SUPREME COURT OF NOVA SCOTIA
Citation: Leigh v. Belfast Mini-Mills Ltd., 2011 NSSC 303

Date: 20110725
Docket: Hfx 272748
Registry: Halifax

Between:

Gillian Leigh, Wanda Cummings and Toltec Holdings Incorporated, carrying on business as Mabou Ridge Centre for Holistic Living

Plaintiffs

v.

Belfast Mini-Mills Ltd. and International Spinners Ltd.

Defendants

Decision re Motion to Ban Publication

Judge:	The Honourable Justice Patrick J. Duncan.
Heard:	By correspondence
Final Written Submissions:	July 22, 2011
Counsel:	Gillian Leigh and Wanda Cummings, self represented, and on behalf of all plaintiffs
	Robert K. Dickson, Q.C. for the defendants

By the Court:

[1] The plaintiffs move to ban the publication of my decision reported as *Leigh v. Belfast Mini-Mills* 2011 NSSC 300. They have filed two letters, both dated July 21, 2011, in support of the motion and request that it be argued by correspondence pursuant to **Civil Procedure Rule 27.01.**

[2] Counsel for the defendants, also by letter of July 21, 2011, responded to the substantive argument for the ban, but has taken no position on arguing the matter by correspondence.

[3] I am prepared to assume jurisdiction to hear the motion. **Rule 27.01(g)** provides a judge with discretion to hear a motion by correspondence. I am prepared to exercise that discretion in the unique circumstances of this case.

[4] It is the usual practice of this court to require an applicant seeking a ban on the publication of any court document that would otherwise be available to the public to notify the media of the intended motion. It is also the usual practice for the application to be heard in an open court with supporting documents.

[5] Information on this policy can be found online at:

http://courts.ns.ca/pubban/pubbanform.htm

[6] The plaintiffs have not given notice of this motion to the media. I acknowledge the very important principle that the public has an interest in an open court and the public availability of the court's decision. My reasons for not following the usual practice follow.

[7] I have concluded that the motion will be dismissed and therefor the public interest in an open and public justice system is preserved by this decision.

[8] **Civil Procedure Rule 1.01** seeks to obtain a "just, speedy and inexpensive determination of every proceeding." Despite a promising start to this action, it has become bogged down in contentious and expensive proceedings which I reference in my decision. I am satisfied that this is a case where the object of the rules is best served by answering the motion in as fast and cost effective manner as possible. I am also satisfied that this can be done while still having regard to the positions of the parties and of the public.

[9] The detailed history of this matter is set out in my decision and I refer to and incorporate that information into this decision. In summary, the plaintiffs made a number of applications under the **Freedom of Information and Protection of Privacy Act** S.N.S. 1993, s. 5 [FOIPOP] to obtain information from several government agencies. They then filed applications with supporting documents (the FOIPOP documents) in the Supreme Court seeking to appeal the results they obtained from the governmental decision makers.

[10] The plaintiffs view the documents that they filed as irrelevant to the matter before me, but also privileged and confidential. They sought an order to seal the FOIPOP documents which was refused by Robertson J. The Nova Scotia Court of Appeal refused to interfere in that decision. See *Cummings v Nova Scotia (Community Services)* 2011 NSCA 2.

[11] The plaintiffs sought an injunction to prohibit the defendants from using the FOIPOP documents in this action. That application was refused by Coughlan J., and the Court of Appeal rejected the plaintiffs' appeal. See, *Cummings v Belfast Mini-Mills* 2011 NSCA 56.

[12] The plaintiffs' submission states:

> The matter (C.A. 341131) [2011 NSCA 56] regarding the seizure of FOIPOP documents by the defendants, which were filed in the above matter is [sic] presently in the process of filing with the Supreme Court of Canada. It has been our consistent assertion that these documents were not only statutorily protected by privacy legislation, but that these documents were completely irrelevant ...
>
> Given the statutory protection of documents in the **FOIPOP** and tribunal matters .... documents which were seized, but are now mentioned in the judgment, we request that the Court refrain from publishing online this judgement until the Supreme Court of Canada makes its decision regarding declaratory and other relief sought by us, ... or irreparable harm will result.

[13] The defendants sought to have the FOIPOP documents introduced in the motions before me. The plaintiffs objected to the admissibility of the **FOIPOP** application documents on the same bases.

[14] At that point the Appeal Court had not considered the decisions of Justices Robertson and Coughlan. Afer reviewing the audio recordings of the Supreme Court decisions, and hearing arguments I made a series of rulings as to which of the documents were relevant and admissible for the limited purposes of the motions I was to consider.

[15] My preliminary rulings are unreported but, in short, I concluded that none of the documents were inadmissible by reason of statutory or common law privilege. Many of them were not admissible because they were not relevant. Some documents were ruled to be admissible and formed part of the evidence on the motions. That information is discussed in the decision and it is that information which the plaintiffs seek to prohibit access to.

[16] At this time, the decisions of the Court of Appeal must guide my decision. They make it clear that the information is not protected. The plaintiffs advise that they are "in the process of filing with the Supreme Court of Canada". It is over a month since the Court of Appeal rendered its' decision. There is no evidence that the plaintiffs have sought an order of either the Supreme Court of Canada nor the Nova Scotia Court of Appeal to seal the documents pending a proposed appeal to the Supreme Court of Canada.

[17] The plaintiffs cite "irreparable harm" if I do not grant the publication ban. I do not see evidence to support this assertion.

[18] The details taken from the FOIPOP documents, discussed in my decision at para. 57, are matters of public record, that is, the same information is available to the public by accessing the Provincial Court files that relate to Ms. Cummings. The information in para. 58 is generalized, not specific.

[19] My decision refused the defendants' motions to access much of the documentation that was thought to have been obtained by the plaintiffs as a result of the FOIPOP applications to the first decision makers. Much of the public documents taken by the defendants from the court's FOIPOP review application files was ruled inadmissible in the matters before me and not referred to in my decision.

[20] The matters that concern the plaintiffs have been discussed in various degrees in each of the Court of Appeal decisions which are not subject to a publication ban. The documents continue to be available to the public in the court's file.

[21] I have considered the plaintiffs' concerns and balanced them against the principles of an "open court" as discussed in *Hollinger v Ravelston Corp* 2008

ONCA 207 at paras. 94-96. There is wholly insufficient evidence to support the remedy sought by the plaintiffs in this motion to ban publication.

[22] The motion is dismissed.

[23] The parties may include any submissions as to the costs of this motion as part of their submissions on costs arising from the motions decided and reported on in 2011 NSSC 300.

Duncan J.