

NOVA SCOTIA COURT OF APPEAL

Citation: *Quinn Estate v. Nova Scotia Association of Health Organizations Long Term Disability Plan*, 2017 NSCA 87

Date: 20171130

Docket: CA 463049

Registry: Halifax

Between:

Estate of Daveen Georgia Quinn as represented by Michael Quinn

Appellant

v.

Nova Scotia Association of Health Organizations
Long Term Disability Plan

Respondent

Judges: Beveridge, Scanlan and Van den Eynden, J.J.A.

Appeal Heard: November 30, 2017, in Halifax, Nova Scotia

Written Release December 4, 2017

Held: Application for leave to appeal dismissed with costs, per reasons for judgment of the Court

Counsel: Jennifer Langille, for the appellant
David Hutt, for the respondent

By the Court (Orally):

[1] The appellant seeks to appeal an interlocutory order. Leave to appeal is required.

[2] In the court below, the appellant moved to disallow the respondent's limitation defence. The respondent made a cross motion for summary judgment dismissing the action in the event the appellant's motion was unsuccessful.

[3] Although the appellant was unsuccessful, the summary judgment motion was adjourned by the trial judge. In the interim, the appellant appealed the interlocutory order.

[4] To obtain leave, the appellant must demonstrate an arguable issue, that is an issue that could result in the appeal being allowed (see *MacRury v. Keybase Financial Group Inc.*, 2017 NSCA 8).

[5] The dispute between the parties involves the entitlement to long term disability benefits. The litigation is being advanced by Mr. Quinn, who represents his deceased wife's estate. She died in December 2013. Approximately four months prior to her death, she commenced an action seeking disability benefits from her denial date of August 31, 2008.

[6] The late Ms. Quinn received long term disability benefits from November 2006 until August 2008 when the respondent determined she was no longer eligible. Ms. Quinn unsuccessfully availed herself of an internal claim review process. On June 16, 2009, she was told that the respondent maintained its denial of benefits.

[7] At this juncture, she could do one of two things to advance her claim: (1) escalate her appeal to the internal appeal board; or (2) bring a legal action against the trustees. If she elected the former, it would be a bar to litigation.

[8] The disability insurance plan unequivocally provides for a one year limitation period to commence legal action. That one year limitation expired in June 2010. Ms. Quinn did not commence her claim until August 21, 2013—more than three years after the limitation period expired.

[9] On appeal, the appellant complains that: the judge erred by applying the one year limitation period set out in the plan as opposed to the six year limitation for contractual disputes found in the *Statute of Limitations Act*, R.S.N.S. 1989, c. 258; and he erred in the exercise of his discretion found in s. 3(2) of that *Act* to disallow a limitation defence.

[10] We are of the unanimous view that leave to appeal should be denied. The appellant has failed to establish an arguable issue that warrants the granting of leave. Specifically, the one year limitation period specified in the plan is the limitation period contemplated by s. 3(1)(c)(iii) of the *Statute of Limitations*. The appellant cites no authority or principle to suggest otherwise.

[11] Furthermore, the judge considered the circumstances set out in ss. 3(2) and 3(4) in his determination not to disallow the limitation defence. We see no arguable issue that he failed to articulate and consider the relevant factors that underpinned the exercise of his discretion not to disallow the limitation defence.

[12] Application for leave to appeal is dismissed with costs to the respondent in the amount of \$1,500.00, inclusive of disbursements.

Beveridge, J.A.

Scanlan, J.A.

Van den Eynden, J.A.