

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Robicheau v. Fair Trade Community Café Inglis Place, 2008 NSSC 107

Date: 20080404

Docket: ST290132

Registry: Truro

Between:

Reginald Joseph Robicheau

Appellant

v.

Fair Trade Community Café Inglis Place

Respondent

DECISION

Judge: The Honourable Justice J. E. Scanlan

Heard: April 4, 2008 in Truro, Nova Scotia

Written Decision: April 14, 2008

Counsel: Mr. Hector MacIsaac, Solicitor for the Appellant
Mr. Alain Begin, Solicitor for the Defendant

By the Court:

[1] This is an appeal of a decision of the Small Claims Adjudicator, Charles Cox. The hearing was held October 9, 2007. The Adjudicator did a summary of his findings dated February 1, 2008. I indicated, as counsel were making their submissions, that there is an inherent difficulty with the Small Claims Court system whereby the Court is not able to access any recording or other record of the Small Claims Court proceedings. It makes it difficult for the Court to determine what occurred during the Small Claims Court hearing. The name of the Court in and of itself is something of a misnomer nowadays. It is called the Small Claims Court and they have a jurisdiction up to \$25,000.00. This claim was for \$14,811.00 dealing with a contract that may have been as much as \$29,000.00 in terms of work that was done by the Appellant on a restaurant constructed by Fair Trade Community Café Inglis Place Inc. here in Truro.

[2] In the absence of any record as to what the Adjudicator may have said during any oral decision, the Court is in a situation where we rely very heavily on a summary that would be produced by a Small Claims Court Adjudicator. The summary may allow this Court to make a determination as to whether there were any errors of law. The difficulty I have with the summary provided by Mr. Cox is

that it is apparent the Adjudicator did in fact find that the Appellant did work on the Respondent's property located at 41 Inglis Place. The Adjudicator said in paragraph 6:

I found the testimony of the claimant, Reginald Joseph Robicheau, to be evasive, contradictory and full of uncertainties. I placed the greater weight on the testimony of the defendant's witnesses.

[3] I acknowledge the Adjudicator was entitled to make assessments of credibility and determine which of the witnesses he believed in whole or in part. He clearly said that he placed less weight in the evidence of Mr. Robicheau than he did on the testimony of the defendant's witnesses. That being said, this Court is unable to determine from the summary as provided by Mr. Cox from the Small Claims Court as to what facts he did find. There is a big difference between the claim that was being made by Mr. Robicheau and the final decision of the Adjudicator. He simply said he dismissed the entire claim. He would be entitled to dismiss the claim to the extent that he thought the bill was over inflated or unsubstantiated. Just because he did not believe part of the allegations as made by Mr. Robicheau would not mean that he was entitled to dismiss the totality of the claim. It is not clear from his summary that he did in fact find there was no substance to any of the balance of the claim as made by Mr. Robicheau.

[4] There were suggestions in the Respondent's brief indicating the evidence by the Respondent was that Reginald Robicheau was told to work within a \$10,000.00 budget. The final invoice for the electrical work was over \$29,000.00. There is no reference of a \$10,000.00 budget in the Adjudicator's decision. Even if there was a budget originally it is not apparent as to whether or not there were changes to the budget amount. Clearly if I do the numbers and the claim was for \$14,000.00 and the total cost as alleged by Mr. Robicheau was \$29,000.00 then that \$10,000.00 budget would not have been adhered to in any event. What happened there? I do not know, the Adjudicator did not tell us.

[5] In the end, I am left in a difficult situation in terms of trying to determine as to whether there was an error of law. I am satisfied there was an error of law at least in the Adjudicator's decision to the extent that he did not give me enough information whereby I can determine as to whether or not there was a proper consideration of the facts, the evidence, and the law. To that extent it is a denial of natural justice. The lack of adequate reasons, combined with the absence of a proper record, denies the Appellant the ability to appeal a case that may or may not have any merit. In other words the summary is completely deficient. As such, I

am left with no recourse other than to send the matter back to the Small Claims Court again.

[6] I wish that somebody in their wisdom would have those people who sit there all night in Small Claims record all of these things. If they would just let them push the button so in a case like this we could hear the evidence when necessary.

[7] I see this all the time in Small Claims Court appeals. They get here in front of me and it becomes he says, she says. That is not the way it should be and it is simply not working. Those are my comments.

[8] The appeal is granted. It will be set down for a retrial in front of a different Adjudicator.

[9] Counsel I would suggest you talk to your clients and see if they can try to resolve this matter.

[10] Mr. Begin send a letter to the Court with the proper costs on an appeal.

The costs will be fixed based on Mr. Begin's letter.

J.

Addendum

[11] The Appellant is entitled to costs of \$50.00 plus disbursements.

J.