

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Raymond v. Canadian Imperial Bank of Commerce*, 2017 NSCA 90

**Date:** 20171212

**Docket:** CA 462482

**Registry:** Halifax

**Between:**

Paulette Raymond

Appellant

v.

Canadian Imperial Bank of Commerce, a body corporate

Respondent

**Judges:** Bryson, Oland, Hamilton, JJ.A.

**Appeal Heard:** December 7, 2017, in Halifax, Nova Scotia

**Held:** Motion for dismissal granted and appeal dismissed, per reasons for judgment of the Court

**Counsel:** Paulette Raymond, appellant in person  
Jeffrey P. Flinn, for the respondent

**Reasons for judgment:**

[1] Paulette Raymond owned a property on Pepperell Street, Halifax for many years. It was her home and also an income-producing property. Ms. Raymond mortgaged it to CIBC. After she defaulted on her payments, CIBC successfully obtained Orders for foreclosure and sale. Ms. Raymond appealed those Orders, and her appeal was set down for hearing. She fully paid out the CIBC mortgage, and CIBC discontinued its foreclosure action and released the mortgage.

[2] CIBC brings two motions for dismissal of Ms. Raymond's appeal, one on the basis that it is without merit, and the second for failure to perfect the appeal. Ms. Raymond brings a motion for extension of time to file appeal material. She also filed two documents entitled "Notice of Contention," which will be described later in this decision. It is these which are the subject of this decision.

[3] The hearing of Ms. Raymond's appeal from the March 8, 2017 and June 28, 2017 Orders of Justice Gerald R. P. Moir is set to be heard by this Court on February 5, 2018. The background to those Orders is as follows.

[4] CIBC started foreclosure proceedings against Ms. Raymond after she failed to make mortgage payments. When she failed to file a defence, CIBC made an *ex parte* motion and on March 8, 2017 Justice Moir ordered the foreclosure, sale and possession of her property. A public auction was scheduled for April 25, 2017.

[5] On April 11, 2017, Ms. Raymond appealed the Foreclosure Order to this Court. The parties agreed to postpone the sale and an Order to this effect was issued by Justice Moir on April 13, 2017.

[6] CIBC sought a rehearing in the Nova Scotia Supreme Court of its *ex parte* foreclosure application on notice to Ms. Raymond. Following the hearing of that motion on June 22, 2017, by Order dated June 28, 2017, Justice Moir suspended his April 13, 2017 Order and ordered that the public auction proceed in accordance with his March 8, 2017 Order.

[7] On July 18, 2017, Ms. Raymond applied to this Court for a stay pending appeal which was denied by August 15, 2017 Order of Justice Van den Eynden. Reasons for the denial were released August 25, 2017.

[8] On September 13, 2017, Ms. Raymond was notified that her property would be sold at a foreclosure auction on October 17, 2017.

[9] On September 21, 2017, Ms. Raymond was permitted to amend her Notice of Appeal to this Court to also appeal Justice Moir's June 28, 2017 Order. It is the appeal from this Order and Justice Moir's March 8, 2017 Order that is set to be heard on February 5, 2018.

[10] On October 16, 2017, Ms. Raymond exercised her "right to redeem" by fully paying out the CIBC mortgage. CIBC then cancelled the public auction, provided Ms. Raymond with a release of mortgage and filed a Notice of Discontinuance with the Nova Scotia Supreme Court discontinuing its foreclosure action.

[11] On October 18, 2017, CIBC applied pursuant to *Civil Procedure Rule* 90.44(1)(a) for an order dismissing Ms. Raymond's appeal on the basis it is without merit.

[12] On October 20, 2017, Ms. Raymond filed a "Notice of Contention" requesting Chief Justice J. Michael MacDonald of this Court to intervene because of the "sharp practice" of CIBC's lawyers in the foreclosure proceedings.

[13] On November 30, 2017, CIBC applied pursuant to *Civil Procedure Rule* 91.20(2)(c) for an order dismissing Ms. Raymond's appeal on the basis she failed to perfect her appeal by failing to file her factum by November 30, 2017.

[14] On December 1, 2017, Ms. Raymond applied for an extension of time to file her factum and affidavit.

[15] On December 6, 2017, the day before the scheduled hearing of CIBC's and her motions, Ms. Raymond filed a second "Notice of Contention". It named CIBC as the respondent. However, she sought an Order against both CIBC and one of its lawyers on the basis that their motions to dismiss her appeal were indicative of "tortious abuse of practice" and their conduct was an "affront to my personal integrity, character and dignity".

[16] *Civil Procedure Rule* 90.44 (1)(a) provides:

A party to an appeal may make a motion to the Court of Appeal at any time before or at the hearing of the appeal for an order setting aside the notice of appeal or dismissing the appeal on either of the two following grounds:

(a) the appeal is frivolous, vexatious, or without merit; ...

[17] *Civil Procedure Rule 91.20(2)(c)* provides:

A judge of the Court of Appeal may dismiss an appeal in which the appellant fails to comply with this Rule 91, such as failing to comply with a Rule, or directions given under a Rule, on any of the following subjects:

...

(c) filing and delivering a transcript, appeal book, and appellant's factum.

[18] Having considered the substantial material filed and the fulsome arguments of the parties, we grant CIBC's motion to dismiss Ms. Raymond's appeal on the basis it is without merit. There is no longer a legal dispute between the parties as Ms. Raymond paid out the mortgage in full and CIBC subsequently released it and discontinued its action.

[19] In light of our decision to grant CIBC's motion to dismiss Ms. Raymond's appeal on the basis it is without merit, it is not necessary to consider her motion for an extension of time to file or CIBC's motion to dismiss for non-perfection. As to the documents headed "Notices of Contention" which Ms. Raymond filed, we observe that they are not Notices of Contention as contemplated in *Rule 90.22*. In them, Ms. Raymond is not seeking to have court orders upheld on certain grounds. Moreover, with regard to the allegations contained in them and elaborated before us, we see no sharp practice or tortious abuse of practice but only a following of the procedures set out in the *Rules*.

[20] Ms. Raymond is forthright in arguing that the purpose of her appeal is to have this Court reconsider the law relevant to foreclosure in Nova Scotia. She says it must be brought into the 21<sup>st</sup> century; that it must accommodate vulnerable self represented litigants like her; that CIBC must act with a "heart" and not intimidate, oppress and bully people; that people must help one another and show more mercy. She says all this, despite having admitted to Justice Moir that she was in arrears in her mortgage at the time the foreclosure action was started. Ms. Raymond's argument that we reconsider the foreclosure law in Nova Scotia is tantamount to having us express an independent opinion on a question of law. As set out by Justice Cindy A. Bourgeois of this Court in *Raymond v. Brauer*, 2015 NSCA 106, para. 19, there is no legislation that permits Ms. Raymond to refer a question of law to this Court.

[21] We dismiss Ms. Raymond's appeal and order her to pay costs, including disbursements, in the amount of \$4,000 to CIBC forthwith. This amount includes costs and disbursements with respect to Ms. Raymond's earlier motion for a stay.

Bryson, J.A.

Oland, J.A.

Hamilton, J.A.