SUPREME COURT OF NOVA SCOTIA
Citation: *Corradini v G. Muttart Law Corp. Inc.*, 2022 NSSC 35

Date:2022-02-01
Docket: Ken. No. 505265
Registry: Kentville

Between:

Richard Corradini

Appellant

v.

G. Muttart Law Corp. Inc.

Respondent

Judge:	The Honourable Justice Gail L. Gatchalian
Heard:	October 12, 2021
Final Written Submissions:	October 26, 2021, Appellant November 10, 2021, Respondent
Counsel:	Patrick Eagan, for the Appellant Geoff Muttart, for the Respondent

BY THE COURT:

Introduction

[1] The Appellant, Richard Corradini, hired a lawyer from the Respondent law firm, G. Muttart Law Corp. Inc. On March 16, 2018, Muttart Law filed a claim against Mr. Corradini in the Small Claims Court for unpaid legal fees. Mr. Corradini did not file a defence. On May 8, 2018, the Small Claims Court adjudicator issued a default judgment, also called a Quick Judgment, against Mr. Corradini under s.23(1) of the *Small Claims Court Act*. Almost three years later, on March 30, 2021, Mr. Corradini filed a motion asking this court to extend the time for filing an appeal under the *Act*. Muttart Law argues that this court lacks jurisdiction to hear the appeal because Mr. Corradini could have asked the adjudicator to set aside the default judgment under s.23(2) of the *Act*. Muttart Law says that interpreting the *Act* in this way avoids overlapping jurisdiction between the Small Claims Court and the Supreme Court and best achieves the purpose of the *Act*, which is access to justice. Mr. Corradini says that there is nothing explicit in the *Act* that deprives this court of the jurisdiction to hear an appeal of a default judgment. Counsel asked that I determine this question of jurisdiction first.

[2] To determine whether this court has the jurisdiction to hear Mr. Corradini's appeal, should his motion to extend the time to appeal be granted, I will consider the purpose of the Act and the relevant words of the Act.

The Purpose of the *Act*

[3] When interpreting the *Act*, I must read the words of the *Act* in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC) at para.21 and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para.26, citing Driedger's *Construction of Statutes* (2nd ed. 1983), p.87. I must also be guided by s.9(5) of the *Interpretation Act*, which states in part that "[e]very enactment shall be deemed remedial and interpreted to insure the attainment of its objects …"

[4] Section 2 of the *Act* states that the intent and purpose of the *Act* is "to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice."

[5] Muttart Law asserts that one of the ways in which the *Act* achieves the informal and inexpensive adjudication of claims within its monetary jurisdiction is by avoiding overlapping jurisdiction, relying on the discussion by Professor W.H. Charles, Q.C. of the historical factors leading to the development of the Small Claims Court in "Small Claims Disputes in Nova Scotia and Access to Justice," (2020) 43:2 Dal LJ 963 at p.983. Muttart Law says that the *Act* should be interpreted to avoid overlapping jurisdiction between this court and the Small Claims Court over the setting aside of default judgments.

The Relevant Words of the *Act*

[6] It may be that interpreting the *Act* as depriving this court of the jurisdiction to hear an appeal directly from a default judgment would best achieve the informal and inexpensive adjudication of claims. However, I cannot ignore the clear words of the *Act*. The appeal section refers to an order or determination of an adjudicator. A default judgment is an order of an adjudicator.

[7] Subsection 32(1) of the *Act* states that a party may appeal to this court "from an order or determination of an adjudicator" on the ground of jurisdictional error, error of law, or failure to follow the requirements of natural justice. A default order under s.23(1) is an order of an adjudicator.

[8] Subsection 23(1) of the *Act* states that an adjudicator may make "an order against the defendant" without a hearing where the defendant has not filed a defence within the time required and the adjudicator is satisfied that there was proper service and that, based on the adjudicator's assessment of the documentary evidence, the merits of the claim would result in judgment for the claimant.

[9] Under s.23(2) of the *Act*, where the defendant appears before the adjudicator who made the default order under s.23(1), the adjudicator "may set aside the order and set the claim down for hearing" if the adjudicator is satisfied that: (a) the defendant has a reasonable excuse for failing to file a defence within the time required, and (b) the defendant appeared before the adjudicator without unreasonable delay after learning of the order.

[10] The plain words of the *Act* indicate that a default order may be the subject of an appeal to this court. This interpretation is not inconsistent with the objective of informal and inexpensive adjudication, as s.23(2) gives a defendant a less formal and less expensive option than an appeal to set aside a default judgment when the defendant has a reasonable excuse for failing to file the defence in time.

[11] I must address the decision in *Clark v. PF Collier & Son Limited*, 1993 CanLII 3447 (NSSC), where Haliburton J. held that that the appellant, who had filed an appeal against a default judgment rather than asking the adjudicator to set it aside, had no right of appeal. Haliburton J. said that the appellant had failed to exhaust all his remedies in the Small Claims Court because a default judgment is not final until an application to set aside under s.23(2) has been dismissed. *Clark* may be an example of the court exercising its discretion to decline to hear an appeal based on the principle of administrative law that, absent special circumstances, interlocutory decisions of an administrative tribunal should not be challenged until the tribunal renders its final decision on the merits. This principle has also been applied to statutory appeals: see *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2008 NSCA 108 at paras.9 and 10. Muttart Law did not rely on this principle of administrative law in this matter.

[12] If *Clark* stands for the proposition that this court has no jurisdiction to hear an appeal from a default judgment, I respectfully decline to follow it. Subsection 32(1) of the *Act* does not require an order or determination to be final for there to be a right of appeal. See *Jamieson (c.o.b. Strait Excavating) v. LeFrank*, 2013 NSSC 420, in which Van den Eynden J. dealt with the merits of an appeal from a default judgment under s.23(3) of the *Act* (where a defendant files a defence but does not appear at the hearing) even though the appellant opted not to ask the adjudicator to set aside the default judgment under s.23(4) of the *Act*.

Conclusion

[13] The preliminary objection of Muttart Law is dismissed. This court has the jurisdiction to hear Mr. Corradini's appeal under s.32(1) of the *Act*. Mr. Corradini will have to first succeed in his motion to extend the time for filing his appeal. If the parties cannot agree on costs, I will receive costs submissions within 30 calendar days of this decision.

Gatchalian, J.