

## IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Costa v. Electec Engineering Inc., 2014 NSSM 72

Claim No: SCCH 424595

### BETWEEN:

Name Perry Costa **Claimant**  
Address c/o Leon S. Tovey  
Burchell's LLP  
1800 – 1801 Hollis Street  
Halifax, NS B3J 3N4  
Phone (902) 423-6361

Name Electec Engineering Incorporated **Defendant**  
Address c/o Kevin A. MacDonald  
Crowe Dillon Robinson  
200 – 7075 Bayers Road  
Halifax, NS B3L 2C1  
Phone (902) 453-1732

Leon S. Tovey appeared for the Claimant.

Kevin A. MacDonald appeared for the Defendant.

### DECISION ON STAY PENDING APPEAL OF RECUSAL DECISION

This is a motion for a stay of proceedings or an adjournment *sine die* (i.e. without day) pending the appeal of a motion for recusal. The history of these proceedings is familiar to both parties and their counsel. There is no need for a recitation.

This motion follows my decision to deny an earlier motion by the Defendant's counsel to recuse myself as a result of a comment made in an e-mail. The decision was given orally at the conclusion of the hearing. Written reasons were filed on September 12, 2014. The matter was set to resume on September 15, 2014. Mr. MacDonald, on behalf of the Defendant, moved for the matter to be adjourned pending the outcome of the appeal. I agreed to adjourn the hearing of the

matter to October 28 and 29. The purpose of the adjournment was to allow time for written submissions on the issue. These have been filed according to the timelines ordered.

I wish to thank both counsel for their capable and helpful submissions.

## Issues

The issues in this matter are straightforward:

- Does the Small Claims Court have jurisdiction to hear a motion for a stay pending the appeal of its decision?
- Both counsel agree on the second issue, namely if this is a proper case to order a stay of proceedings based on the law set out in *Fulton Insurance Agencies v. Purdy* (1990), 100 N.S.R. (2d) 341 (CA) and subsequent decisions.

## Jurisdiction

In his brief, Mr. Tovey cites *Civil Procedure Rule 7* in support of his motion. He referred specifically to the following provisions:

### Scope of Rule 7

7.02 (1) This Rule provides procedures for a judicial review by the court, or an appeal to the court.

(2) This Rule applies to each of the following:

....(d) an appeal to the court in accordance with legislation, except a summary conviction appeal is provided for in Rule 63 - Summary Conviction Appeal.

(3) A person may seek judicial review or bring an appeal, in accordance with this Rule.

Meanwhile, reference is also made to Civil Procedure Rule 7.28:

### Stay pending judicial review or appeal

7.28 (1) A judge may stay a decision under judicial review or appeal and any process flowing from the decision until the determination of the judicial review or appeal.

(2) A motion for a stay must be made at the same time as the motion for directions, unless a judge orders otherwise.

(3) The motion must be made by notice of motion in accordance with Rule 23 – Chambers Motion, although it is mentioned in the notice of appeal or notice for judicial review.

(4) A judge may grant an interim stay until the hearing of a motion for a stay.

(5) The judge may grant any order, including an injunction, as may be necessary to effectively stay a decision.

In summary, Rule 7 establishes the procedure when the appellate jurisdiction of a particular court or tribunal lies with the Supreme Court of Nova Scotia. As noted by Mr. Tovey, the *Small Claims Court Act* and its regulations are silent as to the procedure for a stay pending an appeal. It is clear these provisions govern the application of a stay of proceedings when an appeal of a decision of the Small Claims Court has been filed.

I find the relief sought by the appellant is a stay of proceedings pending appeal. Further, I find the procedure for such a stay is specifically governed by Civil Procedure Rule 7, namely Rule

7.28 and thus, such an application must be brought before the Supreme Court of Nova Scotia. The Small Claims Court does not have jurisdiction. Therefore the motion is denied.

### **Test for Granting a Stay**

I agree with both counsel that the correct statement of the law regarding the test to grant the stay is found in the jurisprudence arising from the case of *Fulton Insurance Agencies Ltd. v. Purdy*, *supra*. However, given that I have found that this Court lacks jurisdiction to hear such a motion, it is unnecessary to determine if the principles apply.

### **Summary**

As this Court lacks jurisdiction to hear a motion for a stay pending the appeal of its own decisions, the motion is denied.

Order accordingly.

Dated at Halifax, NS,  
on October 7, 2014.

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**Gregg W. Knudsen, Adjudicator**

Original: Court File  
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Copy: Defendant(s)