

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Johnson v. Christink, 2008 NSSM 57

2008

Claim No. 263207

Date: 20080915

BETWEEN:

Name: **Christopher Johnson** **Claimant**

- and -

Name: **Brian and Gavinna Christink** **Defendants**

2008

Claim No. 272309

BETWEEN:

Name: **Gavinna Christink** **Claimant**

- and -

Name: **Halifax Regional Municipality** **Defendant**

REVISED DECISION: The text of the original decision has been revised to remove addresses and phone numbers of the parties on September 17, 2008

DECISION

[1] This matter came before the Court on July 8, 2008, and involves a preliminary objection as to the jurisdiction of the Small Claims Court.

History and Pleadings

[2] There are three separate proceedings relevant to this, two in this Court and one in the Supreme Court. I summarize the pleadings in chronological order.

S.H. No. 247665 - Bryan and Gavinna Christink v. Halifax Regional Municipality

- [3] The Originating Notice and Statement of Claim was filed on August 25, 2005. The Plaintiffs allege that a wharf they owned located across the street from them at 142 Covey Road, Hacketts Cove, was improperly removed by the Defendant, HRM, on January 4, 2005, without notice or warning. The Plaintiffs say that previous to that - on October 26, 2004, they were served with an Order to Remedy Dangerous and Unsightly Premises with respect to the wharf and that they responded to that Order to Remedy and spent a considerable amount of money effecting repairs to stabilize the wharf, replaced many boards and, on more than one occasion, contacted an inspector for the Defendant requesting the inspector to attend to view the work that had been completed.
- [4] The Plaintiffs allege that the Defendant breached the *Municipal Government Act* in various manners including failing to properly order the demolition of the wharf, or properly provide notice of the intended demolition of the wharf, or failing to allow and appeal of the Demolition Order, if one existed. In addition, the Plaintiffs claimed that the Defendant Municipality was negligent in causing the wharf to be demolished and sets out several particulars of that negligence including the failure by the Defendant to recognize the Plaintiffs as owners of the lot even though the October 26, 2004, Order had been sent to them.
- [5] On October 7, 2005, a Defence was filed by Halifax Regional Municipality in which HRM asserts that the wharf which was situated at or near a parcel of land known as "Parcel B-A" on Covey Road, Hacketts Cove, was in a condition considered dangerous and/or unsightly under the *Municipal Government Act* and particulars of the dangerous and/or unsightly condition are then set out. The Defendant goes on to allege that the Plaintiffs possess no right to utilize Parcel B-A for the purpose of the wharf . The Defence states that on October 26, 2004, the Defendant Municipality served the Plaintiffs with an Order requiring certain work to be performed in relation to the wharf and that the Plaintiffs failed to comply with the order within 30 days of the service of the Order.

- [6] The Defendant further asserts that as a result of the failure to carry out the Work required under the Order the Defendant Municipality arranged for the performance of the work and hired Maritime Demolition Limited which carried out the work on or about January 4, 2005.
- [7] The Defence goes on to plead and rely upon the provisions of the *Municipal Government Act* and alleges that at all times it acted within and in accordance with its authority under that Act.
- [8] The Defence further pleads that the Plaintiffs had no right to use the wharf where it was situated, that the wharf was illegal, that the removal of the wharf would have been necessary in any event due to lack of appropriate permits and/or authorizations.

SCC No. 263207 - *Christopher Johnson v. Gavinna Christink*

- [9] This claim was filed March 3, 2006. In Schedule "A" to the claim the Claimant asserts that Gavinna Christink of 142 Covey Road, Hacketts Cove, assumed ownership of an existing wharf that belongs by title to Christopher Johnson of 138 Ollie's Loop, Hacketts Cove. It is further alleged that the Christinks had plans for the wharf and obtained a permit to do work on the wharf through the Department of Lands and Forests obtained by the Christinks claiming in writing that the wharf was their personal property which attempt was successful and a permit was obtained. In the fall of 2003 the wharf was severely damaged by Hurricane Juan to the point that the wharf was deemed a navigational hazard by HRM who contacted Mr. Johnson as the property owner and directed him to correct the navigational hazard by repairing the damage. When Mr. Johnson went to the wharf he was approached by the Christinks, a discussion escalated and resulted in a confrontation involving the police.
- [10] The police were provided with the permit from the Department of Lands and Forests which confirmed ownership to the satisfaction of the police who instructed Mr. Johnson to stay

away from the wharf. Further written notices were given to Mr. Johnson advising him to stay away from the property and that any repairs would be the responsibility of the Christinks and would be handled directly by them. The Claimant states that the Christinks were provided more than ample time and several notices by HRM to repair the navigational hazards but did not repair the hazards. HRM sent in a crew to repair the wharf and sent the bill to the “rightful owner”, Mr. Christopher Johnson.

[11] The Defence which was filed on March 28, 2006, states that Bryan and Gavinna Christink purchased 142 Covey Road, along with the 75 foot deeded ocean right-of-way over Parcel B-A in 1992. Along with that right-of-way it was stated that they also had an agreement for the right-of-way to be transferred into their names when the Municipality changes its laws to allow the subdivision of smaller lots. This agreement is said to be filed at the Registry of Deeds and is signed by Gavinna and Bryan Christink and Christopher and Sandra Johnson.

[12] The Defence goes on to state that in 1997 Bryan Christink obtained a permit from the Department of Lands and Forests and the Department of Transportation to build the wharf. At that time he had permission from Christopher Johnson along with the deeded right-of-way and the other document filed at the Registry of Deeds and therefore permission was granted. The wharf was used for many years on a regular basis and it is said that Christopher Johnson had asked for permission on occasion to put his boat on the end of it because he did not have a wharf of his own.

[13] The Defence goes on to state that Hurricane Juan did damage the wharf and that Bryan Christink proceeded to fix it. It is further stated that Christopher Johnson approached the Defendant wanting to buy a piece of property for a building lot which was refused and at that point the relationship became confrontational and the police were involved on several occasions. It was stated that in September 2004, Christopher Johnson went on the wharf and started removing boards and throwing them in the Christink’s yard. The police were involved. It is further alleged in the Defence that Christopher and Sandra Johnson started

complaining to HRM about the unsafe condition of the wharf which resulted in HRM ordering them to repair the wharf which was done successfully although there were many instances of vandalism over a three month period. Police reports were filed.

[14] The Defence further states that in January 2005 Halifax Regional Municipality wrongfully removed the wharf and as a result the law suit in S.H. No. 247665 was filed. It is further asserted in the Defence that there is a letter to HRM from Sandra Johnson agreeing to pay for the removal of the wharf.

[15] An Amended Defence was filed on October 23, 2006, which was filed by counsel. It does not appear to materially change the substance of the original Defence although in paragraph 9 it is stated that the substance of their claim in terms of the charges that are being claimed for are matters in issue before the Supreme Court and are therefore not properly before this Court pursuant to Section 15 of the *Small Claims Court Act*.

SCC No. 272309 - *Gavinna Christink v. Halifax Regional Municipality*

[16] The Statement of Claim in this matter was filed on October 5, 2006. In the Claimant's Statement it refers to the March 3, 2006, action (SCC No. 263207) and goes on to say that HRM wrongfully charged Christopher Johnson as for the reasons set out in the claim filed in the Supreme Court of Nova Scotia in S.H. No. 247665.

[17] The Claim goes on to claim indemnity for any and all amounts found to be owing to Christopher Johnson from the Defendant HRM.

[18] In its Defence filed on October 13, 2006, the Defendant HRM says that the assessment by HRM against Christopher Johnson was proper. It further says that the substance of the claim in respect of the appropriateness of the work and charges in respect thereof are the same as the matters in issue before the Supreme Court of Nova Scotia in *Christink v. HRM*

(S.H. No. 247665) and therefore are not properly before the Court pursuant to Section 15 of the *Small Claims Court Act*.

[19] The Defendant goes on to claim the protection under Sections 5 and 12 of the *Municipal Government Act* and the *Limitation of Actions Act* and, as well, claims the protection of other provisions of the *Municipal Government Act* and in particular, Section 503.

Earlier Decision

[20] This proceeding was originally argued on the basis of jurisdiction before me in June 2006 which was prior to SCC No. 272309 being filed. At that time the Defendants in SCC No. 263207 argued that the Small Claims Court had no jurisdiction by virtue of Section 15. In a decision issued September 21, 2006, I ruled that the Small Claims Court was not without jurisdiction because, based on the pleadings, it was my view that the issues between the Small Claims Court action and the Supreme Court action were different issues.

Analysis - Present Application

[21] The situation is now quite different in light of the action in SCC No. 272309 being filed. As noted, when the matter came before me in June 2006, there were two proceedings - one in Small Claims Court, SCC No. 263207 between Johnson as Claimant and Christink as Defendant, and one in the Supreme Court in S.H. No. 247665 between Christink as Plaintiff and HRM as Defendant.

[22] The statutory provisions which bear on this are Sections 15 and 25 of the *Small Claims Court Act* which read as follows:

Claim before another court

15 The court does not have jurisdiction in respect of the claim where the issues in dispute are already before another court unless that proceeding is withdrawn, abandoned, struck out or transferred in accordance with Section 19.

Joinder of hearing of claims

25 Where an adjudicator is satisfied that there are two or more claims before the adjudicator which would be best dealt with together, the adjudicator may in his discretion hear the claims at the same time.

- [23] I believe the correct approach in this matter is to first consider whether or not a consolidation pursuant to Section 25 would appear appropriate without any consideration of the consequences *vis-a-vis* Section 15 and the jurisdictional issue.
- [24] Considered in this manner, it is inescapable that these two proceedings should be consolidated and heard at the same time. Clearly there is a great deal of evidence that would be germane to both of the proceedings. And, the issue of the “ownership” of the wharf is, from a legal point of view and evidentiary point of view, one that should have a shared hearing.
- [25] As well, a consolidation would bring all of the three parties together in one proceeding so there is no risk of having inconsistent findings or, having to make assumptions relating to parties who are not a party to the action. The consolidation brings everyone to the same “table”.
- [26] In normal circumstances, a consolidation in this case would be consistent with Section 2 of the *Act*.
- [27] The question then becomes whether it is appropriate to exercise that discretion if it has the effect of causing the consolidated matter to be outside of the jurisdiction of this Court by virtue of Section 15. It is an interesting issue because on the one hand the authority to “consolidate” in Section 25 is a discretionary one. On the other hand, the question of whether or not a matter is outside of the jurisdiction of this Court under Section 15 does

not engage the Court's discretion - the matter is either within or not within the jurisdiction of the Court.

[28] I look to judicial precedent and note that in the *Haines Miller & Associates v. Fosse* (1996), 153 N.S.R. (2d) 53 (S.C.), Glube, C.J.S.C. referred with approval to the following comment of the County Court in the *Well & Building Supplies v. Nevitt* (1987), 80 N.S.R. (2d) 415 (Co.Ct.), (para 23 of *Haines*):

Where the claims of two parties "arise from the same set of facts", it will ordinarily be advisable to consolidate the two matters and hear them as one. That will be so even if the effect is to remove the combined proceeding from the jurisdiction of the Adjudicator. [Emphasis Supplied]

[29] Accordingly, it appears that the approach I have followed - to consider the consolidation matter without considering whether or not it removes the proceeding from the Court's jurisdiction - is an appropriate and proper approach and is sanctioned by the Supreme Court.

[30] Based on the preceding, I will order that these two proceedings be consolidated.

[31] The question then is whether as a result of the consolidation, the "issues in dispute are already before another court", to use the words of Section 15.

[32] I think the answer to that question is clear. In paragraph 4 of the Statement of Claim in SCC No. 272309 it is alleged that HRM wrongfully charged Johnson with the costs as per the reasons set out in the Supreme Court matter in S.H. No. 247665. In effect, the Claimant has incorporated by reference the very pleadings filed in the Supreme Court. Clearly, therefore the same issues are in dispute between those two sets of pleadings. I

conclude therefore that the Small Claims Court by virtue of Section 15 does not have jurisdiction in respect of the now consolidated matter.

[33] It should perhaps be pointed out that should the Supreme Court matter be “withdrawn, abandoned, struck out or even transferred” then the Section 15 jurisdictional bar would no longer apply. The order of consolidation would, in that case, still be in effect and presumably the matter would proceed in this Court.

DATED at Halifax, Nova Scotia, this 15th day of September, 2008.

Michael J. O’Hara
Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)