SUPREME COURT OF NOVA SCOTIA
Citation: *Gillis v. Lieberman*, 2024 NSSC 62

Date: 20240301
Docket: 515971
Registry: Halifax

Between:

Wayne Patrick Gillis

Plaintiff

and

Lisa Marlene Lieberman

Defendant

DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: February 20, 2024, in Halifax, Nova Scotia

Counsel: Wayne Patrick Gillis, self-represented Plaintiff
Justin Adams and Bhreagh MacDonald, for the Defendant

By the Court:

[1] Summary judgment, as the name suggests, should be a way to deal with cases summarily, before the parties have spent large sums of money in a trial. If the case is one that just stands no chance of success, or on the other hand, if the defence is hopeless, a trial is a waste of time and money. The court can either dismiss the case or grant a judgment. In many cases, that is doing the unsuccessful litigant a favour. They have been spared the consequences of a losing effort in a trial. Like many legal things, summary judgment now involves a rather complex analysis, making the distinction between summary judgment on the pleading and summary judgment on evidence and dealing with things like pure questions of law and mixed questions of law and fact. Judges must exercise the discipline of applying the required step by step analysis. But at the heart of it all is whether this case should be allowed to get to trial at all.

Amended Statement of Claim

[2] The case involves Wayne Gillis' claim against his former spouse, Lisa Lieberman. Mr. Gillis filed a Notice of Action for Debt, in which he claimed $417,000. Mr. Gillis, in that Notice of Action for Debt, filed on June 29, 2022, identified himself as a "traumatic brain injury survivor, cognitively disabled for sustainable employment" and his former spouse, Ms. Lieberman as a "licensed & practicing veterinarian". He said that Ms. Lieberman owed him money resulting from a "MVA settlement advance & the over 6+ years his indemnity paid schooling of their/her DVM acquisition". In other words, Mr. Gills received a settlement from the accident that caused his brain injury, and he says that it was used to pay for Ms. Lieberman's degree in veterinary medicine. Mr. Gillis alleges that Ms. Lieberman took advantage of his disability by using his settlement to fund her education, moving the family to Florida, and within a year divorcing him there to marry an American, all for the purpose of securing permanent residency in the United States.

[3] That was how this matter started at least. Ms. Lieberman then filed this motion for summary judgment. The hearing of that was scheduled for the Tuesday following a long weekend, February 20, 2024. Mr. Gillis provided a written motion, in court, seeking to amend the pleadings. It was dated Sunday, February 18, 2024. He said that he assumed that the filing of that amendment would result in an adjournment of the summary judgment motion. Mr. Adams, for Ms. Lieberman, did not contest the amendment and said that the arguments to be made on the

summary judgment were not changed by the amendment. The amendment was granted.

[4] Mr. Gillis, who has not been represented by legal counsel in these proceedings said that the idea filing an Amended Statement of Claim came from a person whom he described as a legal coach, who is a lawyer, but who is not retained on this matter.

[5] The Amended Statement of claim alleges that Ms. Lieberman breached her fiduciary duties by placing herself in a conflict of interest and using the Power of Attorney that Mr. Gillis signed to access the settlement funds that he received from the accident claim resolved in 2008. He says that the decisions that she made benefited her. She opted to have a $4,000 monthly settlement paid as a lump sum of $750,000 and used those funds to pay household expenses, to pay for her tuition, and to buy the matrimonial home that they owned in Florida. The funds were depleted by 2015. Ms. Lieberman started divorce proceedings in 2016. As part of the divorce in Florida Mr. Gillis was not awarded any spousal support. His Statement of Claim says that he was not able to connect these issues and to understand what happened to him until he filed the claim in June 2022. In the Amended Statement of Claim Mr. Gillis seeks a full accounting and the equivalent of the $4,000 per month that he would have received under the structured settlement.

The Florida Divorce

[6] Ms. Lieberman filed an affidavit on this motion. Mr. Gillis did not file any evidence on the summary judgment motion. Ms. Lieberman says that Mr. Gillis was injured in 2005 and his case was settled in 2009. At that time, he received $550,309.80 net of legal fees and disbursements. That money was used to pay off family debts and to support the couple and their children. In 2015 Mr. Gillis and Ms. Lieberman moved to Orlando Florida where she began working as a veterinarian. Mr. Gillis was brain injured and had limited capacity to work but was in any event unable to work legally in the United States.

[7] They separated in 2016. They signed a “Marital Settlement Agreement” in Florida on December 6, 2017. That agreement provided for the division of their assets. Ms. Lieberman paid Mr. Gillis $20,000. That was a repayment of money that had been used to fund her education. The matter went to court in Florida. Mr. Gillis argued that he had not had a chance to review and fully understand the Marital Settlement Agreement. The court gave him 15 days to file a motion to that

effect. He did not file that motion so, on January 12, 2018, the Circuit Court of the Ninth Judicial Circuit in Florida issued a Final Judgment of Dissolution of Marriage. That order provided that the Marital Settlement Agreement was ratified and incorporated into the order. The Marital Settlement Agreement, as incorporated in the Florida order, provided that it was a "full, complete, final and equitable settlement of their respective past, present and future property rights, claims, obligations, demands and any and all other matters relating to and existing between them by reason of their said marriage."

[8] Mr. Gillis did not appeal that order.

Relitigating the Florida Divorce

[9] Mr. Gills has made efforts to avoid the terms of the Florida Divorce order. On November 5, 2021, he filed a claim against Ms. Lieberman in the County Court of the Ninth Judicial District in Osceola, Florida. He claimed the maximum amount claimable in that court, $148,075 USD for money that he said was owing because of a "Canadian marriage, promissory note". The claim contested the marriage settlement and claimed for a "breach of contract, discrimination, and intent to harm". On February 15, 2022, the court dismissed the claim.

[10] On June 29, 2022, Mr. Gillis filed the notice in this matter.

[11] On August 24, 2022 Ms. Lieberman was provided with a copy of an email sent by Mr. Gillis to the Nova Scotia Human Rights Commission in which Mr. Gillis says the following;

> Before I begin, this is a "1st degree type of murder" in the pre planned abduction of my son's choice. One masked to my emotional insecurity & to them with material purchases of excitement & false premises. Indeed typical to the mother's narcissistic behaviour. Also having a selfish, to self serving & sociopathic grandmother already conveniently divorced there, simply highlights this intent, discrimination, and deception of me.

[12] On December 6, 2022, Mr. Gillis filed a motion to dismiss the Statement of Defence filed on behalf of Ms. Lieberman. The basis for that motion was that the document was "comprised of a flurry of false information, untruths, and misleading information, it was harmfully delivered to discriminate" against Mr. Gillis. That motion was adjourned without day.

[13] Then, on February 28, 2023, Mr. Gillis filed another motion to dismiss the Defence. On April 18, 2023, Justice Lynch dismissed the motion and prohibited Mr. Gillis from making any other motions without permission of the court. He was ordered to pay costs of $500.

[14] In June 2023 Mr. Gillis indicated that he wanted to have a discovery examination. Ms. Lieberman, through her counsel, agreed. Mr. Gillis agreed to pay the $500 costs that had been ordered. In early July 2023, he changed his mind and said he would not pay the costs award. Then on July 18, 2023, Ms. Lieberman was told by the prothonotary that Mr. Gillis had requested permission to file yet another motion, this time requesting the scheduling of the discovery of Ms. Lieberman. Her counsel contacted Mr. Gillis and eventually discoveries of both parties were agreed. Despite that Mr. Gillis went ahead with the motion to order discoveries. A court order was issued to have both parties discovered.

[15] The discoveries were rescheduled at Mr. Gillis' request because of a heath issue. On the rescheduled date Mr. Gillis briefly questioned Ms. Lieberman. Mr. Gillis then said that because Ms. Lieberman had not been truthful in answering his questions, he would no longer agree to be questioned himself. He left.

[16] Mr. Gillis then contacted the prothonotary. He asked whether he could request a male judge to hear the case. He was told that he could not.

[17] Ms. Lieberman is seeking to have the claim against her dismissed and to have an order prohibiting Mr. Gillis from bringing any further claims without the permission of a judge.

Summary Judgment on Evidence

[18] The motion is for summary judgment on evidence under *Civil Procedure Rule* 13.04. The law that applies is set out in *Shannex v. Dora Construction Ltd.*, 2016 NSCA 89. The first issue is whether there is a genuine issue of material fact. That can be one of pure fact or a mixed question of fact and law. A material fact is a fact that would affect the result. All kinds of facts can be disputed but what the moving party has to show is that there is no question of fact that would affect the result. If there is a material fact in dispute, summary judgment should not be granted. If there is no material question of fact, the analysis moves to the next step.

[19] In this case, there are undoubtedly many facts in dispute. Mr. Gillis says that he was taken advantage of by Ms. Lieberman and that the Florida divorce order

should not be binding on him. But there are some facts that are beyond dispute. The Florida divorce order was granted on January 12, 2018. That order dealt with the division of all the parties' property. Mr. Gillis filed this claim on June 29, 2022, more than 4 years later.

[20] The next issue is whether the pleading requires the determination of a question of law. If there is no question of law, and it has already been determined that there is no question of material fact, that would be a nuisance claim and must be dismissed. There are questions of law to be decided here. Those are whether the filing of the claim by Mr. Gillis is barred by the *Statute of Limitations* and whether the case is *res judicata*, in that the issues have already been decided by a court in Florida.

[21] If there is a question of law, the judge may either grant or deny summary judgment. When dealing with a contested issue of law, like that, the test is whether the pleading, in this case, Mr. Gillis' claim, has a "real chance of success." As Fichaud J.A. noted in *Shannex* it would be patently unjust to dismiss a claim or a defence that has a real chance of success at a later trial. The responding party must show that real chance of success.

[22] If the judge decides that the pleading has no real chance of success, the summary judgment motion should be granted. But if there is a question of law, with a real chance of success the judge can still decide to finally determine that legal question. At that stage the judge can either decide the legal question and grant the motion for summary judgment, or dismiss the motion and convert the matter, with a real chance of success, to an application.

[23] In this case, there are no material questions of fact, whether pure or mixed questions of law and fact. The facts that deal with the limitation issue and the *res judicata* issue are not in dispute. The dates of the Florida court order and the filing of Mr. Gillis' claim in Nova Scotia are known and not disputed. The nature of the Florida order is clear on its face. That is not realistically disputable.

[24] There are two questions of law. Those, again, are whether the claim is statute barred and whether the subject matter of the claim has already been decided by a court.

Real Chance of Success

[25] Summary judgment should be granted, and the case dismissed if, on those legal questions, Mr. Gillis does not have a real chance of success. The judge must decide, having looked at the undisputed facts, whether the responding party, in this case Mr. Gillis, has shown that the claim has a real chance of success. That does not mean proof to a civil standard. It means that there is a reasonable possibility of success, in the sense that it is an arguable and realistic position that finds support in the evidence. *Coady v. Burton Canada Co*., 2013 NSCA 95.

Limitations of Actions Act

[26] Section 8(1) of the *Limitations of Actions Act* provides that a case cannot be brought after the earlier of 2 years from the date the claim was discovered and 15 years from the day on which the act or omission on which the claim was based. Mr. Gillis, in his amended claim, says that it is based on a breach of fiduciary duties arising from the Power of Attorney. In the claim, he alleges that the funds received in 2008, were depleted by 2015, when the parties moved to Florida. When the parties were divorced in January 2018, the court order purported to resolve all matters between them arising from their marriage. That would include any financial claims. How that settlement was dealt with in the Florida divorce was known longer than 2 years before June 29, 2022, when the claim was filed in this case.

[27] When a limitation defence is put forward in the context of a summary judgment motion, the applicant, Ms. Lieberman must show that the limitation period has expired. That has been done here. The plaintiff, Mr. Gillis, must show that there is a reasonable chance of success by presenting evidence that the limitation period had not expired because of the principle of discoverability. *Hardit Corp. v. Holloway Investments Inc*., 2022 NSSC 328.

[28] The only information about that is the statement at paragraph 11 of the Amended Statement of Claim that "The Plaintiff was unable to conceptually think in a manner to be able to connect together these issues and to understand what happened to him until the year he filed this claim in June 2022." That is not evidence. Mr. Gillis did not file an affidavit from himself or from anyone else. There is no medical evidence of any kind to show the extent of Mr. Gillis' disability. Mr. Gillis has not provided any evidence to advance the claim that the limitation period has not expired because the claim was not discoverable within the 2 year limitation period. Mr. Gillis' claim against Ms. Lieberman is barred by

statute and does not have a realistic chance of success. On that basis, summary judgment should be granted.

Res Judicata

[29] *Res judicata* is a Latin phrase that means literally "matter adjudged". It means that the matter has already been decided by a competent court and cannot be brought back for another attempt.

[30] This case involves the relitigation of the same subject matter that was already decided by another court. The issues are then whether the same question has been decided, whether that decision was final, and whether the parties to that litigation were the same as the parties in this matter.

[31] The Final Judgment in Florida, incorporating the Marital Settlement Agreement, which was signed by the parties, determined the division of the assets between Mr. Gillis and Ms. Lieberman. It dealt with any claims that either of them had against the other arising from their marriage. Mr. Gillis obtained a settlement in 2008. That money was used to support the family before their separation and divorce. Mr. Gillis' claim that Ms. Lieberman now owes him money or owes him an accounting of the money received in the settlement, was resolved as part of their divorce. The Circuit Court of the Ninth Judicial Circuit in Osceola County, Florida dealt with the issues of who, as between Mr. Gillis and Ms. Lieberman should get what, including the settlement or what if anything, remained of it. Characterizing the claim now, as a breach of a fiduciary duty under the Power of Attorney, does not change the fundamental nature of what is being sought. It would relitigate the divorce proceeding which decided the property rights, as among other things, between Mr. Gillis and Ms. Lieberman. It is an attempt to undue that judgment.

[32] The Final Judgment from the Circuit Court of the Ninth Judicial Circuit was final. It was issued after a final hearing, and it was a court of competent jurisdiction. The parties are of course the same.

[33] Mr. Gillis' claim has already been decided. It is *res judicata*. It does not have a realistic chance of success.

[34] On that basis as well, summary judgment is granted, and the case is dismissed.

Injunction

[35] Ms. Lieberman has sought an injunction that would prevent Mr. Gillis from taking any further claims against her without the permission of a judge. That kind of remedy has been granted before. In *Cormier v. Canada (Royal Canadian Mounted Police)*, 2015 NSSC 352, Justice Chipman ordered an injunction against a plaintiff who had brought claims against three Provincial Court judges. He said that he would exercise his inherent jurisdiction to restrict the actions of the plaintiff which he found to be vexatious. The purpose was to prevent further abuse of the Court's process.

[36] Mr. Gillis has described himself as a traumatic brain injury survivor. That must be acknowledged but should not be used to either marginalize Mr. Gillis nor to excuse him. There is no expert evidence as to the nature of his current condition so it cannot be used to imply that his actions in relentlessly pursuing his grievances against his former spouse are a function of that condition. His actions speak for themselves.

[37] Mr. Gillis filed a similar claim in Florida, and it was dismissed. He contacted Ms. Lieberman's workplace and alleged that her conduct toward him was inhumane. He threatened to picket outside her workplace with a megaphone. He posted a picture of his Notice of Action to Facebook and a picture of a personal and altered email from Ms. Lieberman about their divorce. He has tried to file a claim with the Nova Scotia Human Rights Commission. He made motions for the same relief in this matter and that resulted in Justice Lynch baring him from filing further motions without permission. He filed a motion seeking discovery when discovery had already been agreed by Ms. Lieberman's counsel. He refused to pay the costs as ordered by Justice Lynch, after first agreeing to do so, then refusing. Mr. Gillis has refused to file an Affidavit Disclosing Documents despite requests to do so. He attended the discovery, asked questions of Ms. Lieberman then refused to be questioned himself, contrary to the order that he had sought himself. He has asked to have a male judge assigned to this case. Mr. Gillis refused to consent to Ms. Lieberman's attendance at the hearing of this motion by video. An appearance was required to formally permit that. Mr. Gillis argued that if she were required to come to Nova Scotia from Florida she would back down, and the matter would be settled.

[38] Whatever the cause, Mr. Gillis' actions amount to a form of legal harassment of his former wife. Mr. Gillis may believe fervently in the righteousness of his cause. Whether he is right or wrong, he cannot continue to use legal process as a weapon or as a way of expressing his frustration or outrage.

[39] The injunction sought by Ms. Lieberman will be granted. Mr. Gillis is prohibited from filing actions or claims against Ms. Lieberman in the Supreme Court of Nova Scotia and the Small Claims Court in Nova Scotia. That of course does not apply to an appeal of this decision.

[40] After the matter was concluded I received correspondence from Mr. Gillis marked “Personal and Confidential”. It was not copied to Ms. Lieberman’s counsel. The court provided a copy. Mr. Gillis wrote that during the hearing on February 20, 2024 he did not feel that he could adequately address the issues and his sister spoke for him. He was not denied the opportunity to speak and did speak on his own behalf. Mr. Gillis asked for a chance to do the hearing again, now that he felt that he could deal with the issues himself. I was not prepared to re-open the hearing of the motion. Mr. Gillis asked his sister to speak for him. He spoke himself as well. Doing the motion again would involve significant cost and inconvenience to the other party, Ms. Lieberman.

Costs

[41] Ms. Lieberman has been successful on the motion for summary judgment. That motion is dispositive of the entire matter and the amount of costs should reflect that.

[42] I will receive Ms. Lieberman’s submissions of costs, in writing, within 30 days of this decision. Mr. Gillis’ response must be filed within 15 days of that.

Campbell, J.