

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

CLARKE, C.J.N.S.:

Underlying this appeal is a claim by the respondent (plaintiff) to recover \$6,200.00 from the appellant (defendant) for professional services.

The claim related to the provision of engineering services concerning a water problem and the preparation of designs and drawings for a drainage easement in a proposed subdivision of the appellant at Elmsdale.

The appellant contended that the retainer obliged the respondent to guarantee the approval of the subdivision by the municipal authorities. The respondent asserted that its retainer was not conditional upon such approval. It alleged that its work was completed upon the preparation of the designs and drawings and that payment of the account was not conditional upon the approval of the subdivision.

After trial Justice Goodfellow found for the respondent. He decided on the evidence that a guarantee of the approval of the plan was not a term of the contract nor was payment for professional services contingent on the approval of the subdivision. He concluded, again on the evidence, that the respondent had agreed to prepare the plan and submit it for approval. This he found the respondent had done.

The appellant appeals from the decision of the trial judge and the order based thereon. He alleges the trial judge erred in his interpretation and assessment of the evidence, and, among others, failed to apply the rules of parol evidence and ***contra proferentum***.

After reviewing and carefully studying the record we have concluded that

there was sufficient evidence before Justice Goodfellow to make the findings of fact and credibility which he did. It is not for this Court to retry the case nor to interfere in the absence of palpable or overriding error which affected the trial judge's assessment of the facts.

There are numerous authorities to this effect consistent with and more recent than the oft quoted **Stein v. The Ship "Kathy K"**, [1976] 2 S.C.R. 802, at pp. 806-8. Examples include **Toneguzzo-Norvell (Guardian *ad litem* of) v. Burnaby Hospital**, [1994] 1 S.C.R. 114, McLachlin, J. at p. 121; **Cole et al v. Cole Estate** (1994), 131 N.S.R. (2d) 296, Roscoe, J.A. at p. 300.

Since, in our unanimous opinion, no reversible error was made by the trial judge, the appeal is dismissed. The respondent is awarded costs on appeal of \$1,000.00, plus its disbursements.

C.J.N.S.

Concurred in:

Flinn, J.A.

Bateman, J.A.