

SUPREME COURT OF NOVA SCOTIA
Citation: Oliver v. Robinson, 2011 NSSC 106

Date: 20110204
Docket: Hfx No. 316242
Registry: Halifax

Between:

Cliff Oliver

Plaintiff

v.

Wesley Robinson

Defendant

Judge: The Honourable Justice C. Richard Coughlan

Heard: February 4, 2011 (in Chambers), in Halifax, Nova Scotia

Decision: February 4, 2011 (Orally)

**Written Release
of Decision:** March 15, 2011

Counsel: J. Andrew Fraser, for the Plaintiff
Peter L. Coulthard, Q.C., for the Defendant

Coughlan, J.: (Orally)

[1] Cliff Oliver moves for an order striking the defence filed by Wesley Robinson. The facts of the case are as follows:

[2] Mr. Oliver filed a notice of action and statement of claim on September 1, 2009. A defence was filed October 29, 2009. On January 11, 2010, Mr. Oliver's affidavit disclosing documents was provided to Mr. Robinson's counsel and Mr. Robinson's affidavit disclosing documents was requested. The matter came before me at Appearance Day on February 5, 2010, when I ordered Mr. Robinson provide his affidavit of documents no later than March 5, 2010. The affidavit was not produced by that date.

[3] On April 15, 2010, a memorandum for date assignment judge was filed by Mr. Robinson's counsel. A date assignment conference was held June 11, 2010. At the date assignment conference, Mr. Robinson was ordered to file an affidavit disclosing documents to Mr. Oliver by July 16, 2010, and to submit to discoveries by September 30, 2010. Mr. Oliver provided Mr. Robinson's counsel with his witness list on January 4, 2011.

[4] Mr. Robinson has not provided an affidavit disclosing documents, made himself available for discovery or provided his witness list. The trial is scheduled for March 8 to 10, 2011.

[5] Mr. Robinson's counsel, Peter L. Coulthard, Q.C., filed an affidavit deposed to January 31, 2011 in which he states:

3. The last time I received instructions from my client with respect to this matter was by e-mail on January 29, 2010.

4. The last communication which I received from anyone for or on behalf of my client was by e-mail on April 19, 2010.

5. The only means of communication which I have with my client is by e-mail and telephone. I have no knowledge as to his physical whereabouts.

6. Since January 29, 2010, I have used every means which I could think of to contact my client and get instructions from him, including telephone, e-mail, and letters to his last known address. All of my efforts have been to no avail.

7. Since April 19, 2010 I have used the same e-mail address to communicate with Mr. Robinson as I was using from the time I was retained. However, since that time I have received no acknowledgement of any of the e-mails I have sent him, or of any of the telephone messages I have left for him. I am therefore unable to say with certainty whether or not Mr. Robinson has received those messages.

8. On January 28, 2011, I forwarded to Mr. Robinson by e-mail the materials which I received from counsel for the Plaintiff with respect to the Motion being brought by the Plaintiff on February 4, 2011, to strike out the Defence filed by my client in this proceeding.

[6] Civil Procedure Rule 88.02(1) provides:

88.02 (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:

....

(e) an order striking or amending a pleading;

[7] Under the circumstances of this case, I am satisfied that there has been an abuse of the process of the court and this is an appropriate case to strike the defence filed by Wesley Robinson.

[8] I grant the application. I award costs in the amount of \$500.00.

Coughlan, J.