SUPREME COURT OF NOVA SCOTIA
Citation: *Saint Vincent's Nursing Home v. Fullerton*, 2014 NSSC 415

Date: 20140916
Docket: Hfx No. 428831
Registry: Halifax

Between:

Saint Vincent's Nursing Home

Appellant

v.

Betty Joan Fullerton and James Robert Fullerton

Respondents

Judge:	The Honourable Justice Denise Boudreau
Heard:	September 16, 2014, in Halifax, Nova Scotia
Oral Decision:	September 16, 2014
Written Decision:	November 20, 2014
Counsel:	Jillian Strugnell and Justin Morrison, for the Appellant Respondents not present

By the Court: (Orally)

[1] This matter is an appeal of a Small Claims Court decision. The Appellant submits that its case was not heard on its merits at first instance. The Respondents were served with notice of this Appeal and have not attended.

[2] As the Small Claims Court is not truly a court of record, we do not have any tape recording as to what happened at the time of this hearing. I am relying upon affidavit evidence.

[3] This is a rather unfortunate situation. The Appellant filed an application in Small Claims Court seeking an order for reimbursement of moneys owed to them, due to the residence of Respondent Ms. Betty Joan Fullerton in their facility. The Appellant claimed that moneys required to be paid, for her stay at their facility, had not been paid.

[4] Neither Respondent attended the hearing date, May 8, 2014. Mr. Morrison (on behalf of the Applicant) attended with witnesses in support. He advised the adjudicator that he was withdrawing the claim against Robert Fullerton, and requested quick judgment against Betty Fullerton. There next occurred an exchange between Mr. Morrison and the adjudicator, as a result of which Mr.

Morrison believed he had been granted quick judgment for the amount sought, as he had requested.

[5] I have no reason to dispute that Mr. Morrison heard what he heard. Clearly, Mr. Morrison was of the belief that his application for quick judgment had been successful. He then packed up and left (and his witnesses packed up and left) which is entirely consistent with his understanding of the events.

[6] After the hearing, the adjudicator wrote to Mr. Morrison seeking case law in support of the Appellant's claim. Mr. Morrison wrote back (through Ms. Strugnell, an associate with his firm) indicating confusion, since it was his understanding that the claim had been granted, and wondering why further particulars were being sought under those circumstances. The adjudicator responded and disputed the fact that quick judgment had been granted. She noted:

> I am afraid your articled clerk may have been a bit premature in his anticipation of a win for his client.

[7] The adjudicator then issued a decision, dated May 28, 2014. Within that decision, she addressed some of the salient facts of the matter, and noted the absence of supporting evidence to the claim. The main reasoning behind her decision is found at paragraph 13:

> While Mrs. Fullerton is a resident of the Claimant's facility and presumably receiving some level of care, there is not yet enough evidence and substantiated legal arguments before me to find an exact amount of money owing commensurate with a finding of unjust enrichment.

As a result, the adjudicator dismissed the claim as against both Defendants. (It was noted by the Appellant before me that the claim against Mr. Fullerton had previously been withdrawn in any event.)

[8] The adjudicator's decision dismissed the claim as against both Defendants on a "without prejudice" basis. It appears that the adjudicator had in mind the possibility of an amended, or new, claim being filed, and a re-starting of the proceedings.

[9] The Appellant in this case was not afforded the opportunity to proceed with its case, and have it heard on its merits. An appeal of a Small Claims Court decision is governed by s. 32 of the *Small Claims Court Act* (R.S.N.S. 1989) c.43 which states:

> 32 (1) A party to proceedings before the Court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of
>
> (a) jurisdictional error;
>
> (b) error of law; or
>
> (c) failure to follow the requirements of natural justice, by filing with the prothonotary of the Supreme Court a notice of appeal.

[10] I agree with the Appellant's submission that the adjudicator did not have the authority to dismiss the claim without having conducted a proper hearing. In my view, the process that took place here did not meet the minimum requirements of natural justice. Specifically, the Plaintiff was not granted the right to be heard, and I find that is an error of law and also a failure to follow the requirements of natural justice. Specifically I refer to and rely upon the *Tanner* case that has been referred to by the Plaintiff (*Tanner v. Lunenburg(Town)*, 2012 NSSC 424). In that similar case, Justice Rosinski stated:

> 23 Nevertheless, I note:
>
> 1. He breached the duty of procedural fairness in not allowing the claimant an opportunity to present evidence and arguments at a hearing – see, for example, Justice Bryson's comments as cited by me in para. 84 in *Leighton v. Stewiacke Home Hardware Building Center*, 2012 NSSC 184 (N.S. S.C.); and
>
> 2. There is no express legal authority that would permit an adjudicator to peremptorily dismiss a claim in such circumstances in any event – though quick judgments on application are available where no Defence is filed in time – see *Leighton*, paras. 32-54; no similar dismissing of a claim based only on the pleadings is permitted under the *Small Claims Court Act* as there is no equivalent to, nor are applicable to that Court, *Civil Procedure Rule 12* (determination of a question of law) or *Civil Procedure Rule 13.03* (summary judgment on pleadings).

[11] In this case I find that both an error of law and failure to follow the requirements of natural justice have been made out here and I grant the appeal.

[12] The Appellant is seeking for the Court to further exercise its jurisdiction by ordering quick judgment in this case. I have considered that and I am not comfortable granting such relief. In my view this case requires a return to the Small Claims Court so that the parties may have an appropriate hearing. I am therefore going to order that the matter be returned to the Small Claims Court, to be heard before a different adjudicator.

[13] I see no claim for costs and I do not believe that costs are appropriate here in any event.

Boudreau, J.