

Claim No: SCP 274511
Date: 20070607

Form 6(c)

In the Small Claims Court of Nova Scotia
Cite as: Bank of Montreal v. Rice, 2007 NSSM 22

Between:

Name: Bank of Montreal Claimant

Name: William Rice Defendant

Revised Decision: The text of the original decision has been revised to remove addresses and phone numbers of the parties on June 11, 2007. This decision replaces the previously distributed decision.

DECISION

The claimant has applied for an Order for Substituted Service of the Notice of Claim. The method sought to be substituted for personal service was by leaving a copy of the proposed Order for Substituted Service with an adult person residing at the last known address of the defendant and if no such adult person was available at said address, by leaving a copy of the Notice posted on the front door of the said apartment. The claimant further proposed that a copy of the Order for Substituted Service be left with any adult person employed with DeMont's Transport, Stellarton, if no such adult person was available at such address then a copy of the notice be posted on the front door of the said address.

In support of the Application, the plaintiff's solicitor filed an Affidavit setting out the efforts that were made by the process server which is also filed.

The processor's Affidavit of May 3, 2007, indicates that he attempted to contact the defendant by telephone at 12:00 o'clock in the afternoon of May 1st. The telephone number was that of the Bank of Nova Scotia. He states that the person at the Bank had no idea who he was talking about. He then proceeded to drive to 350 North Provost Street, apartment #2, knocked on the door and no one answered. Again on, May 1st, before the hour of 5:00 o'clock in the afternoon he again attempted to serve the defendant by attending 350 North Provost Street, and again no one answered the door. On the following day, May 2nd, before the hour of 9:00 o'clock he again attendance 350 North Provost Street. He spoke to a person who identified himself as the superintendent. He states that he was advised by the superintendent that the defendant once lived at this address but was no longer there and did not know his current whereabouts. He left his business card with the superintendent and asked him to have the defendant give him a call.

The same process server filed a further Affidavit sworn on May 24, 2007. In this Affidavit, he states that he had misplaced his records dealing with his attempts to serve the defendant in January, 2007. He then stated that on or about January 22nd, he attended DeMont's Trucking, Stellarton, several times to serve the Notice of Claim. He spoke with an individual who claimed to be the defendant's employer who indicated to the process server that he would give the defendant the message that the processor had attended. He states that the defendant's employer would not divulge any further information.

A further Affidavit is filed by Yvonne Dort, who is employed with The Echo Group in the Tracing Department. Ms. Dort indicates in her Affidavit that she was provided with the defendant's date of birth, last known address as 66 Mechanic Street, Trenton, and last known telephone number as 759-7997 and last employer as DeMont's Transport in Stellarton and a work phone number as 755-5543. It is noted that both these telephone numbers were different than that used by the processor server in trying to locate the defendant by telephone and the address referred to in this Affidavit is different from the address the processor attended to serve the documents. Ms. Dort states in her Affidavit that the telephone number used was disconnected. She further states that she attempted to contact a Mr. Peck who resided at 66 Mechanic Street, in Springhill and was informed that Mr. Peck had never heard of Mr. Rice. She states that she contacted DeMont's Transport on February 7th, and was informed by an individual that the defendant did not work there and that they had never heard of Mr. Rice. She makes reference to trying to contact a C. Rice in Ottawa and of a William Rice in Ontario.

Based on the foregoing, the claimant seeks an Order for Substituted service on the basis that all reasonable efforts to effect personal service on the defendant have been exhausted.

Civil Procedure Rule 10.10 deals with substituted service:

10.10.

(1) Where it is impracticable for any reason to serve an originating notice personally, the court may make an order for substituted service.

(2) Substituted service of an originating notice is effected by taking such steps as the court

has ordered to bring the notice to the attention of the person to be served.

In **Investors Group Trust Co. Limited v. Ulan** (1991), 105 N.S.R. (2d) 161, Goodfellow, J. dealt with an Application for substituted service. Justice Goodfellow refers to the comments made by Mr. Justice Nathanson in **New Brunswick Broadcasting Co. Ltd. et al. v. Speaker of the House of Assembly (N.S)** (1989), 92 N.S.R. (2d) 245 as set out in paragraph 33:

"[33] Civil Procedure Rule 10.10(1) and (2) permits the court to order substituted service in cases where personal service is impracticable and in such manner that the originating notice will be brought to the attention of the person to be served. It is common practice for an applicant seeking substituted service to file an affidavit in support of the application which sets out facts from which the court can conclude that personal service is impracticable and that substituted service is likely to bring the originating notice to the attention of the person to be served..."

At page 167, paragraph 22, Justice Goodfellow states:

"The onus or standard therefore in an application for substituted service is that such will be granted where the applicant has made all reasonable efforts in the factual situation to effect personal service and where personal service in {sic} not practicable an alternate substituted service will be approved that is likely to bring the matter to the attention of the person to be served."

Mr. Justice Goodfellow goes on to set out some practical suggestions that may be considered when a problem arises effecting personal service on a party. He states that his suggestions are only suggestions and by no means meant to be exhaustive. As each situation will govern as to what amounts to reasonable efforts to effect personal service. Those suggestions include:

- 1) Telephone
- 2) Neighbours
- 3) Credit Report
- 4) Accident Report
- 5) Insurance Company
- 6) Post Office
- 7) Sheriff's Office
- 8) Prothonotary's Office
- 9) Banking-Financial Institutions
- 10) Children
- 11) City Directory
- 12) Personal Service
- 13) Employer

Under the sub-heading, "Neighbours", Mr. Justice Goodfellow states that the process server, in attempting service, should make inquiries of neighbours which may well shed light on whether or not the defendant is still residing in the area, and such inquiries should provide assistance as to any knowledge of relatives, employers, etc.

Under the heading "Credit Reports", Mr. Justice Goodfellow suggests that if the plaintiff is a financial institution with access to a credit report then such avenue should be explored. Credit reports often provide information that could lead to the whereabouts of the defendant. In the present case, the claimant is a financial institution, however, the Affidavits do not set out any

particulars as to the efforts made to track the defendant through this source.

There is nothing in the Affidavits provided on file that any search was made of the records at the Sheriff's Office or Prothonotary's Office. There is no reference in the Affidavits filed as to whether or not the defendant has a spouse or children. The Affidavit does not indicate what the hours of employment are for the defendant and therefore no way of knowing whether, or not the attempts to locate the defendant at the defendant's place of employment were during business hours or after business hours. If the defendant is a truck driver for DeMont's Transfer, it is quite likely his normal business hours is not 9:00 to 5:00 and if this is the case, it is hardly a reasonable attempt to serve him during the hours of 9:00 to 5:00 when it would be highly improbable that he would be there for service.

The process server in this case states that on or about January 22nd, he attempted to locate or serve the defendant at the defendant's employer's place of business. He states he spoke with an individual who claimed to be the defendant's employer and that a message would be relayed to the defendant. No other information is provided of any other attempts to obtain specifics as to the defendant's employment particulars. In the Affidavit of Yvonne Dort of The Echo Group, she states that she called DeMont's Transport on February 7th, and was informed by an individual that Bill Rice did not work there and that the person had never heard of Mr. Rice. Notwithstanding this information, the claimant proposes to have a copy of the Order for Substituted Service left with an adult person employed with DeMont's Transport and if no such adult person is available at said address that a copy of the Notice of Claim be posted on the front door of the said address.

Given the statements contained in the aforesaid Affidavits, it would hardly seem reasonable that one could expect that such service is likely to bring the matter to the attention of the defendant.

The claimant also proposes that a copy of the Order for Substituted Service be served on an adult person at 350 North Provost Street, or posted on the front door. However, in paragraph 4 of the May 3rd Affidavit of the process server, I am left with the conclusion that if you accept the statement of the superintendent that William Rice once lived at this address but is no longer there, based on this statement alone, it would appear that substituted service in this manner would unlikely bring the matter to the attention of the defendant.

I am not satisfied on the information set out in the Affidavits of the claimant that the Court can include that personal service is impracticable and that substituted service in the manner proposed is likely to bring the Statement of Claim to the attention of the defendant. In my opinion, the facts to date do not support a conclusion that the applicant has shown that all reasonable steps have been taken to locate the party to be served in these particular circumstances, and that at this juncture, I am not satisfied that such an Order should be granted and would therefore direct that further efforts be made by the claimant to locate the defendant and attempts made to effect personal service. Should those further efforts not result in personal service being effected, I am prepared to look at any further Supplementary Affidavit from the claimants in support of the Order.

GRANTED THIS 7TH day of June, 2007

ISSUED at Pictou this day of , 2007

RAY E. O'BLENIS

Adjudicator