

NOVA SCOTIA COURT OF APPEAL

Citation: *Liu v. Composite Atlantic Ltd.*, 2013 NSCA 142

Date: 20131204

Docket: CA 417703/421324

Registry: Halifax

Between:

Guo Yi Liu

Appellant

v.

Composites Atlantic Limited

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Motion Heard: November 27, 2013, in Halifax, Nova Scotia, in Chambers

Held: Motion to transfer dismissed.

Counsel: Guo Yi Liu, appellant in person
Jack Graham, Q.C., for the respondent

Decision:

[1] Guo Yi Liu is the appellant on two appeals to this Court. Both appeals relate to his lawsuit against his former employer for wrongful dismissal. After the close of pleadings in that suit, Mr. Liu brought a motion for summary judgment on the evidence. It was scheduled to be heard on July 2, 2013. The respondent asked for an adjournment. Justice G. Moir, of the Nova Scotia Supreme Court, granted the request. The summary judgment motion was subsequently re-scheduled for October 15, 2013.

[2] The first appeal (C.A. 417703) is from Justice Moir's decision to adjourn the summary judgment motion.

[3] Mr. Liu's motion for summary judgment was heard by Justice K. Coady on October 15, 2013. He dismissed the motion. Mr. Liu's second appeal (C.A. 421324) is from Justice Coady's decision.

[4] The appellant lives in Ontario. He filed a motion for dates and directions. Included in that motion was a request to transfer both of his appeals to be heard by the Ontario Court of Appeal. In support for his motion, he cited the *Court Jurisdiction and Proceedings Transfer Act*, S.N.S 2003, c. 2.

[5] The respondent opposed the transfer motion. On the motion for date and directions, counsel urged that the adjournment appeal (C.A. 417703) was moot. If dates were set, he would move to have the appeal dismissed under Rule 90.44. There was no objection to setting dates and giving directions for filing on the summary judgment appeal (C.A. 421324).

[6] I heard the appellant's motions in tele-chambers on Wednesday, November 27, 2013. After hearing from the parties, I advised the appellant that his motion to transfer the appeals to Ontario was dismissed. Other matters were duly dealt with. At the end of the session, the appellant requested a further explanation as to why, at least to him, his seemingly sensible transfer request was refused. I repeated the gist of my reasons for him.

[7] On November 28, 2013, the appellant wrote to the Registrar with further submissions. He asks that I reconsider. Nothing the appellant has said changes my ruling. I do not have the jurisdiction to make the order he requests. Mr. Liu is

self-represented. English does not appear to be his first language. These reasons will serve to provide a more fulsome explanation.

[8] An appeal is strictly a creature of statute. That means, absent a provision in a statute, there is no right to appeal. The Court of Appeal, or a judge thereof, to make an order, must rely on a power given by an enactment. The primary source of such power in civil matters is the *Judicature Act*, R.S.N.S. 1989, c. 240. It is this statute that gives to Mr. Liu the ability to appeal to this Court.

[9] The *Judicature Act* says that an appeal lies to the Court of Appeal from any decision, verdict, judgment or order of the Supreme Court or a judge thereof, whether in court or in chambers (s. 38).

[10] His appeals to this Court are from interlocutory orders. The *Judicature Act* puts a screening device on such appeals. Leave must be obtained. Section 40 of that *Act* provides:

40 There is no appeal to the Court of Appeal from any interlocutory order whether made in court or chambers, save by leave as provided in the Rules or by leave of the Court of Appeal.

[11] This is why Mr. Liu's appeal documents are both styled as Notices of Applications for Leave to Appeal. Traditionally, applications for leave to appeal are heard by a panel of this Court at the same time as the appeal. However, absent a legislative directive, a leave application can be heard by a single judge of the Court (see: *Rule 90.12*).

[12] There is nothing in the *Judicature Act*, nor the *Nova Scotia Civil Procedure Rules* made pursuant to that *Act*, that gives any power for appeal proceedings to be transferred to an appeal court in another province.

[13] Until quite recent times, outside the family law context, there was no mechanism by which any ongoing litigation could be transferred to another jurisdiction.¹

[14] This changed with legislation in Saskatchewan, British Columbia and Nova Scotia adopting the recommendations of the Uniform Law Conference of Canada

¹ Black, Pitel and Sobkin, *Statutory Jurisdiction: An Analysis of the Court Jurisdiction and Proceedings Transfer Act* (Toronto: Carswell, 2012) at 214-5

to expressly permit the superior courts of those provinces to authorize a request to transfer, and to accept transfers, of ongoing proceedings. In Nova Scotia, the legislation is the *Court Jurisdiction and Proceedings Transfer Act*, S.N.S 2003, c. 2. This *Act* was proclaimed in force as of June 1, 2008.

[15] The power to transfer a proceeding is given to the Supreme Court of Nova Scotia, not to the Nova Scotia Court of Appeal. The power is found in s. 14 of the *Act*. The section sets out some general provisions that apply. It provides:

- 14** (1) The Supreme Court, in accordance with this Part, may
- (a) transfer a proceeding to a court outside the Province; or
 - (b) accept a transfer of a proceeding from a court outside the Province.

[16] Section 2(g) of the *Act* makes clear: “Supreme Court” means the Supreme Court of Nova Scotia. Mr. Liu initially argued that because the Court of Appeal is a higher court than the Supreme Court, then surely it must have the power to make the requested transfer. If the Supreme Court makes a reviewable error in dealing with a request to transfer then this Court, if leave to appeal were given, could grant any order that might have been made by the Supreme Court. There has been no request in the Supreme Court for a transfer of the proceedings to Ontario.

[17] Mr. Liu cites s. 14(4) as being clear authority for the Court of Appeal to order the requested transfer. It is useful to quote this section in the context in which it appears:

(2) A power given under this Part to the Supreme Court to transfer a proceeding to a court outside the Province includes the power to transfer part of the proceeding to that court.

(3) A power given under this Part to the Supreme Court to accept a proceeding from a court outside the Province includes the power to accept part of the proceeding from that court.

(4) Where anything relating to a transfer of a proceeding is or ought to be done in the Supreme Court or in another court on appeal from the Supreme Court, the transfer is governed by this Part.

[18] Section 14(4) does not give to the Court of Appeal the power, in a first instance application, to authorize a transfer request. It merely says that if anything

relating to a transfer is to be done in the Supreme Court or on appeal, it is governed by Part II of the *Act*.

[19] How the discretionary power is to be exercised by the Court is set out in s. 15 of the *Act*. Again, it is only a judge of the Supreme Court that has the discretionary power to request a court outside the Province to accept a transfer of a proceeding. It provides as follows:

15 (1) The Supreme Court, by order, may request a court outside the Province to accept a transfer of a proceeding in which the Supreme Court has both territorial and subject-matter competence if the Supreme Court is satisfied that

(a) the receiving court has subject-matter competence in the proceeding; and

(b) under Section 12, the receiving court is a more appropriate forum for the proceeding than the Supreme Court.

[20] I make no comment on the ability of a judge of the Nova Scotia Supreme Court to make an order requesting a Court in Ontario, which does not appear to have a Court Jurisdiction and Proceedings Transfer Act, to accept a transfer, nor of course, on the ability of the court in Ontario to accept such a request.

[21] Section 22 of the *Act* sets out details on how issues surrounding appeals are to be dealt with. *After* transfer of a proceeding takes effect, an order of the transferring court (but not the order requesting the transfer) may, with leave, be appealed to the court of appeal of the receiving province. Any appeals outstanding at the time of the transfer may continue in the requesting province provided it is unreasonable or impracticable to be recommenced in the state of the receiving court, and resolution of the appeal is necessary. The provisions are:

Appeals

22 (1) After the transfer of a proceeding to the Supreme Court takes effect, an order of the transferring court, except the order requesting the transfer, may be appealed in the Province with leave of the court of appeal of the receiving court as if the order had been made by the Supreme Court.

(2) A decision of a court outside the Province to accept the transfer of a proceeding from the Supreme Court may not be appealed in the Province.

(3) Where, at the time that the transfer of a proceeding from the Supreme Court takes effect, an appeal is pending in the Province from an

order of the Supreme Court, the court in which the appeal is pending may conclude the appeal only if

- (a) it is unreasonable or impracticable for the appeal to be recommenced in the state of the receiving court; and
- (b) a resolution of the appeal is necessary for the fair and proper conduct of the continued proceeding in the receiving court.

[22] There has been no transfer of the proceedings to Ontario. Hence, the only court that has jurisdiction to deal with errors claimed to have been committed by justices of the Supreme Court of Nova Scotia is the Nova Scotia Court of Appeal, in accordance with ss. 38 and 40 of the *Judicature Act*. The motion to transfer stands dismissed. No costs were requested. I order none.

Beveridge, J.A.