the common law provinces and territories of Canada. Apart from statute, it will not be enforced directly by execution or any other process, but will be regarded as creating a debt between the parties to it, the debtor's liability arising from an implied promise to pay the amount of the foreign judgment. The debt so created is a simple contract debt and not a specialty debt, and is subject to the appropriate limitation period.

See also *Pollier v. Laushway*, [2006] N.S.J. No. 215 (NSSC).

[15] Although an action on the foreign contract debt is sustainable at common law, the Adjudicator determined Section 15 of the *Act* prohibited the exercise of his jurisdiction as the Alberta proceedings still existed. Section 15 states:

Claim before other court

15. The Court does not have jurisdiction in respect of a claim where the issues in dispute are already before another court unless that proceeding is withdrawn, abandoned, struck out or transferred in accordance with Section 19. *R.S., c. 430, s. 15; 1992, c. 16, s. 118.*

[16] I find the Adjudicator's interpretation of Section 15 represents an error in law. Clearly the purpose of this Section is to ensure that proceedings involving the same cause of action are not simultaneously conducted before another Court in the

Province, or, presumably, outside the Province. The intent is to avoid dual proceedings.

[17] In the present case, there are no concurrent or parallel proceedings in Nova Scotia and Alberta. The Alberta action concluded with the issuance of the default judgment. In *Moore v. Mercator Enterprises* (1978), 90 D.L.R. (3d) 590 at paragraph 11:

The English rule also prevails in Canada, at common law: a final judgment, if rendered by a court of competent jurisdiction and if free from fraud, is conclusive on the merits and not open to re-examination. This rule applies to foreign judgments in rem and in personam.

See also *Ellerbrook v. Hortico Inc.*, [1996] N.S.J. No. 59 (NSCA).

[18] The fact that a default judgment may be set aside at some time in the future, as argued by the Respondent, does not make it any less final or conclusive. Once a judgment is rendered there is no proceeding that can be withdrawn, abandoned, struck out or transferred as contemplated by Section 15.

[19] Obviously, this Court has concurrent jurisdiction with Small Claims Court.

The issue is whether Section 9 of the *Act* can be interpreted to include claims arising out of a foreign judgment.

[20] Section 9(5) of the *Interpretation Act* N.S. 1989 236 states:

- 9 (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.

[21] In *MacLean v. MacDonald* 2002 N.S.C.A. 30 Cromwell, J.A. stated at paragraph 18:

In attempting to find the correct interpretation of the statutory provisions, the court must ‘determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretations, the presumption and special rules of interpretation, as well as admissible external aids,’ : see Ruth Sullivan (ed.), *Driedger on Construction of Statutes* (3rd , 1994) at 131.

Having considered these matters, the court should adopt the appropriate interpretation. The appropriate interpretation is one which is plausible in the sense that it complies with the text of the Act, which is efficacious, in the sense that it promotes the legislative purpose and that is acceptable in the sense that the outcome is reasonable and just; *ibid*,

[22] The purpose of the *Small Claims Court Act* is to informally and inexpensively adjudicate claims up to its monetary limits. Section 2 states:

Purpose

2. It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.

The goal is to process claims efficiently and quickly. It is not a Court of record and there are no pretrial procedures.

[23] Clearly, the Claimant has the option of proceeding to enforce the Alberta judgment under the *Reciprocal Enforcement of Judgments Act*, or to proceed with its common law remedy under contract. The Claimant acknowledged that to proceed with its common law action under contract it would have the burden of proving that the Alberta Court had jurisdiction to render the judgment, either by proving the Defendant attorned to the jurisdiction or is otherwise bound by that jurisdiction. The test is one of real and substantial connection. *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077. Such an inquiry is a question of mixed fact and law. As indicated Eastside pleads the Alberta Court did not have jurisdiction. I find the Adjudicator erred in finding that Eastside did not attorn to the jurisdiction of Alberta as there was no evidence on this issue and therefore, no basis to support this conclusion.

[24] Rather than determine a claim based on a fixed amount, it is apparent an Adjudicator, in a case of this nature, would be called upon first to settle a dispute

regarding the original Court's jurisdiction, the *locus* of the original contract, and a factual dispute concerning attornment.

[25] Taking into account the purpose of the legislation, the remedial goals, the underlying values of efficiency and access to justice, and the potential for a complex and lengthy fact finding process in this action, I find the present claim extends beyond the authority of the *Small Claims Court Act*.

CONCLUSION

[26] Accordingly, I dismiss the Appeal.

[27] There will be no Order for costs under the circumstances.

J.