

SUPREME COURT OF NOVA SCOTIA

Citation: *Gillard v. Nova Scotia (Registrar General)*, 2021 NSSC 204

Date: 20210614

Docket: Sydney No. SN484317

Registry: Sydney

Between:

Marilyn Gillard and Stephen Gillard

Applicants

v.

Registrar General

Respondent

INTERLOCUTORY DECISION

Judge: The Honourable Justice Kevin Coady

Heard: May 25, 2021, in Sydney, Nova Scotia

Written Decision: June 14, 2021

Counsel: Stephen Gillard, Self-Represented, for the Applicants
Jack Townsend, Counsel for the Respondent

By the Court:

[1] Marilyn and Stephen Gillard live at 10 Coldwell Street in the town of Glace Bay. It has been their home for many years. They are involved in a legal dispute with their neighbours, John and Helen Simms. The dispute relates to a parcel of land common to both parties (PID 15393622). The Gillards are self-represented litigants in this action and on this motion.

[2] The history of this dispute spans in excess of ten years and is far from a resolution. The Respondent's legal brief outlines how this matter has unfolded and I adopt these paragraphs as an accurate analysis of the history behind this motion:

- On September 8, 2010, Frank Gillis, Q.C. migrated and registered the PID under the *LRA*. At that time, the registered owner of the PID was DARR (Cape Breton) Limited ("DARR").
- The next day, DARR executed a Quit Claim Deed, conveying any interest it had in the PID to Mr. Simms, James MacLellan and Dr. Gerard Turner.
- Mr. MacLellan and Dr. Turner also owned property in the vicinity of Coldwell Street. The purpose of the Quit Claim Deed from DARR was to attempt to remedy potential encroachments upon the PID by the Simmses, MacLellan and Turner families.
- During the months leading up to September 2010, Mr. Gillis and the Simmses advised Mr. Gillard that he also appeared to be encroaching upon the PID. They invited him to join the transaction with DARR to remedy the issue. However, Mr. Gillard refused.
- In February 2011, Mr. Simms, Mr. MacLellan, Dr. Turner and their spouses deeded the PID to Mr. and Mrs. Simms. The Simmses are still listed as the registered owners of the PID on Property Online.
- The dispute between the Simmses and the Plaintiffs relates to a small triangular portion of the PID which lies between their properties. In essence, the Plaintiffs' position is that this portion of the PID falls within the property described in Mr. Gillard's 1975 deed for the property at 10 Coldwell Street.
- Mr. Gillard brought an action against Mr. Gillis in 2017. In 2018, Justice Gabriel granted a motion for summary judgment by Mr. Gillis and dismissed that action.
- In 2018, Mr. Gillis brought an action against the Simmses (the "Simms Action"), for an order "returning" the PID to "its rightful owners".

[3] The Simms action ("Simms Action") is still before this Court, although it appears to be stalled.

[4] The Gillards commenced this action on January 18, 2019. They requested the following relief:

- An Order making the PID “null and void”. Specifically, to make the following property that was registered and migrated under the *Land Registration Act* (“*LRA*”) in September 2010, null and void. The property is described as being PID 15393622.
- An Order for compensation under the *LRA*.

[5] The Registrar General filed its Notice of Defence on March 11, 2019, in which it denied the relief sought. It argued that the Gillards should pursue the relieve they seek in the Simms Action. It further argued that this Court has no jurisdiction under the *LRA* to issue the Orders sought by the Gillards.

[6] In March 2019 the Simmses brought a Motion for Summary Judgment in an effort to have that action dismissed. The Registrar General was added as an intervenor. Justice McDougall heard the motion in July 2019 and dismissed it in an oral decision.

[7] On January 12, 2021, the Gillards filed a Notice of Motion seeking to amend their Notice of Action and Statement of Claim. The amendments sought are not stated in the Motion but appear in correspondence sent to the Respondent on November 21, 2020. There is no confusion about the amendments sought. They are as follows:

- To make the subject property that was registered and migrated under the *Land Registration Act* in September of 2010, Null and Void, or Revisited and Revised.
- A Full Judicial Inquiry into the way this whole matter was handled from top to bottom. Starting with the Federal Crown Corporation conveying property, they obviously never owned. The N.S. Barristers Society, lawyers Insurance, and the N.S. Land Surveyors Association, who are mandated by Law to Police themselves, but failed to do so. To investigate the Decisions and Directions handed down by Justice D. Timothy Gabriel and Justice Glen MacDougall (six), re P.I.D. 15393622, who obviously broke every Civil Litigation rule imaginable. And finally the office of the Registrar General, a Provincial Civil Servant, who turned a blind eye while his fellow officers of the Court were using The *Land Registration Act* as their personal banking machine.
- Too (sic) see that the proper changes are made in the Land Registration Act, in combination with the Municipal Government Act, to guarantee that no family, like the Plaintiffs in this Action, had to go through, just to prove they own the Land they Legally had registered in there (sic) names. The changes have to be made, so that a

Land Surveyors sub-division plan can not be used to Migrate a piece of property just by stating that this piece of property, was created by a sub-division plan. The present or former Registrar General was asked to do just that by the Plaintiffs in this action, but he refused. Last but not least, is that every honest, hardworking Tax Payer in this preference (sic) that were forced to Migrate their property on more than one occasion be reimbursed for any and all expenses.

[8] The Gillards seek to add several paragraphs relating to this Simms Action and the efforts made to resolve it since the failed summary judgement application.

[9] Amendments are governed by *Civil Procedure Rule 38.02* which states:

38.02 General principles of pleading

- (1) A party must, by the pleading the party files, provide notice to the other party of all claims, defences, or grounds to be raised by the party signing the pleading.
- (2) The pleading must be concise, but it must provide information sufficient to accomplish both of the following:
 - (a) the other party will know the case the party has to meet when preparing for, and participating in, the trial or hearing;
 - (b) the other party will not be surprised when the party signing the pleading seeks to prove a material fact.
- (3) Material facts must be pleaded, but the evidence to prove a material fact must not be pleaded.
- (4) A party may plead a point of law, if the material facts that make it applicable are also pleaded.

[10] The essence of this Rule is that pleadings should be limited to material facts. Facts which are immaterial to the cause of action should not be included. A pleading should not include evidence, argument or opinion. In *Capital Markets Technologies, Inc. v. Prince Edward Island*, 2016 PESC 4, the Court considered the equivalent Rule and stated at para. 14:

14 That Rule provides the basis for determining what a proper pleading should and should not contain. A statement of claim (or a statement of defence) should not become a rambling narrative of the relationship between the parties but should clearly and concisely recite only essential or material facts necessary to base a claim. Superfluous, irrelevant, extraneous, repetitive, or immaterial statements are not to be tolerated.

[11] I am firmly of the view that the proposed amendments fall into this category of pleadings. They do not disclose a reasonable cause of action.

[12] The proposed amendments will certainly fail and are not sustainable. In *Drysdale v. Bev & Lynn Trucking Ltd.*, 2016 NSSC 109, Justice Chipman stated at para. 38:

38 A proposed amendment to a statement of claim must raise a justiciable or triable issue, in the sense that the amendment should not be allowed if it is "plain and obvious" that it discloses no reasonable claim or cause of action...

[13] Further, in *Damiani v. Toronto Hydro Corp.*, 2019 ONSC 284, Justice Backhouse commented at para. 6:

6 Tenability of a proposed amended pleading is determined by application of the analysis under Rule 21.01(1)(b)-namely, whether the pleading raises no reasonable cause of action. As explained by Morden and Perell and cited in *Brookfield Financial Real Estate Group Ltd. v. Azorim Canada (Adelaide Street) Inc.*, "it makes little sense to grant an amendment that will immediately be challenged as legally unsound, and the court may inquire into the merits to ensure that the amendment is tenable in law and compliant with the rules of pleading."...

[14] It is unlikely the proposed amendments would do much to advance this litigation. In fact, they would have the opposite effect.

[15] On the proposed first amendment, I find that it is not an issue that can be resolved with this Respondent. It should be directed to the Simms Action as per s. 35 of the *Act*.

[16] On the proposed second amendment, I find there is no authority under the *LRA* to order a full judicial inquiry.

[17] On the proposed third amendment, I find this Court has no authority to amend either the *LRA* or the *Municipal Government Act*.

[18] The proposed fourth amendment contains argument and immaterial facts. These proposed paragraphs add nothing to the conduct of this action.

[19] In conclusion, I am dismissing the Gillards' motion to amend their pleadings. Should the parties not agree on costs, I will accept submissions within 30 days of this ruling.

Coady, J.