IN THE SUPREME COURT OF NOVA SCOTIA
Citation: McKim v. Langille Construction, 2004 NSSC 277

Date: 20040106
Docket: S.Am. 190610
Registry: Amherst

Between:

John Robert McKim

Plaintiff

v.

Langille Construction

Defendant

DECISION

Judge: The Honourable Justice K. Peter Richard

Heard: 06 January 2004, in Amherst, Nova Scotia

Written Decision: 09 August 2006

Counsel: Robert Pineo, for the plaintiff
Jerome T. Langille, for the defendant

By the Court:

[1] Well I harken back to a contracts course in law school where the professor made the comment, “Hard cases make bad law”, and I think that’s so true. Anyway, I’m going to give my decision. First I’m going to refer to some of the facts as they appear from the material before me.

[2] Mr. Lloyd Langille was a home contractor in the Amherst area for some considerable time, and in 1996 he entered into a verbal contract with the plaintiff, John McKim, for the construction of a residence on property owned by Mr. McKim in the Amherst area. Mr. Langille’s principal contact at this time, on behalf of his company or himself, was his son William who dealt, I accept the fact that he dealt not exclusively but probably predominantly with the plaintiff. That was in 1996 and into 1997.

[3] The plaintiff was apparently not pleased with the progress of the house, and in 1997 he started an action against Lloyd Langille, under the business name and style of Langille Construction, and William (Bill) Langille.

[4] Due to health reasons, the defendant Lloyd Langille retired in 2001, some two years before this action was to come to trial. The affidavits disclose that his son, Bill Langille, indicated that he was going to strike out on his own and continue in the home construction business in the Amherst area, which indeed he has.

[5] At a pre-trial conference on October 30th, 2003, after some discussion it was agreed between the parties that the defendant, William Langille, who was at all times in the employ of his father, and who would have been vicariously liable for any negligence on the part of his son, that William Langille be removed as a party defendant in this action. That was done as of that date, because I remember indicating that I would grant the order. I believe, if my recollection serves me, I indicated that the order could be granted at the opening of trial, but the parties wanted to get it out of the way more quickly, so I granted it at that time and the paperwork followed.

[6] Now between the time of that pre-trial conference and the date set for trial, which I think was December 6th, the defendant Lloyd Langille, operating under the trade name and style of Langille Construction, filed for

bankruptcy. He did so, and I understand this from the affidavits, after considering not only the possibility of the judgment, but also the fact that he had $108,000 in judgments against him by Revenue Canada, and also the prospect of incurring debts, further debts in the amount of $10,000 to $20,000 in legal fees and costs relating to the carriage of this action. As I say, he filed for bankruptcy, and the question before me is whether or not that action should have been disclosed prior to the granting of the consent order, and if not having been disclosed, was that a misrepresentation or a mistake sufficient to vitiate the consent order.

[7] In that regard I find that I am bound by the Court of Appeal case of *BNS v. Golden Forest Holdings*, and I refer to the comment of Hallett, J., which is reprinted at page 2 of the defendant's submission.

> Therefore, if the power to vary the order exists, it must be found in the Court's inherent jurisdiction.
>
> Apart from those matters covered by rules 15.07 and 15.08, the inherent jurisdiction of judges of the Supreme Court of Nova Scotia does not extend to varying "final" orders of the court disposing of a proceeding unless the order does not express the true intent of the court's decision. If it were otherwise, there would not be the certainty or finality to court orders that the judicial process requires.

[8] And then Hallett, J.A. refers to a quote from *Monarch Construction*, and I quote:

> A consent judgment is final and binding and can only be amended when it does not express the real intention of the parties or where there is fraud.

[9] Well obviously in this case the intention of the parties was to remove the defendant William Langille as a party, and looking at the actions in their entirety, I cannot come to the conclusion that there has been a mistake or a misrepresentation of sufficient gravity to permit me to vitiate the consent order made between the parties, or their counsel, at the pre-trial conference. And I don't think the *Silver Spoon Desserts* case is of any support, or could be used by the plaintiff, and indeed I believe the plaintiff more or less indicated that on its facts it's not of sufficient relevance to be of assistance.

[10] So I am bound by the appeal court's decision in the *Golden Forest Holdings* case, and since I cannot find that there has been a mistake or a misrepresentation of sufficient gravity to overturn that order, then the order stands and this application is dismissed. Thank you very much.

J.