

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as Scaravelli & Associates v. Quinlan, 2005 NSSM 7

BETWEEN:

SCARAVELLI & ASSOCIATES

Barristers and Solicitors

Applicant**-and-****DAVID QUINLAN****Respondent**

DECISION

[1] The Applicant seeks an Order, by way of an Interlocutory Notice (ex parte application) requiring the Respondent to attend for examination in aid of execution.

[2] The Applicant's Application is supported by the Affidavit of Anthony M. Brunt, sworn to on November 2, 2005.

[3] Mr. Brunt avers to my earlier Decision and Order in this matter, dated January 9, 2004. That Decision and Order directed the Respondent to pay to the Applicant the sum of \$11,497.99. Since then, the Court has issued both a Certificate of Judgment (in Form 46) and an Execution Order (in Form 11). Both documents are exhibited to Mr. Brunt's Affidavit.

[4] Mr. Brunt, in his Affidavit, also avers to the "significant efforts" the Applicant has made to acquire information regarding the Respondent's assets. It appears from Mr. Brunt's Affidavit that the Applicant has been unsuccessful in that regard.

[5] The jurisdiction of Adjudicators of the Small Claims Court of Nova Scotia to issue orders

which are tantamount to notices for examination in aid of execution is the subject of much professional and adjudicatorial debate. Significant insight and direction is afforded by the decision of Adjudicator Casey in *Wickwire Holm v. Wilkes*, [2005] N.S.J. No. 406. In *Wickwire Holm*, Adjudicator Casey held that Adjudicators of the Small Claims Court of Nova Scotia have a general jurisdiction to assist in the enforcement of their own orders up to and including the issuance of directions for examination in aid of execution.

[6] Order is defined in Section 21(1) of the *Small Claims Court Act* as follows:

Subject to the provisions of this *Act*, not later than sixty days after the hearing of the claim of the claimant or any defence or counterclaim of the defendant, the adjudicator may

- (a) make an order
 - (i) dismissing the claim, defence or counterclaim, or
 - (ii) requiring a party to pay money or deliver specific personal property in a total amount or value not exceeding fifteen thousand dollars, and any pre-judgment interest as prescribed by the regulations, [or]
 - (iii) 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; and
- (b) make an order requiring the unsuccessful party to reimburse the successful party for such costs and fees as may be determined by the regulations.

...

[7] My Decision and Order in this matter dated January 9, 2004 is clearly an Order as defined in and by the above Section. Accordingly, it is entitled to be enforced pursuant to the provisions of Section 31(1) of the *Small Claims Court Act*. That Section provides that:

An order of the [Small Claims Court of Nova Scotia] may be enforced in the same manner as an order of the Supreme Court and Section 45 of the *Judicature Act* applies.

[8] Section 45 of the *Judicature Act* cannot be deemed to apply to the Respondent's circumstances without concise knowledge regarding his assets. The Small Claims Court of Nova Scotia is therefore left only with the general enforcement provisions to which the Supreme Court of Nova Scotia has recourse. Those enforcement provisions are set out primarily in *Civil Procedure Rule 52.01*. They are also set out, parenthetically, in *Civil Procedure Rules 53, 54 and 55*.

[9] *Civil Procedure Rule 52.01* provides that:

- (1) An order for the payment of money, other than the payment of money into court, may be enforced by one or more of the following orders,
 - (a) an execution order as provided in Rule 53;
 - (b) a receivership order as provided in Rule 54;
 - (c) a contempt order as provided in Rule 55.

[10] This Application does not concern the appointment of a receiver over the Respondent's assets nor the punishment of the Respondent for contempt. While such remedies may in future be sought by the Applicant, they are not being sought now. This Application is therefore restricted to *Civil Procedure Rules 52.01(1)(a) and 53.15*.

[11] *Civil Procedure Rule 53.15* provides that:

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.

[12] The intersection of *Civil Procedure Rule 53.15* with *Civil Procedure Rule 52.01(1)(a)* and the intersection of *Civil Procedure Rule 52.01(1)(a)* with Section 31(1) of the *Small Claims Court Act*, has been described above. As a more general comment, the intent and purpose of the *Small Claims Court Act*, and therefore the intent and purpose of the Small Claims Court, is the establishment of a civil forum "wherein claims up to but not exceeding the monetary jurisdiction of the Court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice".

[13] It would be an odd thing if the Legislature chose to establish a civil forum for the resolution of “small claims” but then neglected to afford that forum some enforcement procedures. Hence the prospective reason for the inclusion of the provisions of Section 31(1) in the *Small Claims Court Act*. In its plain and ordinary meaning, that Section clearly imports the provisions of *Civil Procedure Rule 52* and, where necessary the provisions of *Civil Procedure Rules 53, 54 and 55*. See for example in that regard E.A. Driedger in *Construction of Statutes (2nd Ed 1983)* at p. 87 as cited with approval by the Supreme Court of Canada in *Markevich v. Canada* [2003] 1 S.C.R. 94, at paragraph 12.

[14] The Legislature’s intent in this regard might be further extrapolated from the Small Claims Court of Nova Scotia’s Form 11 Execution Order. Paragraph 6 thereof gives the Small Claims Court a wide discretion to deal with judgment debtors. The discretion includes contempt.

[15] The Respondent is therefore ordered and directed to attend for discovery in aid of execution upon receipt of written notice to that effect from the Applicant. For the purposes of that written notice, the Applicant is at liberty to employ Form 18.05 from the *Civil Procedure Rules* with the necessary modifications. The Applicant shall file such notice with the Small Claims Court of Nova Scotia and obtain its date stamp prior to service on the Respondent.

DATED at Halifax, Nova Scotia, this 10th day of November, 2005.

Gavin Giles, Q.C.
Chief Adjudicator,
Small Claims Court of Nova Scotia