SUPREME COURT OF NOVA SCOTIA
Citation: *Winkelmann v. Curry et al*, 2022 NSSC 396

Date: 20221208
Docket: 515855
Registry: Yarmouth

Between:

Antje Winkelmann

Applicant

v.

Michael Curry, Justin Adams, Robert Morrison, Adam Norton and Stephen Kingston

Respondents

-and-

Dockets: 519555
Registry: Yarmouth

Between:

Antje Winkelmann

Applicant

v.

Michael Curry, Justin Adams, Robert Morrison, Adam Norton and Stephen Kingston

Respondents

Judge:	The Honourable Justice Pierre Muise
Heard:	December 8, 2022, in Yarmouth, Nova Scotia
Oral Decision:	December 8, 2022

Appearances (515855):	*Respondents* Stephen Kingston for Terry Kelly and Plamen Petkov Justin Adams for Justice Gail Gatchalian Adam Norton for Corinne Currie *Applicant* Antje Winkelmann, self-represented
Appearances (519555):	*Respondents* Stephen Kingston for Michael Curry, Robert Morrison and himself Justin Adams, self-represented Adam Norton, self-represented *Applicant* Antje Winkelmann, self-represented

Corrected Decision: The text of the original decision has been corrected according to the attached erratum dated January 3, 2024.

By the Court (Rendered Orally December 8, 2022):

DECISION GRANTING SUMMARY JUDGMENT AND VEXATIOUS LITIGANT DECLARATION

[1] Antje (as she asks to be called) filed a Notice of Application in Court against the Respondents in Yarmouth File # 515855.

[2] They have all filed notices of contest and have all asked this Court to dismiss the Application summarily.

[3] Justice Gail Gatchalian has also submitted that Antje has and is engaging in abuse of process. For that, she requested an order striking the Notice of Application in Court, and prohibiting Antje, or anyone on Antje's behalf, from filing any process against her, her lawyer or any Justice of the Nova Scotia Supreme Court or Court of Appeal, in any Court in Nova Scotia without leave of this Court.

Immunity

[4] Justice Gail Gatchalian and Corinne Currie both submitted that the Application cannot be sustained against them because they respectively have judicial and quasi-judicial immunity from such proceedings.

[5] I agree they do benefit from such immunity in relation to any act related to, or in connection with, their performance of the duties or functions of their office. That immunity would also extend to any officials acting on their behalf.

[6] There is no evidence or suggestion that Ms. Currie committed any wrong outside of the performance of her duties or functions as a Prothonotary of the Supreme Court of Nova Scotia.

[7] Similarly, there is no evidence or suggestion that Justice Gatchalian committed any wrong outside of the performance of her duties or functions as a Judge of the Supreme Court of Nova Scotia. There is clear evidence that Justice Gatchalian's only involvement with Antje was in the course of performing her duties and function as a Judge of the Supreme Court of Nova Scotia dealing with the Foreclosure Proceeding filed in Kentville and bearing file number 504898.

[8] Therefore, Antje's Application, as against Justice Gatchalian and Ms. Currie is dismissed because they are protected by judicial and quasi-judicial immunity respectively.

Summary Judgment on the Pleadings

[9] The materials filed on behalf of Justice Gatchalian and Ms. Currie also submit that Antje's Notice of Application should be set aside and her Application should be summarily dismissed because her claims of wrongdoing are clearly unsustainable when her pleading is read on its own.

[10] I agree.

[11] The Notice of Application lists as grounds for the order sought a number of requests for relief, as well as a number of alleged wrongs. Not all of those alleged wrongs are wrongs currently recognized in law.

[12] More importantly, the Notice of Application does not state how, where, when, or specifically by whom, those alleged wrongs were allegedly committed.

[13] Therefore: the Notice of Application is clearly unsustainable on its face; it is set aside in its entirety; and, the Application, as against Justice Gatchalian and Ms. Currie, is dismissed.

Summary Judgment on the Evidence

[14] The claims against Mr. Kelly and Mr. Petkov are also clearly unsustainable on their face for the same reasons.

[15] However, their summary judgment motion is brought on the evidence. Therefore, I must answer the relevant questions outlined in ***Shannex Inc. v. Dora Construction Ltd.***, 2016 NSCA 89, at paragraph 34.

[16] **"First Question: Does the challenged pleading disclose a 'genuine issue of material fact', either pure or mixed with a question of law?"**

[17] As stated in Rule 13.04(4), "the pleadings serve only to indicate the issues, and the subjects of a genuine issue of material fact and a question of law depend on the evidence presented." However, as noted in ***Shannex***, the party seeking summary judgment has "the onus to show by evidence there is no genuine issue of material fact". "If the pleadings dispute the material facts, and the evidence on the

motion fails to negate the existence of a genuine issue of material fact, then the onus bites and the judge answers the first question Yes."

[18] If the answer to this first question is yes, the matter "should not be determined by summary judgment".

[19] "Second Question: If the answer to #1 is NO, then: Does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?"

[20] "If the answers to #1 and #2 are both No, summary judgment "must" issue: Rules 13.04(1) and (2). This would be a nuisance claim with no genuine issue of any kind – whether material fact, law, or mixed fact and law."

[21] "Third Question: If the answers to #1 and #2 are No and Yes respectively, leaving only an issue of law, then the judge 'may' grant or deny summary judgment." The question governing that exercise of discretion is: "Does the challenged pleading have a real chance of success?"

[22] It is for the party responding to the summary judgment motion to show a real chance of success. "If the answer is No, then summary judgment issues to dismiss the ill-fated pleading."

[23] The meaning of "real chance of success" was described by Justice Saunders in ***Coady v. Burton Canada Co.***, 2013 NSCA 95, at paragraph 44, as follows:

> The phrase "real chance" should be given its ordinary meaning – that is, a chance, a possibility that is reasonable in the sense that it is an arguable and realistic position that finds support in the record. In other words, it is a prospect that is rooted in the evidence, and not based on hunch, hope or speculation. A claim or a defence with a "real chance of success" is the kind of prospect that if the judge were to ask himself/herself the question:
>
> > Is there a reasonable prospect for success on the undisputed facts?
> > the answer would be yes.

[24] ***Shannex***, *supra*, at paragraph 36, emphasized the following:

> **"Best foot forward":** Under the amended Rule, as with the former Rule, the judge's assessment of issues of fact or mixed fact and law depends on evidence, not just pleaded allegations or speculation from the counsel table. Each party is expected to "put his best foot forward" with evidence and legal submissions on all

> these questions, including the "genuine issue of material fact", issue of law, and "real chance of success"… .

[25] The evidence submitted on behalf of Mr. Kelly and Mr. Petkov shows the following.

[26] They represented CIBC Mortgages Inc. in enforcing a mortgage on real property then owned by Antje Winklemann and Robert Winklemann. They filed, in Kentville, an action for payment of the debt and foreclosure, sale and possession if it was not paid. It bears file number 504898. The action was defended. The defence was struck. That decision was appealed. The appeal was dismissed. CIBC obtained an order for foreclosure, sale and possession. The property was sold at a public auction. The Auctioneer's Deed conveyed the property to CIBC, the successful bidder. The sale was judicially confirmed. Antje and Robert Winkelmann refused to vacate the property. An order requiring the Sheriff to remove anyone occupying the property was granted and issued.

[27] None of that is disputed.

[28] The Notice of Application does not plead any other material facts.

[29] The materials submitted by Antje, and labelled as Exhibits, contain: notices she sent in connection with the foreclosure proceeding; what she referred to as "syntaxed" documents from wrongdoers; audio recordings of unknown events; what was labelled as "testimonies" from man, Robert: Winklemann, Man, Donald: Larkin, man, Frederick: Winklemann, and woman, Annabelle: Winklemann; what she referred to as a "fair warning text"; and, affidavits of service relating to service on the Respondents named in Antje's Application in Court bearing file number 515855.

[30] The "syntaxed" documents are almost entirely highlighted with dark colours, making them difficult to read, with various numbers inserted throughout. It is unclear what they are presented to establish, except perhaps in support of an allegation in the Notice of Application of "Gramma-Fraud". That is not a wrong recognized in law, making those documents immaterial.

[31] The audio recordings are on a USB Stick. Antje was informed by the Prothonotary that would not be played on our computers and she needed to provide them on a Disk. She did not.

[32] Some of the testimonies speak of the impact of the wrongs alleged in the Notice of Application. However, they do not state how, where, or when those alleged wrongs were allegedly committed and, they do not specifically state who did what. So, they do not make the pleadings any more sustainable.

[33] The "fair warning text" states:

> "Important serious aspect based on facts
>
> This is to notify you that there are still tax proceedings going on in the USA and that it is therefore possible that even with payment by the buyer the house is blocked, which is why it is then possible that the buyers money is then blocked for months and the buyers does not get the house in the end.
>
> This is a serious fair warning that if you/they trespass, you/they will be sued.
>
> That the Auctioneer is administrating property without rights.
>
> That the auction is unlawful, and any bid will be seen as a trespass on property and will be sued for damages."

[34] This was, more likely than not, an attempt to intimidate any potential bidders at the public Auction for the property that was the subject of the foreclosure action.

[35] Its existence is not disputed. So, irrespective of whether its existence is a material fact in establishing any of Antje's claims of wrongdoing, it does not prevent summary judgment. It is, however, indicative of Antje's propensity to use pseudo-legal tactics to subvert legal processes in an abusive and vexatious manner.

[36] None of the materials submitted by Antje raise a genuine issue of material fact.

[37] Therefore, the answer to the first question is "no".

[38] Since the pleadings are clearly unsustainable for the reasons noted, they do not require determination of a question of law. Therefore, the answer to the second question is also "no", and I must grant summary judgment.

[39] I will nevertheless comment briefly on the third question because Counsel for Mr. Kelly and Mr. Petkov has raised it.

[40] Antje has not shown that her pleading has a real chance of success. I find that for the same reasons that I found Antje's pleading to be unsustainable.

Abuse of Process

[41] Civil Procedure Rule ("CPR") 88 "provides procedure for controlling abuse" of process.

[42] CPR 88.02(1) states, among other things:

> "A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:
>
> ….
>
> (e) an order striking or amending a pleading;
>
> ….
>
> (g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;
>
> (h) any other injunction that tends to prevent further abuse."

[43] Justice Gatchalian seeks a finding of abuse of process under Rule 88, striking of the pleading for abuse, and the injunctive remedy already referred to.

[44] She did not seek a vexatious litigant finding under s. 45B of the **Judicature Act** of Nova Scotia. I can, as a general rule, only deal with such a finding on a motion brought by a party, a clerk of the court, or another person with leave of the court.

[45] There is also a Prothonotary's motion to dismiss a new Application in Court, which I will describe later, pursuant to CPR 88.

[46] CPR 88 can bring into play s. 45B of the **Judicature Act**.

[47] Further, as noted at paragraph 27 of ***Tupper v. Nova Scotia (Attorney General)***, 2015 NSCA 92, I also maintain an inherent jurisdiction to declare a litigant to be vexatious and to take steps to control abusive filings or other conduct by them.

[48] Our Court of Appeal, in ***Tupper***, at paragraphs [51] to [55], also encouraged judges faced with a vexatious litigant to consider a blanket prohibition on filing

claims without leave of the Court, and consider extending that to restrain the vexatious litigant's spokesperson, agent or associate.

[49] I agree with Counsel for Justice Gatchalian that the act of suing her because she granted orders in a foreclosure proceeding which resulted in Antje losing her home "displays a fundamental disrespect for the entire court process which cannot be tolerated by this court" and amounts to an abuse of process.

[50] That abuse, by itself, justifies striking the pleadings.

[51] It is also argued that it is such a grave abuse of process that it warrants prohibiting Antje from filing anything else against Justice Gatchalian, any Judge of the Nova Scotia Supreme Court or Court of Appeal, and Justice Gatchalian's Lawyer.

[52] It is unnecessary for me to decide the question based only on that abuse because there is also other abuse to consider.

[53] Even before filing the Notice of Application here, Antje had appealed from Justice Norton's order striking her defence and granting summary judgment. The Notice of Appeal contained 24 pages of pseudo-legal submissions in two languages, only one of which was an official language of Canada. That appeal was dismissed summarily on the motion of the Registrar for failing to perfect the appeal. Therefore, she created unnecessary delay and put CIBC to unnecessary expense.

[54] The first originating document she tried to file at the Yarmouth Prothonotary's Office was on a blank Notice of Application Form which had been altered so extensively by crossing out essential parts that it did not even come close to complying with the Civil Procedure Rules. Therefore, the then Deputy-Prothonotary, Deborah Comeau, properly refused to accept it for filing. Antje subsequently sent her, and her supervisor, "Fair Warning" notices threatening to sue them for $10,000 if they did not correct their trespass on her case.

[55] That, like the "Fair Warning" text previously discussed, was, more likely than not, an intimidation tactic, this one aimed at a Court Officer and her supervisor.

[56] Antje's revised Notice of Application in Court was ultimately accepted for filing as the essential parts had not been crossed out.

[57] However, it does not make a sustainable claim.

[58] Since filing that claim, she has filed dozens of notices and demands to the Court regarding procedure and what she did or did not consider herself subject to, including today, following her oral submissions on the points in those notices and demands.

[59] In addition, while appearing before me in the Nova Scotia Supreme Court at Yarmouth, including today, she has tried to negotiate the use of procedure that is acceptable to her, showing clear disrespect for the Rules of Civil Procedure already in place. For example, she claims a right to trial by jury even though it is not available for an Application in Court.

[60] She is constantly trying to transplant a procedure of her own choosing into the court process.

[61] She refers to this Court as “My Court” or “The Winklemann Court”.

[62] Then, just yesterday, December 7, 2022, Antje filed another Notice of Application in Court, using the standard form, without crossing out the essential parts, but, like the previous Notice, adding her own wording. It also is unsustainable because it does not say where, how, or when, the alleged wrongs were perpetrated, nor specifically by whom.

[63] What is noteworthy is the Respondents named in that Notice of Application in Court. They include “Man, Michael: Curry”, “Man, Justin: Adams”, “Man, Adam: Norton”, “Man, Stephen: Kingston”, and “Man, Robert: Morrison”.

[64] Those are all lawyers who are appearing, or have appeared, on behalf of Respondents in the within Application in Court bearing file number 515855 and/or who are, or were, lawyers in the firm of Mr. Petkov and Mr. Kelly. There is nothing suggesting any other connection with them.

[65] Today, Antje stated she wanted everyone to swear in so she could hold everyone liable.

[66] She told me, while I was presiding over her case, that she would hold me liable if I allowed the alleged “trespass” against her to continue.

[67] Clearly, Antje is suing or threatening to sue any justice system participant, or court officer, or court official, who argues for, or makes, a decision she does not

like, or who she believes has done so. That is clearly vexatious and an abuse of process.

[68] Unfortunately, her past actions, and her comments today, have shown that, more likely than not, if not stopped, Antje will continue bringing such frivolous and vexatious proceedings against any additional justice system participants, court officers, or court officials, who would become involved, like counsel for the respondents in the new Application in Court bearing file number 519555.

[69] It would be unfair to those with legitimate cases to be unnecessarily delayed in having their cases heard because Antje is frivolously exploiting scarce court resources and attempting to hijack the court system by filing unsustainable pleadings, then tying up court time trying to force the Court to agree to her terms for the procedure that will be followed.

[70] It is completely improper and unacceptable for her to use the court process, or threaten to use the court process, to intimidate justice system workers or participants, in revenge for decisions made by them, or for their representation of an adverse party.

[71] For these reasons, I find that Antje has abused the Court's process, commenced frivolous Applications against multiple respondents, and is likely to continue to do so if not stopped. Therefore, I declare Antje to be a vexatious litigant and must put in place measures to prevent Antje from wreaking further havoc on the justice system.

[72] For these reasons I hereby prohibit Antje, and any spokesperson, agent or associate of Antje, and any other person acting on behalf of Antje or Antje's spokesperson, agent or associate, from filing any process whatsoever, including but not limited to any action, application or motion, in the Nova Scotia Supreme Court or the Nova Scotia Small Claims Court, without leave of a Judge of the Nova Scotia Supreme Court.

[73] Ancillary to this prohibition, I direct any court officer receiving a request to file any such process without the Court having granted leave, to reject the filing.

[74] This prohibition covers a broader range of potential respondents or defendants than that initially requested by Counsel for Justice Gatchalian. However, it encompasses all those suggested by him, and now those that were at least impliedly encompassed in the additional submissions.

[75] I have not extended the prohibition to filing in any Court in Nova Scotia, which was requested, because my inherent jurisdiction to control the court process and ensure it is not abused is limited to the process in the Nova Scotia Supreme Court. The Court of Appeal and the Provincial Court are to be left to govern their own processes.

[76] I included the Small Claims Court because it is a statutory Court connected to the Supreme Court in that the filings for the Small Claims Court are processed by the various Prothonotaries or Deputy-Prothonotaries of the Supreme Court, and cases sometimes get transferred between the Small Claims Court and the Supreme Court.

[77] It would be contrary to my conclusions, and the spirit of this prohibition, and unfair to the Respondents in the Application in Court bearing file number 519555 to allow that Application to go any further.

[78] That Application is summarily dismissed as being an abuse of process and clearly unsustainable on its face.

Conclusion

[79] For the foregoing reasons:

- the Applications in Court filed by Antje bearing file numbers 515855 and 519555 are dismissed;
- I hereby prohibit Antje, and any spokesperson, agent or associate of Antje, and any other person acting on behalf of Antje or Antje's spokesperson, agent or associate, from filing any process whatsoever, including but not limited to any action, application or motion, in the Nova Scotia Supreme Court or the Nova Scotia Small Claims Court, without leave of a Judge of the Nova Scotia Supreme Court; and,
- I direct any court officer receiving a request to file any such process without the Court having granted leave, to reject the filing.

Costs

[80] Counsel for the Respondents have advanced very brief submissions on costs.

[81] Now that the result is known, I will accept further submissions on costs in writing.

[82] Any further submissions the Respondents wish to make must be filed by December 20, 2022.

[83] Any submissions on costs by Antje must be filed in writing by December 30, 2022.

[84] The Respondents will have until January 5, 2023, to file a written reply.

[85] I will render a decision on costs by correspondence.

Order

[86] Counsel for Justice Gatchalian, Justin Adams, undertook to prepare the order from today, with a costs order to follow later.

Pierre Muise, J.

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Erratum

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Erratum Details:	The original citation of 2023 NSSC 341 has been corrected to reflect the 2022 oral decision date with the citation of 2022 NSSC 396
Erratum Date:	January 3, 2024