

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Johnson v. Christink, 2006 NSSM 45

2006

SCCH No. 263207

Date:20060921

BETWEEN:

Name: **Christopher Johnson**

Claimant

- and -

Name: **Brian and Gavinna Christink**

Defendants

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on March 9, 2007. This decision replaces the previously distributed decision.

Appearances:

Claimant: Michael Ellis

Defendants: Jamie MacNeil

D E C I S I O N

[1] On June 27, 2006, a hearing was held to deal with a preliminary objection dealing with jurisdiction to hear this matter. Mr. MacNeil, for the Defendants, asserts that the Small Claims Court has no jurisdiction. Primarily the argument is based on Section 15 of the Nova Scotia *Small Claims Court Act* which reads:

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in respect of a claim where the issues in dispute are already before another court unless that proceeding is withdrawn, abandoned, struck out or transferred in accordance with Section 19.

[2] Tendered to the Court were copies of pleadings from the Supreme Court between the Defendants here, the Christinks, as Plaintiffs against the Halifax Regional Municipality, as

Defendant. The Claimant in this Small Claims Court, Johnson, is not a party in the Supreme Court action.

- [3] The question to be answered under s. 15 of the Act is whether the “issues in dispute” are already before another court. That requires determining what the issues in dispute are in each court.
- [4] Simply put, the issue in the Small Claims Court is whether the Christinks are legally obliged to indemnify Mr. Johnson for the HRM bill which has been submitted to Mr. Johnson.
- [5] On the other hand, the essential issue in the Supreme Court appears to be whether or not HRM was legally entitled to demolish the wharf. These are, in my respectful view, different issues.
- [6] As well, the parties are different in the two actions. While that may not always lead to a finding that there is jurisdiction on a Section 15 analysis, in this case it means that this Court would not be in a position to make a ruling on matters between HRM and the Christinks since HRM is not a party. That mean, it seems to me, that the bill from HRM to the Johnsons has to be accepted at face value. It may well be that it will ultimately be found that there was no proper or legal basis for that bill to be issued by HRM; I cannot make a ruling on that as HRM is not a party before me. Accordingly, the bill that was issued has to be taken on face value and the case decided on the basis that the bill was proper.
- [7] There is no question that there is a degree of overlap between the two cases. However, as already stated, the question to be answered on s. 15 is whether the “issues in dispute” in this case are already before another court. On the basis of the evidence and submissions before me, I am unable to so conclude.

- [8] At the hearing I also indicated that this was a preliminary decision only and that I would reserve the right to decide in a contrary manner based on further evidence or submissions that may be made.

DATED at Halifax, Nova Scotia, this 21st day of September, 2006.

Michael J. O'Hara
Adjudicator

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