

Docket No.: CA 161662
Date: 20000918

NOVA SCOTIA COURT OF APPEAL
[Cite as: Northern Petroleum v. Sydney Steel Corp., 2000 NSCA 104]

Roscoe, Flinn and Cromwell, JJ.A.

BETWEEN:

NORTHERN PETROLEUM, a body corporate

Appellant

- and -

SYDNEY STEEL CORPORATION, a body corporate

Respondent

REASONS FOR JUDGMENT

Counsel: Robert G. Belliveau, Q.C. and Jane O'Neill, for the
appellant
Alexander S. Beveridge, Q.C., for the respondent

Appeal Heard: September 18, 2000

Judgment Delivered: September 18, 2000

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

FLINN, J.A. (Orally):

[1] The appellant appeals the decision and order of Justice MacAdam dismissing its action against the respondent.

[2] Ultramar Canada Inc. (Ultramar) and the appellant entered into a contract with the respondent, dated June 20, 1990. The contract made provision for the respondent purchasing Bunker C fuel oil from Ultramar, to be stored in petroleum storage tanks which were to be built by the appellant. The appellant was a distributor of Ultramar products, and, under a separate agreement with Ultramar, was paid by Ultramar to deliver the Bunker C fuel oil being purchased by the respondent.

[3] The appellant claimed that under the terms of the contract the respondent agreed to purchase a minimum of 140,000 barrels of oil per year during the five year term of the contract. The respondent purchased less than 140,000 barrels of oil in the years 1990, 1991, & 1992, and the appellant claimed damages for its lost profit margins plus interest.

[4] The appellant claimed, in the alternative, that representations made by the respondent during pre-contract negotiations - as to its Bunker C oil requirements - constituted a collateral contract between the appellant and the respondent, which the respondent breached.

[5] In the further alternative the appellant claimed that the respondent is liable to it for damages on the basis of negligent misrepresentation.

[6] We have reviewed and considered the submissions of counsel, both written and oral, and we are of the unanimous opinion that:

1. The contract dated June 20, 1990 contains no provision, either express or implied, whereby the respondent agrees to purchase a minimum quantity of 140,000 barrels of Bunker C fuel oil per year during the five year term of the contract.

2. As to the claim of collateral contract, and judging all of the circumstances from the perspective of the reasonable bystander, it could not be reasonably inferred that the respondent was warranting that it would purchase from the appellant, through Ultramar, a minimum quantity of Bunker C fuel in each of the five years of the contract. (See **Dick Bentley Productions Ltd. et al v. Harold Smith (Motors) Ltd.**, [1965] 2 All E.R. 65 (C.A.).

3. There was no evidence before the trial judge of negligence on the part of the respondent in respect of any representations which the respondent made prior to the date of the contract; namely June 20, 1990. Therefore, there can be no claim against the respondent for negligent misrepresentation.

[7] The appeal is, therefore, dismissed.

[8] The appellant will pay to the respondent its costs of this appeal, which are

hereby fixed at \$2000.00 plus disbursements.

Flinn, J.A.

Concurred in:

Roscoe, J.A.

Cromwell, J.A.