SUPREME COURT OF NOVA SCOTIA
Citation: *Layes v. Layes* , 2019 NSSC 241

Date: 20190729
Docket: Hfx No. 434899
Registry: Halifax

Between:

Rose Ellen Layes

Plaintiff/Respondent

v.

Kevin Layes and 3086779 Nova Scotia Limited

Defendants/Respondents

v.

Peter Lederman, Q.C.

Third Party/Applicant

Decision

Judge: The Honourable Justice Denise Boudreau

Heard: May 9, 2019, in Halifax, Nova Scotia

Counsel: Peter Rumscheidt, for the Plaintiff
Ronald Pizzo, for the Defendant
Colin D. Bryson, Q.C., for the Third Party

By the Court:

[1] This is a motion brought by the third party, Peter Lederman, pursuant to Rules 12 and 13 of the Nova Scotia *Civil Procedure Rules*. The applicant seeks the determination of a question of law and, if such is granted, further seeks summary judgment in order to rectify Minutes of Settlement, as well as the dismissal of certain claims of the plaintiff and defendants.

Background

[2] While I do not intend to outline the entirety of the history of this matter, some of the past details are helpful in understanding how the parties came to this point.

[3] A Notice of Action and Statement of Claim was filed by the plaintiff on January 5, 2015, against the defendant Layes and the numbered company 3086779 Nova Scotia Limited (hereinafter "308 NS"). The plaintiff is the mother of the defendant Layes. The lawsuit alleged that the plaintiff (along with her husband, now deceased) had assisted the defendant Layes in the financing of a business venture that he was interested in. The plaintiff and her husband did so by allowing their property located in Antigonish County to be mortgaged, in exchange for a loan in the amount of $100,000. The mortgagee was 308 NS. The plaintiff alleges

in her pleadings, and in the present motion, that the entirety of this money was provided to the defendant Layes.

[4] It is also the position of the plaintiff in her pleadings that this mortgage has been repaid and should be released. It is her position that, at present, and for all intents and purposes, the defendant Layes and 308 NS are one and the same.

[5] In response to the plaintiff's action, the defendants filed a joint defence and counterclaim. It is their joint position that the mortgage is not repaid. The mortgagee 308 NS further seeks the foreclosure and sale of the lands in question. The plaintiff defended the counterclaim.

[6] In December 2017, following the receipt of new information, the plaintiff filed an Amended Notice of Defence to the counterclaim. The amendments included the following:

> 7. Layes (the plaintiff) states that by Notice of Application in Chambers filed with the Court on July 14, 2009, 308 commenced a proceeding naming Layes and John James Layes as Respondents. 308 sought an Order of the Court directing payment to it by the Respondents of referenced sums of money and in default of such payment, an Order for foreclosure, sale and possession.
>
> …
>
> 12. Layes states that through counsel, negotiations then took place between 308, John James Layes, Layes, and Kevin Layes pursuant to which a resolution was reached to the Foreclosure Proceeding. The agreement called for Kevin Layes, John James Layes and Layes to pay to 308 the sum of $117,000.00. In exchange, 308 agreed to discontinue the Foreclosure Proceeding and fully release John James Layes, Kevin Layes and Layes from any and all matters referenced in the Foreclosure Proceeding.

> 13. Layes states that Minutes of Settlement were drafted and subsequently executed by her, John James Layes, Kevin Layes and Stephen Lockyer on behalf of 308 confirming and incorporating the terms of the agreement that had been reached.
>
> 14. Paragraph 3 of the Minutes of Settlement states:
>
> > 3. In consideration of the mutual premises set out above, all parties to these Minutes of Settlement do each remise, release and forever discharge each and all of the other, and each of their respective heirs, executors, administrators, successors, assigns, agents, servants, officers, shareholders, directors, employees, joint venture partners, licensees, related and affiliated corporations and divisions, partners, and insurers, of and from any and all actions, causes of actions, claims and demands, for or by reason of any damages, or loss arising out of any transaction involving the Lands and without limiting the generality of the foregoing, any and all allegations, claims and demands rendered in the pleadings, motions, affidavits, and proceeding commenced in the Supreme Court of Nova Scotia under Ant. No. 313952 (the "Released Claims").
>
> 15. Layes pleads and relies upon the terms set out in the Minutes of Settlement and states that 308 has released Layes from any claim under the March 3, 2004, mortgage.
>
> 16. Layes pleads and relies upon the Minutes of Settlement and states that 308 is estopped from pursuing its claim under the mortgage against Layes.

[7] In response to that filing, the defendant Layes initiated a third party claim against lawyer Peter Lederman, QC. The claim alleged that Mr. Lederman had been retained by Kevin Layes in response to the 2009 foreclosure action commenced by 308 NS. Furthermore, that:

> 20. On or about March 7, 2012 Mr. Layes settled the 308 NS Ltd. foreclosure proceeding with Mr. Lockyer on the following terms:
>
> > i. Mr. Layes would purchase the shares of 308 NS Ltd. or $117,000.00;
> >
> > ii. This share purchase represented a full and final settlement of all claims, which Mr. Layes, Ms. Layes, her deceased husband, and Mr. Lockyer had against each other;
> >
> > iii. 308 NS Ltd. would discontinue the Application;
> >
> > iv. 308 NS Ltd. would neither release the Mortgage nor any rights of action to collect on the debt; and

> v. Kevin Layes, Rose Layes and her husband (collectively the 'Layes') would sign a release, releasing Mr. Lockyer from any liability for any actions or causes of action which the Layes had or may have had against Mr. Lockyer.
>
> …
>
> 25. Mr. Lockyer's counsel drafted the Minutes of Settlement ('Minutes'), which were to have reflected the terms of settlement referred to in paragraph 20 above.
>
> 26. The Minutes, however, contained a mutual release of all claims and causes of action between the Layes and 308 NS Ltd. This was not consistent with the terms of settlement outlined in paragraph 20 above in that 308 NS Ltd. was neither to have been a Releasor nor a Releasee.
>
> 27. The Mortgage was not released.
>
> 28. Mr. Lederman advised Mr. Layes that with respect to the claims of 308 NS Ltd., the terms of the release in the Minutes relating only to the discontinued Foreclosure Application itself.
>
> 29. Mr. Lederman further advised that 308 NS Ltd.'s rights of action to collect on the debt and to bring foreclosure proceedings on the Mortgage were not in any way affected or released by the Minutes.
>
> …
>
> 41. Mr. Layes and 308 NS Ltd. say that Mr. Lederman breached his duty of care owed to them by advising Mr. Layes to sign Minutes of Settlement which did not correspond to the terms of settlement to which Mr. Layes had agreed.
>
> …

[8] All of this brings us to the motion brought by third party, Mr. Lederman. He brings the present motion pursuant to Civil Procedure Rule 12, seeking a determination of the following question:

> Did the March 2012 agreement reached between Kevin Layes and Stephen Lockyer / 3086779 Nova Scotia Limited include mutual releases of Rose Layes, John Layes, Kevin Layes, and 3086779 Nova Scotia Limited?

[9] Mr. Lederman puts forward the position that the written/signed Minutes of Settlement (that I have just referred to) are incorrect. They do not reflect the actual agreement between the parties, in that they provide releases which were never

agreed to by the parties. Mr. Lederman takes a great deal of responsibility for this mistake and, in fact, acknowledges that he did not review or read the document prior to sending it to Kevin Layes. He seeks for this Court to find, pursuant to Rule 12, that the settlement agreement reached between Rose Layes, John Layes, Kevin Layes, and 308 NS did not include releases as provided for in the Minutes. He further seeks:

a) An Order for the rectification of the Minutes of Settlement to remove paragraphs 3, 4 and 5 of the Minutes of Settlement and replace them with a release of Stephen Lockyer by Rose Layes, the Estate of John Layes and Kevin Layes;
b) The dismissal of the claims of Rose Layes in paragraphs 15 and 16 of the Amended Statement of Defence to Counterclaim of 3086779 Nova Scotia Limited; and
c) The dismissal of the Third Party claim.

Rule 12

[10] I must first consider whether this is an appropriate question for determination under Rule 12. It reads:

> **Scope of Rule 12**
>
> 12.01 (1) A party may, in limited circumstances, seek the determination of a question of law before the rest of the issues in a proceeding are determined, even though the parties disagree about facts relevant to the question.
>
> (2) A party may seek to have a question of law determined before the trial of an action or the hearing of an application, in accordance with this Rule.
>
> **Separation**
>
> 12.02 A judge may separate the question of law from other issues in a proceeding and provide for its determination before the trial or hearing of the proceeding, if all of the following apply:

> (a) the facts necessary to determine the question can be found without the trial or hearing;
>
> (b) the determination will reduce the length of the proceeding, duration of the trial or hearing, or expense of the proceeding;
>
> (c) no facts to be found in order to answer the question will remain an issue after the determination.
>
> **Determination**
>
> 12.03(1) A judge who orders separation must do either of the following:
>
> (a) proceed to determine the question of law;
>
> (b) appoint a time, date, and place for another hearing at which the question is to be determined.

[11] The steps of a Rule 12 analysis were discussed by our Court of Appeal in *Mahoney v. Cumis Life Insurance Co.* 2011 NSJ No. 158 (C.A.), which was a case involving the interpretation of an insurance contract:

> 15. Under *Rule* 25.01 of the former *Civil Procedure Rules*, the practice was that the chambers judge could decide a preliminary issue of law only if the parties filed an agreed statement of fact: *e.g. Seacoast Towers Services Ltd. v. MacLean* (1986) 75 N.S.R. (2d) 70 (S.C.A.D.), paras. 18-23, and various other authorities.
>
> 16. The new *Rule* 12 does not require an agreed statement for the determination of a preliminary question of law. This is clear from *Rule* 12.01(1) -- a party may "in limited circumstances, seek the determination of a question of law … even though the parties disagree about the facts relevant to the question".
>
> 17. *Rule* 12.02 recites those "limited circumstances": (a) "the facts necessary to determine the question can be found without the trial or hearing", (b) the determination will reduce the length or expense of the proceeding, and (c) "no facts to be found in order to answer the question will remain an issue after the determination". Conditions (a) and (c) contemplate that the Chambers judge, on a *Rule* 12 motion, may find facts, but only (1) the facts necessary to determine the pure legal question before him and (2) if all those facts, necessary to decide the pure legal question, can be determined without a trial.
>
> 18. So the first step with *Rule* 12 is to identify the pure legal question to be determined. *Rule* 12.01(1) permits a motion for determination of "a question of law". *Rule* 12.03 permits the judge either to determine "the question of law" or appoint a time to determine that question of law. The *Rule* does not authorize a determination of a question of fact or mixed fact and law, excepting only those facts that scaffold the point of pure law under *Rule* 12.02 (a) as I have discussed.

> 19. The second step is to identify all the facts that are necessary to determine that question of pure law. Nothing in *Rule* 12 permits a judge to decide facts that are unnecessary to determine the question of pure law in the motion. A party who wishes an assessment of evidence on other matters, leading to a judgment by interlocutory ruling, should make or join a summary judgment motion under *Rule* 13.04 ("Summary judgment on evidence").
>
> 20. The third step under *Rule* 12 is to decide whether all those facts necessary to determine the issue of pure law in the motion "can be found without the trial or hearing".
>
> 21. This third step generates the question – What does *Rule* 12.02 (a) mean that those facts "can be found with of the trial or hearing"? In my view, it does not mean that a judge under *Rule* 12 can assess evidence in the same fashion as in a motion for summary judgment on the evidence under *Rule* 13.04. Under *Rule* 13.04, a responding party must "put his best foot forward" with evidence or risk a determination that there is no genuine issue of material fact requiring trial, or that its claim or defence has no real chance of success, and a consequent dismissal of the action or defence: (authorities removed). *Rule* 12 does not give the chambers judge that power. A judge under *Rule* 12 may not determine contested facts that might hinge on testimony at a trial. That is the point of *Rule* 12.02(a)'s condition that "the facts… can be found without the trial".

[12] I was also referred to *Korecki v. Nova Scotia (Minister of Justice)* [2013] NSJ No. 508, where the issue was the interpretation of the provincial *Civil Service Act* as to notice in the case of termination of an employee.

[13] Applying the step-by-step test laid out in Rule 12, I must first identify the pure legal question to be determined. I must next identify all the facts that are necessary to determine that question of pure law, and lastly, I must decide whether all those facts necessary to determine the issue "can be found without the trial or hearing".

[14] The proposed question is: Did the March 2012 agreement reached between Kevin Layes and Stephen Lockyer / 3086779 Nova Scotia Limited include mutual

releases of Rose Layes, John Layes, Kevin Layes, and 3086779 Nova Scotia Limited?

[15] I have before me the evidence of Mr. Lederman, who states that he represented Kevin Layes, Rose Layes, and John Layes at the time of the foreclosure. Mr. Lederman writes in his affidavit:

> 6. In January 2012, 308 Ltd. took steps resume the foreclosure action. This led to Kevin Layes negotiating an agreement with Stephen Lockyer for the purchase of Mr. Lockyer's shares of 308 Ltd. I represented Kevin Layes in the negotiation of this share purchase, which proceeded as follows:
>
> - By a letter from me to Christopher I. Robinson (Mr. Lockyer's and 308 Ltd.'s lawyer) dated February 24, 2012, Kevin Layes offered to purchase Mr. Lockyer's shares in 308 Ltd. for $80,000, with Kevin Layes and his parents undertaking to not pursue the threatened legal action against Mr. Lockyer and his wife. A true copy of this letter is attached hereto as Exhibit "A".
>
> - By a letter dated February 29, 2012 from Mr. Robinson, Mr. Lockyer counteroffered to sell his shares for $117,000. A true copy of this letter is attached hereto as Exhibit "B".
>
> - By an email from me to Mr. Robinson dated March 2, 2012, Kevin Layes agreed to pay $117,000.00 for Mr. Lockyer's shares. The email expressly stated that it was a share purchase and that the Mortgage would not be released. The email also offered that Kevin Layes wish to purchase Mr. Lockyer's shares in another company. A true copy of this email is attached hereto as Exhibit "C".
>
> - From that point forward Mr. Robinson and I proceeded to close the share purchase agreement by arranging for the requisite exchange of signed documents and money. True copies of the correspondence relating to the closing of the share purchase agreement are attached hereto as Exhibit "D".
>
> 7. As part of the exchange of closing documentation, Mr. Robinson prepared and provided me with Minutes of Settlement to be signed by 308 Ltd., Rose Layes, John Layes, and Kevin Layes. I sent the said Minutes to Kevin Layes in an email dated March 27, 2012, asking that he and his parents sign the Minutes and return them to me so that I could send it to Mr. Robinson for Mr. Lockyer's signature.

> True copies of the Minutes of Settlement and email are attached hereto as Exhibits "E" and "F".
>
> 8. According to my file notes, the minutes signed by Rose Layes, John Layes and Kevin Layes were returned to me by mail from Kevin Layes in late May 2012, and I then sent it to Mr. Robinson for Mr. Lockyer signature. My file does not indicate that I received a signed copy of the Minutes back from him. The signed copy of the minutes attached hereto as Exhibit "G" was provided to me by counsel for Rose Layes in the document production in this proceeding.
>
> 9. The Minutes are not consistent with the terms of the share purchase agreement reached between Kevin Layes and Stephen Lockyer as outlined herein, specifically:
>
> > (a) the Minutes do not include the release of Stephen Lockyer and his spouse, which was part of the share purchase agreement;
> >
> > (b) the minutes included a mutual release between 308 Ltd., Rose Layes, John Layes and Kevin Layes, which was not part of the share purchase agreement.
>
> 10. Unfortunately, I did not review the Minutes before sending them to Kevin Layes and his parents for their signatures, so I did not notice these discrepancies.

[16] Mr. Lederman attaches correspondence between himself and lawyer Chris Robinson in support of his evidence. In a letter dated February 24, 2012, from himself to Mr. Robinson, Mr. Lederman writes:

> …
>
> Having outlined the background to this matter, my client wishes to make the following offer: on the assumption that 3086779 N.S. Ltd. has no obligations or liabilities attached to it, he will buy all the shares for $80,000.00. He and his parents will then undertake not to pursue any action against your client and his wife arising from the water company project.
>
> …

[17] Mr. Robinson responded on February 29, 2012, by way of a letter forwarded by email:

> ….

> In response to your clients' offer of $80,000 to settle this matter, my client is willing to accept the following amount in full and final settlement: $117,000 which represents the principal ($100,000), legals relating to the mortgage ($12,000) and legals in relation to this Application ($5000)….

[18] Mr. Lederman responded by email on March 2, 2012:

> Dear Mr. Robinson: Please accept this e-mail as our formal response to your offer to settle. My client will pay $117,000.00 to your client in full settlement of all outstanding issues, but he would like to structure the settlement in the following manner. For income tax reasons, he would prefer not to have the mortgage released but rather have the shares of 3086779 Nova Scotia Limited signed over to him. I am assuming that this company has done nothing other than grant this one mortgage, and that Mr. Lockyer could give Mr. Layes an indemnity regarding any possible liabilities or income tax claims regarding it… (emphasis is mine)

[19] Mr. Robinson's next email is March 5, 2012:

> Mr. Lederman:
>
> Please find attached scanned copies of my client's affidavit sworn today in response to Kevin Layes Affidavit filed in support of his conversion Application. The exhibits to my client's Affidavit are also attached. I anticipate the Affidavit will be filed with the Court today via fax and then mailed for stamping. Where I had not heard further from you following our email exchange of last Friday, we are continuing to move forward with our foreclosure application and the defence of your client's request for conversion. Thank you.

[20] Mr. Lederman responds on March 5 2012:

> Mr. Lenehan: (sic) My client accepts your client's offer to settle. I anticipate having the funds this week. Peter Lederman

[21] From Mr. Robinson on March 6 2012:

> Mr. Lederman:
>
> Thank you for your email of yesterday evening. We will await the arrival of the settlement funds. As per our agreement, the funds will be held in escrow pending our receipt of the share purchase documentation and the hearing will not be adjourned until these steps are completed. In the alternative, upon receipt of the funds my client would be willing to Discontinue the Application were the escrow

> condition waived, thereby allowing Mr. Layes as much time as he needs to have the requisite share purchase documentation drafted and executed – it's his choice. Thank you.

[22] Response March 7:

> Mr. Robinson: Trust cheque is enroute via registered mail – hang on to it until transfers effected.

[23] Further documentation appeared to finalize this share purchase agreement; however, no further mention is made of any releases, either of the mortgage, or otherwise. Mr. Robinson then provides draft Minutes of Settlement on March 27 2012. This is the document that Mr. Lederman did not review, but sent to Kevin Layes for his signature (and Ms. Layes signature).

[24] Kevin Layes agrees with Mr. Lederman about the facts of the matter, although he takes no position on this Motion. He writes:

> 17. I, on behalf of Rose Layes, her late husband, and myself, retained Mr. Peter Lederman, Q.C., to defend the foreclosure.
>
> 18. The company 308 NS Ltd. retained Mr. Chris Robinson as counsel in the foreclosure proceeding.
>
> …
>
> 21. On or about March 7, 2012 we settled the foreclosure proceeding. We understood the terms of the settlement were supposed to be as follows:
>
> > i. I, Kevin Layes would purchase the shares of 308 NS Ltd. for $117,000.00 and 308 NS Ltd. would discontinue its foreclosure proceeding;
> >
> > ii. A mutual release would be signed which would release all claims, Ms. Layes, her deceased husband, Mr. Lockyer, Mrs. Lockyer and I, had against each other personally;
> >
> > iii. The mutual release **would not** release the Mortgage;

> iv. the mutual release would not release or affect any rights of action or claims 308 NS Ltd. had to collect on the outstanding loan secured by the Mortgage; and
>
> 22. The Mortgage and its enforceability would not be affected in any way as a result of the settlement.
>
> …

[25] I am not sure who Mr. Layes refers to in the use of the word "we" in paragraph 21 above. Perhaps he means himself and Mr. Lederman. I say that because it is clear that Mr. Lederman's other "client", the plaintiff, Rose Layes, was entirely unaware of the terms of the settlement.

[26] In the plaintiff's affidavit, she confirms receiving a demand letter in 2009 from mortgagee 308 NS, seeking the sum of $140,000, failing which foreclosure proceedings would be commences. She notes:

> 9. I recall that when this letter was received I provided it to Kevin. It had been my understanding and belief from the time of the initial mortgage in 2004 that Kevin would be responsible for making any and all required payments under the Mortgage.
>
> 10. I provided the March 6, 2009 letter to Kevin with the understanding and expectation that he would respond and address the matters claimed in the letter.
>
> 11. After providing the letter to Kevin, I had very little involvement in the legal proceedings which followed. I understood and believed that Kevin would be looking after things to make sure that there would not be a foreclosure on my property.
>
> 12. I did not meet with or give instructions to Mr. Lederman with respect to the foreclosure proceeding which was started by 308 Ltd.
>
> …
>
> 14. I was not in any way involved with or aware of the efforts and steps described said to have resulted in the purchase by Kevin of shares of 308 Ltd. I at no time had any communications either in writing or in person with Mr. Lederman in regard to the share purchase agreement.

> 15. To the extent that I had any limited information with respect to the resumption of the foreclosure proceeding, this was from Kevin. I understood and believed that Kevin was making efforts to resolve matters such that the foreclosure proceeding would be resolved and the risk of my losing our property would be eliminated.

[27] The plaintiff agrees that she signed the Minutes of Settlement, however:

> 17. I did not receive the Minutes directly from Mr. Lederman and at no time did I have any discussions with him regarding the terms of the Minutes. To the best of my recollection and belief at no time did John and Mr. Lederman have any direct communication with respect to the Minutes. I recall that Kevin provided the Minutes to me and John and asked us to sign. Kevin did not review the specific terms of the Minutes with us. It was my understanding and belief that the document was part of the resolution of the foreclosure proceeding and the elimination of the Mortgage.
>
> 18. I did not know that Kevin bought the shares of 308 Ltd. and that he took the position the Mortgage was still in existence and that 308 Ltd. could try to foreclose on my property until shortly before Kevin and 308 Ltd. filed the Defence and Counterclaim in the proceeding in which 308 Ltd. claims payment from me under the Mortgage or, alternatively, an Order for foreclosure.

[28] The plaintiff opposes the motion of the third party. While she agrees that the question proposed by the third party is an important question, in her view it should be left for the trial. She submits that Rule 12 is not the appropriate forum to deal with this issue. She disagrees that all of the facts necessary to answer the proposed question are before the court now.

[29] It is the position of the plaintiff that evidence is needed from, for example, the other two parties who were involved in this settlement, Mr. Lockyer and his counsel, Mr. Robinson, in order to determine their understanding of the agreement. They could answer important questions such as: why were the Minutes drafted as they were? What authority did Kevin Layes have to resolve the foreclosure

proceeding on his parents' behalf? Why did the parties (represented by counsel) sign the Minutes if they did not agree with what it contained?

Analysis

[30] In analysing the question before me, I must determine whether (a) the facts necessary to determine the question can be found without the trial or hearing; (b) the determination will reduce the length of the proceeding, duration of the trial or hearing, or expense of the proceeding; and (c) no facts to be found in order to answer the question will remain an issue after the determination.

[31] The facts I have before me come, in large measure, from the evidence of Kevin Layes and Peter Lederman. They both agree that the Minutes of Settlement are incorrect and should not have included a release of the mortgage of the plaintiff. Kevin Layes indicates that he did not agree to such a release, and Mr. Lederman agrees that such were not his instructions. The emails support their position.

[32] The plaintiff cannot offer any evidence as to the agreement, since neither she nor her husband were involved in the settlement discussions. That is unfortunate, because as parties to the foreclosure proceeding, they should have been involved in discussions to settle it. Having said that, the plaintiff could not possibly have any

evidence to offer as to whether the Minutes of Settlement are an accurate representation of what was agreed to.

[33] The plaintiff submits that the issue before me requires a trial to determine the facts. In support of her position, she has raised a number of questions, which she notes cannot be answered on the facts put forward on this motion. While I can understand her position, I am unconvinced that these questions are material ones in the context of my task.

[34] For example, the plaintiff questions: Did Kevin Layes have the authority to negotiate on behalf of his parents? It appears, on its face, that the answer to this question might be "no". However, I have difficulty seeing how any answer to this question advances the issues before me. If Mr. Layes had such authority, so be it. But if he did not, the settlement agreement could only be further weakened, or perhaps even invalidated. More to the point, in my view this question is immaterial to the specific Rule 12 question that has been put before me.

[35] As to the question of why the Minutes were drafted as they were by Mr. Robinson, it seems to me that there are only 2 possible answers to that question, both involving a mistake by Mr. Robinson: either a) the draft was an error and Mr. Robinson also missed it, along with everyone else; or b) Mr. Robinson's draft was correct, according to his understanding of the agreement, but inaccurate as to the

agreement between the parties. Either way, the Minutes of Settlement remain incorrect.

[36] As to why the parties signed the erroneous Minutes of Settlement, we know the answer at least from the Layes, both Kevin and Rose; they signed because they did not read it. Kevin Layes signed because he trusted Mr. Lederman; Rose Layes signed because she trusted Kevin Layes. Their trust was, apparently, misplaced.

[37] Why did Mr. Lockyer and Mr. Robinson sign? Again, there are a few possibilities: they did not read it either, or they misunderstood the agreement. I remain unpersuaded that any answer to this question would assist in moving this case forward.

[38] At the end of the day, and in its most basic interpretation, this motion asks me to recognize that the Minutes of Settlement (pleaded by the Plaintiff Layes in her amended claim), were not meant to forgive the outstanding mortgage. In my view, I have all of the facts I need to be able to answer this question. I see nothing further that could be gained from testimony at trial.

[39] Mr. Lederman and Kevin Layes agree that the Minutes of Settlement are incorrect and should not have included a release of the mortgage of Rose Layes. Kevin Layes indicates that he did not agree to this, and Mr. Lederman agrees that

such were not his instructions. The correspondence between counsel, although less than crystal clear, do confirm that forgiveness of the mortgage is not part of the agreement.

[40] In my view those are all the facts I need. These Minutes of Settlement incorrectly recorded the agreement of the parties.

[41] It also seems clear that a determination of this Rule 12 question will reduce the length of the proceeding, the duration of the trial or hearing, or the expense of the proceeding, and that no facts to be found in order to answer the question will remain an issue after this determination. I see no value in using court time and resources on the further debate of whether this agreement forgave the mortgage. It did not. The parties can now focus on the many important issues within this greater proceeding, which clearly need adjudication.

[42] I therefore accept that the question posed is one that I can deal with pursuant to Rule 12: Did the March 2012 agreement reached between Kevin Layes and Stephen Lockyer / 3086779 Nova Scotia Limited include mutual releases of Rose Layes, John Layes, Kevin Layes, and 3086779 Nova Scotia Limited?

[43] My answer to that specific question is “no”.

[44] I want to be very clear that by the present ruling, I am specifically not addressing whether the March 2012 agreement *should* have, or *should not* have, forgiven the plaintiff's mortgage. My ruling is limited to a finding that the agreement, in point of fact, did not forgive the plaintiff's mortgage.

Rule 13

[45] It is clear from the decision in *Mahoney*, *supra*, that a Rule 12 motion, even if successful, does not provide the Court with jurisdiction to do more than answer the question of law posed, assuming it is appropriate to do so. Where a litigant seeks something further from the Court as a result of the decision on the Rule 12 motion, a further motion pursuant to the appropriate Rule is required.

[46] Here the Applicant seeks a further ruling pursuant to Rule 13: that the Minutes be rectified to remove the offending paragraphs and replace them with a release of Stephen Lockyer; that claims contained in the Amended Statement of Claim of Rose Layes in paragraphs 15 and 16 (those invoking the Settlement as a reason for her claim to succeed) be dismissed; and that the third party claim against Peter Lederman be dismissed (since, if the Minutes of Settlement are rectified, there is no longer any viable claim by Kevin Layes against Mr. Lederman).

[47] The plaintiff has conceded that if the Rule 12 motion is granted, and if the answer to the question was deemed to be "no", then the Rule 13 motion as requested should be granted.

[48] I agree. I find that the present circumstances meets the criteria for summary judgment as defined by our Court of Appeal in *Upham v. Dora Construction*, [2016] NSJ No. 505. Having ruled as I have to the Rule 12 question, I can see no reason why the Minutes should not be rectified. Correspondingly, there is no reason why the pleadings should continue to include the Minutes as a basis for claim or defence.

Conclusion

[49] I grant the relief requested. I order:

1. The rectification of the Minutes of Settlement to remove paragraphs 3, 4, and 5. Given the agreement of the plaintiff, I will also agree to amend the document to include the release of Mr. Lockyer;
2. Dismissal of the claims of plaintiff in paragraphs 15 and 16 of her Amended Statement of Defence to Counterclaim of 3086779 N.S. Ltd.; and
3. Dismissal of the Third party claim against Peter Lederman.

[50] If the parties cannot agree on costs, I would ask for written submissions within 45 days of this decision.

Boudreau, J.