

SUPREME COURT OF NOVA SCOTIA
Citation: *CMC v. Spanberger*, 2023 NSSC 398

Date: 20231114
Docket: 516277
Registry: Sydney

Between:

Canada Moving Company

Appellant

and

Annie Spanberger

Respondent

Judge: The Honourable Justice Patrick J. Murray

Motion Heard: August 18, 2023 in Sydney, Nova Scotia

Written Decision: November 14, 2023

Counsel: Samantha Lee for Canada Moving Company
Natalie MacDougall for Annie Spanberger

By the Court:

Introduction

[1] The Appellant, Canada Moving Company, who hired by the Respondent, Ms. Spanberger, to move her from Montreal, Quebec to Sydney, Nova Scotia. Ms. Spanberger's furnishings were packed up from her apartment in Montreal and were delivered to her new address in Sydney on January 7, 2021.

[2] The Respondent was not satisfied with the move and alleged numerous difficulties and unprofessional service, claiming that many valuable items were substantially damaged. Payment was initially made by the Respondent but later cancelled as a result of her dissatisfaction.

[3] Canada Moving Company filed a claim against Ms. Spanberger in the Small Claims Court on July 13, 2022, for the amount of \$12,155.37. Prior to the move the parties agreed on a contract price of \$10,978.21. The written agreement was dated December 31, 2020.

[4] The hearing was scheduled for October 11, 2022 and both parties attended virtual by teleconference. The Adjudicator ruled on a preliminary motion made by Ms. Spanberger denying her motion that the Small Claims Court was without jurisdiction. Ms. Spanberger then requested an adjournment which was granted by the Adjudicator.

[5] On the re-scheduled hearing date of January 18, 2023, the Respondent, Ms. Spanberger was present with Counsel. Canadian Moving Company represented by Ms. Samantha Lee was not present and did not attend virtually.

[6] Due to its non-appearance, the moving company's claim was deemed to be abandoned and its claim was dismissed.

[7] Canada Moving Company appeals that decision on the ground that it was denied natural justice by the Small Claims Court Adjudicator.

Issue

[8] Should Canada Moving Company's appeal be allowed.

Stated Case

[9] Under the *Small Claims Court Act* and Regulations when a Notice of Appeal is filed the Adjudicator must provide a summary of its findings resulting from the hearing in the matter. This summary, along with any exhibits constitutes the record for the Appeal and has been referred to as the “stated case”. The stated case is due within 30 days of the filing of the Notice of Appeal.

[10] As of the appeal hearing date, August 18, 2023, the stated case had not been provided. This Court pointed this out to the parties and confirmed its importance in such appeals as it constitutes the record appealed from.

[11] Having brought this to the attention of the parties both the Appellant and the Respondent indicated they wished to proceed on the basis of the Notice of Appeal and their written submissions. The Court directed it would accede to their wish but reserved the right to request that the stated case be provided to the Court prior to releasing its decision.

The Adjudicator’s Order

[12] The order appealed from reads as follows:

On the 18th day of January 2023, a hearing was held in the above matter and the following Order was made:

The Claimant did not appear and is deemed to have abandoned the claim. the claim against the Defendant is dismissed.

The Notice of Appeal Filed February 9, 2023

[13] The single ground contained in the Notice of Appeal is “failure to follow the requirements of natural justice”.

[14] The particulars of the alleged failure as cited by the Appellant are that:

1. She did not receive personal service due to human error.
2. The Claimant in no way wishes to abandon its claim.

3. On October 11, 2022, Appellant was prepared to proceed while the Respondent was not. An extension of time was granted for filing an amended defence.

[15] In requesting that the stated case be provided, the Court was particularly interested in the procedure followed at the hearing on October 11, 2022, especially in light of ground number three, which indicates the Respondent was granted an adjournment to retain Counsel and file “another defence”.

[16] In her submissions, (and in the grounds), Ms. Lee argues the Adjudicator provided the Respondent with an opportunity to file a further defence after her preliminary motion failed. Ms. Lee says her client is entitled to the same courtesy which is in keeping with the rules of natural justice and fairness.

Service of Documents

[17] Service of documents in Small Claims Court proceedings is addressed in a number of provisions in both *Acts* and the regulations.

[18] In an appeal, service of the Notice of Appeal may be by personal service or registered mail. If it is by registered mail, the Appellant shall file the Canada Post registration receipt with the Prothonotary (s. 22(3) of the Regulations, s. 22(5)).

[19] Section 21(3) of the *Act* states:

21(3) Service of all documents may be by personal service or such other manner of service or substituted service as prescribed by the regulations.

[20] Section 12 of the Small Claims Court Regulations states:

12. Service of a Notice of Adjudication by a court clerk pursuant to Section 11 or any other document served by a court clerk shall be by registered mail or such other manner of service as directed by the Court.

[21] In the present case, the Appellant, represented by Ms. Lee, was served with the Notice of the hearing scheduled for January 18, 2023, by registered mail.

[22] Section 22(5) of the Regulations stated with respect to Proof of Service:

22(5) Proof of service may consist of a letter certifying the fact of service and the mode of service, and where service is by registered mail, the appellant shall file the Canada Post registration receipt with the prothonotary.

[23] In his summary of findings, the Adjudicator stated the following with respect to the rescheduling of the hearing date that occurred on October 11, 2022:

The Respondent did not have any other defence filed and requested additional time to file another defence and to hire a lawyer, the Court adjourned the matter and gave the Respondent eight (8) more days to file a supplementary defence. The Respondent was warned that failure to so do may result in a quick judgment issued against them.

The Respondent then retained legal counsel and filed a supplemental defence on October 21, 2023. In addition, the Respondent filed a supplement Exhibit Book, a Book of Authorities.

The Clerk then rescheduled the hearing to Wednesday, January 18 and letters were sent to both the Appellant and the Respondent informing them of the hearing date.

[24] The Appellant was served at the address designated for service by Ms. Lee on behalf of her client. Her submission on this point is that she acknowledges having received the Court's letter of November 7, 2021, at that address. In addition, Ms. Lee acknowledged having received an email on November 7 from the Respondent's counsel which contained further notice of the hearing date of January 18, 2023.

[25] She stated however, that she personally did not receive it and says the signature is that of a member of her household. She further stated she understood the hearing date was in February 2023. When questioned by the Court as to the basis of that understanding, she provided no clear answer.

[26] The Appellant is correct in stating that her client provided moving services to Ms. Spanberger under a service contract, has not been paid, and the matter has not been heard on its merits. This includes the Defence filed by the Respondent.

As previously referred to, the Appellant stated, Canada Moving Company had no intention of abandoning its claim. She accepts responsibility for the mistake but asks that her client not be prejudiced by it. The Court understands the Appellant's submission.

Caselaw – Denial of Natural Justice

[27] In *Strait Excavating v. LeFrank*, 2013 NSSC 420, the Appellant appealed a Small Claims Court decision alleging a failure to follow the rules of natural justice. The particulars of the error as set out in the Notice of Appeal, involved “a mix up” by the Appellant of the court date. In explaining the basis for the appeal, the Appellant stated:

I had marked in my day planer (sic) and house calendar the 28th of May. When I got my paperwork out I seen the date and caller (sic) the Court house.

[28] As in the case here, the only ground in *Strait Excavating* was a failure to follow the rules of natural justice, which circumstances arose from the Appellant missing his hearing date. In her decision, Justice E. Van den Eynden, (as she then was) held:

[25] In *Farrow v. Butts* [2010] N.S.J. No. 537, Justice P. J. Murray dealt with an issue respecting a denial of **natural justice** which arose from an Appellant’s failure to appear at the scheduled hearing. In that case Justice Murray adopted the reasoning of Justice Warner in the *Kemp v. Prescesky* case and, in particular, the position that an appellant must demonstrate that he or she has a reasonable excuse for defaulting. I quote from Justice Murray’s decision in *Farrow v. Butts* and, in particular paragraphs 6, 7 and 16:

(6) The right to be heard, with or without a meritorious defence, is a right which must be strictly guarded by any Court. When a judgment is made in the absence of the Defendant, the standard becomes the highest to ensure due process is followed and that no breach of **natural justice** occurs.

(7) Fundamental to **natural justice** is the notion that a party gets to “have its say”. This appeal is such a case because the Appellant was ordered to pay “upon default”, the sum referred to above, without being present. This is commonly referred to as “entering default judgment”. In such cases, the reviewing (Appeal) Court’s level of circumspection must be at its highest. Even in such cases, the Claimant, the Respondent in this appeal, must still prove the validity of their claim.

(16) In considering a person’s right to be heard, it does not automatically follow that just because they were not present, that their appeal will be allowed. The Court must also view the Respondent’s actions, and the courts record of events, in determining whether due process was followed and whether the Rules and Regulations prescribed by the Court were adhered to.

[29] In her decision, Justice Van den Eynden took into account not just whether the excuse offered by the Appellant was reasonable, but the entire circumstances:

[34] In this case, the Claimants/Respondents followed the rules. They took their claim seriously and marshalled it along as they were required. The same cannot be said of the Appellant. The excuse offered by the Appellant for missing his hearing date even if true is simply not reasonable in these circumstances. Furthermore, based on the evidence before the Court, I am not satisfied that the Appellant has established a fairly arguable defence or serious issue to be tried which are considerations when determining an application to set aside a default judgment. Even if the Appellant could establish such, I find he certainly does not have a reasonable excuse for missing his hearing date.

[30] In concluding, the court found while the proceeding in Small Claims Court is intended to be accessible and informal, parties need to be reasonably diligent, mindful and respectful of the process.

[31] As noted, the rules and procedures followed by the Respondent are a consideration in assessing the rules of natural justice.

Decision

[32] When the preliminary motion was ruled upon it was open to the Respondent to request an adjournment to allow her to retain legal counsel and file a defence. The Respondent did both of these things as directed by the Adjudicator. A detailed defence was filed by Ms. Spanberger on October 21, 2022.

[33] That is a separate matter from the Appellant “missing” the hearing date. In this province, if proper service has been effected, the Adjudicator has jurisdiction to dismiss the claim in the absence of the Appellant’s attendance at the hearing, barring unforeseen circumstances knowledge from which it maybe imputed or inferred that an injustice is being done.

[34] In this case, as in every other, it is open for an Adjudicator to inquire as to the non-presence of a party. The stated case in this matter shows the Adjudicator turned his mind to this at the hearing on January 18, 2023, and in the stated case, he explained that he followed the normal practice when a party who is served fails to appear at the hearing.

[35] I find the excuse offered by Ms. Lee is less than satisfactory that she did not personally receive the notice, and it was not entered in her calendar.

[36] This is not an unsubstantial claim. It may seem harsh not to allow the claim to be reheard, when the judgment resulted from human error, as acknowledged.

[37] However, if an Adjudicator were expected to hold proceedings for reasons of non-attendance of a party and reschedule each matter for a new hearing, confusion and chaos would ensue, with respect to an already over-burdened system. Each case must be decided on its own individual circumstances.

[38] I find this case to be a circumstance addressed by the Court of Appeal in *Chediac v. Desmond*, 1996 NSCA 34, as referred to in the Respondent's brief:¹

11. In *Chediac v. Desmond*, a decision of the Nova Scotia Court of Appeal, an order had been issued against the defendant when she failed to attend the hearing and defend the claim brought against her in the Small Claims Court of Nova Scotia. The defendant appealed the decision of the Small Claims Court adjudicator on the basis that the Adjudicator had failed to follow the requirement of natural justice, stating that she had inadvertently missed the date for the Small Claims Court and had not been given a chance to present evidence on her behalf. The appeal was dismissed on the basis that the Adjudicator had the jurisdiction to make an order against the defendant in her absence upon being satisfied that she had proper notice of the time and place of the hearing.

[39] Having weighed and considered the circumstances, as they apply to the rules of natural justice, I have decided to dismiss the Appellant's appeal.

Conclusion

[40] For all of these reasons, I find there has not been a failure to follow the requirements of natural justice.

[41] The appeal is therefore dismissed.

[42] The Defendant is clearly the successful party on the Appeal. Exercising my discretion, I decline to award costs on the appeal.

Murray, J.

¹ Paragraph 11 of the Respondent's Brief