

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *N. W. Cole Associate Appraisers Ltd. v. Industrial Packaging Ltd.*,
2007 NSSC 113

Date: 20070206

Docket: SH 269078

Registry: Halifax

Between:

N. W. Cole Associate Appraisers Limited, a Nova Scotia company carrying on
business as “White Star Plastics” 1246 Rocky Lake Drive, Unit 8, Waverley, Nova
Scotia B2R 1R5

Appellant

v.

Industrial Packaging Limited, c/o Credit Consultants, 11 Scarfe Court, Dartmouth,
Nova Scotia B3B 1W4

Respondent

Judge: The Honourable Justice M. Heather Robertson

Heard: February 6, 2007, in Halifax, Nova Scotia

Written Decision: April 12, 2007 (Orally: February 6, 2007)

Counsel: Steve Cole (self-represented), for the appellant
Erin McDonald (self-represented), for the respondent

Robertson, J.: [Orally]

[1] This is an appeal of a Small Claims Court decision of the adjudicator J. Walter Thompson, Q.C. with respect to the claim of Industrial Packaging Limited for payment of invoices for the sale of bails of cardboard product to N. W. Cole Associate Appraisers Limited who were shipping this product onto Asia.

[2] As I have explained to the parties, the responsibility of this court is to conduct a review of the adjudicator's decision. The scope of the review is limited. I am to examine the adjudicator's findings - his decision - and determine if they are reasonable on their face and to determine if there is any basis for an appeal. I am not to substitute my own decision for that of the adjudicator simply to look at the reasonableness of his decision on the facts. The case of *Brett Motors Leasing Ltd. v. Welsford*, [1999] N.S.J. No. 466 (S.C.) is a well established precedent with respect to the standard of review. That case sets out what constitutes an error in law sufficient that the matter can be overturned. Examples of errors in law are as follows:

1. Where a statute has been misinterpreted; i.e. when a party has been denied the benefit of statutory provisions under legislation pertaining to the case;
2. Where there has been a clear error on the part of the adjudicator in the interpretation of documents or other evidence;
3. Whether the adjudicator has failed to appreciate the valid legal defence;
4. Where there is no evidence to support the decision reached;
5. Where the adjudicator has clearly misapplied the evidence and the material respects therefore producing an unjust result;
6. Where the adjudicator has failed to apply the appropriate legal principles to the proven facts.

[3] In such cases, the court can intervene and overturn the decision or impose some other remedy such as remitting the case for further consideration.

[4] The grounds of appeal advanced by Mr. Steve Cole on behalf of his own company are that there has been a jurisdictional error, an error in law, and failure to meet the requirements of natural justice.

[5] The appellant purchases discarded cardboard packing products and sells the materials to recycling plants around the world. The appellant argues that the respondent did not have proper standing before the Small Claims Court because Industrial Packaging Limited is not registered with the Registrar of Joint Stock Companies pursuant to the *Corporation Registrations Act*. The history of the registration does show that there is a company registered as Trans Industrial Packaging Limited, but that company has adopted the name Industrial Packaging Limited and use it on all its invoices and communications with the parties but is not properly registered to do business in that name.

[6] Secondly, the appellant pleads the *Sale of Goods Act* respecting the deficiency of the goods that is to say the moisture content in the goods exceeding that which was contractual bargained for. The appellant says that the adjudicator missed the salient point that goods sold to others are not the same as these particular goods sold to Asia, where the turnaround time for the goods is a number of months. The moisture content is of great significance because it goes to the issue of the shipping cost which goes directly to the bottom line of the appellant. If there is too much moisture content in this product this is contrary to the contractual requirements. The shipping costs are therefore higher and the appellant virtually has to eat these costs and loose money.

[7] The appellant says the adjudicator erred in that he determined that moisture was not really the issue because the materials were going to be ultimately mulched in a wet process, so water would be added and there would be no significant distinction between bails, based on moisture content. He submits that the adjudicator failed to grasp the real issue which was the actual weight for shipping purposes which had to be borned by the appellant as he trans shipped the goods to Asia.

[8] Mr. Erin McDonald on behalf of the respondent says that moisture was not a factor and that everyone knew the bails were stored outside and that they are so tightly wound that moisture can only penetrate the very surface of the bail. Mr. McDonald is in agreement with all the findings made by the adjudicator and tells the court that there is no error in law in the decision rendered.

[9] It is my determination that there has been an error in law made, in the manner in which the adjudicator interpreted the evidence that was before him respecting the central issue of the weight of the bails and the implications that had to the contractual relationship between N. W. Coles Associate Appraisers Limited and Industrial Packaging Limited. On that basis I would send the matter back for rehearing.

[10] I would also say that before the matter can be reheard, Industrial Packaging Limited must attend at the Registrar of Joint Stock Company's office and register the business name Industrial Packaging Limited to give them clear standing in the rehearing of the matter. The adjudicator treated the issue of corporate registration as a technical error and he said he would not hold the matter up and he would hear the matter on its merits. The fact is the Small Claims Court statute requires the people to be in good standing in order to have status. I am not going to penalize you and say the matter cannot be reheard, but I require that Industrial Packaging Limited puts themselves in good standing. Go get the name registered, if you want to have standing before the courts of Nova Scotia and deal properly in contract with your customers.

[11] It was also argued that the adjudicator did not allow time for argument. While I am not convinced that the parties had no opportunity for submission, I offer a cautionary word to the adjudicator. It is important that all the parties feel that they have the right to be fully heard. I understand the Small Claims Court is under great pressure because they have to hear so many matters every night. It can lead to an error in law if that the parties believe they did not have the opportunity to be heard.

[12] On the facts that were heard it is clear to me that the adjudicator has committed an error in law respecting the weight that he gave to the evidence before him, in understanding the central issue of the weight of the bails and the implications that would have in shipping costs. For that reason I am sending the matter back for rehearing.

Justice M. Heather Robertson