

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Copage, Peterson, Toney & Toney v. Annapolis Valley Band, 2004
NSSC 94

Date: 20040430
Docket: S.K. 10,860
Registry: Kentville

Between:

Murray Copage, Sr., Janette Peterson,
Lawrence Toney and Marilyn Toney

Plaintiffs

v.

The Annapolis Valley Band

Defendant

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Judge: The Honourable Justice Gregory M. Warner

Heard: April 22, 2004. in Kentville, N.S.

Subject: Civil Procedure Rule 25.02 - Application to stay trial based on *res
judicata* or *issue estoppel*.

Issues:

1. Whether the plaintiff is entitled under Rule 25.01 to bring application to stay Notice of Trial based on *res judicata* or *issue estoppel*.
2. Whether stay should be issued under Rule 25.01 in the absence of an agreed statement of facts.

Summary: In January, 2002, the Annapolis Valley Band stopped paying its four Gaming Commissioners in respect of four written fixed term employment contracts. The four Commissioners sued in this Court for constructive dismissal. The Band defended on the basis that the contracts were void and, alternatively, that the plaintiffs had breached the contracts and counter-claimed for an accounting from the plaintiffs.

Two of the four plaintiffs filed claims under the Canada Labour Code for wrongful dismissal. They were successful before the Canada Labour

Board and the Board reinstated them and the Board eventually awarded Lawrence Toney damages, which were recovered through the execution process in February, 2004.

In the Meantime in October, 2003, the Band settled with Copage and Marilyn Toney and filed a Notice of Trial in this action. In February, 2004, the Band settled with the third plaintiff (Janette Peterson) leaving Lawrence Toney as the only plaintiff. Lawrence Toney brought this application for a stay of the trial and the Band opposed it.

Result:

1. Leave to apply for a stay after the Notice of Trial was granted under Rule 28.05 (2)

2. A stay of the trial was granted under Rule 25.01, based on *res judicata* or *issue estoppel*, despite the absence of an agreed statement of facts but where the facts from the public record, were clear.

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