

Date: 20020114
Docket: S. H. No. 164246

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: Ofume v. Vukelich, et al 2002 NSSC 009]

BETWEEN:

MAUREEN OFUME

PLAINTIFF/RESPONDENT

- and -

GORANKA VUKELICH, and SUE WOLSTENHOLME and ST.
JOSEPH'S COLLEGE OF EARLY CHILDHOOD EDUCATION
(a body corporate) and CHRIS RAFUSE

DEFENDANTS/APPLICANTS

D E C I S I O N

HEARD BEFORE: **The Honourable Justice Walter R. E. Goodfellow in the
Supreme Court of Nova Scotia at Halifax (Chambers)
on January 11th, 2002**

DECISION: **January 11th, 2002 (Orally)**

**WRITTEN RELEASE
OF ORAL:** **January 14th, 2002**

COUNSEL: **Dr. Phillip C. Ofume, Ph.D. - Representing Maureen
Ofume**
Eugene Y. S. Tan - Representing the Defendants

GOODFELLOW, J.: (Orally)

BACKGROUND

- [1] Maureen Ofume issued an Originating Notice Action June the 8th, 2000. From the outset, she has been represented by her husband and agent, Dr. Phillip Ofume.
- [2] Dr. Ofume has a considerable degree of experience in litigation, particularly as a self-represented party. The file contains a letter dated June the 28th, 2000, a copy of which is filed June the 29th, 2000 from Eugene Y. S. Tan, solicitor, to Maureen Ofume at the address stated in her Originating Notice Action. The letter makes it clear that Mr. Tan was not authorized to accept service and that Ms. Ofume should proceed to personal service on each Defendant individually. He also pointed out Chris Rafuse is listed in the Originating Notice as a Defendant but not named in the Statement of Claim. It appears that Ms. Ofume would not accept the return of the copies from Mr. Tan so he had them delivered to her home. The College appears to have been served, then there was an amended Originating Notice of Action filed July the 24th, 2000. I must say that the Statement of Claim, both in the original Originating Notice of Action and in the amended Originating Notice

of Action, make very serious allegations, not only against the Defendants but allegations against the Nova Scotia Human Rights Commission, Court Administrators, Judges, etcetera. The initial claim referred in the Originating Notice Action to a claim totally Sixty Million (\$60,000,000.00) Dollars plus costs and the amended claim seeks One Hundred and Thirty Million (\$130,000,000.00) Dollars plus costs. My reference to the Originating Notices is simply to show an appreciation of the seriousness of this matter and therefore, the necessity that it be dealt with in a proper manner.

- [3] Dr. Ofume wrote to Mr. Tan August the 22nd, 2000 confirming that he was representing Mrs. Maureen Ofume and that he was preparing a default action against Mr. Tan's clients. In that letter, he accuses Mr. Tan's clients, "who are running because they have sinned against the Lord of Host". He stated further, "we believe in litigation and we prefer to be sleeping in courtrooms than at home" and ends that letter with a somewhat difficult to understand paragraph, "Greetings in the Matchless Name of Jesus. I trust this information finds you on top with all things under your feet".
- [4] St. Joseph's College of Early Childhood Education was served and filed a Defence, August the 4th, 2000.

- [5] Mrs. Ofume filed her List of Documents February the 1st, 2001 and St. Joseph's College of Early Childhood Education filed its List of Documents March the 13th, 2001.
- [6] Mrs. Ofume filed what I take to be "Record for Trial Judge" June the 13th, 2001 and Mr. Tan responded by placing this matter on the Appearance Day docket maintaining that none of his individual clients had been served with the Originating Notice Action or the Originating Notice Action as amended.

AFFIDAVITS OF SERVICE

- [7] Dr. Phillip Ofume filed three Affidavits entitled Affidavit of Service. They were all filed July the 20th, 2001 and Dr. Ofume says in the individual Affidavits which he swore on the 20th of July, the following:

1. I, Dr. Phillip Ofume of Bedford in the Halifax Regional Municipality, Province of Nova Scotia, Process Server, make oath and say that I did on Monday the 12th day of June, A.D. 2000, before the hour of 10 a.m. o'clock in the forenoon, serve Defendant Ms. Chris Rafuse in company of a pointer Mrs. Maureen Ofume with the within Originating Notice (Action) and Statement of Claim by leaving a true copy of the same with Ms. Chris Rafuse by Personally meeting her at 2336 Brunswick Street, Halifax, Nova Scotia in the presence of the Plaintiff Mrs. Ofume who acted as a pointer to facilitate the service. I endorsed the date of the service thereon on Monday the 12th of June A.D. 2000.

2. I, Dr. Phillip Ofume of Bedford in the Halifax Regional Municipality, Province of Nova Scotia, Process Server, make oath and say that I did on Friday the 09th day of June A.D. 2000, before the hour of 10 a.m. o'clock in the forenoon, serve Defendant Ms. Goranka Vukelich in company of a pointer Mrs. Ofume with the within Originating Notice (Action) and Statement of Claim by leaving a true copy of the same with Ms. Goranka Vukelich Personally at 2336 Brunswick Street Halifax, Nova Scotia and that I endorsed the date of the service thereon on Friday the 09th day of June A.D. 2000.

3. I, Dr. Phillip Ofume, of Bedford in the Halifax Regional Municipality, Province of Nova Scotia, Process Server, make oath and say that I did on Friday the 09th day of June A.D. 2000, before the hour of 10.30 a.m. o'clock in the forenoon, serve Defendant Ms. SUE WOLSTENHOLME in company of a pointer Mrs. Ofume with the within Originating Notice (Action) and Statement of Claim by leaving a true copy of the same with Ms. SUE WOLSTENHOLME Personally at 2338 Brunswick Street Halifax, Nova Scotia and that I endorsed the date of the service thereon on Friday the 09th day of June A.D. 2000.

CIVIL PROCEDURE RULES

Right to sue or defend in person or by a solicitor

9.08(1) Except in the case of a litigation guardian as referred to in rule 6.02(3), any person, whether or not he sues as a trustee or personal representative or in any other representative capacity, may commence, carry on or defend a proceeding in the court by a solicitor or in person.

Service of an originating notice

10.02(1) Except on an ex parte application or where a rule otherwise provides, an originating notice shall be served personally on each defendant by the plaintiff or his agent.

Personal service of a document

10.03(1) Personal service of a document is effected on,

- (a) an individual, by leaving a copy of the document with him.

ONUS

[8] This is an Application by Vukelich, Wolstenholme and Rafuse seeking relief, including a declaration that they have not been personally served with an Originating Notice Action and Striking the Affidavits of Service sworn by Dr. Phillip Ofume, as agent representing his wife, Maureen Ofume alleging personal service.

[9] The Court is called upon from time to time to address allegations that a named party was not in fact served as alleged in an Affidavit of Service or that the service alleged failed to comply with the prerequisite personal service when required under the *Civil Procedure Rules*.

[10] The starting point must be that the Court accepts at face value a sworn statement of personal service and places the onus upon the party alleging otherwise to establish on a balance of probabilities that the Affidavit of Service is in error. The onus is thus because the Affidavit of Service is a sworn statement before a lawfully authorized functionary, usually before a

Commissioner of the Supreme Court of Nova Scotia and as such, should be accorded a presumption of validity. It is a rebuttable presumption.

Vukelich, Wolstenholme and Rafuse therefore have the onus of satisfying this Court on a balance of probabilities that the respective Affidavits of Service are in error and that they were not as alleged and sworn personally served.

ISSUE

[11] The sole issue before the Court is whether or not the Applicants have established on a balance of probabilities Maureen Ofume has not complied with the requirements of the *Civil Procedure Rules*, namely, personal service upon each of the Defendants.

FINDINGS OF ACT

1. Maureen Ofume issued her Originating Notice Action the 8th of June, 2000.
2. Maureen Ofume has been represented from the outset by her husband and agent, Dr. Phillip Ofume.
3. Dr. Ofume is no stranger to litigation before this Court. In his letter of August the 22nd, 2000 he states his belief in litigation.

4. With respect to the alleged personal service upon Goranka Vukelich, I accept her evidence that she was not served as alleged by the sworn Affidavit of Dr. Ofume and reject the evidence of Dr. Ofume.
5. With respect to the alleged personal service upon Sue Wolstenholme, I accept her evidence that she did not meet or come in contact with Dr. Phillip Ofume at any time on the 9th of June, 2000 and that she was not personally served with any Originating Notice in this action. I expressly reject the evidence of Dr. Phillip Ofume given in open Court and his testimony by way of sworn Affidavit of Service.

I note that Dr. Ofume gave evidence that he personally served both Goranka Vukelich and Sue Wolstenholme at the same time and when it was pointed out to him in cross-examination that in his Affidavits of Service he swore that he serviced Goranka Vukelich at 10:00 A. M. and Sue Wolstenholme at 10:30 A. M. and his response was simply to summarily dismiss this as an error. I am satisfied that the Affidavits of Service filed over a year after the alleged service are in fact deliberate misrepresentations to the Court by Dr. Phillip Ofume.

6. With respect to the alleged personal service upon Chris Rafuse, I accept her evidence and preferred it in its entirety to the evidence of Dr. Phillip Ofume. I

specifically accept that she was not personally served with the Originating Notice at any time before or on June the 12th, 2000. I find that it was totally impossible for Dr. Ofume to serve Ms. Rafuse on June the 12th, 2000 as he alleged because I accept that she was in Newfoundland on June the 11th, 2000 at the confirmation of her Stepson, Daniel, and her bank card record with the Toronto-Dominion Bank confirms her personal use in Gander at such establishments as the Gander Convenient Store, the Newfoundland Liquor Store where she purchased on June the 12th Screech and other expenditures while in Newfoundland. I find, as a fact, that she was not even in the Province of Nova Scotia at the time Dr. Dr. Ofume alleges he effected personal service upon her at Halifax, Nova Scotia.

CONCLUSION

[12] I have stated the onus required of the Applicants necessary to strike a sworn Affidavit of Service. I state that I am in fact satisfied beyond a reasonable doubt that none of the individual Defendants were personally served, as alleged by Dr. Phillip Ofume under oath. In the result, the Application is granted. Counsel have been heard on costs and Mr. Tan most reasonably only seeks costs of \$500.00. Special Time Chambers that have features such

as cross-examination on Affidavits and here such took place with four witnesses, can warrant a much more substantial award of party and party costs. *MacLean v. MacLean* 2002, NSSC 005, S.P. No. 1205-001750. Mr. Tan's request that the costs be on the basis of Maureen Ofume discontinue her action is not appropriate. This has been a very heavy special time Chambers and had substantial costs been sought, they would have in all probability been allowed. Dr. Ofume's offer to pay \$100.00 in costs is totally inadequate. With respect to additional relief, when an Application to Strike an Affidavit of Service is granted, the Court, depending entirely on the circumstances, will determine the appropriate course of conduct. If, for example, a self-represented party or a non-lawyer agent honestly believed that by serving a member of a parties family, met the requirement of personal service and the Court accepted that situation, then one of the options could be to have them acknowledge service as of the date they appeared in the Court Application, thereby permitting a continuation of the Action without any undue delay. Options such as that would be predicated upon honest belief and mistake and that is certainly not the situation here. I find that there was a deliberate misleading of the Court resulting in an abuse of process. The Court must monitor what takes place to fulfil its obligation

to the public as fully as possible with the limited resources available.

Misconduct such as Dr. Ofume exhibited here, acting as the agent representative of his wife represents an abuse of process and resulted in an unwarranted encroachment upon the Courts limited resources.

[13] The Court will prepare an Order containing the following provisions:

1. That the Application is granted with a Declaration that the individual named Defendants have not been personally served.
2. That the Affidavits of Service filed by Dr. Ofume be struck.
3. That costs are taxed and allowed in the reasonable amount requested of \$500.00, as the Court does not consider it appropriate, even though justified, to grant an award of costs higher than requested.
4. The Court has on occasion granted costs against a representative, usually a solicitor who has conducted herself/himself in a manner comparable to what Dr. Phillip Ofume has done, and while it is very very rare in these circumstances, the Order for costs shall be jointly against Dr. Phillip Ofume and Maureen Ofume.
5. The Court will order a Stay of the Action against the individual Defendants unless and until the costs of \$500.00 have been paid.

6. The Order will contain a provision prohibiting Dr. Phillip Ofume from henceforth acting as the agent or representative of Maureen Ofume in any respect in this action. To make it clear, Dr. Ofume will not be permitted to represent Maureen Ofume and will not be permitted to appear or speak in any application or process/trial in this action.
7. The conduct of Dr. Ofume in deliberately misleading the Court simply cannot be tolerated and while he retains the right to represent himself in actions where he is the party, he should not any longer be permitted to represent Maureen Ofume in what, if any, other present or future actions that she may commence and he shall be prohibited from henceforth acting in any representative capacity for Maureen Ofume. In so doing, I make further note that CPR 9.08(1) permits Maureen Ofume, subject to the Stay pending payment of costs, to act as her own solicitor or through a solicitor.

J.