

**NOVA SCOTIA COURT OF APPEAL**  
[Cite as: **Jollymore v. Jollymore Estate, 2001 NSCA 172**]

**Glube, C.J.N.S.; Hallett and Chipman, J.J.A.**

**BETWEEN:**

ESTATE OF THOMAS JOLLYMORE and  
DELLA HARNISH, EXECUTRIX

Appellants

- and -

ERIC JOLLYMORE, MARION JOLLYMORE,  
DAVID JOLLYMORE and PERCY JOLLYMORE

Respondents

---

REASONS FOR JUDGMENT

---

Counsel: Albert Bremner, Q.C. for the appellants  
Janus E. Naugler for the respondents

Appeal Heard: November 27, 2001

Judgment Delivered: November 29, 2001

THE COURT: The application for fresh evidence was dismissed. The appeal from Justice Carver's September 22<sup>nd</sup>, 2000 order was dismissed. The appeal of the March 16<sup>th</sup>, 2001 order respecting the personal liability of Della Harnish was allowed. The application of the respondents was remitted to the Supreme Court of Nova Scotia for a new hearing per reasons for judgment of Hallett, J.A.; Glube, C.J.N.S. and Chipman, J.A. concurring.

**HALLETT, J.A.:**

- [1] The application to adduce fresh evidence is dismissed.
- [2] There is no basis to allow the appeal of the September 22<sup>nd</sup>, 2000 order of Justice Carver. The appeal from that order is dismissed.
- [3] With respect to the appeal of the personal liability order, probate of the Will of Thomas Jollymore had not been granted to Della Harnish when she signed the Deed to Winfield Harnish and his wife in February of 1999. Furthermore, she signed the Deed in her personal capacity. The Will, which had been proven in solemn form, left all of Mr. Jollymore's property in trust to Della Harnish, his executrix and trustee.
- [4] Considering the aforesaid circumstances, Justice Carver erred in law in failing to consider whether Della Harnish as executrix made a disposition that warranted the order he made pursuant to s. 9(2) of the **Testators Family Maintenance Act**, R.S.N.S. 1989, c. 465. That order shall be set aside and the respondents' application shall be remitted to the Supreme Court of Nova Scotia for a new hearing. The respondents shall personally serve or cause personal service to be made on Della Harnish, Ira Oscar Parks, Jr., Winfield Harnish, Sandra Viola Harnish and Derek Wells with notice of the application as these persons would appear to have an interest in the proceedings as the principal issue before the Court on the rehearing will be whether or not the warranty deed executed by Della Harnish and Ira Oscar Parks, Jr. in favour of Winfield Harnish and his wife was effective to transfer title in whole or in part.
- [5] There has been divided success on the appeal; there will not be an order for costs.

Hallett, J.A.

Concurred in:

Glube, C.J.N.S.

Chipman, J.A.