

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** Mike's Laundromat Ltd. v. Buns and Son Realty Ltd.,  
2003NSSC066

**Date:** 20030326  
**Docket:** 112389  
**Registry:** Sydney

**Between:**

Mike's Laundromat Limited (a body corporate) and its successor company,  
Townsend Street Laundromat Limited (a body corporate) and Dan MacDonald  
Plaintiffs

v.

Buns and Son Realty Limited (a body corporate) and Ronald Michael  
MacDonald, Sr.  
Defendants

**Judge:** Before The Honourable Justice Frank Edwards, In  
Chambers

**Heard:** March 10, 2003, in Sydney, Nova Scotia

**Written Decision:** March 26, 2003

**Counsel:** Hugh R. McLeod, for the Applicant  
No one appearing for the Respondent

**By the Court:**

- [1] The Applicant Plaintiff applies for an Order to amend the Execution Order in this proceeding or an Order to amend the style of cause of this action pursuant to Civil Procedure Rule 5.04 and 5.04. The Applicant wishes to seize certain funds presently held in the bank account of the Estate of the deceased individual Defendant.
- [2] The Applicant commenced an action against both the corporate Defendant and the individual Defendant on December 29, 1999. The Defendants filed a Defence on February 11, 2000. The Applicant filed its Notice of Trial on May 28, 2001.
- [3] Unfortunately, the individual Defendant died on October 19, 2001. Probate was granted on April 11, 2002. Apparently, an estate account was opened by the personal representatives of the Estate at the Royal Bank of Canada. Funds belonging to the deceased Defendant were then deposited in the Estate Account.
- [4] Meanwhile, a Consent Order consenting to judgement against both Defendants was issued on November 14, 2002. Judgement was entered on December 10, 2002 and an Execution Order was issued on December 13, 2002.

- [5] The Bank refused to release funds in the Estate account. The Bank took the position that the Estate account was not named in nor covered by the Execution Order.
- [6] Counsel for the Applicant has indicated that, if successful, he will not seek disbursement of any of the seized funds until the priorities are settled under the *Probate Act*. Counsel says that "... my client feels his \$26,000.00 is much safer in the sheriff's hands ... than having it sitting in a bank account which can be depleted at a moment's notice by the Executors" (letter March 12, 2003).
- [7] The personal representatives of the Estate have sworn to faithfully administer the Estate. I have no evidence that they will do otherwise. More to the point, the Applicant does not have judgement against the Estate. The Bank was correct in the position it took. The Applicant is a creditor of the Estate and must get in line with any other creditors to have its entitlement determined in the normal manner pursuant to the *Probate Act*. It is not

[8] entitled to interfere with the lawful activities of the Estate's personal representatives by seizing funds they are sworn to administer.

[9] I am dismissing the application without costs to any party.

Order accordingly.

J.