

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation:** Davison v. Canadian Artists Syndicate Inc., 2011 NSSM 28

**Date:** 20110426  
**Claim:** 319192  
**Registry:** Halifax

Between:

Christine Davison

Applicant

v.

Canadian Artists Syndicate Incorporated

Respondent

**Adjudicator:** J. Scott Barnett

**Heard:** November 29, 2010

**Written Decision:** April 26, 2011

**Counsel:** Christine Davison, Self-Represented

Richard Vroom, Representative of the Respondent

**By the Court:**

## **INTRODUCTION**

[1] The Applicant, Christine Davison, was successfully sued in the Small Claims Court of Nova Scotia by the Respondent, Canadian Artists Syndicate Incorporated (“Canadian Artists Syndicate”). At the request of the Respondent, the Clerk of the Small Claims Court issued an Execution Order naming Ms. Davison as the judgment debtor. Ms. Davison now applies for relief from that Execution Order.

## **FACTUAL BACKGROUND**

[2] Back on May 25, 2010, after hearing evidence and submissions, an Adjudicator of this Court granted judgment against Ms. Davison in favour of the Canadian Artists Syndicate in the amount of \$2,369.32.

[3] On July 8, 2010, the Canadian Artists Syndicate requested an Execution Order and a Certificate of Judgment from the Small Claims Court as it was entitled to do.

[4] The Execution Order in issue here is dated July 9, 2010. After the addition of amounts such as the Personal Property Security Registry filing fee, the total claim set out in the Execution Order is \$2,485.05.

[5] On November 29, 2010, Ms. Davison made the within Application. There is no stipulated form for this type of Application in the *Small Claims Court Forms and Procedures Regulations*, N.S. Reg. 17/93, as amended and I reproduce below that which was typed on a sheet of paper, signed by Ms. Davison and filed with the Court:

“Nov. 26/10  
In reference to Claim Number – 319192  
In the matter of Canadian Artists Syndicate V.S. Christine Davison;  
Richard Vroom of 33 Kata Court Hammonds Plains, Nova Scotia, B3Z 1N8 is requested to attend a court hearing with Adjudicator Walter Thompson on the date of November 29<sup>th</sup>, at 6pm at Small Claims Court, 5250 Spring Garden Road, Halifax, Nova Scotia, B3J 1E7. At that time and place, there will be an Application to the Court for Relief, to amend an order to reflect the current income of Christine Davison of 2068 Brunswick Street, Halifax, Nova Scotia, B3K 2Y7.”

[6] A copy of this sheet of paper was personally served on Mr. Vroom on November 27, 2010.

[7] On November 29, 2010, Ms. Davison and Mr. Vroom appeared before me, the former in her capacity as the Applicant / Defendant and Mr. Vroom as the authorized representative of the Respondent / Claimant.

[8] At the hearing, Ms. Davison explained that she was seeking relief from the Execution Order because she is a self-employed contract worker who does not have a significant income; she writes astrological horoscopes and astrology columns for various publications. She is concerned that the Sheriff might seize the whole of any individual sum that she gets paid by a publisher when it purchases her work, thus leaving her destitute.

[9] What Ms. Davison wants to do is pay \$100 a month until the debt to the Canadian Artists Syndicate is paid off. She says that she has one child in respect of whom she receives the federal Child Tax Benefit and she is pregnant with a second child that will be born shortly. Ms. Davison indicates that her monthly income is \$1,100 to \$1,400 a month, net of the Child Tax Benefit.

[10] In response to Ms. Davison's plea to the Court, Mr. Vroom testified that the Canadian Artists Syndicate has not been able to

collect one penny on the judgment that it obtained despite vigorous efforts to collect on the debt. Mr. Vroom noted that he has directed the Sheriff to one bank where he believes Ms. Davison is cashing cheques (although she apparently has no account there) and to various other sources, all in an attempt to garnish Ms. Davison's income. Mr. Vroom maintained that Ms. Davison's income is much higher than she claims since her astrological horoscopes appear in many newspapers.

## **ISSUES**

[11] This Application raises two issues. First, is it within this Court's jurisdiction to grant the relief that Ms. Davison seeks? Second, if this Court can grant such relief, should it be granted in this case?

## **DISCUSSION**

### (a) Jurisdiction of this Court

[12] While it is possible that an Application such as the one before me has arisen in the Small Claims Court before, I have not been

able to locate any written decision by another Adjudicator which could confirm that possibility.

[13] One of the features of the Small Claims Court is an absence of extensive written procedural rules, a fact which is consistent with the stated purpose of the Small Claims Court; i.e. to “informally and inexpensively” adjudicate claims within the Court’s jurisdiction: Section 2 of the *Small Claims Court Act*, R.S.N.S. 1989, c. 430, as am. The *Small Claims Court Act*, *supra*, and the *Small Claims Court Forms and Procedures Regulations*, *supra*, provide some guidance but many possible questions are left unanswered.

[14] One such unanswered question concerns what a judgment debtor should do if he, she or it seeks relief from an Execution Order. The only applicable provision in the *Small Claims Court Act* and associated regulations that I can find is Section 31 in the *Act* which states:

**Enforcement of order**

31(1) An order of the Court may be enforced in the same manner as an order of the Supreme Court and Section 45 of the Judicature Act applies.

[15] Section 45 of the *Judicature Act*, R.S.N.S. 1989, c. 240 deals with articles that are exempt from seizure under execution.

[16] As has been noted before, this Court can refer to the *Civil Procedure Rules* pertaining to proceedings in the Supreme Court of Nova Scotia for guidance in the absence of a specific statutory or regulatory provision pertaining to the Small Claims Court: *Brown v. Newton*, 2009 NSSC 388 at para. 27 and *Malloy v. Atton*, 2004 NSSC 110 at para. 14.

[17] Rule 79 of the *Civil Procedure Rules* deals with the enforcement of execution orders. Rule 79.22(1) specifically deals with the question of relief from execution orders:

A judge may stay enforcement of an execution order or a periodic execution order, conditionally or unconditionally, and on any terms the judge sees fit.

[18] The forerunner provision in the *Civil Procedure Rules* (1972) was Rule 53.13(1) which provided as follows:

Where the court is satisfied that,

- (a) special circumstances exist that render it inexpedient to enforce an order for the payment or recovery of money;

- (b) the applicant is for any reason unable to pay any money payable or recoverable under an order;
- (c) for any other just cause;

the court may order the issue or enforcement of an execution order to be stayed, either absolutely or for such period and subject to such conditions as the court thinks just.

[19] Rule 53.13(2) indicated that an application supported by an affidavit of the judgment debtor could be made on notice pursuant to 53.13(1).

[20] In the recent decision in *Smith`s Field Manor Development Ltd. v. Campbell*, 2010 NSSC 63 at para. 6, Justice Moir held that Rule 79.22 in the *Civil Procedure Rules* “continues the power to stay execution orders without any substantive change” from the old Rule 53.13 in the *Civil Procedure Rules* (1972).

[21] I should also point out that Rule 79 sets out a scheme whereby only a certain maximum percentage of a debtor’s gross wages can be seized pursuant to an execution order and, in any event, the debtor is not to be left with less income than certain stipulated minimum amounts. There are also specific rules applicable to “deposit-taking corporations” which address the concern raised in *Baker v. Tanner*, [1991] N.S.J. No. 37 (S.C.A.D.). There, it was noted that a debtor’s wages could be



exempt from seizure if still in the hands of an employer before paid to the debtor employee but those same wages might be exigible if electronically deposited into a bank account or received by the debtor from the employer and then deposited by the debtor into a bank account.

[22] After considering the matter at great length, which I regret has caused me to go past the sixty day timeframe referred to in Section 29(1) of the *Small Claims Court Act*, I have concluded that this Court does possess the jurisdiction to grant relief from execution orders issued pursuant to judgments rendered in this Court.

[23] In coming to this conclusion, I recognize that the *Small Claims Court Act, supra*, and the associated regulations, do not specifically set out whether or not this Court has jurisdiction in the present circumstances. However, there are prior decisions by other Adjudicators suggesting a broad interpretation of Section 31(1) of the *Small Claims Court Act, supra*, which, as already noted, provides that orders of this Court can be enforced in the same manner as orders of the Supreme Court of Nova Scotia. Those decisions have employed principles of statutory interpretation in reaching their conclusions: see, e.g., *Scaravelli & Associates v.*

*Quinlan*, [2005] N.S.J. No. 575 and *Wickwire Holm v. Wilkes*, [2005] N.S.J. No. 406, both decisions of the Small Claims Court in which the Adjudicators held that the Small Claims Court could direct a judgment debtor (pursuant to an order of the Small Claims Court) to attend a discovery in aid of execution.

[24] The suggested broadness of Section 31(1) was curtailed as a result of the decision in *Wickwire Holm v. Nova Scotia (Attorney General)*, [2007] N.S.J. No. 405 (S.C.). In that case, Warner, J. concluded that the *Small Claims Court Act, supra*, and associated regulations do not clearly and unambiguously override the common law presumption that the Small Claims Court, a statutory court, does not have *ex facie* civil contempt jurisdiction. Instead, the Supreme Court of Nova Scotia retains its inherent jurisdiction to deal with contempt of inferior tribunals and statutory courts like the Small Claims Court.

[25] I have read the appeal decision in *Wickwire Holm v. Nova Scotia (Attorney General)*, *supra* very carefully. The Court was necessarily focused on the issue of *ex facie* civil contempt. Because of the very special nature of that concept and its proper application, I have difficulty extracting much in the way of more

general statements of law that are of assistance in respect of the issue presently before the Court here.

[26] The decision in *Atlantic Electronics Ltd. (Assignee of) v. Dauphinee*, [2008] N.S.J. No. 256 (S.C.) followed shortly after the decision in *Wickwire Holm v. Nova Scotia (Attorney General)*, *supra*. In that case, an appeal to the Supreme Court of Nova Scotia followed an Adjudicator's decision that held that the Small Claims Court did not have jurisdiction to grant an order for leave to sell land, free and clear of a prior judgment, pursuant to Section 9 of the *Sale of Land Under Execution Act*, R.S.N.S. 1989, c. 409: *Atlantic Electronics Ltd. (Assignee of) v. Dauphinee*, [2008] N.S.J. No. 167 (Smll. Clms. Ct.).

[27] In the decision resolving the appeal, Justice LeBlanc concluded that "an execution order issued to enforce payment of a judgment which has the result of forcing a sale of real property is not a claim for the recovery of land or an interest or an estate in land" (see para. 33) and thus Section 10(a) of the *Small Claims Court Act*, *supra* (which excludes from the Small Claims Court's jurisdiction any claims for the recovery of land or an estate or interest therein) was not a barrier to granting the relief sought by the applicant.

[28] I have read the appeal decision in *Atlantic Electronics Ltd. (Assignee of) v. Dauphinee, supra*, as carefully as the appeal decision in *Wickwire Holm, supra*. Because of the wording of ss. 8 and 9 of the *Sale of Land Under Execution Act*, and once Section 10(a) was held to be inapplicable, there was no question that the Small Claims Court was clearly the forum in which the applicant was entitled to receive relief:

**Notice to prior judgment creditor to sell**

8 Where several judgments against the same person have been registered in the same registry or land registration office for one year and any judgment creditor whose judgment was so registered before the judgment of another judgment creditor does not take effective steps to sell the land bound by the judgments, the subsequent judgment creditor may give written notice to the prior judgment creditor requiring the prior judgment creditor to sell such land within three months after the service of such notice upon the prior judgment creditor.

**Priority acquired by subsequent judgment creditor**

9 Where such prior judgment creditor does not, in the opinion of the court or a judge, take effective steps to sell the land within three months from the service of such notice, the subsequent judgment creditor giving the notice shall acquire priority for his judgment over the judgment of the judgment creditor upon whom such notice is served, and may, upon notice of the application of such judgment creditor, obtain from the court in which his judgment was obtained, or a

judge thereof, an order in the action for leave to sell the said land, free from the lien or encumbrance of the prior judgment. [emphasis added]

[29] The underlined wording in the applicable statute is self-explanatory. Once again, however, I am unable to extract many general statements of law from the decision in *Atlantic Electronics Ltd. (Assignee of) v. Dauphinee, supra*, that assist me here.

[30] The main difficulty with Section 31(1) is that, while it does say that orders of the Small Claims Court may be enforced in the same manner as orders of the Supreme Court, the section does not say if any necessary enforcement procedures not otherwise expressly available in accordance with another statute can be pursued in the Small Claims Court, the Supreme Court of Nova or possibly both. This point has previously been made: see para. 17 of the Adjudicator's decision in *Wickwire Holm, supra*.

[31] In my view, the answer lies in the inherent jurisdiction of this Court to control its own process or perhaps better identified as the implied jurisdiction of this Court as opposed to "inherent jurisdiction," a phrase also used in referring to the powers of a superior court: *R. v. Gunn*, [2003] A.J. No. 467 (Q.B.). The Small Claims Court is a statutory or inferior court.

[32] Chief Justice Samuel Freedman cited a definition of inherent jurisdiction in the sense that I mean it here (i.e. implied jurisdiction) in *Montreal Trust Co. v. Churchill Forest Industries (Manitoba) Ltd.*, [1971] M.J. No. 38 (C.A.) at para. 16:

“In this light, the inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

[33] In an informative article discussing the inherent jurisdiction of inferior courts (S. Sugunasiri, “The Inherent Jurisdiction of Inferior Courts”, (1990 – 1991) 12 *Adv. Q.* 215), the following is noted at page 216:

“Although the inherent jurisdiction of a court was probably most significant in a time when rules of court were not as comprehensive and as general, or indeed as generous, as they are today, this power cannot now be discounted, for it may still be exercised in respect of matters that are already regulated by statute or by rule of court. It should not be forgotten that many inferior courts in Canada, especially those presided over by provincially appointed judges or magistrates, have very simple and superficial rules of practice and procedure, often doing little more than prescribing forms,

and some have no rules at all. In any given case, therefore, a court may proceed under any one or more of the three sets of powers: statute, rule of court or inherent power.”

[34] The author of the aforementioned article provides a list of areas of action by courts that have been held (up to the time of the writing of the article) to fall within the proper exercise of implied jurisdiction including, among many others, the ability to adjourn proceedings: see pages 219 to 223. The staying of an execution order is not on the list.

[35] There is a recent decision from the Ontario Court of Justice, however, which directly addresses the question before me: *Figliola v. Ontario (Director, Family Responsibility Office)*, [2009] O.J. No. 2538 (Ont. C.J.). The Ontario Court of Justice as it was called at the time, now renamed under Ontario’s *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended, was a creature of statute like the Small Claims Court of Nova Scotia. After considering relevant authorities addressing the scope of inherent jurisdiction of inferior courts, Justice Zisman held as follows at para. 31:

“The enforcement of an order in my view is a matter of **procedural** law, rather than substantive law and therefore, it is an area over which a court may properly exercise a measure of inherent jurisdiction.”

[36] I also note the decision in *Re Henning and Weber*, [1984] O.J. No. 3117(Ont. Prov. Ct., Fam. Div.) which holds that the exercise of an inferior court's discretion may be guided with due regard to equitable principles.

[37] To use wording that is sometimes used in this context, I am satisfied that addressing a request for relief from an execution order issued by this Court is necessarily incidental or ancillary to this Court's jurisdiction as conferred by statute. It is reasonable to conclude that mechanisms of enforcement can and should be dealt with in the Small Claims Court in respect of Orders of the Small Claims Court (exclusive of *ex facie* contempt issues).

[38] I also believe that the interest of litigants in the Small Claims Court, many of whom are self-represented (as they are in the case before me) in accessing an informal and inexpensive court process applies not only to the adjudication of issues but also in the enforcement of Small Claims Court Orders that flow from that adjudication process. The prospect of initiating proceedings in the Supreme Court of Nova Scotia in respect of all enforcement issues that may arise from Small Claims Court Orders may be overwhelmingly daunting to self-represented litigants even though



there may be valid issues that cannot be resolved between judgment creditors and debtors without the assistance of a court.

[39] That being said, the exercise of this Court's discretion with respect to its implied jurisdiction should be carried out in a very cautious manner (*Cocker v. Tempest* (1841), 151 E.R. 864 at 865 (Exch.)) and consistent with principles applied in the Supreme Court of Nova Scotia in similar situations.

[40] In summary, I believe that this Court does have jurisdiction to consider Ms. Davison's request for relief from the Small Claims Court Execution Order.

(b) Should the requested relief be granted?

[41] As already mentioned, Ms. Davison's concern is that she may be left destitute if the judgment creditor in this case serves an Execution Order on a company that intends to pay her a lump sum payment for work product that she has created. In her request for relief, she argues that the whole of that lump sum would be exigible and it is on this basis that she requests relief.

[42] By reason of Section 31(1) of the *Small Claims Court Act*, a Small Claims Court Order may be enforced in the same manner as an Order of the Supreme Court of Nova Scotia. I believe that it follows from this that if a certain sum of money would not be exigible in respect of a Supreme Court of Nova Scotia Execution Order, it similarly would not be exigible in respect of a Small Claims Court Execution Order.

[43] *Civil Procedure Rule 79.08(3)* provides as follows:

(3) Unless a judge orders otherwise, fifteen percent of a judgment debtor's gross wages are payable to the sheriff under an execution order, the rest of the judgment debtor's wages are exempt from execution, and nothing is payable that reduces the judgment debtor's net wages, after deductions of amounts required by law to be deducted, below the applicable of the following minimums:

- (a) \$450 a week for a judgment debtor who supports a dependant, as defined in the *Income Tax Act* (Canada);
- (b) \$330 a week for any other judgment debtor.

[44] "Wages" are said, in *Civil Procedure Rule 94.10*, to include "salaries, commissions, gratuities, and other compensation for labour or services."

[45] *Civil Procedure Rule 79.08(3)*, coupled with Section 45 of the *Judicature Act* which provides for exemptions from seizure under execution of various types of property, appears to be designed to protect impecunious debtors from falling below “some kind of minimum subsistence level of income”: *Di Benedetto v. Slaunwhite*, [1993] N.S.J. No. 4 (Co. Ct.), *per* Palmeto, C.J. Co. Ct.

[46] In the decision just cited above, Chief Justice Palmeto stated that “[c]ourts should endeavour to give effect to this purpose, especially when the minimum amount reserved is fixed and not subject to changes for inflation.”

[47] I am satisfied that the money payments that Ms. Davison receives from publishers for her work fall within the previously referred to definition of “wages” and that *Civil Procedure Rule 79.08(3)* therefore provides Ms. Davison with adequate protection from what she fears; i.e. loss to execution of one hundred percent of any particular payment from a publisher.

[48] In other words, I do not accept the premise suggested by Ms. Davison that she will necessarily be left completely destitute if an Execution Order is served on a publisher to whom she provides her

work product. The assumption that the premise is true was the sole basis upon which Ms. Davison presented her request for relief from the Execution Order in question and, given that I do not believe that the premise is correct, I see no reason why Ms. Davison's request that the application of the Execution Order be stayed, conditional upon payment of \$100 a month, should be granted.

### **CONCLUSION**

[49] Ms. Davison's Application for relief is denied but, in the circumstances, I decline to order any costs.