

SUPREME COURT OF NOVA SCOTIA

Citation: Johnson v. Mill, 2011 NSSC 66

Date: 20110215

Docket: Hfx No. 326583

Registry: Halifax

Between:

A. Patricia Louise Johnson

Plaintiff

v.

Peter A.D. Mill

Defendant

DECISION

Judge: The Honourable Justice Suzanne M. Hood

Heard: September 8, 2010

Counsel: William L. Ryan, Q.C. and Sarah Scott, on behalf of the plaintiff
William L. MacInnes, Q.C., on behalf of the defendant

By the Court:

[1] The plaintiff seeks disclosure of documents. The defendant contests their relevance.

ISSUE:

[2] Relevance of documents sought.

FACTS

[3] The plaintiff filed a Notice of Motion on August 30, 2010 seeking an order to compel the defendant to “provide all relevant documents in relation to this matter...”

[4] The plaintiff issued a Notice of Action and Statement of Claim in this matter on March 30, 2010. In paragraph 29 the plaintiff alleges:

...that the Defendant has, in connection with others, been involved in a fraudulent and criminal Ponzi scheme and that her monies were part of the Ponzi scheme, and further alleges that some of those funds have been used not to invest but rather to pay interest to other investors who have also invested monies with companies controlled and/or operated by the Defendant.

[5] In other paragraphs of the Statement of Claim she alleges the role of the defendant in the Ponzi scheme. In paragraph 2 she says:

The Defendant, Peter A.D. Mill is a self-proclaimed businessman who resides at 169 Stewart Street, Ottawa, Ontario, born on November 18, 1940 and at all material times hereto was the controlling mind and/or director of Canglobal Corporation, Canglobal & Cantec Group of Companies and held himself out to be an authorized officer of Canglobe Financial Group and CFG*CN Ltd.

[6] In paragraph 3 she refers to the Promissory Note and states:

... The Term Promissory Note was signed on behalf of Canglobe Financial Group and CFG by Peter Mill “Authorized Officer”...

[7] In paragraph 6 she refers to a letter received by the defendant which stated:

We are currently processing a transaction in Europe that will provide a flow of funds back to Canglobe International Capital Incorporated in the next seven to ten business days. Please apologize for the delay in the completion of this transaction, but be assured we are on top of the situation and will provide the necessary funds related to the above client.

[8] In paragraph 7, there is reference to a further letter signed by the defendant, which states in part:

...We have every reason to believe in the confidence behind this instruction that funding shall be realized and that capital will emerge this month.

[9] A letter dated August 18, 2007, signed by the defendant (referred to in paragraph 8), stated as follows:

I am pleased to inform you that we are in the final stages of our European capital enhancement process. We have been informed that we will have a provision of funds first starting between the 30th of August and the 15th of September. We are then told this will be continuing through October. We anticipate all Capital Bridging positions with CIC as investment will be initiated up to the third week in September.

[10] In paragraph 9 there is reference to the defendant as CEO. That paragraph provides as follows:

In September, 2007 the Plaintiff was informed that “funds are to emerge this week in Europe. Our CEO will travel there to oversee the transfer of funds to our European accounts next week”. The CEO referred to was the Defendant Peter Mill.

[11] A further letter signed by the defendant dated August 27, 2007 was referenced in paragraph 10:

I will keep you updated while I am in Europe to oversee initial flow of funds. I also want to assure you the cash flow is imminent and will allow you to meet all the company’s financial obligations understood by us to need servicing”.

[12] Throughout the rest of the Statement of Claim there are references to meetings between Douglas Rudolph and the defendant. In paragraph 26 there is another reference to the defendant as CEO:

The Plaintiff received another update dated October 16, 2008 which indicated that, “CEO (Peter Mill) invited to travel late next week to oversee deposit of funds to our accounts. Bridging Fund Repayment will commence immediately our access to funds”.

[13] The defendant filed a Notice of Defence and Statement of Defence on April 22, 2010. In the Statement of Defence he states in paragraph 5:

That the Defendant, Peter Mill, is a business man and is not the controlling mind and/or director of Canglobal Corporation, Canglobal and Cantec Group of Companies and is not an Officer, Director or Shareholder of any of those companies or CFG*CN Limited.

[14] In paragraph 7 of the Defence he says that the money was a loan, not an investment. In paragraph 11 he states:

That there is no legal basis for action against the Defendant by the Plaintiff and that this claim does not have the sound founding in law.

[15] The defendant asks that the action be dismissed.

[16] The affidavit of documents filed by the plaintiff includes correspondence from the defendant as well as emails from him. It totals 63 items. The affidavit of documents from the defendant contains 10 documents but no correspondence or emails.

[17] Although the plaintiff’s Notice of Motion was very broad, in her written submissions to the Court she requested specifically:

- An accounting of all monies received by the CanGlobe Financial Group of Companies, with a tracing of the funds received, deposited, handled and disbursed;
- An accounting of monies received personally by the Defendant from any of the CanGlobe Financial Group of Companies or any funds received from solicitor, Mark A. David;
- All documentation in connection with banks or financial institutions with regard to the deposit, handling or the obtaining of funding in relation to the investors in the CanGlobe Financial Group of Companies.

These are the items which were ordered to be produced by my Order granted October 4, 2010. The parties have requested that I issue written reasons for granting that Order.

ANALYSIS

[18] *Civil Procedure Rule 14.08* sets out the presumption for full disclosure. It provides as follows:

Presumption for full disclosure

14.08 (1) Making full disclosure of relevant documents, electronic information, and other things is presumed to be necessary for justice in a proceeding.

[19] However, the new *Rules* limit the scope of production. *Rule 14.01 (1)* provides as follows:

Meaning of “relevant” in Part 5

14.01 (1) In this Part, “relevant” and “relevancy” have the same meaning as at the trial of an action or on the hearing of an application and, for greater clarity, both of the following apply on a determination of relevancy under this Part:

- (a) a judge who determines the relevancy of a document, electronic information, or other thing sought to be disclosed or produced must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the document, electronic information, or other thing relevant or irrelevant;
- (b) a judge who determines the relevancy of information called for by a question asked in accordance with this Part 5 must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the information relevant or irrelevant.

[20] The “semblance of relevancy” test is no longer applicable. I must assess whether a judge presiding at the trial of this action would find the information relevant or irrelevant. At this early stage of the proceeding, commenced less than one year ago,

I conclude that the assessment of trial relevancy can only be based on the pleadings. At later stages of proceedings, there may be other information available to a Chambers Judge to assist in assessing trial relevancy. On this motion for production of documents relevancy must be based on the allegations in the Statement of Claim on the assumption that they can be established.

[21] In this case, the allegations are that there was a Ponzi scheme and that the defendant was a part of it. Throughout the Statement of Claim there are references to the defendant being “the controlling mind and/or director” of various companies; of the defendant signing documents as “authorized officer”; and a reference to the defendant as CEO. Although the events alleged occurred between June 2006 and March 2010, principally between 2006 and 2008, some of the documents filed with the defendant’s affidavit of documents were dated only in May of 2010 and two were undated. These documents were attached to the brief of counsel for the defendant.

[22] Based upon the allegations made in the Statement of Claim, I conclude that the specific documentation sought is relevant to this action and that the defendant produce that documentation. The defendant’s role in the CanGlobe Financial Group of Companies is alleged in the Statement of Claim and his involvement in the subject transaction is also alleged.

[23] Having been successful on the motion the plaintiff is entitled to her costs. If the parties cannot agree on the appropriate level of the costs, I will accept brief written submissions. However, I note that the matter was dealt with in general Chambers in a short period of time.

Hood, J.