

NOVA SCOTIA COURT OF APPEAL

Citation: Kameka v. Williams, 2009 NSCA 107

Date: 20091022

Docket: CA 305131

Registry: Halifax

Between:

Norman Kameka and Thomas Hayes

Appellants

v.

Ervin R. Williams

Respondent

Judge: The Honourable Justice Duncan R. Beveridge; Oland, J.A. concurring. The Honourable Justice Joel E. Fichaud concurring under separate reasons.

Appeal Heard: June 16, 2009

Subject: Practice and Procedure: the applicability of the doctrine of *res judicata*.

Summary: The respondent successfully sued the driver in Small Claims Court seeking compensation for property damage. The respondent then brought an action in Supreme Court against the driver and owner seeking compensation for personal injuries. The appellants applied to have the action struck as being barred by the doctrine of *res judicata*. The Chambers judge dismissed the application.

Issue: Did the Chambers judge err in law in his analysis and conclusion with respect to the principles of *res judicata*

Result: The Chambers judge erred in law in dismissing the application to strike the respondent's claim. The respondent had but one cause of action against the appellant driver. Having obtained judgment in the Small Claims Court for property damage, his cause of action merged into that judgment and the doctrine of *res judicata* precluded him from then proceeding in the

Supreme Court against the appellant claiming damages for personal injuries. The respondent's additional claim against the appellant owner was unsustainable as he had already been paid for the damage he claimed was caused by the wrong done. In concurring reasons, Fichaud, J.A. said that s.13 of the *Small Claims Court Act* prohibited claim splitting and therefore precluded Mr. Williams' second action in the Supreme Court, after Mr. Williams' judgment in the Small Claims Court. Fichaud, J.A. said that Mr. Williams' claim in the Supreme Court should be dismissed because of s. 13 without resort to the common law.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 34 pages.