

Claim No: 242418

Date: 20051004

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as Wickwire Holm v. Wilkes, 2005 NSSM 3

BETWEEN:

Name Wickwire Holm Claimant

Name Peter John Wilkes Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on March 3, 2006. This decision replaces the previously distributed decision

DECISION

APPEARANCES:

Janet Stevenson, solicitor for the Claimant

No one appearing for the Defendant

- (1) The Claimant, Wickwire Holm, applies on an ex parte basis for an Order for Discovery in Aid of Execution.
- (2) This proceeding was commenced on March 2, 2005, when the Claimant filed a Notice of Claim in the Small Claims Court of Nova Scotia.
- (3) The amount claimed was \$7,984.64 for legal services provided to the Defendant together with costs and interest.
- (4) The Claimant produced an Affidavit of Service verifying that the Defendant was served with a copy of the Notice of Claim form on March 10, 2005.
- (5) The Claimant provided an Affidavit in Proof of the Claim.

- (6) An Order was issued in the amount of \$8,356.89, including interest and costs on April 22, 2005.
- (7) The Defendant did not appear on the hearing date.
- (8) Subsequently, the Court issued an Execution Order on May 31, 2005.
- (9) The Claimant requests an Order compelling the Defendant to attend a discovery examination in aid of execution.
- (10) This request requires an interpretation of Section 31 of the Small Claims Court Act, R.S., c. 430, s. 1. Section 31 provides as follows:

“31 (1) An order of the Court may be enforced in the same manner as an order of the Supreme Court and Section 45 of the Judicature Act applies.”

- (11) The jurisdiction of the Supreme Court of Nova Scotia does not extend to the enforcement of Small Claims Court Orders. I quote from Gruchy J. in the case of Royal Insurance Company of Canada v. Legge (1996) 152 N.S.R. (2d) 283, at paragraph 18 as follows:

“The Small Claims Court is not supervised by the Supreme Court, other than by prerogative remedies for judicial review. This court’s relationship to the Small Claims Court is as an appellate tribunal only. The Nova Scotia Legislature removed from the jurisdiction of the Supreme Court the subject matter of actions properly taken pursuant to the Small Claims Court Act.”

- (12) In the case of Imperial Life Financial v. Langille (1997) 166 N.S.R. (2d) 46, MacDonald J. (as he then was) elaborated on the relationship between the Small Claims Court of Nova Scotia and Supreme Court of Nova Scotia as follows at page 6:

“I refer specifically to the decision of Chief Justice Glube of this Court in **Haines, Miller & Associates Inc. v. Voss** (1996), 158 N.S.R. (2d) 389 wherein she concluded that the Supreme Court has jurisdiction concurrent to that of the Small Claims Court for claims involving an amount that would have ordinarily fall within the jurisdiction of the Small Claims Court.” (sic)

(13) I conclude, therefore, that the Small Claims Court of Nova Scotia has, within its own statutory limits, jurisdiction that is concurrent with the Supreme Court of Nova Scotia.

(14) I quote further from the Imperial Life Financial v. Langille decision as follows at page 3:

“Our Small Claims Court serves an extremely useful purpose within the administration of civil justice in this province. It provides an informal and inexpensive forum for the resolution of claims within a limited monetary value. It provides access to justice for those who might not otherwise afford it. It makes perfect sense to have claims involving smaller amounts of money processed in an efficient manner without the expense of extensive pre-trial proceedings.”

(15) The jurisdiction of the Small Claims Court of Nova Scotia is purely statutory whereas the Supreme Court of Nova Scotia has the inherent jurisdiction of a Superior Court to regulate the processes of the Court (see L & B Electric Ltd. v. Oickle (2004) 222 N.S.R. (2d) 213 (N.S.C.A.)).

(16) The issue which arises in this proceeding is the interpretation of the intention of the Legislature in Section 31 of the Small Claims Court Act wherein it provided that an Order of the Small Claims Court “may be enforced in the same manner as an Order of the Supreme Court”.

(17) Section 31 does not set out which Court has authority to enforce Orders of the Small Claims Court, only the manner in which those Orders may be enforced. As the jurisdiction of the Small Claims Court of Nova Scotia is concurrent with that of the Supreme Court of Nova Scotia within its statutory limits, the Legislature must have intended that the Small Claims Court of Nova Scotia would have the authority to enforce its own Orders similar to the way in which the Supreme Court of Nova Scotia enforces its Orders. This is the plain meaning of the section.

(18) In the process of interpreting Section 31, I have considered a number of factors, including the following:

(a) The concurrent jurisdiction of the Courts referred to earlier;

(b) The ability of the Supreme Court to transfer claims within the monetary jurisdiction to the Small Claims Court (Section 19(4) of the Small Claims Court Act);

- (c) Section 29(1)(a)(iii) of the Small Claims Court Act, as amended, c.10, s.41(c) which authorizes an Adjudicator to make any Order “for any remedy authorized or directed by an Act of the Legislature in respect of matters or things that are to be determined pursuant to this Act.” (see McNeil v. Meech (2003) N.S.S.C. 108);
- (d) The legislature has provided powers of enforcement to other inferior Courts and tribunals (see Rule 22 of the Family Court Rules made pursuant to Sections 11 and 12 of the Family Court Act, R.S.N.S. 1989, c.159 and see Crowell v. Larsen (2002) 204 N.S.R. (2d) 396 (S.C.N.S.) paragraph 12 with respect to enforcement powers pursuant to the Residential Tenancies Act, R.S., c. 401, s. 1, and also see Public Inquires Act, R.S.N.S. 1989, c. 372).
- (19) I have also considered the provisions of Section 9(5) of the Interpretation Act, R.S.N.S. 1989, c. 235 which provides as follows:
- “(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
- (a) the occasion and necessity for the enactment;
 - (b) the circumstances existing at the time it was passed;
 - (c) the mischief to be remedied;
 - (d) the object to be attained;
 - (e) the former law, including other enactments upon the same or similar subjects;
 - (f) the consequences of a particular interpretation; and
 - (g) the history of legislation on the subject.”
- (20) Section 31 is broad in scope. The issue for determination in this proceeding is whether the Section can be interpreted as providing jurisdiction to the Small Claims Court to issue an Order for Discovery in Aid of Execution. I find that this Court does have jurisdiction to issue such an Order.
- (21) A Court Order or Execution Order pursuant to that Order would be a hollow remedy if no procedure existed to facilitate the enforcement of such Orders. I find that the Legislature did not intend to cloak the Small Claims Court of Nova Scotia with such empty powers.

- (22) I find that Section 31 of the Small Claims Court Act provides this Court jurisdiction to issue Orders in aid of execution. Civil Procedure Rule 53.15 provides guidance. The Rule states as follows:

“**53.15.** The court may, at any time after the issue of an execution order, order any judgment debtor or other person by oral discovery or otherwise to disclose any information he possesses, regarding any property in which the judgment debtor has an interest or which he disposed of since contracting the debt or incurring the liability in respect of which an order was obtained.”

- (23) I would direct the Solicitor for the Claimant to provide an Order which sets out a specific time and place for the discovery in aid of execution and, further, the Order should require personal service upon the Defendant at least ten days in advance of the discovery.

Dated at Dartmouth, Nova Scotia,
on October 4, 2005.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)