

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Parkwoodland Management Ltd. v MacDonald, 2009 NSSC 168

Date: 20090422

Docket: SP 306721

Registry: Pictou

Between:

Parkwoodland Management Limited

Plaintiff

v.

Almore MacDonald, Estate of Marion Isabel Chesnutt, Cathy Chesnutt

Defendant/
Respondents

Judge: The Honourable Justice Simon MacDonald.

Heard: April 22, 2009, in Pictou, Nova Scotia

Oral Decision: April 22, 2009

Written Decision: May 21, 2009

Counsel: Charles Thompson for the Applicant
E. Anne MacDonald, for the Respondents

By the Court:

Orally:

[1] Parkwood Land Management Limited (Parkwood) on January 28, 2009 filed a Notice of Application in Court pursuant to *Civil Procedure Rule 5.07*.

[2] The Notice of Application requests an order as follows:

(a) For specific performance directing that the party described in an option to purchase agreement dated June 29th, 1995 between, Lloyd A. Chesnutt and M. Isabel Chesnutt, as vendors and Parkwood Land Management Limited (Parkwood), as purchaser be conveyed by the respondents to Parkwood free and clear of encumbrances in exchange of payment of \$40,000.00 by Parkwood as set out in the option to purchase.

(b) Requiring the respondents to pay costs to Parkwood on a solicitor and client basis.

[3] The notice set forth the grounds forming the basis of the application. It fixed February 26th, 2009 at 9:30 a.m. for the court to hear a motion to give directions, set a time, date and place of hearing. The solicitor for Parkwood filed an Affidavit as evidence on the motion for directions.

[4] On February 25th, 2009 a Notice of Contest was filed on behalf of Almore MacDonald and Cathy Chesnutt, the personal representatives of the Estate of Marion Isabel Chesnutt. It set forth the grounds of contest and witness information as required by Rule 5.04.

[5] On February 26, 2009 the Order for Directions Hearing was held before Justice Douglas MacLellan who issued an order pursuant to *Civil Procedure Rule 5.09* as follows:

1. The parties shall complete the following steps as set out below:
 - (a) Applicant's affidavit March 19th, 2009
 - (b) Respondent's affidavits April 29th, 2009
 - (c) Affidavit of documents from both parties April 29th, 2009
 - (d) Any rebuttal affidavits from applicant May 6th, 2009
 - (e) All cross-examinations and Affidavits and discovery, June 9, 2009
 - (f) Fulfilment of all undertakings arising from discovery June 19th, 2009

(g) Applicant's brief June 29, 2009

(h) Respondent's brief July 10, 2009

(i) Applicant's reply brief July 13, 2009

2. The hearing of the applicant's application shall be scheduled for two days to be held at the courthouse in Pictou on a date as soon after July 13, 2009 as the court is available and is convenient for the parties. Counsel for the parties shall forward their available dates for the hearing to the prothonotary no later than March 5, 2009.

[6] At the Directions Hearing counsel sought a settlement conference to try to resolve the matter. They agreed to April 8th, 2009 at 1:30 p.m. in Antigonish, Nova Scotia. Counsel were to file their respective positions one week before that date.

[7] The applicant filed Affidavits of David Parker, president of Parkwood Land Management Limited, March 19th, 2009, Ian MacLean, a lawyer, March 25, 2009 and Gary Rankin, a lawyer, on March 19th, 2009.

[8] The respondent's Affidavits were not due until April 29th, 2009.

[9] By telephone conference and fax on March 30th, 2009 to both counsel, Mr. Thompson and Ms. MacDonald, Ms. MacLeod, judicial assistant and scheduler for

Justice MacLellan, confirmed the settlement conference was to be on April 22, 2009 at 1:30 p.m. in Pictou before myself.

[10] On April 15th, 2009 a brief was filed on behalf of the applicant for the settlement conference.

[11] At about noon today a fax was received by the prothonotary from counsel on behalf of the respondents providing available dates for the hearing.

[12] Respondent's Counsel have not filed anything else by way of a settlement brief or any other material to the court.

[13] I have determined with counsels' agreement the Settlement Conference is cancelled because there is no possibility of settlement. One of the basic issues is the medical condition of Mr. Lloyd Chesnutt when he signed the Option to Purchase Agreement. The parties agree medical evidence through either a report or an affidavit from the Respondents would be required for the Settlement Conference.

[14] The applicant seeks costs under *Civil Procedure Rule 10* because the settlement conference was cancelled.

[15] *Civil Procedure Rule 10.12 (4)* states:

“A judge may order a party who participates in a settlement conference and does not comply with Rule 10.12 (3) and, as a result, causes the settlement conference to be cancelled, to indemnify another party for the expenses of the conference.

(5) A judge may order a party who cancels a settlement conference after another party incurs expenses for the conference to indemnify the party for the expenses.”

[16] Civil Procedure Rule 10.12(3) referred to states:

“(3) A party who participates in a settlement conference must do each of the following:

(a) submit a brief, book of authorities, and book of evidence on time;

(b) prepare adequately for the conference;

(c) disclose the party’s case or defence in written submissions and discussions;

(d) attend the conference personally if the party is an individual or, if the party is an individual who cannot attend or a corporation, authorize an agent to bind the party to terms of settlement;

(e) if the party authorizes an agent, arrange for the agent to attend the conference or, if the settlement conference judge permits, to be in communication with counsel and able to authorize counsel to bind the party to terms of settlement.

[17] I find there has been a settlement brief prepared and costs incurred by the applicant for the settlement conference.

[18] I have considered the remarks of both counsel and find the cancellation is as a result of the Respondents not filing appropriate material in time as required under Civil Procedure Rule 10.12(3).

[19] Civil Procedure Rule 77 dealing with costs allows for the awarding of costs and indemnification for failure to comply with Civil Procedure Rule 10.12(3).

[20] Settlement conferences are a way to resolve issues between parties in a court action. Lengthy trials are now tying up court rooms and Judges. Thus, the use of

settlement conferences plays an integral and important role in the trial process. They allow easier access to justice and they also save the parties in some cases significant costs. They also allow the parties participation and thus they can feel they have played an active role in resolving the issues in contest between them.

[21] It is important therefore when a settlement conference is set up that the position and law of each party be adequately placed before the settlement conference judge. Only then can he or she prepare properly to assist the parties in trying to reach a satisfactory settlement of the issues in dispute.

[22] Here the settlement conference was cancelled. The new rules are enacted to encourage parties to prepare and file documents and briefs in time so settlement conferences can be carried out. This maintains the integrity of the settlement conference process.

[23] It is unfair to the Party who does not file a settlement brief to proceed because the court would be unaware of the party's particular position. It is only by receiving the documentation it becomes aware of their argument and can form a knowledgeable opinion about it.

[24] Considering the above remarks and argument from both sides, I impose costs against the respondents in the sum of \$700.00 payable on or before the 13th day of July, 2009.

J.