

Date: 20010209
Docket: C.A. 145934

NOVA SCOTIA COURT OF APPEAL
[Cite as: Haynes Group of Lawyers v. Regan, 2001 NSCA 34]

BETWEEN:

THE HAYNES GROUP OF LAWYERS

Appellant

- and -

SUSAN MARIE REGAN

Respondent

D E C I S I O N

Counsel: Ross H. Haynes for the appellant
 David W. Richey for the respondent

Application Heard: January 18, 2001

Decision Delivered: February 9, 2001

BEFORE THE HONOURABLE JUSTICE CROMWELL IN CHAMBERS

CROMWELL, J.A.: (in chambers)

- [1] Ms. Regan applies for an order removing a Certificate of Judgment from the Registry of Deeds and related relief. Her application raises the issues of whether the Certificate of Judgment was properly issued and whether a chambers judge of the Court of Appeal has jurisdiction to grant the relief requested.
- [2] In order to understand the issues, it is necessary to set out the background of the matter in some detail.
- [3] In January of 1995, Ms. Regan (the applicant) and the predecessor firm of The Haynes Group of Lawyers (the respondent) entered into a contingency fee agreement respecting services to be performed by the firm with respect to Ms. Regan's claim for damages for personal injuries. The contingency agreement provided that if the client discharged the firm prior to final recovery of compensation, the client agreed to pay the lawyers forthwith, upon tendering of the account, all costs and disbursements and for services rendered to be determined on the basis of the firm's hourly fee.
- [4] In October of 1997, Ms. Regan advised the firm that she had retained another lawyer and would no longer require the firm's services. The firm submitted its bill for services determined on an hourly basis plus disbursements and taxes. The bill was taxed before Davison, J. He fixed the amount of the bill at \$6,742.00 plus disbursements and taxes. He ordered that the contingency fee agreement be modified so that no monies would be payable by Ms. Regan to the firm until the proceeding with respect to which the contingency fee agreement related had been disposed of. He also ordered that there could be no enforcement of the bill prior to "successful disposition of this proceeding". I quote the relevant paragraphs in full:

IT IS ORDERED THAT the account of The Haynes Group of Lawyers is taxed and allowed in the amount of fees - \$6,742.00, disbursements - \$499.19, GST - \$341.52, HST - \$341.60;

AND IT IS FURTHER ORDERED THAT The Haynes Group of Lawyers shall have judgment against the Plaintiff, Susan Regan, in the amount of \$7,924.31 but no moneys are payable until the disposition of this proceeding. [that is the personal injury action brought by Ms. Regan against Michelle A. Wright and Morley Charles Wright, S.H. No. 114571]

AND IT IS FURTHER ORDERED THAT payment of said judgment may not be enforced prior to the successful disposition of

this proceeding, and then only with the leave of this Honourable Court.

- [5] The law firm appealed the Order to this Court asking that the limitation on its enforcement be deleted. In May of 1998, the appeal was dismissed without costs, but the Order of Davison, J. was varied so as to permit the firm to obtain a charging order for its fees pursuant to **Civil Procedure Rule 63.26**.
- [6] In May of 1998, at the instance of the law firm, the Prothonotary issued a Certificate of Judgment showing a debt owing from Ms. Regan to The Haynes Group of Lawyers in the amount of \$7,924.31. There is no dispute that as of that date and, for that matter, as of the date of the application before me, the personal injury action had not been finally resolved. The Certificate of Judgment was recorded in the Registry of Deeds by the law firm. Subsequently, upon the sale of Ms. Regan's home, an objection to title was made on the basis of the outstanding judgment. The application now before me by Ms. Regan to vacate the Certificate of Judgment resulted.
- [7] I heard the matter in chambers on January 18th, 2001, and raised the question with counsel whether I had jurisdiction to make the order sought. Mr. Richey, on behalf of Ms. Regan, filed a helpful brief addressing the jurisdictional point as well as the merits of the application. Mr. Haynes, on behalf of the law firm, did not object to my jurisdiction and indicated that if it was my view that the Certificate of Judgment should be postponed to facilitate closing of the real estate transaction, he would sign all documentation necessary to effect that result forthwith. I indicated in chambers that, in my opinion, the Certificate of Judgment should be postponed to facilitate the closing. Upon Mr. Haynes undertaking to do so, I reserved my decision on the application.
- [8] The first issue is whether a chambers judge in the Court of Appeal has jurisdiction to make the order requested. I set out the relief sought in the Notice of Application in full:

.....

- (1) THAT all records of a Judgment recorded at the Registry of Deeds at Halifax in Book 6227 at page 609, as Document No. 16786, be removed from the records at said Registry;
- (2) THAT a copy of this Order be filed by the Prothonotary in the Supreme Court file bearing S.H. No. 114571;

- (3) THAT a certified copy of this Order shall be delivered forthwith by the Appellant to the Registry of Deeds for recording;
- (4) THAT the cost of recording this Order and purging the records of the Registry of Deeds shall be at the expense of the Appellant.

[9] The foundation of Ms. Regan's application is the Order of Davison, J. dated March 17th, 1998, and a Certificate of Judgment issued by the Prothonotary on the 12th day of May, 1998. The **Civil Procedure Rules** specifically address the effect of a subsequent appeal on the order appealed from. **Rule 62.29(1)** provides that where an order of the Court of Appeal which has been certified by the Registrar to the Prothonotary or clerk with whom the order appealed from was entered, the latter shall thereupon cause it to be entered in the proper book and "all subsequent proceedings may be taken thereon as if the order had been granted by the court appealed from". I set out **Rule 62.29(1)** for convenience:

62.29 (1) Where an order of the Court has been certified by the Registrar to the prothonotary or clerk with whom the order appealed from was entered, the latter shall thereupon cause it to be entered in the proper book and all subsequent proceedings may be taken thereon as if the order has been granted by the court appealed from.

(emphasis added)

[10] In my opinion, the Certificate of Judgment issued by the Prothonotary certifies the judgment of Davison, J. of the Supreme Court as varied on appeal. The effect of the Order of the Court of Appeal, once transmitted to the Prothonotary of the Supreme Court, is to permit all proceedings to be taken with respect to that Order as if it had been made by the Supreme Court. This **Rule**, which has counterparts in the **Supreme Court of Canada Act**, R.S.C. 1985, c. S-26 (see s. 51) and in Newfoundland **Rules of the Supreme Court**, 1986, r. 57.29(2) and the Northwest Territories, **Rules of the Court of Appeal Respecting Civil Appeals**, r. 27(2) is, in my opinion, intended to leave matters relating to the enforcement of the Order, as varied if at all on appeal, to the Court that originally made it. While a chambers judge of this Court has the authority to amend the formal order for judgment to correct any errors or omission, or otherwise to better express the order's intent: see **Rule 62.26(2)**, in light of the explicit provision of **Rule 62.29(1)**, I do not think that a judge of this Court should issue directions to the

Prothonotary, let alone the Registrar of Deeds, with respect to a Certificate of Judgment based on a judgment issued out of the Supreme Court and substantially affirmed on appeal.

- [11] Mr. Richey, in his helpful and comprehensive brief to me, relied extensively on the article by I.H. Jacob entitled “*The Inherent Jurisdiction of the Court*” published in (1970), 23 Current Legal Problems 23, but, with respect, that article mainly concerns the inherent jurisdiction of the English High Court which is a superior court of original jurisdiction.
- [12] It is submitted that I have inherent jurisdiction to regulate the process of proceedings before the Court. I agree that I have inherent jurisdiction in the sense that I have authority necessarily incidental to the exercise of jurisdiction which is conferred on a judge of the Court of Appeal by enactment or rule or otherwise. I do not agree, however, that what is in issue here is a proceeding in the Court of Appeal. Once the appeal to this Court from the Supreme Court has concluded, **Rule 62.29** provides that all subsequent proceedings may be taken on the order of the Supreme Court as varied or affirmed by the Court of Appeal as if the order of the Court of Appeal had been granted by the court appealed from. In my opinion, what is in issue here is whether The Haynes Group of Lawyers has failed to comply with the order granted by Justice Davison and whether the Prothonotary was in error in issuing a Certificate of Judgment pursuant to that order. In my respectful view, and having regard to **Rule 62.29**, the application before me is a proceeding subsequent to the appeal in relation to the order which formed the subject-matter of the appeal. Such proceedings are to be pursued in the court appealed from, that is, the Supreme Court of Nova Scotia.
- [13] In my respectful view, the relief requested in this application should be sought before a judge of the Supreme Court of Nova Scotia.
- [14] In view of my conclusion that I do not have jurisdiction to make this order, I dismiss Ms. Regan’s application, but in the circumstances without costs.