

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Ofume v. Nova Scotia, 2004 NSSC 132

Date: 20040615
Docket: S.H. 215478
Registry: Halifax

Between:

Phillip Ofume and Maureen Ofume

Plaintiffs

v.

The Government of Nova Scotia, Annette Boucher, Canadian Imperial Bank of Commerce (CIBC) Mortgage Corporation, Laurel Purcell, Halifax Regional Police, High Sheriff in and for Halifax County Registrars, Supreme Court and Court of Appeal of Nova Scotia

Defendants

Judge: The Honourable Justice J. Edward Scanlan

Heard: June 15, 2004 matter heard, in Halifax, Nova Scotia

Written Decision: June 28, 2004

Counsel: Philip C. Ofume, for the plaintiffs
Edward Gores, for the defendant
Wayne J. Francis, for the defendant
Margot J. Ferguson, for the defendant
R. Charles Perez, for the defendant

By the Court: (Orally)

Application against the Government of Nova Scotia

[1] I do not have to hear anything further from Mr. Gores. I am satisfied that in terms of this action there has been no proper notice pursuant to s. 18 of *The Proceedings Against the Crown Act*. The notice that was given by Mr. Ofume actually preceded many of the events of which he is complaining. His complaints appear to be in the nature of an appeal to the original action in addition to complaining of subsequent actions of the court staff. As to the actions of the court staff he alleges there were excesses in authority of use of force. He could not give proper notice pursuant to s. 18 since the acts had not yet occurred. The notice that he refers to, and which the crown takes the position never was served on the Attorney General pursuant to the provisions of *The Proceedings Against the Crown Act*, did not constitute clear notice of intended action or cause of action. I am not going to go on beyond that counsel, as regards to the propriety of any allegations as contained in the statement of claim. I think that is really something that should be left for a later day. If in fact, there were excesses by any persons in terms of execution of orders, then that is a separate issue that would have to be dealt with on the merits. So, the actions as against the Government of Nova Scotia, Annette

Boucher, Laurel Purcell and the High Sheriff in an for Halifax County, the Registrar of Supreme Court and the Court of Appeal of Nova Scotia all stand dismissed. I understand that the Halifax Regional Police have not been served with the statement of claim and really, I do not have much jurisdiction in that regard counsel. As regards to CIBC, I am prepared to deal with that separately.

Decision re: CIBC

[2] This is an application by CIBC, and I am just dealing with the CIBC portion of the application now, where they have requested, by Interlocutory Notice dated April 28th, an Order pursuant to Rule 14.25(1) of the *Civil Procedures Rules* Striking Out the Originating Notice (Action) and Statement of Claim; or in the alternative, for an Order for Summary Judgement pursuant to Rule 13.01 of the *Civil Procedure Rules*.

[3] Rule 14.15 of the *Nova Scotia Civil Procedure Rules* enables the court at any stage of the proceedings to order any new pleadings, affidavits, or statement of facts or anything therein to be struck out or amended on the grounds that; (a) it discloses no reasonable cause of action or defence. It is important to note that in

relation to subpara. (a) the courts' have ruled repeatedly that in terms of making the determination pursuant to Rule 14.25(a) the court looks to the pleadings only as opposed to extrinsic evidence. The situation is different in relation to subparas. (b) and (d), as relied upon by the Applicants herein. In relation to paras. (b) and (d) the court can strike on the ground that the pleadings are false, scandalous, frivolous or vexatious or (d) that it is otherwise an abuse of process, and the court may order the proceedings be stayed or dismissed accordingly.

[4] In relation to para. 14.25(a) I must say that as I read through the rather extensive pleadings of Mr. Ofume, at best they were confusing. It was not clear what all of his arguments (pleadings) were or were not. It is difficult to say definitively that they disclosed no reasonable cause of action. Any complaint appeared to relate, really, to the earlier foreclosure proceedings which he was challenging. In relation to those earlier foreclosure proceedings, I have the file here and I referred to it on a number of occasions. It appears as though CIBC made it apparent to Mr. Ofume that they were not going to renew the mortgage when it came up for renewal. CIBC asked for re-payment of the entire mortgage balance that was outstanding. The mortgage balance was not repaid. It appears upon reviewing the file that he had attempted to make payments at a number of

different branches so as to keep his monthly mortgage up to date. In referring to that mortgage file I point out that I am not relying upon the other file as extrinsic evidence to make my determination under subpara. (a) of 14.25. I reference that file only in an attempt to understand the basis of Mr. Ofume's claim in the present action. I look at that only to understand his submissions in determining whether Mr. Ofume's pleadings disclose a reasonable cause of action in this case. Again, the pleadings are so vague and convoluted, I cannot say with certainty that there is no reasonable cause of action. There are repeated references to a conspiracy of some sort as between the bank and the courts, the court officers, the sheriffs, law firms. The allegations suggest that because of race considerations all of those groups have somehow acted in concert so as to deprive the Ofume family of their home and to push this foreclosure through.

[5] The difficulty in terms of those assertions is they are simply bald or bare assertions, or bare allegations. I again refer to the fact that they are difficult to understand and difficult to read. As I tried to sift through the pleadings, I really could not ascertain anything other than bare or bald assertions without anything else in terms of details as regards to substance of the alleged conspiracy. It simply says because he is a member of a visible minority that he somehow became the

target of a conspiracy. There is nothing that I see in the file other than those allegations. I refer to the *Baker Fisheries v. Widridge*, 2002 NSCA and the authorities referred to therein, which suggests you need something more than these bare assertions when it comes to conspiracy allegations. As I said; I cannot find anything other than the bare assertions.

[6] Without the assertions of conspiracy I cannot see anything else as I read through the statement of claim that discloses a reasonable cause of action. Everything else appears to be an indirect attempt to somehow appeal a matter which was already adjudicated upon by the courts in the main foreclosure proceeding. I might point out the matter of leave to appeal is still outstanding before the Supreme Court of Canada on that original foreclosure action.

[7] In summary, I am satisfied the pleadings do not disclose a reasonable cause of action.

[8] If I am wrong, or in case I have somehow misunderstood the pleadings, I refer to the argument that is made by the applicants in relation to 14.25(b) & (d).

In dealing with those sections I can consider the extrinsic evidence as referred to in the affidavits and the other proceedings in a broader sense.

[9] Justice Glube as she then was, in re *McCulloch Bankrupt* (1992) reported 115 NSR (2d) 131 adopted a list of principles that would help the court determine if an action is frivolous or vexatious and an abuse of process of the courts. She referred to the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction as constituting a vexatious proceeding. She said:

Where it is obvious an action cannot succeed, or if an action would lead to no possible good, or if no reasonable person can reasonably expect to obtain a relief if the action is vexatious.

[10] Justice Glube went on to say:

Vexatious actions include those brought for an improper purpose including harassment and the oppression of other parties by multifarious proceedings brought for the purpose other than the assertion of legitimate rights. It is the general characteristic of a vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented off with actions brought against the lawyers who have acted for or against the litigants in the earlier proceedings.

[11] In this case just about anybody that touched this file including the Government of Nova Scotia, Annette Boucher, Laurel Purcell, the High Sheriff, the Regional Police, the Registrar of Supreme Court and the Registrar of the Court of Appeal has been named as a defendant.

[12] I am satisfied in determining whether proceedings of vexatious, the court must look at the whole history of the matter, not just whether there was originally a good cause of action.

[13] As I look through the history of this action, I am satisfied the pleadings are based almost entirely upon an underlining assumption, that the original foreclosure action was improper or illegal. I again point out that if there was any impropriety in relation to that original foreclosure proceedings that is a matter for the courts, in that proceeding. In terms of the leave application before the Supreme Court of Canada, that matter is still being adjudicated upon by way of the leave application.

[14] I am satisfied, referring to my earlier comments in relation to 14.25(1)(a) that the claim cannot succeed. There have been countless interlocutory

applications throughout the course of S.H. No. 194319 and those applications are inextricably linked to the present action. This appears to be but one more attempt to appeal or somehow have this court take another look at that action. As regards, the assertion that there is a racist conspiracy at work, I have already dealt with the fact the pleadings do not provide enough details as regards any suggested conspiracy. Above and beyond that, there is absolutely no evidence before me to suggest that there was anything in this file that was precipitated as a result of racial bias. I would point out that there was an allegation of racial conspiracy which was summarily dismissed by the court in the prior action.

[15] I am satisfied as well, that this court should take into account the fact that the Ofumes' have failed to make payment of costs awarded against them in the earlier proceedings. I addressed that issue with Dr. Ofume. He did point out that there was in excess of \$11 million in the house at the time of the foreclosure. He suggested some of the money was not his money; he was holding it for other purposes. That did not account for the entire \$ 11 million yet there is \$3,700 in costs in the earlier actions which remain unpaid. Mr. Ofume, if you are going to be asking for assistance of this court, I suggest that you first deal with the orders the court made in terms of costs.

[16] I am satisfied that pursuant to the provisions in Rule 14.25(a) as well as (b) and (d) that the cause of action should be struck.

[17] I am satisfied that CIBC, the Government of Nova Scotia and the others that they represent, Mr. Gores, are entitled to \$750. each, and when I say that I mean CIBC \$750, the Province \$750. For the Province that is a single amount of \$750 not \$750 for each of the defendants you represent Mr. Gores.

[18] I am satisfied as well, given the comments of Mr. Ofume in terms of the fact that he intends to keep making applications in this case and that he refuses to pay costs as ordered, it is appropriate that the court make an order which goes beyond the routine order for costs. Mr. Ofume seems intent on repeatedly litigating this matter no matter what I say or do. He intends to appeal to the United Nations and “this greater body of law”, to which he refers as well as our Court of Appeal. I cannot stop him from appealing but I am satisfied that it would be appropriate in terms of controlling this court’s process that the court order him to pay the \$750 to the Province as ordered before taking any future action relating to this foreclosure proceeding. This is the one order for costs

which will have to be paid, before he continues the process or makes another application. In saying that, I do note that the action against the Province of Nova Scotia was struck for lack of proper notice pursuant to *Proceedings Against the Crown Act*. That was without prejudice to his right to make future applications. I expect Mr. Ofume may well be back but he will pay the costs first.

J.