

SUPREME COURT OF NOVA SCOTIA

Citation: Goodick Estate v. Conrad Estate, 2011 NSSC 51

Date: 20110211

Docket: PtH 276741

Registry: Port Hawkesbury

Between:

Lori Michelle Briand, as representative of the **Estate of Michael Roger Goodick**, **Lori Michelle Briand** to her personal capacity, **Dylan Ryan Briand** and **Lauryn Amara Briand**, both infants, by their *guardian ad litem* and mother, **Lori Michelle Briand**

-and-

The Estate of Clifton Arnold Conrad and MacLeod's Farm Machinery Limited, a Nova Scotia Company

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Judge: The Honourable Justice Robert W. Wright

Heard: September 27-30, 2010 in Halifax, Nova Scotia

Written

Decision: February 11, 2011

Subject: Ownership of snowmobile at time of fatal accident.

Summary: After his new Polaris FST model snowmobile broke down during a trip to Cape Breton (for the third time), Mr. Conrad took it back to the dealership (MacLeod's) on January 26, 2006. He was then provided with a new Polaris 700 model snowmobile which he took back to Cape Breton to resume his snowmobiling trip. Two days later, Mr. Conrad was involved in a head on snowmobile collision which took the lives of both drivers. In the subsequent lawsuit against the Conrad Estate and MacLeod's, the issue of the legal ownership of the snowmobile being driven at the time of the accident was severed by consent order, which would determine which insurer was required to respond to the plaintiff's claim for damages.

Issue: Did Mr. Conrad and MacLeod's make a binding contract on January 26th for an even trade of the two snowmobiles (whereby Conrad became the owner of the 700 model) or was the 700 model provided to Mr. Conrad merely on a loaner basis while the other was being repaired (whereby ownership of the 700 model remained with MacLeod's)?

Held: After reviewing the evidence, the court found that the parties had agreed on all the essential terms of a contract for an even trade of the two snowmobiles on January 26th. Assisted by the Rules for ascertaining the intention of the parties under ss. 20 and 21 of the *Sale of Goods Act*, and taken from the perspective of an objective reasonable bystander, the court found that title to the 700 model passed to Mr. Conrad on that date. Although no formal transfer documents were completed at the time (having been deferred to the following week), the court was satisfied that the completion of such paperwork was simply necessary for the implementation of a contract which had already been made. In the result, the insurer for the Conrad Estate was required to bear responsibility for responding to the plaintiffs' claims for damages.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.
