IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Watts v. Wallace, 2008 NSSC 71

Date: 20080310
Docket: SH 274906A
Registry: Halifax

Between:

Karen Watts

Plaintiff

and

Larry Basil Wallace

Defendant

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: September 4, 2007, in Halifax, Nova Scotia

Final Written Submissions: August 24, 2007 and August 29, 2007

Written Decision: March 10, 2008

Counsel: Robert Leonard Miedema, for the plaintiff
Patrick J. Eagan, for the defendant

By the Court:

Introduction

[1] This is an appeal of a decision of a Small Claims Court adjudicator with respect to a dispute arising from the purchase and non-delivery of an automobile.

[2] The *Small Claims Court Act* permits an appeal on the basis of jurisdictional error, error of law or failure to follow the requirements of natural justice: s. 32. I am satisfied that in the present matter the only possible basis of appeal would be error of law. There is no apparent argument relating to natural justice or jurisdiction.

The Adjudicator's Decision

[3] The claimant (hereafter the respondent) agreed to purchase a 1970 Chevrolet Barracuda from Kevin Buchanan, who operated a business known as K & K Radical Muscle Cars along with the defendant (hereafter the appellant). The cost of the vehicle was to be $8,500, with $4,500 to be paid by cheque to the appellant and the remainder in cash to Mr. Buchanan. The car was never delivered. The adjudicator described the issue as whether there was a contract between the

respondent and the appellant, such that the appellant was jointly or severally liable to return the funds. It appears that there was no written contract.

[4] Based on a review of the evidence, the adjudicator found that the respondent had made arrangements with Mr. Buchanan for the purchase of the vehicle. The purchase price was $8,500, to be paid partly by cheque and partly by cash. He concluded that the appellant returned the cheque to the respondent, and that the respondent endorsed and cashed it on June 6, 2006, and delivered the money to Mr. Buchanan, which, he found, was consistent with Mr. Buchanan's evidence that he received $4,500 directly from the respondent. While the respondent's evidence was that he paid by cheque, which the appellant cashed, it was "clear by the presence of Mr. Wallace's signature on the back that he had possession of the cheque after Ms. Watts attempted to cash it." The adjudicator expressed some concern about an e-mail sent by the respondent to Mr. Buchanan's niece in which he stated that he owed $11,000 rather than $8,500. He was satisfied, nevertheless, that the evidence of two additional witnesses, in combination with the evidence of the parties, "corroborates much of the material circumstances of Mr. Wallace's claim."

[5] As to the business operations of the appellant and Mr. Buchanan, the adjudicator held as follows:

> (26) There is plenty of evidence concerning the business affairs of Ms. Watts and Mr. Buchanan from the Claimant's witnesses. Also, I have to infer that the evidence is correct as Ms. Watts called no evidence to refute them, despite being given ample opportunity to do so. Each witness consistently testified that Ms. Watts often dealt personally on business matters.
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> (27) I find that part of the business of K & K was the purchase and resale of automobile[s] for profit. I also find that many of their business transactions were conducted personally by Ms. Watts including payment of accounts and the issuance of invoices in her name personally. It may be that both the Defendant and Mr. Buchanan conduct their personal transactions in the same manner. In these circumstances, it would be difficult if not impossible for a person contracting with either of them to know exactly with whom they were dealing. I find on a balance of probabilities that this is a mutual obligation of Ms. Watts and Mr. Buchanan. Once she had accepted the funds personally, it was incumbent upon Ms. Watts to see the transaction through or terminate it. There is no evidence that she attempted to do either.
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> (28) She played a pivotal role in this transaction and should be liable for what amounts to a complete failure of consideration.
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> (29) I find on a balance of probabilities that she was aware of the transaction, and participated in it. If I am wrong in this finding, I also find that she has in own personal name $4500 which originated from Mr. Wallace to which she is not entitled. Consequently, I find she is liable to the Claimant for $4500....

Discussion

[6] As a preliminary matter, I note the following comments of Saunders J. (as he then was) in *Brett Motors Leasing Ltd. v. Welsford* (1999), 181 N.S.R. (2d) 76 (S.C.):

> [14] One should bear in mind that the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the adjudicator. I do not have the authority to go outside the facts as found by the adjudicator and determine from the evidence my own findings of fact. "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provisions under legislation pertaining to the case; or where there has been a clear error on the part of the adjudicator in the interpretation of documents or other evidence; or where the adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the adjudicator has failed to apply the appropriate legal principles to the proven facts. In such instances this Court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.

[7] The appellant claims that the adjudicator failed to express a basis for liability. Alternatively, the appellant suggests that if the basis for liability was contract, the adjudicator failed to find that the parties to the litigation were *consensus ad idem*; if the basis was partnership, he failed to apply the test for

existence of a partnership; and, if it was in equity, he failed to apply the test for unjust enrichment or constructive trust.

[8] I cannot agree with the appellant's view. I am satisfied that the adjudicator concluded that the appellant and Mr. Buchanan operated K & K as a partnership, although he did not make this finding explicit. He made clear findings to the effect that they carried on a business, in common, with a view to a profit, which would satisfy the test for an unregistered partnership: *Partnership Act*, R.S.N.S. 1989, c. 334, s. 4. He also clearly found that the appellant was aware of and a willingly participant in the agreement to sell the vehicle. In essence, the adjudicator concluded that K & K, an unregistered partnership, made a contract with Mr. Wallace. Although the adjudicator might ideally have set out a more explicit legal analysis, I am satisfied that these were his findings on the facts.

[9] The appellant also raises an objection to the adjudicator's alternative conclusion that the appellant "has in own personal name $4500 which originated from Mr. Wallace to which she is not entitled." The appellant says this contradicts the adjudicator's finding that Mr. Buchanan received $4,500 in cash directly from the respondent. The appellant asserts that natural justice demands that such a

contradiction, "evident to the reasonable person on a broad review, constitutes a patently unreasonable error that warrants judicial intervention." In view of the conclusion on the main issue, it does not appear to me that it is necessary to address this factual finding.

Conclusion

[10] The appeal is accordingly dismissed. The respondent shall have his costs.

J.