

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Lockerby v. Lockerby, 2011 NSSC 125

**Date:** 20110330

**Docket:** 1201-063145

**Registry:** Halifax

**Between:**

Douglas Bruce Lockerby

Petitioner

v.

Ero Anna Lockerby

Respondent

**Judge:**

The Honourable Justice Elizabeth Jollimore

**Heard:**

March 22, 2011

**Counsel:**

Lynn Reiersen, on behalf of Douglas Lockerby  
Ero Lockerby, self represented  
Matthew J.D. Moir, on behalf of Weldon McInnis

## **By the Court:**

### **Introduction:**

[1] Mr. Lockerby has applied for an order that Crowe Dillon Robinson pay debts listed in the Lockerbys' Corollary Relief Order from proceeds it has received and will receive from the sale of the Lockerbys' properties; an order that Weldon McInnis' October 4, 2010 judgment against Ero Lockerby be "discharged or any other necessary action taken, to allow the purchaser clear title [ . . . ] without payout" of the judgment, and costs including those on a solicitor/client basis.

[2] Mr. Lockerby makes his motion relying on section 2A(7) of the *Creditors' Relief Act*, R.S.N.S. 1989, c. 112, and *Rules 79 and 80 of the Nova Scotia Civil Procedure Rules*.

### **Preliminary Issue**

[3] A preliminary issue relates to whether I have jurisdiction to hear Mr. Lockerby's application. If I do not, then this application goes no further before me.

[4] I heard argument from Mr. Lockerby and from counsel on behalf of Weldon McInnis regarding this application. Ms. Lockerby represents herself and she says she doesn't know whether I have jurisdiction, but she knows she owes her former law firm money and she didn't contest the legal steps it took to secure payment of its account because she didn't contest the account.

### **The Judicature Act**

[5] The Family Division's direct jurisdiction is outlined in the *Judicature Act*, R.S.N.S. 1989, c. 240 in section 32A(1). Section 32A(2) expands the Family Division's jurisdiction to include charges, offences and matters under additional legislation where the Governor in Council makes an order conferring that jurisdiction on the Family Division. In no regard does the jurisdiction provided under the *Judicature Act* include relations between debtors and creditors and their impact on third parties.

### **Other legislation**

[6] I have reviewed the provisions of the *Creditors' Relief Act* and the *Land Registration Act*, S.N.S. 2001, c. 6. I have reviewed *Civil Procedure Rules 79 and 80*. None of these enactments confers jurisdiction on the Family Division to deal with those matters they govern. Reported applications under the *Creditors Relief Act* and the *Land Registration Act* have been heard in the Supreme Court, not in the Family Division. The *Civil Procedure Rules* cited to me are to aid execution, not to allow an unrelated party to dispute the availability of collection to a creditor.

### **The Matrimonial Property Act**

[7] Mr. Lockerby argues that the intent of my decision (reported at *Lockerby*, 2010 NSSC 282) was not for Ms. Lockerby to receive the benefit of having her legal expenses of approximately thirty-nine thousand dollars paid, before any other debt is paid. He argues that I had jurisdiction under section 10(a) of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275 to allocate interests in property and I could have made a decision utilizing that power if there had been notice that Weldon McInnis intended to enter judgment against Ms. Lockerby for her unpaid legal expenses. This is correct, but my jurisdiction in that application ended when I rendered my decision and endorsed the resulting order. This happened before Weldon McInnis registered its judgment. I do not have enduring jurisdiction over new matters which arise subsequent to my decision.

[8] Mr. Lockerby is candid that he has no better argument in support of my jurisdiction than the fact the *Matrimonial Property Act* is remedial and its remedial effect has been subverted by the registration of Weldon McInnis' judgment in priority to the couple's other debts. I will not repeat Mr. Lockerby's argument about the lack of good faith in Weldon McInnis' registration of its judgment. That issue isn't relevant to my determination and I leave any consideration of that to the judge who will ultimately deal with his application.

[9] Mr. Moir argues that there is nothing in the *Matrimonial Property Act* that grants jurisdiction to deal with relief claimed by a non-party to a proceeding.

### **Conclusion**

[10] My review of the *Rules* relied upon by Mr. Lockerby and statutes that he (and I) have identified as possibly relevant to this situation do not provide the Family Division with jurisdiction to decide this application. As described, the Division's jurisdiction does not include an application of this sort. Conversely, where legislation describes the court which has authority over its subject matter, the Family Division is not named.

[11] Section 32C(1) of the *Judicature Act* allows that I may order the transfer of a proceeding from this court to another court. I may do so, according to section 32C(2) at any stage of the proceeding and all steps validly taken prior to the transfer remain valid and effectual as if they were taken or made where the proceeding ought to have been commenced. As a result, I order that this application be transferred and an order to this effect shall be issued.

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Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia