SUPREME COURT OF NOVA SCOTIA

Citation: *CBM – Custom Building Maintenance (NS) Ltd. v. Miller Waste Systems Inc.*, 2016 NSSC 115

Date: 20160426
Docket: Hfx No. 447149
Registry: Halifax

Between:

CBM – Custom Building Maintenance (NS) Limited

Appellant

v.

Miller Waste Systems Inc.

Respondent

DECISION

Judge: The Honourable Justice Suzanne M. Hood

Heard: April 12, 2016, in Halifax, Nova Scotia

Oral Decision: April 12, 2016

Written Release of Oral Decision: April 26, 2016

Counsel: Justin D. Morrison, for the Appellant
Leora J. Lawson, for the Respondent

By the Court (Orally):

Introduction

[1] CBM appeals the decision of the Small Claims Court adjudicator and cites three grounds of appeal in its brief:

(a) The Adjudicator misinterpreted or failed to give any consideration to the March 2012 agreements;

(b) The Adjudicator erred in law in finding that CBM and Miller Waste entered new or amended contracts with new lift rates and failed to consider evidence which was relevant to that finding; and

(c) In the alternative, the Adjudicator erred in law in finding that estoppel or waiver applied in respect of the payment of fuel charges after March 2014 if CBM had entered new or amended contracts with Miller Waste.

[2] The respondent, Miller Waste Systems Inc., says the appellant is trying to re-argue the matter. This matter raises the issue or error of law as it was discussed in the leading case *Brett Motors Leasing Ltd. v. Welsford*, [1999] N.S.J. No. 466 (NSSC) where Saunders, J., as he then was, in the trial court, said at para. 14:

> […] "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 there has been a clear error on the part of the Adjudicator in the interpretation of documents or other evidence; […] 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. (Quoting the portions from the appellant's brief.)

[3] The standard of review of error of law is correctness. In conducting that review, there is conflicting law in Nova Scotia on the role of the Supreme Court in reviewing findings of fact made by Small Claims Court adjudicators.

[4] I prefer the approach of Justice Moir in *Hoyeck v. Maloney*, 2013 NSSC 266, where he said in para. 23:

> We do not review Small Claims Court findings of fact for palpable and overriding error. Our jurisdiction to review for error of law may extend to the situation "where there is no evidence to support the conclusions reached": *Brett* at para. 14. That would have to be apparent from the summary.

[5] There was only had a summary in that case, whereas in this case we have the full decision of the adjudicator as well as the summary.

[6] Therefore I can review findings of fact only if I conclude there is no evidence upon which the adjudicator could have made his finding. For the reasons that Moir, J. referred to in *Hoyeck*: we do not have the benefit of a transcript and it is contrary to the purpose of the *Small Claims Court Act* to analyze findings of fact

except to determine if there is any evidence to support them. Even if I may have made different findings of fact, it is not my role to substitute my view of the facts.

[7] I have the decision of the adjudicator, the summary report and the exhibits which were before the adjudicator. Those have to be relied upon to determine if there was an error of law.

Ground 1

[8] The appellant says that the adjudicator either misinterpreted or failed to consider the March 2012 contracts.

[9] The adjudicator's decision in para. 16 refers to "new contracts" to revise the pricing. He considered the conflicting testimony of Ms. Kathy Hallett and Ms. Angela McGonnell (then Ms. Hickey) and accepted that there were contracts and that they contained pricing.

[10] Although he did not say he considered and rejected the March 2012 contracts, it is not necessary for an adjudicator to refer to every piece of evidence and, in light of his conclusion that these were new contracts, it was unnecessary for him to do so. In his summary report, the adjudicator says the 2012 contracts were "superseded" because the 2014 contracts were "standalone" contracts.

[11] I therefore conclude there was no error of law. There was evidence the adjudicator could and did rely upon to conclude that these were new contracts. He preferred the evidence of Ms. McGonnell after a fairly lengthy review of the principles he should consider in making credibility findings. This is at para. 12 of his decision.

[12] Ground 1 is dismissed.

Ground 2

[13] The appellant says the adjudicator erred in law in finding there were new or amended contracts with new lift rates and failed to consider evidence which was relevant to that finding.

[14] The adjudicator did consider the pricing issue and he found as a fact that the contracts had pricing in them. He had the evidence of Ms. McGonnell (then Hickey), which he accepted, and it was specific with respect to rates. He did not accept the evidence of Ms. Hallett with respect to signing documents with blanks in them for pricing or for the rates.

[15] His conclusion was based on evidence that was before him which was accepted. He accepted that the purpose of the meeting between Ms. Hallett and Ms.

McGonnell was to "revise the pricing" (para. 16 of his decision). There was evidence upon which he could come to this conclusion.

[16] I therefore conclude there was no error of law and Ground 2 of the appeal is dismissed.

Ground 3

[17] Ground 3 is made in the alternative, and it is that the adjudicator erred in law in finding that estoppel or waiver applied with respect to the fuel charges.

[18] He referred to waiver and estoppel very briefly, but he did go on and say: "The law does not aid those who sit on their rights." He referred to the considerable period of time during which the fuel surcharges had been paid without any dispute. He then went on to refer to the fact there was either agreement or at least acquiescence.

[19] CBM had the right to insist that there be no fuel surcharges, but, by its conduct, waived that right. Therefore there is no error of law.

[20] Ground 3 is therefore dismissed.

Costs

[21] The respondent seeks its costs as permitted by the Small Claims Regulations. These are pretty limited: Barristers' Fees $50 and whatever out of pocket costs that may have been incurred. I note the adjudicator did award costs of $250. I have the power to award any costs that the adjudicator could have, but, in light of the fact that he did award $250, I am not going to go back and look at his powers under Regulation 15. The costs I award are $50.

Hood, J.