IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Jabez Financial Services Inc. v. Sponagle, 2008 NSSC 112

Date: 20080417
Docket: SH-285971
Registry: Halifax

Between:

Pricewaterhousecoopers Inc., in its capacity as
Receiver of the Property and Assets of Jabez Financial Services Inc.

Plaintiffs

and

Garth Sponagle and Norma Sponagle

Defendants

Judge: Justice Walter R.E. Goodfellow

Heard: April 16, 2008, in Chambers, Halifax, Nova Scotia

Written Decision: April 17, 2008

Counsel: Stephen Kingston, for the plaintiffs

No one in attendance for the defendants.

Goodfellow, J.:

BACKGROUND

[1] This action was commenced September 25th, 2007 whereby Pricewaterhousecoopers Inc. as receiver of Jabez Financial Services Inc. who it is stated operated a bank in Curacal, on or about, June 15th, 2006 transferred $45,980.00 to the trust account of the solicitors acting for Garth Sponagle and Norma Sponagle which funds were used to purchase land at Garland, Kings County, Nova Scotia.

[2] JFS Inc. stated the Sponagle's had no entitlement to these funds. The Sponagles through solicitor, Eric O. Sturk, of Waterbury Newton filed a defence October 22, 2007 and acknowledged the funds were transferred and used for the purposes of acquiring the Garland property but maintain the funds were not the property of JFS Inc. but the property of clients of JFS Inc. etc.

[3] The statement of claim was amended January 31, 2008 and stated the Sponagles had no legal entitlement to the funds and further that on July 12, 2006 JFS Inc. transferred $4,913.00 to Garth Sponagle and this second payment, which

it is stated, Garth Sponagle had no entitlement to. The claim is advanced that all the funds received result in unjust enrichment. No defence has been filed to the amended statement of claim.

[4] The plaintiff filed its list of documents November 7, 2007. The defendants by their solicitor, Eric O. Sturk, filed their list of documents December 20, 2007.

[5] The plaintiffs applied for and received an order March 11, 2008 requiring the defendants to fulfill certain undertakings given at their discovery on January 8, 2008. The order relates:

> **AND UPON IT APPEARING** that the Discovery Undertakings remain unanswered, despite requests, and that the Plaintiff has applied for an Order pursuant to Civil Procedure Rule 18.15 requiring the Defendants to respond to the Discovery Undertakings by a date certain;

[6] The order requires compliance by Tuesday, April 1, 2008. Solicitor Sturk advised the court in writing March 10, 2008 that his clients:

> The April 1 deadline is acceptable to my clients. I do not intend to appear in Chambers, as my clients expect to respond to the discovery undertakings by April 1, 2008. My clients will consent to the original order Mr. Kingston filed.

[7] Solicitor Sturk did go on to dispute the cost issue.

[8] This application to strike the defence was filed April 4, 2008.

[9] The application is supported by the affidavit of Stephen Kingston, solicitor for JFS Inc., and he indicates:

> 3. **THAT** during the course of the discovery examinations, various undertakings were provided by the witnesses and attached hereto as Exhibit "A" is a true copy of a list of discovery undertakings as provided by the discovery reporter.
>
> 4. **THAT** on or about January 10, 2008 I forwarded a copy of the list of discovery undertakings to the Defendants' solicitor.
>
> 5. **THAT** on January 11, 2008 I wrote to the Defendants' solicitor responding to Mr. Pomeroy's discovery undertakings. A true copy of my letter is attached hereto as Exhibit "B".
>
> 6. **THAT** on February 8, 2008 I sent an email message to the Defendants' solicitor which, amongst other items, referenced the Defendants' outstanding discovery undertakings. A true copy of my email message is attached hereto as Exhibit "C".

[10] Apparently Sturk, on a previous occasion, had advised the solicitor for the plaintiff that he was off the file but no Notice of Change of Solicitor has been filed and, therefore, solicitor Sturk remains the solicitor on record for the defendants.

[11] Mr. Kingston's supporting affidavit states:

> 3. **THAT** on March 11, 2008 I forwarded a copy of the Order to the Defendants' solicitor by email attachment. A true copy of my email message to the Defendants' solicitor is attached hereto as Exhibit "B".
>
> 4. **THAT** on March 12, 2008 I forwarded a "hard copy" of the Order to the Defendants' solicitor by regular mail. A true copy of my letter to the Defendants' solicitor in this regard is attached hereto as Exhibit "C".

[12] Mr. Kingston, solicitor for the plaintiffs, took the cautionary step of forwarding copies of his clients pre-hearing memorandum and notice by courier direct to the defendants on April 7, 2008 and on the same date provided solicitor Sturk, by e-mail, with a copy of his communication direct to the defendants. Solicitor Sturk has failed the professional courtesy of acknowledging correspondence from a fellow officer of the court.

[13] The response direct from the Sponagles is revealing.

[14] Separate and apart from their failure to fulfill undertakings from their January 8, 2008 and their consent and agreement to abide by the April 1, 2008 deadline in this court's order of March 11, 2008, the Sponagles send to Mr.

Kingston a letter and notarized statement headed “Notice of Understanding and Intent And Claim of Right” which has approximately thirty-five recitals and many additional quotation mark furthermores. I will only recite a few of the Sponagles’ “representations” so that one can easily garner the flavour of their “position”.

> ...Whereas it is my understanding a society is defined as a number of people joined by mutual consent to deliberate, determine and act for a common goal, and,
>
> Whereas it is my understanding that for something to exist legally it must have a name, and, ...
>
> Whereas it is my understanding Section 32 of the Constitution Act limits it to members and employees of government, and, ...
>
> Whereas it is my understanding that it is lawful to abandon one’s SIN, and,
>
> Whereas it is my understanding people in Canada have a right to revoke or deny consent to be represented and thus governed, and,
>
> Whereas it is my understanding if anyone does revoke or deny consent they exist free of government control and statutory restraints, and, ...
>
> Whereas it is my understanding that if one has lawful excuse one may choose to not obey a court, tribunal, statute, Act or order, and that this factual truth is expressed in Sections 126 and 127 of the Criminal Code of Canada, and, ...
>
> Whereas a Freeman-on-the-Land has lawfully revoked consent and does exist free of statutory restrictions, obligations, and limitations, and, ...
>
> Whereas it is my understanding that I can use a Notary Public to perform duties found under any Act including thus they have the power to hold court and hear evidence and issue binding lawful judgments, and,
>
> Whereas it is my understanding that a Notary Public can also be used to bring criminal charges to bear against traitors, even if they hold the highest office, and,

> Whereas it is my understanding that I have a right to use my property without having to pay for the use or enjoyment of it, and ...
>
> Whereas it is my understanding a summons is merely an invitation to attend and the ones issued by the Nova Scotia Securities Commission create no obligation or dishonour if ignored, and,
>
> Whereas it is my understanding peace officers have a duty to distinguish between statutes and law and those who attempt to enforce statutes against a Freeman-on-the-Land are in fact breaking the law, and, ...
>
> Furthermore, I claim that the courts in Nova Scotia are de-facto and bound by the Law and Equity Act and are in fact in the profitable business of conducting, witnessing and facilitating the transactions of security interests and I further claim they require the consent of both parties prior to providing any such services...
>
> Furthermore, I claim my FEE SCHEDULE for any transgressions by peace officers, government principals or agents or justice system participants is FIVE HUNDRED DOLLARS PER HOUR or portion thereof if being questioned, interrogated or in any way detained, harassed or otherwise regulated and FIVE THOUSAND DOLLARS PER HOUR or portion thereof if I am handcuffed, transported, incarcerated or subjected to any adjudication process without my express written and Notarized consent...
>
> Affected parties wishing to dispute the claims made herein or make their own counterclaims must respond appropriately within Fourteen (14) days of service of notice of this action. Responses must be under Oath or attestation, upon full commercial liability and penalty of perjury and registered in the Notary Office herein provided no later than Fourteen days from the date of original service as attested to by way of certificate of service.
>
> Failure to register a dispute against the claims made herein will result in an automatic default judgment securing forevermore all rights herein claimed and establishing permanent and irrevocable estoppel by acquiescence forevermore barring the bringing of charges under any statute or Act against...

[15] The foregoing represents less than half of the items listed by the Sponagles in their Notice of Understanding and Intent and Claim of Right. In the

accompanying letter from Garth and Norma Sponagle, they dispute the direction to comply and by way of example states:

> Our right to refuse to obey your orders is not mentioned at all let alone to that standard and your supposed authority is not expressed at all, without reference to another party.

[16] Again, to give an indication of the flavour of their communication I quote part of one of their paragraphs as follows:

> I know that those who rely on statutory authority to control their fellow man do so not due to a need for the other party to be controlled, but due to a need by them to control. It is an ego thing I think and is only over come with Good spirit. Those who benefit from any societal or legislative mechanism rarely wish to understand that mechanism, especially if it appears to grant them power, control or authority over their fellow man and understanding that mechanism would remove, limit or erode that apparent power, control or authority. They simply do not want to know. They are children who feel that because they have obeyed another, they should now be obeyed as well. It is their reward for being such good children.

ISSUES - Should this Honourable Court exercise its discretion as to strike out the Defence herein?

Law and Argument

Civil Procedure Rule 18.15 states:

18.15.

(1) When any person refuses or neglects to attend at the time and place appointed for his examination or refuses to be sworn or answer any question properly put to him or produce any document which he is bound to produce, the court may

(a) hold him guilty of contempt;

(b) if he is a plaintiff, dismiss the proceeding;

(c) if a defendant, strike out the defence;

(d) grant such other order as is just.

[17] Rule 18.15 was considered by the Court of Appeal in **van de Wiel v. Werry** (2005), 237 N.S.R. (2d) 321 (at paras. 17-19):

> 17 The threshold that must be met before Rule 18.15 is engaged is high. This test is described in two cases, *Frank v. Purdy Estate*, supra, and *Dorey v. Green* (2000), 186 N.S.R. (2d) 362 (N.S.S.C. [In Chambers]), the case sent to the van de Wiels on September 24, 2004 at the instance of Goodfellow, J..
>
> 18 This court stated in *Frank v. Purdy Estate*, supra:
>
> > [11] On the Chambers application counsel for the respondents referred to cases where there had been a finding of an abuse of process, under rule 14.25 but did not provide the Chambers judge with an authority suggesting the test that should be employed under rule 18.15. There does not appear to be any reported case in Nova Scotia where rule 18.15 was considered. In other jurisdictions the rule has been judicially considered infrequently as well, perhaps because of its severity. In any event, where a similar rule has been considered, the remedy of dismissing the claim or defence has been used only inn the most extreme cases as a last resort, those in which the failure of a party to comply with the Rules is found to be "contumacious"...

19 Goodfellow, J. later stated in *Dorey v. Green*, supra:

> [14] To strike a defence for non-attendance at a scheduled discovery is a very heavy guillotine remedy. To do so requires evidence of willful or deliberate ignoring of the process. It must be conduct of a contemptuous nature or conduct so indifferent as to amount to a deliberate flouting of the law.

CONCLUSION

[18] It is clear that the defendants, through their solicitor, consented to the deadline of April 1 for compliance with professional undertakings given January 8, 2008 which not only remain outstanding but very clearly, from the direct response of the defendants, they have decided that they have the right to refuse complying with orders. The defendants in taking the various positions indicated in the material they filed, clearly and overwhelmingly show wilful and deliberate ignoring of the process plus a clear and unequivocal intent to ignore the authority of the court and it's order. As a consequence, the only conclusion one can come to is that the plaintiffs are entitled to an order striking the defence with costs set in the amount of five hundred dollars ($500) payable forthwith.

J.