

SUPREME COURT OF NOVA SCOTIA

Citation: *Tupper v. Nova Scotia (Attorney General)*, 2014 NSSC 213

Date: 2014/06/16

Docket: Halifax, No. 410543

Registry: Halifax

Between:

Thomas Percy Tupper

Plaintiff

v.

The Attorney General of Nova Scotia representing
Her Majesty the Queen in right of Nova Scotia, Judgment
Recovery (N.S.) Ltd., Harold F. Jackson, Q.C., Paul L.
Walter, Q.C., Rob Stewart, Q.C., and John Kulik, Q.C.

Defendants

Judge: The Honourable Justice N.M. Scaravelli

Heard: May 21, 2014, in Halifax, Nova Scotia

Counsel: Thomas Percy Tupper, in person
Duane Eddy, for the Defendant Attorney General of
Nova Scotia
Michael R. Brooker, Q.C., for the Defendant Judgment
Recovery (N.S.) Ltd.
Jason T. Cooke and Ann E. Smith, Q.C., for the Defendants
Harold F. Jackson, Q.C. and Paul L. Walter, Q.C., Bob
Stewart, Q.C., and John Kulik, Q.C.

By the Court:

[1] The defendant parties in this action filed motions for summary judgement on the pleadings pursuant to *Civil Procedure Rule* 13.03 and alternatively for an order dismissing the proceedings as an abuse of process together with an order restraining the plaintiff from initiating further proceedings without the leave of the court pursuant to *Civil Procedure Rule* 88 and section 45(B) of the *Judicature Act*.

[2] I have determined this is an appropriate case in which to grant an order dismissing the action as an abuse of process on the part of a vexatious litigant. Alternatively the court would allow the motion for summary judgment on the pleadings.

BACKGROUND

[3] The current action by the plaintiff encompasses a lengthy history of litigation proceedings stretching back 30 years. The results of the most recent hearing involving the parties is found in the Court of Appeal Decision dated June 5th, 2014 (*Tupper v. Nova Scotia Attorney General*,

2014 N.S.C.A. 60) where the defendants motion for security for costs regarding an appeal by the plaintiff in these proceedings was granted.

Justice Scanlan succinctly set out the history of the proceedings:

[4] The appellant, Mr. Tupper has, for over two decades, been involved in various lawsuits, all stemming from a motor vehicle accident wherein Mr. Tupper was the driver of a motorcycle and he struck a pedestrian in 1983. The various legal proceedings since that time allege conspiracy of one sort or another and the history of those proceedings is described by Justice Glen G. McDougall (reported as **Tupper v. Nova Scotia Barristers' Society**, 2013 NSSC 290). In ¶4-9 Justice McDougall sets out the history as follows:

[4] **The Accident:** The alleged conspiracy began on the night of June 4, 1983 when Mr. Tupper struck a pedestrian while driving his motorcycle on the highway in Kentville, Nova Scotia. The pedestrian brought an action in negligence against Mr. Tupper. Mr. Tupper was uninsured and did not defend the claim. The claim against him was defended by Judgment Recovery (N.S.) Ltd. The pedestrian was represented by Paul Walter, Q.C. Judgment Recovery was represented by Harold Jackson, Q.C.

[5] At trial, [1985] N.S.J. No. 287, Justice Grant found that both Mr. Tupper and the pedestrian had been negligent. Liability was apportioned 75 percent to Mr. Tupper for driving his motorcycle without headlights on and 25 percent to the pedestrian whose inebriated state limited his ability to avoid the collision. Damages were awarded to the pedestrian and paid by Judgment Recovery. Judgment Recovery then pursued Mr. Tupper for repayment.

[6] Mr. Tupper sought advice from lawyer Robert Stewart, Q.C. on whether or not to appeal the trial decision. Mr. Stewart recommended against an appeal.

[7] At some point after his discussions with Mr. Stewart, Mr. Tupper became convinced that the pedestrian's claim against him had been fraudulent. In Mr. Tupper's view, the pedestrian had intentionally placed himself in the path of the oncoming motorcycle in order to sue for damages. To support this theory, Mr. Tupper cites several portions of the trial decision including reference by the judge to the pedestrian's statement that "it was not up to him to move" when he heard the motor bike approaching.

[8] In Mr. Tupper's mind, each of the lawyers who participated in his trial and Mr. Stewart were aware, by virtue of their legal training, that damages should be awarded only to victims of genuine accidents. Accordingly, Mr. Tupper asserts that these lawyers became party to the insurance fraud by allowing him to be victimized by the pedestrian.

[9] **The 2007 Action:** As a result of Mr. Tupper's inability to make payments to Judgment Recovery, his driver's licence has been suspended since August of 1985. In 2007, Mr. Tupper filed an action against the Province,

Judgment Recovery and Judgment Recovery's lawyers, Mr. Jackson and John Kulik, Q.C., for damages flowing from the suspension of his license. The Nova Scotia Supreme Court dismissed the action against all parties except the Attorney General, [2007] N.S.J. No. 341. The Nova Scotia Court of Appeal upheld the dismissal, [2008] N.S.J. No. 187. By defending the parties sued by Mr. Tupper in this action, lawyers Catherine Lunn, Michael Brooker, Q.C., and Michael Wood, Q.C. (as he then was) were added by Mr. Tupper to the list of those knowingly involved in the conspiracy against him.

[5] The original trial which dealt with the accident is reported as **Hake v. Tupper**, 1985 CarswellNS 270 (S.C.T.D.). In that case the trial judge found that Mr. Tupper was driving his motor bike and struck an intoxicated pedestrian. The lights on Mr. Tupper's motor vehicle had been disconnected and were not operational at the time of the accident, which occurred approximately 1:30 a.m. on June 4, 1983. Mr. Tupper was found to have been travelling at an excessive rate of speed and was driving without a valid driver's license. Mr. Tupper was found to be negligent and 75% liable for the accident. Mr. Hake received an award based on 75% of approximately \$37,500.

[6] Also, starting in 2002 it appears that Mr. Tupper started blaming his girlfriend, Toni Wheeler for the accident and took action against his ex-girlfriend, Ms. Palmer as well as her brother Mr. Watson and their lawyer Ritchie Wheeler. That matter proceeded through to an appeal and in a decision reported **Tupper v. Wheeler**, 2005 NSCA 74, this Court dismissed the appeal having determined that it was absolutely unsustainable and of no merit whatsoever.

[7] In **Tupper v. Nova Scotia (Attorney General)**, 2007 NSSC 232, there was a successful motion by the defendants including the Attorney General, Judgment Recovery and Mr. Kulik to strike the Statement of Claim and deny a motion by Mr. Tupper to add further defendants including Mr. Jackson. The claims in that action were ultimately dismissed with the exception of a s. 15 **Charter** claim against the Attorney General. Justice Moir determined that any claims of negligence or breach of fiduciary duty against Mr. Kulik and Mr. Jackson were clearly unsustainable. Mr. Tupper appealed that decision and this Court found there was no merit to the appeal (**Tupper v. Nova Scotia (Attorney General)**, 2008 NSCA 44, leave to appeal ref'd [2008] 3 S.C.R. x).

[8] Mr. Tupper made complaints to the Nova Scotia Barristers Society against seven lawyers including the named solicitors in the motion now before the Court. The Barristers Society

dismissed those complaints. A judicial review of the decision of the Nova Scotia Barristers' Society determined that the judicial review "has no chance of success and must not be entertained any further". That case is reported as **Tupper v. Nova Scotia Barristers' Society**, 2013 NSSC 290.

[9] In an affidavit prepared by Jason Cooke in support of the motions for security for costs now before the Court, Mr. Cooke detailed costs orders outstanding as against Mr. Tupper as follows:

1. Costs awards in the amount of \$1,000 in favour of the respondents Bernard Scott Coldwell and Vernon Russell Ward, bearing CA No. 121987;
2. Costs awards in the amount of \$500 in favour of the defendant Ritchie R. Wheeler and \$250 in favour of the defendants Tony Palmer and Peter Watson, bearing S.K. No. 226787;
3. Costs awards in the amount of \$1,500 in favour of the respondent Ritchie Wheeler and \$750 in favour of the respondents Toni Palmer and Peter Watson, bearing CA No. 234788;
4. Costs awards in the amount of \$100 in favour of the defendant John Kulik, \$100 in favour of the defendant Judgment Recovery (N.S.) Ltd. and a total of \$100 to the defendants The Attorney General of Nova Scotia and the Minister of Service Nova Scotia and Municipal Relations, bearing S.H. No. 255102;
5. Costs awards in the amount of \$500 in favour of each of the respondents The Attorney General of Nova Scotia, The Minister of Service Nova Scotia and Municipal Relations – The Honourable Barry Barnett, Judgment Recovery (N.S.) Ltd and Judgment Recovery's Lawyer – John Kulik, bearing C.A. No. 286230; and
6. Costs awards in the amount of \$300 in favour of the defendant Judgment Recovery (N.S.) Ltd. and \$300 in favour of the defendants Harold F. Jackson, Q.C., Paul L. Walter, Q.C., Bob Stewart, Q.C. and John Kulik, Q.C., and the proposed defendant Michael Brooker, Q.C., bearing Hfx No. 410543.

[10] Mr. Tupper acknowledged at the hearing of this motion that he has not paid those costs, although he did suggest that costs were owing to him. He argues those costs should be deducted from the amounts, or off-set against the amounts that are now outstanding in the costs awards as I have noted above (¶1-6).

[11] I am satisfied that any costs award that may have been made in Mr. Tupper's favour are of no relevance in terms of the issue of costs as between the parties now before the Court and Mr. Tupper.

[12] Mr. Tupper says he cannot pay costs. He does indicate that he has spent substantial sums of money in the various proceedings.

[13] A brief summary of some of the various applications and actions as set out above in relation to Mr. Tupper begin to paint the torturous picture of the various proceedings launched, and applications made by Mr. Tupper. Mr. Tupper challenged me in court, saying that if I could see 500 metres in the dark he would drop his appeal. The issue is not whether I can do the impossible; the issue is whether the various respondents should be left to fund appeals launched by Mr. Tupper, in this case an appeal which is implausible at best.

[4] The matter before Justice Scanlan relates to an appeal from a February 2014 decision of Justice Allan Boudreau in this proceeding where he dismissed Mr. Tupper's motion to add as further defendants, lawyers Michael Brooker, Q.C., solicitor for Judgment Reovery, Catherine Lunn, counsel for the Attorney General in the 2007 proceeding, before Justice Moir, and the Registrar of Motor Vehicles.

ABUSE OF PROCESS – VEXATIOUS LITIGANT

[5] Civil Procedure Rule 88 provides:

88.01 (1) These Rules do not diminish the inherent authority of a judge to control an abuse the court's process.

(2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.

(3) This Rule provides for controlling abuse.

Remedies for abuse

88.02 (1) 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:

- (a) an order for dismissal or judgment;
 - (b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;
 - (c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;
 - (d) an order to indemnify each other party for losses resulting from the abuse;
 - (e) an order striking or amending a pleading;
 - (f) an order expunging an affidavit or other court document or requiring it to be sealed;
 - (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.
- (2) A person who wishes to make a motion under section 45B of the *Judicature Act* may do so by motion in an allegedly vexatious proceeding or a proceeding allegedly conducted in a vexatious manner, or by application if there is not such outstanding proceeding.

Unsustainable pleading

88.03 (1) It is not an abuse of process to make a claim, or raise a defence or ground of contest, that may on the pleadings alone be unsustainable, and such a claim, defence, or ground may be challenged under Rule 13 – Summary Judgment.

(2) A party or the prothonotary may make a motion to strike a pleading on the basis that it amounts to an abuse of process.

[6] Section 45 B of the *Judicatures Act*:

45B. Order against proceeding without leave – (1)

Where a court is satisfied that a person has habitually, persistently and without reasonable grounds, started a vexatious proceeding or conducted a proceeding in a vexatious manner in the court, the court may make an order restraining the person from

(a) starting a further proceeding on the person's own behalf or on behalf of another person;

(b) continuing to conduct a proceeding,

without leave of the court.

[7] Dismissing an action for abuse of process is an exceptional remedy used only in the clearest cases of abuse of the court process. In these instances the court exercises its inherent power to prevent vexatious and other litigants from bringing the administration of justice into disrepute.

[8] The present action stems from the 1983 motor vehicle accident as is the case in all legal proceedings to date. The essence of the action is set out in paragraph 7 of the Amended Statement of Claim:

This is a lawsuit on how Larry Hake and four lawyers conspired to commit insurance fraud, extortion, etc., had me pay back their stolen money to the insurance company they robbed and when I couldn't pay, my driver's license was suspended January 19, 1987 to the present / future. And it's about charter rights violation.

[9] The claim goes on to recount Mr. Tupper's versions of the events surrounding the accident and subsequent proceedings. The issues raised in the current proceeding have ostensibly been dealt with in the previous proceedings. The allegations contained in the previous proceedings are often repeated and supplemented with different wording. Attempts to re-litigate a claim which the court has already determined is an abuse of process.

[10] Mr. Tupper is a vexatious litigant. As indicated he has brought a number of actions to determine issues that already have been dealt with. He has been persistent in taking unsuccessful appeals from judicial decisions. He has failed to pay costs of unsuccessful proceedings. He has made scurrilous and unsubstantiated accusations against all defendants charging malice, bad faith, gross negligence, extortion, and intimidation. This repeated litigation is a misuse of the courts process and resources. It requires the defendants to dedicate time and resources to respond.

[11] I would also grant summary judgment on the pleadings pursuant to Civil Procedure Rule 13.03. Although some of the allegations in the current proceeding use different language, the allegations are essentially the same as the 2005 proceeding where the claim was dismissed. The

additional allegations of fraud / conspiracy and abuse of process do not have a factual basis. In summary the claim fails to disclose a reasonable cause of action against any of the defendants. The claim does not set out any material facts to support the allegations made and as such, the allegations are unsustainable.

[12] The action is dismissed.

[13] Subject to an appeal of this decision, I order that Mr. Tupper shall not take any further steps in these proceedings nor commence any further proceedings against the defendants relating to Mr. Tupper's involvement in the 1983 motor vehicle accident with Mr. Hake, without leave of the court. I award costs in the amount of \$750.00 to the Attorney General, \$750.00 to Judgment Recovery and \$750.00 to solicitor defendants.