IN THE SUPREME COURT OF NOVA SCOTIA
Citation: 2301072 Nova Scotia Ltd. v. Lienaux., 2004NSSC151

Date: 20040518
Docket: S.H. 93-6909
(Being the Consolidation of S.H. 93-5807 and 93-5909)
Registry: Halifax

Between:

2301072 Nova Scotia Limited

Respondent
[Plaintiff]
(Defendant by Counter-Claim)

-and-

Charles D. Lienaux and
Karen L. Turner-Lienaux

Applicant
[Defendants]
(Plaintiffs by Counter-Claim)

-and-
Marven C. Block, Q.C.
-and-
The Toronto-Dominion Bank

Respondent
Defendant by Counter-Claim

-and-
Wesley G. Campbell and
Grant E. MacNutt

Third Parties

Judge:	The Honourable Chief Justice Joseph Kennedy
Heard:	May 18, 2004, in Halifax, Nova Scotia - Recusal Motion Oral Decision May 18, 2004 Written Release of Recusal Decision: November 18, 2004
Counsel:	Gavin Giles for 2301072 Nova Scotia Limited, the Toronto-Dominion Bank and Wesley G. Campbell Charles D. Lienaux, representing himself and Karen L. Turner-Lienaux Marjorie Hickey (David Lewis, Articled Clerk) for Marven Block, Q.C.

By the Court: (Orally)

[1] This is an application by Mr. Lienaux seeking that I recuse myself from determining the form of order and the issue of costs, specific to these matters.

[2] He sets out three grounds for the application, three suggestions on his part, three arguments on his part that either separately, or in combination, he says, would cause a reasonable, objective individual to believe that this Court is bias against Mr. Lienaux. Perception being everything.

[3] Firstly, he makes reference to the fact that the decision was rendered, I think, ten or eleven days beyond the six month guideline, set out by both the *Act* and the Canadian Judicial Council, as the guideline for the period of time within which judges of this Court should be rendering decisions.

[4] Let me say that I have not found, that having gone beyond that period, that I have lost jurisdiction of the matter. Ultimately, I would expect that that will be a decision for the Court of Appeal to determine.

[5] Secondly, before I go further in relation to that question, let me say that this is my first opportunity, in the presence of all parties in this matter, to apologize for that delay. That was too long a period of time to determine this matter. It shouldn't have happened. We have all kinds of explanations, no excuses, explanations, I can say, let the record reflect, that when Mr. Lienaux pointed out that the matter was beyond the six months, as he had every right to do, and complained about that, as he had every right to do, and perhaps should have, I took myself out of circulation, off the bench, and sat down and got the decision out, as I thought in the circumstances was not only proper, but essential for me to do. That is why the decision came out some nine days after, nine or ten days, I don't want to, nine, ten, perhaps eleven days, after the six month period. At any rate, that is how it happened. Shouldn't have happened that way, notwithstanding the volume and the complication in this matter and the other issues and matters and cases that I have to deal with. There is no legitimate excuse for this matter going beyond six months and I apologize to all parties.

[6] I'll say this, that it would seem to me, that perhaps an objective observer would say that the delay compromised or was as much a negative to the plaintiffs in the matter as it was to Mr. Lienaux. I don't know that it could be seen to be

specifically prejudicial to his side of the matter, when one considers the nature of these trials. At any rate, shouldn't have happened. The Court of Appeal will eventually have an opportunity to say something about that, but I do think it is appropriate for me to apologize to both sides.

[7] The delay in this matter is not a good reason for me to recuse myself. I do not find that a reasonably informed, objective individual, noting that delay in the rendering of the decision, would conclude that I was bias against Mr. Lienaux, Ms. Lienaux-Turner, either because of the delay in the rendering itself, or in the context of the entire procedure. I do not consider it demonstrative of any bias, either real or perceived.

[8] As to the other two matters raised, the question of why I would have struck the pleading of Mr. Lienaux and not the pleading of Mr. Block, quite frankly, for what it is worth I never put my mind to it, but whether it was a mistake or otherwise, something that is properly a matter to be raised on appeal. I made a decision, if either of the parties are unhappy with that decision, or more accurately consider that decision to be wrong in any respect, then that is what the appeal process is for.

[9] And likewise, I say exactly the same in relation to the third question, third argument made by Mr. Lienaux, if I was in the determination of this matter wrong, then without being the least flippant, I say that is what the Appeal Courts are for, and that I am already aware of the fact that the Appeal Court will have an opportunity, and should have an opportunity, to review my determination from these matters.

[10] From the totality of the arguments made, I conclude that and I will state, for what it's worth, that I am not bias in the matter, but that is not the question. The question is whether there could be a perception of bias formed by, properly informed reasonable individual, an objective perception of bias in relation to the matters based on the arguments put forward. I find from the totality of the information, there could not, and I on that basis, do not intend to recuse myself with respect to the question of form of order in this matter and the question of costs.

[11] The motion to recuse is on the record.

Chief Justice Kennedy