



The reasons for judgment of the Court were delivered orally by:

**Bateman, J.A.:**

This is an appeal from a decision of Justice Douglas MacLellan of the Supreme Court.

The respondent, Lloyd Arnburg, purchased a used John Deere combine from the appellant, Farm & Leisure Equipment Limited. The related conditional sales contract was assigned to John Deere Limited. Mr. Arnburg defaulted on his payments. At the request of the John Deere representative, Mr. Arnburg voluntarily surrendered the combine to John Deere Limited, upon the verbal assurance of the representative that he would not be pursued for any deficiency that might arise upon resale of the combine. Notwithstanding this assurance, the respondent signed a Voluntary Surrender Agreement, paragraph 5 of which states:

I agree that the voluntary surrender of the unit(s) is without prejudice to any rights or claims which Deere and/or the Dealer may have against me, of any kind whatsoever, arising directly or indirectly out of my purchase of the unit(s).

John Deere subsequently reassigned the conditional sales contract to the appellant. The appellant then sued the respondent for the deficiency, which claim was dismissed by the trial judge. It is from that judgment that Farm & Leisure appeals. In the course of his judgment, the trial judge found, as a fact, that Mr. Arnburg surrendered the combine because he had been assured by the John Deere representative that he would not be held responsible for a deficiency.

The appellant submits that the trial judge erred in allowing evidence of the verbal statements of the John Deere representative, receipt of which evidence, he says, was in contravention of the Parol Evidence Rule. It is our view, however, that the Parol Evidence Rule is not engaged on the facts of this case. The Rule does not apply so as

to preclude evidence of a separate collateral contract, nor evidence of a misrepresentation, inducing entry into a subsequent written contract (see **Bank of Montreal v. Murphy**, [1986] 6 W.W.R. 610 (B.C.C.A.)).

The trial judge, having found as a fact that there was a representation on behalf of John Deere that the company would not pursue a deficiency, and having found, as well, that that representation caused Mr. Arnburg to sign the agreement voluntarily surrendering the combine, John Deere is precluded from pursuing the deficiency, whether through operation of the doctrine of estoppel, or on a collateral contract analysis. The appellant, as assignee, can have no greater rights than John Deere Limited.

In addition, we are of the opinion that s. 14 of the **Conditional Sales Act** (Nova Scotia) applied, as was found by the trial judge.

Accordingly, the appeal is dismissed with costs to the respondent of in the amount of \$1000.

Bateman, J.A.

Consented to:

Freeman, J.A.

Roscoe, J.A.

C.A. No. 132145

**NOVA SCOTIA COURT OF APPEAL**

**BETWEEN:**

**Farm & Leisure Equipment  
Limited, a body corporate**

Appellant

- and -

**Lloyd Arnburg**

Respondent

REASONS FOR  
JUDGMENT BY:

Bateman, J.A.  
(Orally)