

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Caproli v. MacIntosh*, 2017 NSSC 48

**Date:** 20170224

**Docket:** Pic No. 451346 (SCP437669)

**Registry:** Pictou

**Between:**

Sesto Caproli

Appellant

v.

Bruce MacIntosh

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Ann E. Smith

**Heard:** February 17, 2017, in Pictou, Nova Scotia

**Written Decision:** February 24, 2017

**Subject:** Appeal of decision of Small Claims Court Adjudicator

**Summary:** The Appellant retained counsel to investigate allegations of duress and mental incompetence when he sold a property two years earlier. He sued his lawyer for the return of the retainer alleging that the lawyer had guaranteed that he would have the property reconveyed to him without exceeding the terms of the retainer. The Adjudicator dismissed the claim.

**Issues:** Did the Adjudicator commit errors of law which require

intervention by this Court?

**Result:** Appeal dismissed. The Adjudicator committed no errors of law. Nor was there a failure to follow the requirements of natural justice.

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**Counsel:** Sesto Caproli, Self (Appellant)  
Naomi Veniot, for the Respondent

**By the Court:**

**Introduction**

[1] Sesto Caproli appeals from a decision of the Small Claims Court dismissing his claim against Bruce MacIntosh, Q.C.

**Background**

[2] In February 2014 Mr. Caproli retained Mr. MacIntosh to investigate the circumstances whereby Mr. Caproli sold his property located at Lake Ainslie two years earlier. Mr. Sesto believed that he had been taken advantage of by the lawyers involved in the transaction, the bank, the land surveyor and the realtor. He wanted the sale unwound and the property reconveyed to him.

[3] In correspondence to Mr. Caproli of February 25, 2014, Mr. MacIntosh set out the nature of the investigations he would carry out for Mr. Caproli in return for an initial down payment of \$15,000.00. Mr. MacIntosh's hourly rate was noted as \$375.00 per hour and the letter stated that where appropriate, he would use more junior lawyers and paralegals to cost effectively assist in the investigation of Mr. Caproli's claim.

[4] Mr. Caproli alleged that he was not mentally competent and under duress when he signed the Agreement of Purchase and Sale and the deed to the Lake Ainslie property in 2012.

[5] After receipt of the \$15,000.00 retainer, Mr. MacIntosh carried out various investigations relating to Mr. Caproli's allegations about professional negligence and dishonesty of several professionals over the period of several months.

[6] Mr. MacIntosh completed his investigations and concluded that there was no reasonable evidentiary basis for a lawsuit against one or more proposed defendants. He communicated this to Mr. Caproli.

[7] Mr. Caproli brought a Small Claims Court action against Mr. MacIntosh seeking the return of the \$15,000.00 retainer with interest and costs. He alleged that Mr. MacIntosh failed to carry out the work he was retained to do and that he

had defrauded him of \$15,000.00. Mr. Caproli claimed that Mr. MacIntosh had guaranteed him that he could return the Lake Ainslie property to him and that this could be accomplished without exceeding the \$15,000.00 retainer.

[8] The matter was heard by Adjudicator Peter Lederman, Q.C. on April 28, 2016. Mr. Caproli acted on his own behalf. Mr. MacIntosh was represented by counsel.

[9] In his decision dated April 29, 2016, Adjudicator Lederman made the following findings:

... His goal was to have the transaction set aside and the property reconveyed to him. This presumably would have required him to reimburse the purchaser the sale price, which appears to have been \$110,000.00. Mr. Caproli told me unequivocally that Mr. MacIntosh promised that he would ensure that the property was returned to him and this would be accomplished without exceeding the retainer provided of \$15,000.00.

It appears to me that Mr. Caproli truly believes the version of events that he related to me, and I cannot find that he is being deliberately misleading. However, it is blatantly obvious that his version of what happened between himself and Mr. MacIntosh is grossly unrealistic and not at all in accord with the proven facts. I agree with Mr. MacIntosh's conclusion that when he is presented with a fact that does not accord with his version of events, Mr. Caproli simply ignores it, without bothering to even attempt to explain his reasoning for doing so.

Mr. MacIntosh provided Mr. Caproli with a retainer letter that set out in explicit detail what he proposed to do for him in return for the payment received, and that involved an investigation of the circumstances surrounding the sale of the Lake Ainslie property. Only if Mr. MacIntosh was able to identify solid grounds for challenging the sale would he then recommend going on to actual legal action. As it turned out, all of the allegations made by Mr. Caproli regarding mental incapacity and duress were completely without foundation.

[10] Mr. Lederman concluded that it would have been foolhardy for Mr. MacIntosh to recommend commencing an action and requesting more money to finance "such a fruitless endeavour." Mr. Lederman went on to state:

...Mr. MacIntosh...terminated his involvement with Mr. Caproli after fulfilling his retainer to investigate the actual facts surrounding the sale. Mr. Caproli is aggrieved because the payment of \$15,000.00 did not produce the result which he expected, a result confirming his preconceived opinion of wrongdoing by all of the participants in the sale of the property. In my opinion, Mr. MacIntosh did what he was asked to do, fulfilled the terms of his retainer and properly earned the fee that he charged.

## Law and Analysis

[11] The *Small Claims Court Act*, R.S.N.S. 1989, c. 430, provides an appeal as of right to the Nova Scotia Supreme Court from the decision of a Small Claims Court adjudicator. Section 32(1) of the *Act* sets out the available grounds of appeal.

s.32(1) A party to proceedings before the court may appeal to the Supreme Court from an order or determination on the ground of

- (a) jurisdictional error;
- (b) error of law
- (c) failure to follow the requirements of natural justice

by filing with the prothonotary of the Supreme Court a notice of appeal.

[12] Mr. Caproli filed a Notice of Appeal on May 10, 2016 claiming that the Adjudicator committed an error in law “which resulted in unfair court trial concerning the case. Therefore, a review of the judgment is being requested.”

[13] Mr. Caproli did not articulate to the Court what was “unfair” about the Small Claims Court hearing, apart from the fact that he disagreed with the Adjudicator’s conclusions.

[14] Mr. Caproli submitted before this Court that he did not receive the February, 2014 retainer letter. He characterizes this as an error of law. Although it is unknown whether Mr. Caproli gave evidence to Adjudicator Lederman that he did not receive the retainer letter, it is clear from the Adjudicator’s decision that he concluded that Mr. Caproli knew the terms of Mr. MacIntosh’s retainer, including the work he would undertake, his hourly rate, the amount of the initial retainer and that Mr. Caproli provided Mr. MacIntosh with a \$15,000.00 retainer.

[15] What Mr. Caproli characterizes as errors of law are not so. The Adjudicator interpreted the evidence before him and reached conclusions based on that evidence. It is not for this Court to interfere with his factual findings.

[16] I find that the Adjudicator committed no errors of law. Nor was there a failure to follow the requirements of natural justice.

[17] The Adjudicator dismissed Mr. Caproli’s claim without awarding costs or out-of-pocket expenses to Mr. MacIntosh. In the circumstances I decline to award

Mr. MacIntosh's out-of-pocket expenses incurred for serving Mr. Caproli with his defence to the Small Claims Court claim.

Smith, J.