

NOVA SCOTIA COURT OF APPEAL

Cite as: Muise v. Reddick Bros. Masonry Ltd., 1996 NSCA 77
Chipman, Roscoe and Pugsley, JJ.A.

BETWEEN:

GORDON MUISE

Appellant

- and -

REDDICK BROS. MASONRY LTD.

Respondent

)

Andrew S. Nickerson
for the Appellant

)
Joe Reddick, Agent
for the Respondent

)
Appeal Heard:
April 11, 1996

)
Judgment Delivered:
April 11, 1996

THE COURT:

The appeal is dismissed and the respondent shall recover from the appellant costs in the amount of \$500.00, including disbursements as per oral reasons for judgment of Roscoe, J.A.; Chipman and Pugsley, JJ.A., concurring.

The reasons for judgment were delivered orally by

ROSCOE, J.A.:

This is an appeal from a decision of a Supreme Court judge who dismissed an appeal by way of stated case from a Small Claims Court adjudicator. The appellant, who was the defendant at the trial, contends that as a result of comments made by the adjudicator, there was a reasonable apprehension of bias and a denial of natural justice.

The respondent performed masonry work on the appellant's property. The issue before the adjudicator was which party was entitled to the leftover bricks worth approximately \$1,068.00. The respondent claimed that he had purchased the bricks and therefore owned the bricks not required for the job. The appellant defended on the basis that the contract was for labour only and that he had purchased the bricks.

While the respondent, who was unrepresented at the trial, was testifying, he presented an invoice in his name for the bricks which, he said, he had paid. The adjudicator reported in the stated case as follows:

At that point, I reviewed the provisions of the defence as outlined in paragraph 5 [that the bricks were purchased by the Defendants]. I asked defence counsel if in fact it was correct that Reddick had paid for the brick as evidenced by the invoice and was advised that it was so. I asked counsel as a matter of law that defence counsel should convince me why I should not strike the Statement of Defence and enter judgment by default in favour of the Claimant. Defence counsel asserted that as the evidence unfolded it would become clear as to why that defence could be sustained. I proceeded with the trial and heard the balance of the Claimant's evidence and to hear the Defendant's.

I heard the evidence of both parties. It is clear that the Claimant purchased and supplied all of the materials, not just the bricks as the Defendant would have it, for the job. There was a contract price agreed to for the work.

We have reviewed the record, considered the written and oral arguments and unanimously conclude that there was no error of law made by the Supreme Court judge in concluding that the decision of the adjudicator should be confirmed. There is nothing, in our view, either on the record or advanced before us of anything which could objectively and reasonably be said to amount to anything other than an attempt by the adjudicator to informally and efficiently grasp the issues as they arose in the evidence.

The appeal is dismissed with costs to the respondent in the amount of \$500.00 including disbursements.

Roscoe, J.A.

Concurred in:

Chipman, J.A.

Pugsley, J.A.