IN THE SUPREME COURT OF NOVA SCOTIA
Citation: *Chater v.Canada Lands Company* , 2005 NSSC 37

Date: 20050215
Docket: S.H. 204478
Registry: Halifax

Between:

Elie Chater and Almon Investment

Plaintiffs/Respondents

v.

Canada Lands Company CLC Limited

Defendant/Applicant

Judge:	The Honourable Justice Walter R.E. Goodfellow
Heard:	February 15, 2005, in Halifax, Nova Scotia (Chambers)
Written Decision:	February 17, 2005
Counsel:	Gary A. Richard, for the Plaintiffs/Respondents Peter M.S. Bryson, Q.C. and Jeff Aucoin, Articled Clerk, for the Defendant/Applicant

By the Court: (Orally)

[1] The application is to strike the statement of claim and alternatively a summary judgment.

[2] The application to strike is under *Civil Procedure Rule* 14.25 which can only be struck if it discloses no reasonable cause of action. The law is very clear. We have the benefit of the Supreme Court of Canada decisions and our own Court of Appeal but, for the record, the Supreme Court of Canada had caused to comment on application to strike pleadings in *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, where Wilson, J. remarked at p. 486:

> The law then would appear to be clear. The facts pleaded are to be taken as proved. When so taken, the question is, do they disclose a reasonable cause of action, i.e. cause of action "with some chance of success" ... is it 'plain and obvious that the action cannot succeed?' Is it plain and obvious that the plaintiff's claim for declaratory or consequential relief cannot succeed?

[3] Subsequently, in *Hunt v. Carey Canada Incorporated*, [1990], 2 S.C.R. 959, the Supreme Court of Canada reaffirmed that position. Recently, Nova Scotia *(Labour Relations Board) v. Future Inns Canad*a *Inc.*, (1999), 179 N.S.R. (2d) 213 (N.S.C.A.) , the late Pugsley, J.A. speaking for our Court of Appeal said at p. 222:

> The parties are in agreement that the test on an application under *Rule* 14.25 is a stringent one. Where the application involves striking a statement of claim the applicant must establish under *Rule* 14.25(1)(a) that it is "plain and obvious" that it discloses no reasonable cause of action ...

[4] I have reviewed the pleadings several times and, of course, I have the affidavits as well. I want to make some general comments with respect to the pleadings. What you find in the pleadings, in my view, is constant referral to proposals, discussions, negotiations, intentions, and, in my view, there is no certainty as to price, largely because it was not known what the cost of remedial work would be and, indeed, paragraph 19 of the statement of claim acknowledges that Mr. Pachal had to seek approval and there is no indication before me that it is pleaded there was ever approval of the negotiations, intentions and discussions that took place between Mr. Chater and Mr. Pachal. There is no factual basis to establish offer, acceptance and consideration of the fundamentals of a contract. Alternatively, there is nothing in writing as required by the *Statute of Frauds* and I find in the facts pleaded as true do not establish the fundamentals, do not establish the contract.

[5] With respect to misrepresentation I agree with Mr. Chater's counsel that you do not have to have a contract before you to have actionable misrepresentation. For example, if Mr. Chater had been told by Mr. Pachal

that there was going to be six weeks in order to file a tender and then he turned around and put it on tender for one week and he missed it, then that would quite probably be an actionable misrepresentation. But here, I see nothing that factually indicates, it is not even identified what the misrepresentation is in my view, there is no doubt that Mr. Chater is probably the most knowledgeable person and he may have spurred the matter on, but I see nothing on the facts pleaded, I have taken them as true, that in any way establishes an alleged misrepresentation, let alone that it was a negligent misrepresentation as alleged in paragraph 33 of the statement of claim.

[6] Now, with respect to party confidentiality, I have real difficulty in seeing how the October 16th letter in any way imparts confidential information, or that there was any confidential information and there are no real particulars of confidentiality, in providing financial statements, in providing any specifics of any kind of method, just a general aspect, some reference in a partial paragraph of those very lengthy documents which strikes me as pretty straight forward. Much of this is public record in any event and I do note that he is alleging that that transpired on October 16th and yet he turns

around and he tenders after October 16th and the reason he does not have the contract is that he did not win the tender.

[7] Now, with respect to unjust enrichment the brief is clear and the law is settled that you have to have an enrichment and corresponding deprivation and in the absence of any juristic reason for the enrichment. In my view and the facts pleaded and before me, taken as true, do not establish any enrichment or corresponding deprivation, an absence of juristic reason for enrichment.

[8] It is therefore that I conclude that the application to strike should be granted. There is, to use the terminology of our own Court of Appeal and Supreme Court of Canada to me it is plain and obvious that the action cannot succeed, there is no actionable cause set out, the mere stating that I sue you for misrepresentation, I sue you for breach of contract, I sue you for negligent representation using my confidential information, I sue you for just enrichment, does not create the action itself. It must be facts, taken to be true and sufficiently outlined in the pleadings in order to reach the very, very limited requirement and I therefore grant the application to strike. Had I not granted, I would have granted summary judgment on the basis of the law which is well known and I think the last two or three decisions I have read, I

have given a number of decisions saying there is no need for a judge to give constant decisions on what the law is with respect to summary judgment, i.e., *Bank of Montreal v. Scotia Capital Inc. et al.* (2002), 210 N.S.R. (2d) 75. It is well dictated and spelled out, so the application is granted. The action is dismissed.

[9] With respect to costs, I will leave it to counsel and hopefully they will be able to work it out and if they cannot then submit something in writing to me and I will address it. I will await the order.

J.