IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Layes v. MacDonald, 2006 NSSC 289

Date: 20061002
Docket: SH No. 133518
Registry: Halifax

Between:

Kevin J. Layes, of Sackville, Province of Nova Scotia and Sugarloaf Spring Rain Limited, a body corporate, incorporated in the laws of Nova Scotia, with Head Office in Lower Sackville, in the County of Halifax, Province of Nova Scotia

Plaintiffs

v.

Joseph A.F. MacDonald, Peter M.S. Bryson and Marcia Brennan, County of Halifax, Province of Nova Scotia

Defendants

Judge:	The Honourable Justice Frank Edwards
Heard:	September 5 & 6, 2006, in Sydney, Nova Scotia
Counsel:	Kevin J. Layes, in person R. Lester Jesudason, for the defendants

By the Court:

[1] This matter was set down for trial for nine days commencing September 18, 2006. The Plaintiff, who represents both himself and the corporate defendant, had advised the date assignment judge in December 2005 that he intended to call five (5) witnesses and needed only four and one half days to present his case. I am satisfied that it was on that basis that the date assignment judge agreed to set only nine days for trial. I am also satisfied that, for the same reason, the Defendants agreed to the dates.

[2] On September 5, 2006, I convened a recorded pre-trial telephone conference with the parties to discuss the time allotment and other issues. By that time, it was clear that the Plaintiff intended to call at least 30 witnesses and to introduce voluminous documentary evidence.

[3] The Defendants agreed that the nine days allotted were not nearly sufficient and asked that the matter be adjourned. I adjourned the telephone conference until the following day to allow the Plaintiff to make further written representations. I advised him that, unless he could satisfy me that there was a reasonable prospect of concluding the matter in nine days, I would be adjourning the trial.

[4] Later, on September 5, I did receive a further 5+ page fax letter from the Plaintiff. By this time, the Plaintiff had reduced his witness list to 20 but he still wanted to call 35 witnesses “in the event that time permits”. He wrote that he had reduced his witness list “to accommodate the wishes of My Lord and opposing counsel”.

[5] When I reconvened the telephone conference on September 6, I ordered that the matter be adjourned without day and that the parties attend a date assignment conference. I was satisfied that there was no realistic prospect of completing the matter within the allotted nine days. I was satisfied that to allow the matter to proceed would be unfair to the Defendants who would then be obliged to prepare twice for trial -- once for the scheduled time and once for the inevitable adjourned time. I accepted the Defendants’ submission that something close to 30 days would be required for trial.

[6] I considered pressing ahead and doing the trial in two different segments. In the end I decided not to because I felt that the Plaintiff had knowingly misrepresented the time required to the date assignment judge. I felt it would be

inappropriate and unfair to allow the Plaintiff to “jump the que” as he had clearly done.

Order accordingly.

J.