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NOVA SCOTIA COURT OF APPEAL

[Cite as: L&M Standard Industries Ltd. v. Coopers Industries Inc., 2000 NSCA 8]

Roscoe, Flinn and Cromwell, JJ.A.

BETWEEN:

L & M STANDARD INDUSTRIES LIMITED and ATLANTIC TRI-PROVINCIAL WELL DRILLING LIMITED Appellants	)	W. Dale Dunlop and Susan E. Wheeler for the appellants
- and -	)	
COOPERS INDUSTRIES, INC. Respondent	)	Wendy Johnston for the respondent
	)	Appeal heard: January 12, 2000
	)	Judgment delivered: January 12, 2000

THE COURT: Appeal dismissed per oral reasons for judgment of Flinn, J.A.; Roscoe and Cromwell, JJ.A. concurring.

FLINN J.A.: (Orally)

[1] The appellants are the owner and the lessee, respectively, of a truck mounted drilling rig. In June 1987, the drilling rig was destroyed by fire. The appellants sued the respondent, the designer, manufacturer and distributor of the drilling rig. The appellants claimed that the fire loss was caused by the negligence of the respondent.

[2] The matter came on for trial before Justice Davison of the Supreme Court. The sole issue before the trial judge was whether the fire was caused by the negligence of the respondent. The parties had agreed on the quantum of damages.

[3] The trial judge found, essentially, that the appellants had not proved their case. The appellants appeal the trial judge's dismissal of their action.

[4] The position advanced by the appellants at the trial was:

1. the fire was caused by "auto ignition". A check valve on the drilling rig failed, and, as a result, there was no restraint to the emission of hydraulic fluid on to various exterior components of the engine. Following shut-down, the engine components were hot enough to cause the fire; and
2. that this auto ignition was as a result of the respondent's negligence. The respondent should have examined the check valve thoroughly after a previous fire in May of 1987. Had the respondent done that the respondent could have discovered that the check valve was

damaged. It could have been repaired, and as a result, the auto ignition would not have taken place.

[5] Following his assessment of the evidence, the trial judge rejected both of those positions.

[6] On the issue of negligence, the trial judge said:

> I find the plaintiffs have not proved on the balance of probabilities that the check valve was damaged in May 1987.

He said further:

> ..... It cannot be determined, on the balance of probabilities, that the examination of the check valve in May, 1987, would determine a deficiency or malfunction of the check valve.

[7] On the issue of "auto ignition", the trial judge concluded:

> My impression from the whole of the evidence is that such auto ignition is a rare phenomenom.

[8] He found there was "no proof the rig auto ignited. The cause of the fire cannot be determined from the evidence".

[9] These conclusions are as a result of the trial judge's assessment of the evidence. There was evidence, or a lack thereof, which support those conclusions. In reaching those conclusions the trial judge made no error of law. As a result there is no basis for intervention by this Court.

[10] The appeal is, therefore, dismissed. The appellants will pay to the respondent its costs of this appeal. Counsel have agreed that this Court's 40% rule will apply.

Flinn, J.A.

Concurred in:

Roscoe, J.A.

Cromwell, J.A.