IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Connors v. Mood Estate, 2011 NSSC 287

Date: (20110711)
Docket: Hfx 346027
Registry: Halifax

Between:

Stephan Joseph Connors

Appellant

v.

THE PUBLIC TRUSTEE OF NOVA SCOTIA, personal representative of the Estate of June Shirley Mood

Respondent

Judge:	The Honourable Justice Simon J. MacDonald
Heard:	May 24, 2011; June 14, 2011in Halifax, Nova Scotia
Written Release of Oral Decision:	July 11, 2011
Counsel:	J. Brian Church, Q.C., Counsel for Appellant Duane Rhyno, Counsel for Appellant Cory Withrow, Counsel for Respondent

By the Court, **Orally**:

[1] This is a decision as a result of an appeal by Stephen Connors from a Small Claims Court Appeal decision in the matter of himself and the Estate of June Mood. The decision of the Small Claims Court Adjudicator David T.R. Parker ordered the Appellant to pay to the Estate of June Mood, the sum of $4274.00 for outstanding rent. Also, Mr. Connors was to vacate the premises known as 73 Kings Road, Wellington, N.S. on Thursday, March 31, 2011 and the lease is terminated as of that date.

[2] **FACTS:**

1) The facts reveal the Appellant met the late June Mood in 1996 and moved into 73 Kings Road, Wellington, Nova Scotia in 1997;

2) A formal lease was entered into between the Appellant and June Mood on February 1, 2005 for residential premises at unit 1, 73A Kings Road, transferred from 73B Kings Road in December, 2003;

3) A further lease was entered into between the Appellant and June Mood on February 1, 2008, for residential premises at unit 3 from unit 1 at 73A Kings Road, Wellington, Nova Scotia;

4) There was an application to the Director by June Mood dated June 12, 2010, requesting termination of the tenancy and payment of back rent with respect to the Appellant and said premises;

5) Ms. Mood died and the Estate of June Mood and the Appellant herein entered into a mediated settlement agreement on November 30, 2010.

6) On January 11, 2011 the Public Trustee, on behalf of the Estate of June Mood sought an Order from the Director of Residential Tenancies to enforce the mediated settlement agreement;

7) The Order of Direction dated January 14, 2011, required the Appellant to vacate the premises known as 73 Kings Road, Wellington, Nova Scotia;

8) Mr. Connors appealed that Order to the Small Claims Court where Adjudicator Parker heard the matter and rendered the decision and Order now under appeal before me;

[3] **GROUNDS OF APPEAL**:

(a) Jurisdictional error;

(b) Error of Law;

(c) Failure to follow the requirements of natural justice;

and the particulars of the error or failure which form the grounds of appeal are:

1) The Adjudicator failed to consider properly or at all, the application of subsection 10(b) of the ***Small Claims Court Act,*** R.S.N.S. 2007, c. 10, s.10; and

The Adjudicator's Decision and Order indicate a failure by the Adjudicator to properly weigh the evidence before him in determining whether a landlord-tenant relationship existed as between the Appellant and Respondent.

[4] LAW AND ANALYSIS

LeBlanc, J. In ***MacIntyre v. Nichols***, 2004 NSSC 36 outlined the standard of review in the matter of Small Claims Court Appeals when he said at para. 35:

> 35. "I do not have jurisdiction to read here the case and to make my own findings of fact. That the findings of fact of the Adjudicator are reasonable on their face there is no basis on appeal to substitute the decision of the Adjudicator that one would prefer to make. It is evident that I did not have the opportunity to hear the evidence and make findings of reliability and credibility as did the Adjudicator.
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> 36. I refer to the decision of Saunders, J. As he then was, in ***Brett Motors Leasing Ltd. v. Welsford,*** 1999 N.S.J. No. 466 NSCC. He stated at para. 14:
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> 37. "One should bear in mind that the jurisdiction of this court is confined to questions of law which must rest upon findings of fact as found by the Adjudicator. I do not have the authority to go outside the facts as found by the law. "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provision under legislation pertaining to the case; or where there has been a clear error on the part of the Adjudicator in the interpretation of documents or other

> evidence; or where the Adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the Adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the Adjudicator has failed to apply the appropriate legal principles to the proven facts. In such instances, this Court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.
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> 38. I adopt the analysis of Saunders, J. In ***Brett***, supra and find that before I can overturn the Adjudicator's decision, there has to be a clear error on her part. In other words, the appellant must show that the Adjudicator misinterpreted documents or other evidence; that there was no evidence to support the conclusions reached; that she clearly misapplied the evidence in a material respect thereby producing an unjust result or that she failed to apply appropriate legal principles to proven facts. Only in such an instance, could I overturn the decision of the Adjudicator."

[5] This passage was approved in ***Clelland v. eCRM Networks Inc.***, 2006 NSSC 337 and ***Casey v. Wheatley***, 2009 NSCC 238 and I adopt the same principles for the purposes of this particular case.

[6] There is no transcript of the hearing before the Small Claims Court Adjudicator as there was no recording of the proceedings which is apparently not done. Thus, an Appellate Court must rely on the Adjudicator's report.

[7] Davison, J. in ***Victor v. City Motors Ltd.*** [1997] N.S.J. No. 140 spoke of this where he said at paras. 14 and 15;

> 14. "Appeals from the Small Claims Court must be considered in a slightly different manner. In my view the difference is recognized by the legislature when they required the Adjudicator to place in the summary report the basis for findings of fact. This Supreme Court, on appeal, does not have a transcript of the evidence and does not have a basis to consider the findings of fact made by the Adjudicator. In my view, when the Adjudicator prepares the summary for the appeal, effort should be made to expressly state the findings of fact and the basis for those findings.
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> 15. Respect should be accorded the findings of fact, but where it cannot be established from the record the appropriateness of the findings, the danger exists that the findings are unreliable."

[8] In his first ground of appeal, the appellant argues that the Adjudicator made a jurisdictional error because he failed to consider properly, or at all the application of Section 10 (b) of the ***Small Claims Court Act*** R.S.N.S. 2007 c. 10, s.10**.**

[9] The relevant portion of s. 10 states:

> [10] "Notwithstanding s. 9, no claim may be made under this Act...
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> (b) In respect of a dispute concerning the entitlement of a person under a will, or settlement, or on an intestacy..."

[10] The appellant argues that the Adjudicator's failure to address the legislative provision of section 10(b), which he argued goes to the heart of small claims jurisdiction can constitute an error of law or jurisdiction.

[11] As I read the Adjudicator's summary report his decision and order, he, at no time was asked to determine or did he determine issues of law in respect to any claim or entitlement Mr. Connors might have under a will, settlement or intestacy. He was hearing an appeal under the ***Residential Tenancies Act*** pursuant to s. 17 c(1) thereof.

[12] The issue before Adjudicator Parker was whether or not there was a landlord-tenant relationship between Mr. Connors and Ms. Mood. Then, was it breached and if so, whether Ms. Mood's estate was entitled to relief.

[13] Beveridge J., (as he then was) in ***Lacombe v. Sutherland***, 2008 NSSC 391 said at para. 39:

> 39. There has been what appears to be almost a growth industry in parties contending that a trier of fact has erred in law by failing to give sufficient reasons. Although the court in ***R. v. Sheppard*** was considering an appeal from a criminal case, the principles have in fact been applied across the legal spectrum. Saunders, J.A. in the recent decision of ***C.R. Falkenham Backhoe Services Ltd. v. Nova Scotia Human Rights Board of Inquiry,*** [2008] N.S.J., no. 158 wrote:
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> > 32. Nevertheless, since the Court filed its judgment in Sheppard six years ago, the propositions therein contained have been applied in a host of cases covering a broad spectrum of subjects ranging from immigration, to divorce, to probate, from actions for wrongful dismissal, to claims of bodily injury and breach of fiduciary obligations. Here we are concerned with the reasonableness of the Board's findings and awards of damages based on the evidentiary record. A protest that the Board's reasons are inadequate does not invoke a discrete right of appeal. Rather, the complaint as to an absence of paucity of reasons entails a functional inquiry: is it possible to undertake an informed, principled and valid review for error? As this court recently observed in ***2446339 Nova Scotia Limited v. A.M.J. Campbell Inc.*** [2008] N.S.J. No. 30, 2008 NSCA 9 at para 90, it is important to emphasize that:
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> > Deficiencies in a trial judge's reasons do not afford a free standing substantive right of appeal in the civil context, any more than a criminal context.

[14] In ***R. v. R.E.M.*** [2008] 3 S.C.R. 3, Chief Justice McLachlin discussed the adequacy of reasons to be given by the trial judge when she wrote at para 35:

> 35. (1) Appellate courts are to take a functional, substantive approach to sufficiency of reasons, reading them as a whole, in the context of the

> evidence, the arguments and the trial, with an appreciation of [page19] the purposes or functions for which they are delivered (see Sheppard, at paras. 46 and 50; Morrissey, at p. 524).
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> (2) The basis for the trial judge's verdict must be "intelligible", or capable of being made out. In other words, a logical connection between the verdict and the basis for the verdict must be apparent. A detailed description of the judge's process in arriving at the verdict is unnecessary.
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> (3) In determining whether the logical connection between the verdict and the basis for the verdict is established, one looks to the evidence, the submissions of counsel and the history of the trial to determine the "live" issues as they emerged during the trial.
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> This summary is not exhaustive, and courts of appeal might wish to refer themselves to para. 55 of Sheppard for a more comprehensive list of the key principles. This was a criminal law case but I am satisfied that the same principles would apply to an appeal on a civil case.

[15] In ***R. v. Walker*** [2008] 2 S.C.R., 245, the court found that the trial judge's reasons fell well short of the ideal and in that case Binnie J. said at para. 20:

> 20. Equally, however, Sheppard holds that "[t]he appellate court is not given the power to intervene simply because it thinks the trial court did a poor job of expressing itself" (para. 26). Reasons are sufficient if they are responsive to the case's live issues and the parties' key arguments. Their sufficiency should be measured not in the abstract, but as they respond to the substance of what was in issue. The "trial judge's duty is satisfied by reasons which are sufficient to serve the purpose for which the duty is imposed, i.e., a decision which, having regard to the particular circumstances of the case, is reasonably intelligible to the parties and provides the basis for meaningful appellate review of the correctness of

> the trial judge's decision" (para. 55(8)). Moreover, "[w]here it is plain from the record why an accused has been convicted or acquitted, and the absence or inadequacy of reasons provides no significant impediment to the exercise of the right of appeal, the appeal court will not on that account intervene" (para. 46). The duty to give reasons "should be given a functional and purposeful interpretation" and the failure to live up to the duty does not provide "a free-standing right of appeal" or "in itself confe[r] entitlement to appellate intervention" (para. 53).

[16] Although the Adjudicator did not specifically refer to s. 10(b) it is clear from a reading of his decision as a whole he regarded the matter before him as a landlord-tenant relationship as required under sections 2 and 3 of the ***Residential Tenancies Act***. He concluded that one did exist. As one reads his summary report and decision one can only conclude he did not regard the matter before him as an estate issue to which s. 10(b) would apply.

[17] Although the appellant argued before the Adjudicator Parker, there was a common-law relationship between himself and Ms. Mood, I am satisfied upon a reading of the whole decision he concluded Mr. Connors was a companion and they were good friends, but nonetheless, as he assessed the situation there was a landlord-tenant relationship and one that fell under the ***Residential Tenancies Act***. I do not find he made any jurisdictional error concluding this was a landlord-tenant issue and that he had the jurisdiction to hear the matter.

[18] Grounds 2 and 3 of the appellant's grounds of appeal dealt primarily with insufficiency of reasons.

[19] As Oland, J.A. said in ***R. v. Delorey***, 2010 NSCA 65 at para. 23:

> 23. "With respect, I am not persuaded that the trial judge failed to provide sufficient reasons. An appellate court reviewing reasons for sufficiency is to proceed with deference based on the proposition that the trial judge is in the best position to determine matters of fact and credibility. Here the trial judge recognized that the credibility of Mr. MacEachern and Ms. Walsh was a live issue and important to his determination on the speed of the vehicle. In his decision, the judge expressly referred to Mr. MacEachern's testimony as to his drinking and smoking marijuana that night, and his limited testimony at the preliminary inquiry. He also referred to Ms. Walsh's explanation as to why her memory had improved since preliminary inquiry. His reasons do not detail precisely how he reached his conclusion as to credibility. However, it was not essential that they do so. The functional approach calls for reasons which, examined in their entire context, are sufficient to inform the parties of the basis of the verdict, to provide public accountability and to permit meaningful appeal. The judge's decision accomplished these objectives. I would dismiss this ground of appeal."

[20] I have applied the principles enunciated in ***Lacombe v. Sutherland,*** (supra) and ***R. v. R.E.M.*** (supra). I am also satisfied Justice Oland's principles in ***R. v. Delorey*** (supra) would apply to a civil case such as this. Applying these principles

I am not convinced the Adjudicator failed to provide sufficient reasons in this case.

[21] Here, the live issue is whether or not a landlord-tenant relationship existed between the parties and was the tenant in breach of the terms of that relationship so as to enable the landlord to obtain redress. He dealt with the relationship between the parties as a result of evidence he heard and concluded there was a landlord-tenant relationship. He concluded there was a breach. He assessed the amount owing and ordered the premises be vacated. From my review of his summary report, especially paragraphs 2, 3, 4, and 5, one can conclude there was such a relationship. In reaching his decision he considered the totality of the evidence.

[22] Although he did not review each and every witnesses testimony in his decision I am satisfied the Adjudicator's summary report and decision accomplished the objectives referred to by Oland, J.A. in ***Delorey***, *supra*. There was sufficient evidence there in context using a functional approach to conclude and to provide the public with an accountability and to permit meaningful appeal.

[23] I would dismiss this ground of appeal.

[24] Insofar as a natural justice ground of appeal is concerned, I would dismiss that as well for the above reasons and as well, the parties were represented by counsel. They had a fair opportunity to present their case and were given a fair hearing.

[25] In conclusion, I would dismiss the appeal, confirm the Adjudicator's Order and award the Respondent $50.00 costs, plus the costs awarded by Justice Hood in the cause, in the amount of $300.00.

J.

Halifax, N.S.