

NOVA SCOTIA COURT OF APPEAL

Citation: *Canada (Attorney General) v. Borgo Upholestry Ltd.*, 2004 NSCA 5

Date: 20040113

Docket: CA198623

Registry: Halifax

Between:

Attorney General of Canada

Appellant

v.

Borgo Upholstery Ltd. and Neil John Funnell

Respondents

Judge: Freeman, J.A.

Appeal Heard: November 24, 2003

Subject: Contracts, Sale of Goods Act R.S.N.S. 1984 c. 408, Fitness for Purpose, Merchantability, Breach of Condition, Reliance, Sale by Description, Breach of Contract, Fundamental Breach of Contract.

Summary: The appellant represents Public Works Canada which under federal acquisition procedures purchased 804 sled-type chairs by description from the respondents to refurbish classrooms for the Canadian Forces Naval Operations School in Halifax. The chairs were found to be unsafe because of a tendency to tip forward and the appellant sought to repudiate the contract and refuse payment, relying breach of conditions of fitness for intended purpose and merchantability pursuant to s. 17 of the **Sale of Goods Act**. The trial judge found the appellant could not invoke the conditions because it had failed to prove it had relied on the skill and judgment of the sellers, and had accepted the chairs after conducting its own inspection. While he made strong findings of fact as to the unsafeness of the chairs, he found there had been no fundamental breach of contract. He found the appellant liable for \$62,821.61 to the respondents for loss on the eventual resale of the chairs.

Issues: The issues were whether the trial judge had erred in finding that the conditions of fitness for intended purpose and merchantability in s. 17(a) and (b) of the **Sale of Goods Act** did not apply, and that there was no fundamental breach of the contract.

Result: The appeal was dismissed with costs of \$2,500. On the facts found by the trial judge as to the reliance of the purchaser on the skill and judgment of the sellers, the conditions did not apply. The vendors had supplied chairs as described in the contract, so the contract was not breached.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 21 pages.