NOVA SCOTIA COURT OF APPEAL

Citation: Curtmar Farms Ltd. v. Tetreault, 2007 NSCA 7

Date: 20070117
Docket: CA 268232
Registry: Halifax

Between:

Norman Tetreault and Barbara Tetreault

Appellants

v.

Curtmar Farms Limited

Respondent

Judges:	Roscoe, Hamilton and Fichaud, JJ.A.
Appeal Heard:	January 16, 2007, in Halifax, Nova Scotia
Held:	Appeal is dismissed with costs and disbursements per reason for judgment of Roscoe, J.A.; Hamilton and Fichaud, JJ.A. concurring.
Counsel:	Gary A. Richard, for the appellants Robert Carruthers, Q.C., and Kerri-Ann Robson for the respondent

Reasons for judgment:

[1] The issue raised on this appeal is whether the trial judge, Justice J. E. Scanlan, erred in determining that the appellants agreed to purchase a herd of 35 dairy cattle from the respondent in April 2002. The appellants contend that they took possession of the cattle on consignment, that they have paid the respondent in accordance with the oral agreement and that the trial judge erred in ordering that the appellants pay the respondent the balance of the purchase price of $25,800 plus interest and costs.

[2] The background facts are fully set out in the decision of the trial judge and need not be repeated here. See: 2006 NSSC 246. The trial judge carefully reviewed the evidence and where it conflicted made findings of fact founded largely on determinations of credibility. Based on the facts he found and the inferences drawn from them, he concluded that the appellants agreed to buy the cattle from the respondent for the price of $3,000 each, plus $3,000 for trucking, and $300 for three calves. He said:

> [15] In terms of the agreement as between the parties, I am satisfied that in this agreement as with at least three prior deals, the agreement was for a purchase versus consignment. In relation to the three other herds, and I refer to one in particular where there were at least eight cows that had died because they had been bred to a bull which was simply throwing off calves that were too big, he said they were coming out at 150 pounds per calf and it was simply too hard on the animals that were trying to deliver them. Mr. Tetreault says, it was my loss. Even though he said that was supposed to have been a so-called consignment agreement as well. It was not a consignment agreement and that is why it was Mr. Tetreault's loss. I am satisfied the agreement existed for the three prior purchases as it did for this one. The understanding as between the parties was not that the risk remains with Mr. Moxsom but in fact the risk is with the Tetreaults.
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> [16] The deal was, and I accept this part of Mr. and Mrs. Tetreault's evidence, they could not finance the capital aspect of this purchase and they needed a reasonable time to sell the cattle before they could in fact pay for them. Mr. Moxsom was okay with that. He knew what the expectations were, he knew there was a time which they needed to sell the cattle and they would send the money on to him as soon as they received it. That does not mean that all of the losses were Mr. Moxsom's. The same situation existed when the nine cows died or the one with the broken leg and the calves were lost. That was Mr. Tetreault's risk.
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> [17] The market was Mr. Tetreault's risk as well. I am satisfied the market did collapse as attested to by Mr. Tetreault's evidence.

[3] The appellants submit that the totality of the evidence "does not reasonably support the trial judge's finding that the agreement was one of a purchase and sale and not consignment. As a result the factual finding is clearly wrong and as such a palpable error." They contend that it is not a logical finding that the appellants would have agreed to purchase unregistered Ayrshires.

[4] This is an appeal, not a rehearing or an opportunity for us to substitute our views for that of the judge at first instance. This Court is to intervene only if the trial judge erred in legal principle or made a palpable and overriding error in finding the facts: **H.L. v. Canada (Attorney General)**, [2005] S.C.J. No. 24; **Housen v. Nikolaisen**, [2002] 2 S.C.R. 235; and **McPhee v. Gwynne-Timothy**, 2005 NSCA 80.

[5] After reviewing the record and hearing the able arguments advanced by counsel, it is our unanimous opinion that there was sufficient evidence before the trial judge to support all of the findings of fact and credibility he made, and to support the conclusions he reached. We have not been persuaded that he made any error in fact, law or legal principle in concluding that the parties entered an agreement of purchase and sale and not a consignment arrangement. There is nothing which justifies our intervention.

[6] The appeal is therefore dismissed with costs of the appeal payable by the appellants to the respondent in the amount of $1500 plus disbursements.

Roscoe, J.A.

Concurred in:

Hamilton, J.A.

Fichaud, J.A.