IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Oak Island International Group Ltd. v. Canada (Attorney General), 2003 NSSC 143

Date: 20030704
Docket: SH 142279
Registry: Halifax

Between:

Oak Island International Group Limited

Plaintiff

v.

Attorney General of Canada

Defendant

Before: The Honourable Justice Hilroy S. Nathanson

Heard: May 1, 2, 5, 6, 7, 12, 13, 14, 15, 20, 21, 22, 23, 26, 26, 27, 28, 29 and June 2, 2003, in Halifax, Nova Scotia

Written Decision: July 4, 2003 (Oral decision - June 27, 2003)

Counsel: Douglas A. Caldwell, Q.C. and Lloyd Berliner, Esq., on behalf of the Plaintiff
Reinhold M. Endres, Q.C. and James Gunvaldsen-Klaassen, Esq., on behalf of the Defendant

NATHANSON, J. (Orally):

[1] The plaintiff called five witnesses during a 16-day trial period and then rested, after which counsel for the defendant moved for *non-suit*, that is, for dismissal of the proceeding on the ground that, upon the facts and the law, no case had been made out. The motion was made pursuant to C.P. Rule 30.08.

[2] Oak Island was a participant in the silver hake fishery. It alleges that employees of the Department of Fisheries and Oceans (“DFO”) deliberately made false statements and initiated actions with the intention of harming it and forcing it out of the fishery. Consequently, it was compelled to make a voluntary assignment in bankruptcy. It claims damages for: (a) misfeasance and abuse of public office; (b) wrongful interference with its business relations or economic interest; and (c) wrongful interference with its contractual relations. These claims reflect the three issues of the law which must be resolved.

[3] The test in an application of this kind is: whether the plaintiff has established a *prima facie* case. In applying this test, the presiding judge is not permitted to evaluate the weight or credibility of the evidence, and is limited to determining whether the plaintiff has adduced any facts from which liability can reasonably be inferred. The decision to be made is whether a reasonable jury could find in favour of the plaintiff if the jury believed the evidence at trial up to that point. The motion should not be granted where the plaintiff presented evidence from which, if left uncontradicted, an inference can be drawn to establish each of the elements of the relevant legal issues.

[4] Support for these propositions can be found in the following authorities:

Sopinka, Lederman and Bryant, The Law of Evidence in Canada, (Second Edition, 1999), p. 138 ff.
J.W. Cowie Engineering Limited v. Allen (1982), 52 N.S.R. (2d) 321 (A.D.)
Turner-Lienaux v. N.S. (A.G.) (1993), 122 N.S.R. (2d) 119 (C.A.)
Barrett v. Reynolds (1994), 134 N.S.R. (2d) 349 (C.A.)

[5] I will now consider the submissions of counsel in regard to each of the three issues.

FIRST ISSUE: MISFEASANCE AND ABUSE OF PUBLIC OFFICE

[6] With respect to DFO authorizing trans-shipment of silver hake to go to Cuba during the currency of Oak Island’s dispute with the Cuban Fleet, the facts are extensive, complex and unclear. It will be necessary to evaluate a large number of

allegations before the truth can emerge. Since evaluation is not permitted upon an application for *non-suit*, I must accept the evidence as is. Having done so, I find that a reasonable jury, if it believed the evidence presented on behalf of the plaintiff to date, could find in favour of the plaintiff. The plaintiff has presented evidence which, if left uncontradicted, could allow an inference to be drawn to establish each of the elements of this aspect of this particular issue.

[7] With respect to the allegation that Robichaud and Sciocchetti of DFO impliedly warned Greig not to put together a business plan with Oak Island, the evidence is extremely weak but, since I am not permitted to evaluate the evidence, I am compelled to find that a reasonable jury, if it believed the evidence, could find in favour of the plaintiff.

SECOND ISSUE: WRONGFUL INTERFERENCE WITH BUSINESS RELATIONS OR ECONOMIC INTEREST

[8] With respect to the question as to whether DFO improperly delegated authority to the Canadianization Committee, there are no facts from which a reasonable jury could find in favour of Oak Island. Oak Island has not adduced any facts from which liability can reasonably be inferred. In particular, there is no evidence that Oak Island had contracts with Canadian vessels to fish in the two basins, that DFO delegated any authority to the Canadianization Committee, that the Committee was dominated by D'Eon interests, that the Canadian fishers walked away from Oak Island, that Evan Walters was Chairman of the Canadianization Committee, that he was a fisher for D'Eon, or that the Committee has ceased to exist.

[9] With respect to the question of whether the Minister refused 1996 eligibility to Oak Island without justification, there are no facts in evidence from which a reasonable jury could find in favour of Oak Island. The Minister had discretion to grant an allocation; he exercised that discretion by not granting an allocation; in doing so, he gave a reason; that reason was based on facts in evidence. Therefore, the Minister appears to have acted with justification.

THIRD ISSUE: WRONGFUL INTERFERENCE WITH CONTRACTUAL RELATIONS

[10] With respect to the contents and circumstances surrounding the Fishing Agreement and Private Agreement between Oak Island and the Cuban Fleet, the

facts are confusing and far from clear but, nevertheless, depending upon how they are evaluated, may give rise to a reasonable inference of liability.

[11] On the other hand, with respect to the argument concerning Unaaq's appointment of Oak Island to harvest and manage its quota, there is no evidence from which a reasonable jury could find in favour of Oak Island, if it believed that evidence. In particular, there is no evidence that a (binding) contract existed, that DFO was aware of the existence of a contract, that a contract was breached, that a breach of contract was induced by DFO, and that damages resulted.

CONCLUSION

[12] The application for *non-suit* is granted in regard to the second issue, and is refused in regard to the first and third issues. The plaintiff has established a *prima facie* case in regard to the first and third issues.

[13] The trial will resume on a date to be scheduled.

J.