IN THE SUPREME COURT OF NOVA SCOTIA

Cite as Clive Estate v. Rizzi, 2002 NSSC 34

BETWEEN:

ESTATE OF JOSEPH WALTER CLIVE

APPELLANT

- and -

LOIS RIZZI

RESPONDENT

HEARD: At Yarmouth, Nova Scotia on January 17, 2002

BEFORE: The Honourable Justice Charles E. Haliburton

SUBJECT: Appeal of Small Claims Court Decision

DECISION: The 4th day of February, A.D. 2002

ATTENDING: Andrew Nickerson, Solicitor for the Appellant

                Ian MacDonald, Solicitor for the Respondent

D E C I S I O N

[1]   A novel point has been raised on this appeal.

[2]   The facts briefly stated are that the Claimant, the Estate of Joseph Walter Clive filed a claim in Small Claims Court against Lois Rizzi claiming the delivery of a motor vehicle or money in lieu thereof. The claim was issued by the Clerk of the Court pursuant to Section 21 of the Act after inserting the "time and place of adjudication" as January 23, 2002.

[3]   In due course the claim was served and Ms. Rizzi filed a Defence and Counterclaim.

[4]   When the Defence and Counterclaim were filed the Clerk of the Court reviewed the docket relating to the anticipated proceedings in the Small Claims Court and scheduled for hearing. Anticipating that this matter, which was now contested, would require considerable time for hearing; and realizing that there was an extensive docket set for hearing on January 23rd, she looked for a possible alternative date. It appeared that the matters scheduled for December 12th would be brief and that this matter could be heard more conveniently at that time. Accordingly, the earlier date was assigned to this matter. Notice indicating this new date was forwarded to the parties by registered mail.

[5]   On December 12th the Defendant appeared for the hearing. The Notice forwarded by registered mail to the Claimant was not accepted by the Claimant or at least was not received by the Claimant. The Claimant was not advised of the accelerated date for hearing.

[6]   Having made that observation it is, in my view, irrelevant whether the Claimant had been made aware of the earlier date or not. Claimant's counsel has argued on this appeal and I accept as correct, the proposition that the Small Claims Court, being a statutory court, is obliged to follow the procedural steps as laid down in the Act.

[7]   Section 21 (1)(a) provides that;

> (1) Upon a claim being delivered to the prothonotary of the
> Supreme Court for the county in which an action is commenced,
> the clerk shall
> (a) open a file, affix an identifying number to the file and claim
> document, date stamp the document, insert the time within
> which the document is to be served on the defendant, insert the
> time and place within which any defence or counterclaim is to
> be filed and served on the claimant, **insert the time and place
> of adjudication in accordance with the regulations**..."

In this particular instance the Clerk changed the date of the proceeding at the time the Defence was filed. Section 21 (2) does not authorize the Clerk to do so. It provides;

> "Upon a defence or counterclaim being filed with the clerk
> of the county court, the clerk shall make certain the correct file
> number is affixed to the document, date stamp and file the
> original document, issue a certified copy to the Defendant and
> issue additional certified copy or copies as required for service
> by the defendant on the claimant or claimants".

[8]   The authority of the Clerk to fix a date for hearing was exhausted when the "Claim" was issued and a date assigned. There was no statutory authority to adjust the date either by advancing it or delaying it.

[9]   At the time appointed for the hearing the adjudicator, of course, does have authority to deal with adjournment and to ensure that the parties are granted a reasonable opportunity to be heard.

[10]   I have therefore concluded that the adjudicator was without jurisdiction when the hearing took place on December 18th and the proceedings were therefore a nullity. The Claimant is entitled to a hearing *de novo* which will be held before another adjudicator.

Dated at Digby, the 4th of February, 2002

J.