

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Sheldon Nathanson, Barristers & Solicitors Incorporated v. Thomas*, 2017 NSSM 83

SCC SN No. 452572

BETWEEN:

**SHELDON NATHANSON, BARRISTERS &
SOLICITORS INCORPORATED**

CLAIMANT

and

LAURA LEE THOMAS

DEFENDANT

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held at Sydney, Nova Scotia on January 18, 2017

DECISION RENDERED: January 31, 2017

APPEARANCES:

For the Claimant: Wayne Magee, Process Server on behalf of the Claimant

BY THE COURT:

1. A Notice of Claim in connection with this matter was originally dated June 14, 2016 and filed with the court on June 17, 2016. The original scheduled hearing date was August 16, 2016 and the Claimant was provided 38 days from June 17, 2016 to effect service on the Defendant. Correspondence from the court file, from a Vince Neary, referencing this specific matter dated August 16, 2016 advises the court that the Claimant was unable to effect service on the Defendant and therefore the matter could not proceed on the originally scheduled court date (August 16, 2016). The court file further confirms that notice from the Clerk of the Small Claims Court was posted through Canada Post to Laura Lee Thomas at [address removed], Port

Morien, NS and as at January 9, 2017 information was received that the Notice of Hearing had not been picked up by the Defendant.

2. On January 18, 2017, the Claimant's representative made application for substituted service. In support of that application, a sworn Affidavit of Brad Mugridge, a Provincial Civil Constable, was provided to the court setting forth the efforts that Mr. Mugridge as well as other notable process servers had advanced in an attempt to personally serve Laura Lee Thomas. These efforts included originally attending at her last known address noted as [address1 removed] Port Morien, Nova Scotia, as well as the address identified as [address2 removed] Port Morien, Nova Scotia which was learned to be the address of the Defendant's "ex-sister-in-law". The affidavit evidence further confirmed that the address of [address2 removed] Port Morien, Nova Scotia, appeared to be that of the Defendant's ex-husband.

3. In conversation with individuals residing at both of the afore-mentioned addresses situate in Port Morien, both individuals confirmed they are no longer connected with the Defendant, both believed that the Defendant resided somewhere in Glace Bay and both confirmed they have not had contact with the Defendant for several years.

4. The Affidavit of attempted service further confirmed Mr. Mugridge attended Seaview Manor, South Street, Glace Bay, which was believed to be the place of employment of the Defendant. Mr. Mugridge appears to have satisfied himself that the Defendant was working at the Seaview Manor at the time, however, was advised that she was away from work for two or three weeks and as such the opportunity to effect personal service could not be realized. A message was left for the Defendant to contact Mr. Mugridge but at the time of the application before me no return call was received.

5. Section 21(3) of the *Small Claims Court Act* provides that:

service of all documents may be by personal service or such other manner of service or substituted service as prescribed by the Regulations.

The Regulations of the Small Claims Court of Nova Scotia provide as follows:

3 (1) The time for serving the Notice of Claim and a form for a Defence/Counterclaim on the Defendant shall be within 10 days from the date on which the claim is filed or within any additional time the clerk or adjudicator may allow.

(2) The claimant shall serve the Notice of Claim and a form for a Defence/Counterclaim at the time of service.

(3) Service of a Notice of Claim and a form for a Defence/Counterclaim shall be by personal service or such other manner of service as directed by the Court. (my emphasis)

6. It is trite to say that in dealing with any adjudicative process that it is a fundamental right that any person being claimed against be provided sufficient opportunity to receive, review and respond to any such claim. It is for that reason the rules governing most every court mandate that a person initiating a claim, whether identified as a Claimant, Plaintiff or Applicant is normally required to effect “personal service” of the originating documentation to the Defendant and/or Respondent. Quite apart from fundamental reasoning of a Defendant being given the right to receive notice of and the particulars of any such claim, is also the fact that once service is effected, again in most courts, such service then triggers a host of additional rights and remedies and corresponding obligations of both parties. Therefore, the service of the originating documents is and will always remain a critical step in the process of natural justice.

7. However, the same rules applicable to the various courts necessitating, in the first instance, personal service, also recognize the need for alternative methods of service provided the court can be assured with some level of certainty that the Notice of Claim will be brought to the attention of the Defendant. To achieve this, a discretionary remedy of the courts has evolved known as “substituted service”. In the case of the Small Claims Court, while substituted service is clearly permitted in accordance with Section 21(3) of the *Small Claims Court Act, R.S., c. 430*, little guidance by way of procedural rules is provided as to what alternative methods are to be used. From my review of decisions of the court dealing with applications for substituted service, the court will first look to be satisfied by the Plaintiff/Claimant that every reasonable effort was advanced to effect personal service.

8. In this case, based on my review of the file materials and most notably the Affidavit of Attempted Service given by Brad Mugridge dated the 18th day of July 2016, I am satisfied that every reasonable attempt was advanced to determine a location of the Defendant’s residence through personal attendance and electronic searches and further by attending at her place of employment.

9. I am further satisfied by the Affidavit evidence that while often alternative avenues for substituted service are adopted such as service on a spouse, parent or family member, based on the evidence set forth it appears clear that, while Ms. Thomas had been previously connected to individuals at both addresses attended to, she has not had any contact with these individuals for several years. Therefore, I am not satisfied that simply serving notice on these alternative individuals who appear to have “formerly” had a relationship with Ms. Thomas would be sufficient to satisfy the threshold of achieving service through this substituted means.

10. It is worthy to note this claim was originally initiated back in June 2016. Mr. Mugridge's Affidavit, dated July 18, 2016, sets forth the efforts to personally serve the Defendant over the initial two weeks in July 2016. It is now in excess of six months later.

11. Therefore, being satisfied that the Claimant through their agent has made all reasonable efforts to personally serve the Defendant, I am prepared to grant an Order for substituted service. As set forth in the written Order, I have provided alternative means of substituted service that may be employed with the proviso that the Claimant would satisfy a minimum of one.

12. Further, again as set forth in the Order, given the passage of time if one of the proposed means of substituted service chosen is that of serving a representative of the Defendant's employer, it will be necessary for the process server to provide reasonable evidence that he has satisfied himself that the Defendant continues to be employed at such place.

13. The Order for Substituted Service is hereby granted in accordance with the terms as set forth in the Order issued.



A. ROBERT SAMPSON, Q.C.

Adjudicator