C.A. No. 106293

NOVA SCOTIA COURT OF APPEAL

Cite as: Ramada Canada Ltd. v. Park Place Centre Ltd., 1994 NSCA 220

Matthews, Jones and Freeman, JJ.A.

BETWEEN:

RAMADA CANADA LIMITED and RAMADA INC. Appellants	Alexander S. Beveridge for the Appellants
- and -	
	William L. Ryan, Q.C. and A. Douglas Tupper for the Respondents
PARK PLACE CENTRE LIMITED and PARK PLACE CENTRE LIMITED PARTNERSHIP Respondents	
	Appeal Heard: November 24, 1992
	Judgment Delivered: December 8, 1994

THE COURT: The appeal is dismissed with costs as per reasons for judgment of Freeman, J.A.; Matthews and Jones, JJ.A. concurring.

FREEMAN, J.A.:

This is an appeal from the interlocutory judgment of a Supreme Court of Nova Scotia judge in Chambers declaring binding, and ordering the enforcement of, an agreement settling some issues related to a breach of contract action between the owner of a new hotel and the hotel chain upon which it relied for services.

The respondent Park Place Centre Limited, general partner for Park Place Centre Limited Partnership, entered into a 20-year contract with the appellants, Ramada Canada Limited and its American parent Ramada Inc., in 1989 whereby Park Place was entitled to use of the "Ramada Renaissance" name for the hotel it was building in the Burnside Industrial Park in Dartmouth, N.S. The agreement also provided for sales, advertising, promotional and marketing services, and inclusion in Ramada computerized reservation system. Ramada Canada was to manage the hotel for ten years.

Park Place terminated the management agreement in April, 1992, claiming mismanagement had resulted in substantial losses. Park Place alleged that Ramada had unilaterally restricted the name it might use to "Renaissance" only, a designation for a new brand of luxury hotels, and limited its access to the computerized reservation system. It commenced action.

An interlocutory hearing was scheduled for January 5, 1994, for an injunction prohibiting Ramada and Ramada Canada from terminating the licensing agreement for nonpayment of fees and a mandatory injunction requiring the transfer of the license agreement from Ramada Canada to Ramada Franchises Canada Limited (RFCL), an autonomous company.

Just before the hearing the parties agreed to settle these issues. They then entered into negotiations resulting in a detailed agreement, never formally signed, to remain in effect until three months after the determination of the breach of contract

action. It included a provision for notices of the transfer to be sent to travel agents and others; the agreement was not formalized because of continuing negotiations on the specific details of this point. On May 6, 1994, Ramada and Ramada Canada advised Park Place they refused to implement the settlement agreement.

Park Place applied to Justice Goodfellow for a declaration that the settlement agreement was binding, an order for specific performance, and injunctive relief. Ramada and Ramada Canada applied to convert the application to an action, which would have provided for more extensive pre-trial procedures and resulted in substantial delay.

Justice Goodfellow heard the parties, considered extensive affidavit evidence and provided opportunity for cross examination on the affidavits. The Chambers judge did not err in exercising his discretion to deal with the matter before him as an application rather than an action. In my view the agreement, like the application, was clearly related to the original action.

The principle governing this court has been stated in a number of cases. It was well expressed by former Chief Justice MacKeigan in **Exco Corporation Limited v. Nova Scotia Savings and Loan et al.** (1983), 59 N.S.R. (2d) 331 at p. 333 as follows:

> This court is an appeal court which will not interfere with a discretionary order, especially an interlocutory one such as this that is now before us, unless wrong principles of law have been applied or patent injustice would result.

Justice Goodfellow issued an order declaring that the settlement agreement is binding; he ordered specific performance and an injunction restraining Ramada Inc., and Ramada Canada Limited from interfering in the implementation of the settlement agreement.

The affidavit evidence showed that settlement was negotiated between A. Douglas Tupper representing Park Place and Colin Bryson representing Ramada by telephone in the two days before the January 5, 1994, hearing date, and confirmed by an exchange of letters on January 5th. The letters contained provisions going beyond the matters which had been scheduled for hearing, some of which were agreed to and some of which were subject to further negotiation. These were referred to as "collateral items" or "details to be worked out" . The key provision was the second listed in Mr. Tupper's letter to Mr. Bryson: "Ramada and Ramada Canada agree to an assignment of the existing License Agreement to RFCL."

Mr. Bryson replied in one word: "Agreed."

There was evidence before Justice Goodfellow to support a conclusion, applying the objective test of the reasonable person, that Park Place had offered to settle the application scheduled for January 5th, if Ramada would agree the License Agreement not be terminated but be transferred to RFCL, and that Ramada had accepted this, thus creating an umbrella contract, an implied provision of which was that other terms could be added as they were negotiated. This agreement and all matters agreed to in the course of the negotiations which followed were collected together in the written draft agreement, which was annexed to the order.

Only questions relating to notices resulting from the transfer of the licensing agreement remained unsettled in May 1994, when Ramada advised Park Place it would not complete the agreement without a global settlement of all actions of Park Place against Ramada.

This was contrary to the first provision in Mr. Tupper's letter of January 5th to Mr. Bryson:

> 1. All parties agree the settlement is without prejudice to any claims or disputes between the parties and shall not operate as a waiver of any rights, except as specifically agreed.

Mr. Bryson had agreed to that term as well by his letter of January 5, 1994. Justice Goodfellow made a finding on the evidence that the agreement was binding and enforceable and I have not been persuaded that he made a palpable and overriding error in doing so.

In **Davis. v. Bathtub King (Halifax) Limited** (1991), 104 N.S.R. (2d) 98 at p. 100 Matthews J.A. stated:

> Essentially, and with deference, the appellant in effect, wishes us to set aside findings of fact by the trial judge and in so doing impose a conclusion in its favour. The trial judge assessed the testimony given and the evidence produced. Our function is not to retry the case. Appeal courts in innumerable cases have applied the rule: conclusions of fact cannot be disturbed unless they are perverse, or clearly wrong, or unless the trial judge made some "palpable and overriding error" to use the words of Mr. Justice Ritchie in **Stein Estate et al. v. Ship "Kathy K" et al**. (1975), 6 N.R. 359 (S.C.C.), at page 366.

There is no need to deal with the notice of contention or the other issues raised on the appeal. The appeal is dismissed with costs which we fix at $2,000 including disbursements.

J.A.

Concurred in:

Matthews, J.A.

Jones, J.A.

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