**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Nova Scotia Real Estate Commission v. Robinson*, 2018 NSSC 339

**Date:** 20181219
**Docket:** Hfx 478604
**Registry:** Halifax

**Between:**

Nova Scotia Real Estate Commission

Applicant

v.

Martina Robinson, Frank Harmsen, Exquisite Nova Scotia Seafood Inc. cob as 123 Home Seller Services+, CC Group Publishing Inc., and Robinson & Harmsen Lifestyle Real Estate Inc.

Respondents

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| **Judge:** | The Honourable Justice Denise M. Boudreau |
| **Heard:** | December 19, 2018 in Chambers, in Halifax, Nova Scotia |
| **Oral Decision:** | December 19, 2018 |
| **Written Release of Oral Decision:** | May 6, 2019 |

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| **Counsel:** | Nathan Sutherland, for the Applicant<br>Martina Robinson, self-represented<br>Frank Harmsen, self-represented |

**By the Court (Orally)**:

[1] The matter before the court today is an application in Chambers for an injunction pursuant to s. 15(a) of the *Real Estate Trading Act*, S.N.S. 1996, c. 28, as amended, restraining the respondents from trading in real estate or holding themselves out as being available to trade in real estate.

[2] The applicant is seeking that the respondents be found and be declared to have traded in real estate without authorization, contrary to s. 4(1) of the *Real Estate Trading Act*.

[3] The applicant is also seeking a list of prohibitions from the respondents, specifically "trading in real estate", but also:

> Without limiting the generality of the foregoing, the respondents or any of them shall immediately cease:
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> (a) advertising or marketing real estate for sale as an agent or broker or brokerage on behalf of others;
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> (b) listing properties for sale on the website operated by or associated with Robinson & Harmsen Lifestyle Real Estate Inc., unless the website serves only as a platform that allows sellers to post properties for sale and allows interested buyers to contact sellers directly;
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> (c) listing properties for sale under their own names on any social media platform including, but not limited to, Facebook or in print media;
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> (d) referring to themselves as agents, brokers, designated seller representatives, a brokerage, a brokerage firm, a real estate service provider or any other version or combination of these terms whether on an online platform in print or otherwise;
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> (e) erecting for sale signs with the Robinson and Harmsen name and logo and/or with any of the respondents' contact information listed on the sign unless the

> contact information is a mere conduit that serves to connect interested buyers directly to sellers who are acting on their own behalf without a broker/agent; and, lastly,
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> (f) entering into any agreement with any person to assist with the purchase or sale of real estate on that person's behalf for a fee, including the taking of any commission for the provision of services related to the purchase and/or sale of real estate.

[4] In order to understand the context of the matter, I wish to give a brief history. I do not intend to repeat everything that has been put before me, although I have reviewed it all.

[5] The named individual respondents, Martina Robinson and Frank Harmsen, are a married couple. They are directors of the respondent company, Robinson & Harmsen Lifestyle Real Estate Inc. They are also, in fact, the directors of the other respondent companies. Some of those companies, I am advised, are not in operation.

[6] According to the evidence before me, Mr. Harmsen, himself, as well as the other respondent companies (with the exception of the Robinson & Harmsen Lifestyle Real Estate), have never been licensed as a real estate professional, either as a broker or an agent.

[7] The evidence before me indicates that Ms. Robinson was licensed as a broker in this province in or around 2010. Ms. Robinson's Nova Scotia licence was suspended for a period of one year in September 2017. That suspension occurred,

as I understand it, following a discipline hearing, and a decision resulting from that hearing. Her reinstatement was conditional on Ms. Robinson retaking the broker's course and passing the exam.

[8] The information before me indicates that during the period of suspension, Ms. Robinson was permitted to retain a salesperson licence. This essentially meant that Ms. Robinson could continue to trade in real estate as long as she was working for a licensed brokerage. It would appear, as we sit here today, Ms. Robinson remains suspended. She has not retaken the course, she has not taken the exam, her licence remains suspended and she does not work for a licensed brokerage in this province.

[9] The company, Robinson & Harmsen Lifestyle Real Estate Inc., was once a licensed brokerage but that status ceased with the suspension of Ms. Robinson. And so that company is in the same situation as she is; that is to say, not licensed.

[10] It is the position of the applicant that the respondents (all of them) have engaged in the trade of real estate. The word "trade" I will speak about later. It is also the contention of the applicant that the respondents have held themselves out to be "available to trade" in real estate, despite having no licence to do so and, in the case of Ms. Robinson, being suspended from doing so.

[11] It does not seem disputed on behalf of the respondents that they are not so licensed. In the material put before me and in submissions today, there does not appear to be any dispute that none of the respondents have a valid licence to trade in real estate in Nova Scotia.

[12] The dispute, that has been the subject of debate today, is the question of what constitutes "trade", and whether or not the activities that have been engaged in by the respondents constitutes trade.

[13] The applicant has provided the court with the affidavit of Mr. Bradley Chisholm and a number of attachments.

[14] This evidence shows that the company, Robinson & Harmsen Lifestyle Real Estate Inc., has presented itself on both its own website and on social media as a "brokerage firm" and as a Nova Scotia real estate company.

[15] It is noted that the Robinson & Harmsen Lifestyle Real Estate Inc. website advertises real estate listings on its website. In addition, there are "For Sale" signs that appear on actual properties on the ground with the logo of "Robinson & Harmsen Lifestyle Real Estate". There are advertising and marketing elements to both the website, the logo appearing on the website, and the "For Sale" signs. It is

also noted that the contact information provided on the online website, as well as the “For Sale” signs, are exclusively for either Mr. Harmsen or Ms. Robinson.

[16] According to the evidence provided by Mr. Chisholm, on the website Ms. Robinson is referred to as a “real estate service provider” on a number of occasions. The website provides her biography alongside various Nova Scotia property listings. There is, as far as I can see from the information put forward, no information provided with respect to the actual homeowners related to those particular listings. There is only the contact information for Ms. Robinson with respect to some listings, and to Mr. Harmsen with respect to others.

[17] Ms. Robinson, with respect to various postings or listings of properties, calls herself a “Designated Seller Representative”. This would appear to suggest that the properties are listed with that designation specifically to indicate that Ms. Robinson would be prepared to assist with the purchase or sale of that property.

[18] Mr. Harmsen is also featured quite prominently on the website. He is noted as the managing director/owner of Robinson & Harmsen Lifestyle Real Estate. Again, with respect to a number of properties, his phone number and contact information are listed attached to various Nova Scotian properties for sale. This is both with respect to listings on the website, and on the ground. Mr. Harmsen also

calls himself a “Designated Seller Representative”. Mr. Harmsen, as I have noted earlier in this decision, has never been licensed as an agent or broker.

[19] The applicant has also put forward some information with respect to respondent CC Group Publishing. There are also, as can be seen from the affidavit of Mr. Chisholm, clearly listings or postings for properties that were included on a Facebook page for “CC Group Publishing Inc.”. This page referred interested persons back to the Robinson & Harmsen Lifestyle Real Estate Inc. website. It is the contention of the applicant that, in fact, CC Group was used as a front for real estate trading activities, and “CC Group” should also be enjoined from activities relating to the “trade of” real estate.

[20] The application that is brought before me seeks an injunction pursuant to s. 15A of the *Real Estate Trading Act*, S.N.S. 1996, c. 28, and I quote for ease of reference:

> 15A (1) Where a person whose licence has been suspended pursuant to this Act or he regulations does or attempts to do anything contrary to this Act or the regulations, the Commission may apply to the Supreme Court of Nova Scotia for an injunction to restrain the person from doing or attempting to do anything contrary to this Act or the regulations.
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> (2) Where a person who is not licensed pursuant to this Act does or attempts to do anything contrary to this Act or the regulations, the Commission may apply to the Supreme Court of Nova Scotia for an injunction to restrain that person from doing or attempting to do anything contrary to this Act or the regulations.

[21] I have reviewed the caselaw that has been provided to me by counsel for the applicant, in particular, the *Ipsco Recycling* case, [2003] F.C. 1518. The present application is not an injunction being sought pursuant to the common law. It is an injunction being sought pursuant to statutory authority, that has been recognized as being subject to a different test:

> **50** There is, however, a significant distinction between an injunction authorized by statute and an injunction available to the attorney general at common law. This distinction is aptly illustrated in *Ontario (Minister of the Environment) v. National Hard Chrome Plating Co.* (1993), 11 C.E.L.R. (N.S.) 73 (Ont. Gen. Div.). There, the statutory provision with respect to the granting of an injunction contemplated an injunction to "restrain" contravention of the statute. The Court concluded that because the statute only provided a basis for the issuance of a prohibitory injunction, a mandatory injunction was only available at common law at the request of the Attorney General suing in the public interest. Such common law relief was available only where the law was being flouted and the legislation was inadequate to protect the public interest.
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> **51** On the basis of the authorities cited by the parties I am satisfied that where a statute provides a remedy by way of injunction, different considerations govern the exercise of the court's discretion than apply when an attorney general sues at common law to enforce public rights. The following general principles apply when an injunction is authorized by statute:
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> > (i) The court's discretion is more fettered. The factors considered by a court when considering equitable relief will have a more limited application. See: *Prince Edward Island (Minister of Community and Cultural Affairs) v. Island Farm and Fish Meal Ltd.* (1989), 79 Nfld. & P.E.I.R. 228 (P.E.I. S.C. (A.D.)); *Maple Ridge (District) v. Thornhill Aggregates Ltd.* (1998), 162 D.L.R. (4th) 203 (B.C.C.A.).
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> > (ii) Specifically, an applicant will not have to prove that damages are inadequate or that irreparable harm will result if the injunction is refused. See: *Shaughnessy Heights Property Owners' Association v. Northup* (1958), 12 D.L.R. (2d) 760 (B.C.S.C.); *Manitoba Dental Association v. Byman and Halstead* (1962), 34 D.L.R. (2d) 602 (Man. C.A.); *Canada (Canadian Transportation Accident Investigation and Safety Board) v. Canadian Press*, [2000] N.S.J. No. 139 (S.C.) (QL).

> (iii) There is no need for other enforcement remedies to have been pursued. See: *Saskatchewan (Minister of the Environment) v. Redberry Development Corp.,* [1987] 4 W.W.R. 654 (Sask. Q.B.).
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> (iv) The court retains a discretion as to whether to grant injunctive relief. Hardship from the imposition and enforcement of an injunction will generally not outweigh the public interest in having the law obeyed. However, an injunction will not issue where it would be of questionable utility or inequitable. See*: Saskatchewan (Minister of the Environment) v. Redberry Development Corp*., *supra*; *Maple Ridge (District) v. Thornhill Aggregates Ltd., supra*; *Capital Regional District v. Smith* (1998), 168 D.L.R. (4th) 52 (B.C.C.A.).
>
> (v) It remains more difficult to obtain a mandatory injunction. See: Canada (*Canadian Transportation Accident Investigation and Safety Board) v. Canadian Press, supra*.

[22] Therefore, this is not an injunction that is subject to the normal and usual *RJR-MacDonald* test, so I do not need to consider the provisions of that test.

[23] The applicant has also put forward the sections of the *Act* that they feel have been breached in this particular case. They have referred to s. 4(1) of the *Act* which prohibits the "trade" in real estate unless a person is licensed to do so. Section 4(1) says:

> 4 (1) No person shall trade in real estate or hold out as being available to trade in real estate unless that person is licensed to do so or is otherwise permitted to do so by this Act, the regulations and the by-laws, but only to the extent that the person is permitted to do so by this Act, the regulations and the by-laws or by the licence and subject to any restrictions, terms and conditions in the licence or under which the licence was issued.

[24] The word "trade" is a defined term in the *Act* at s. 2(y):

> 2 (y) "trade" or "trading" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, commercial lease or rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct

> or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt.

[25] I also have noted the other case mentioned by the applicant, being *Cleary v. Martin*, NSSC 1990 CarswellNS 73. That decision noted that the *Act* (which at that time was the predecessor *Act* to the one that exists today) was clearly passed for the protection of the public. Obviously where unqualified persons are entering into trade of real estate, there is a risk that the public could be seriously financially harmed.

[26] The respondents have put forward their position in their written materials. They raised essentially two issues. First, there are a number of exceptions noted in the *Act*; cases falling within those exceptions would not require licensing for being engaged in "trade". The respondents have noted the exception at s. 3(d) of the *Act*:

> 3 (d) any person who is a member in good standing of the Nova Scotia Barristers' Society and the trading is in the course and as part of that person's practice as a barrister or solicitor.

[27] The respondents made the submission that, since they ensure the involvement of solicitors through the process, the exception at 3(d) of the *Act* would apply to cover their activities through the entire process of a property being bought/sold. This submission can be very easily dealt with. Clearly, the exception in 3(d) only applies to those who are actually members in good standing of the Nova Scotia Barristers' Society. In this particular case, neither of the individual

respondents are members in good standing of the Society. The respondents do not meet that particular exception.

[28] The second submission made by the respondents is that they are merely acting as a "conduit", if I might use that word, or as a "for sale by owner" type company. Section 3(a) of the *Act* provides another common sense exception, for people who choose to sell their own property. Such a person certainly could not be prevented from selling their own property. Section 3(a) indicates that the *Act* does not apply to:

> 3(a) any person not ordinarily trading in real estate who acquires real estate or disposes of real estate owned by that person or in which that person has a substantial interest, or an official or employee of any such person engaged in so acquiring or disposition of real estate.

[29] The respondents have put forward the example of the "PropertyGuys" real estate company. The "PropertyGuys" is a real estate company and maintains a website. Such a website is used as a platform, so that people wanting to sell and buy their own properties are put in touch with each other. The website and its administrations are not put forward as a "brokerage" or as "brokers" or as "realtors" in any way. People are simply put in contact with each other through a website.

[30] The respondents have also noted that the particular website that is at issue here is, in fact, a website that originates in Germany. This website exists in both German and English. It is administered from Germany. There are, in fact, two different companies, one operating in Germany with the "Robinson and Harmsen" name and one in Nova Scotia, also with the "Robinson and Harmsen" name. The respondents point out that in Germany, they are licensed to sell property.

[31] The respondents are self-represented. They are not legally trained and I do not want to insist on strict adherence to the *Rules* to the point that they are hampered from presenting me with their position. Having said that, the *Rules* cannot simply be ignored.

[32] The evidence that I consider is that contained in the affidavits. The respondents, during their submissions, did provide information that was more fact than submission. The information given to me in that fashion is not under oath and not admissible as evidence.

[33] This applies to the applicant as well; any purported fact that was not put before me in affidavit form, will not be considered as evidence.

[34] It is clear, in the evidence before me, that there is a website that is operated by "Robinson & Harmsen Lifestyle Real Estate Inc.". It is clear that there are

properties listed on that particular website. It is also clear that in no case, that I have seen, does the owner's name appear, or the owner's contact information. In every case that is noted, and there are multiple cases, the respondents are the only contacts that are provided. Their names are given and their phone numbers are given. Robinson & Harmsen Lifestyle Real Estate Inc. refers to itself as a brokerage firm.

[35] Both Mr. Harmsen and Ms. Robinson have referred to themselves in individual listings for properties as a "Designated Sales Representative". It must be said that, on the face of the website, I can see no difference between what appears there and what appears on a real estate company website such as Royal LePage or Re/Max. The respondents have made the point that there are, perhaps, people for whom English is not their first language, and perhaps such people might want to have someone else listed as a contact person. But in my view, looking at the totality of the evidence before me, that simply is not what is occurring.

[36] The "Harmsen and Robinson" team, if I might put it that way, is the only contact listed for these properties. They are being held out as "sales representatives". They are not being held out as friends of the owner, or as translators for the owner, or anything else. They are being held out as a sales representative, and what is being sold is a property. Frankly, the respondents give

every impression, from looking at the website, that they are a real estate firm and/or a brokerage firm. It is certainly possible, and maybe even probable, that the reason that some people are listing with this company is the language issue. But that does not change the fact that people are, in fact, "listing" with them. The reason they are doing so is not important.

[37] I have been shown no evidence to dispute what is plainly before me, on a plain reading of what these websites say and what the "For Sale" signs say. Perhaps the respondents meant something different. They may think that the website says it differently, or that what they have in their mind is appearing plainly on the website. However, I can assure them that having reviewed those pages from the website, what comes through on the page is that they are real estate agents.

[38] As a result, I can understand the applicant's concern that the public will be reasonably misled by what they are seeing. Looking at it from the point of view of a reasonable member of the public, it looks every bit like a real estate company.

[39] It seems clear that what is occurring meets the definition of "trading" as contained in the *Act*. The respondents have no authority to do so.

[40] An injunction is meant as an equitable remedy; there must be some consideration of equity, that is to say, what is fair. Would there be some reason not

to issue this injunction? Would there be some unfairness that would be created? Would there be, for example, no utility in issuing an injunction? Would it be in the public interest to issue such an injunction? All those considerations are relevant.

[41] Frankly, I see nothing before me that would lead me to conclude that this particular injunction would be unfair to the respondents. It seems clear that a breach of the *Act* has taken place and that there is a public interest in preventing these types of risks to the public.

[42] To be clear, this order is not necessarily preventing the respondents from any and all activities relating to property. I am going to issue an Order today. The respondents must make sure that they are compliant with it. Some of the activities that the respondents are interested in pursuing may still be acceptable, as they may not be caught by this order.

[43] But some of the activities they are engaged in are caught by both the definition of "trade" and by this Order, and those activities will, obviously, need to cease. I see no reason in equity not to issue the order. The provisions that are being sought seem perfectly reasonable as against all of the respondents.

**Conclusion**

[44] I am prepared to issue this injunction, ordering that the respondents cease the activities noted in paragraph [3] of this decision.

[45] This matter would fall within Tariff C applications heard in Chambers, more than one hour but less than one-half day. The basic range is $750 to $1,000.

[46] The applicant is seeking the maximum with a multiplier of three for a total of $3,000 in costs. They feel that to be appropriate because of the importance of the matter to the parties and the amount of effort involved.

[47] The respondents have indicated that, in their view, a fairer range would be to use the bottom of the range being $750, but to multiply that by two, which would give costs in the range of $1,500.

[48] I would agree that this particular application does appear to have taken perhaps a little more time than the norm. I note that there was a lot of information filed by both parties. I would note that the respondents filed voluminous information that I (and I presume the applicant) spent time reading. In my view, much of it was really not all that helpful; for example, the privacy information. On the other hand, many applications in Chambers have some fairly voluminous

evidence, so I am not convinced that three times the maximum is necessarily appropriate.

[49] I will order costs in the amount of $2,000, payable by the respondent to the applicant forthwith.

Boudreau, J.