

SUPREME COURT OF NOVA SCOTIA

Citation: Park Place Centre Ltd. v. Ultramar Ltd., 2010 NSSC 112

Date: 20100329

Docket: Hfx No. 280426

Registry: Halifax

Between:

Park Place Centre Limited

Plaintiff

v.

Ultramar Ltd. and G & S Haulage Limited

Defendants

Judge: The Honourable Justice C. Richard Coughlan

Heard: July 7-9 and September 29-30, 2009, in Halifax, Nova Scotia

Written Decision: March 29, 2010

Counsel: George W. MacDonald, Q.C. and Jane E. O'Neill, for the Plaintiff
C. Scott Sterns and Tammy Manning, for the Defendant, Ultramar Ltd.
David P. S. Farrar, Q.C. (July, 2009), Nancy I. Murray, Q.C. (September, 2009), Christopher Madill and Tipper MacEwan, for the Defendant, G & S Haulage Limited

Coughlan, J.:

[1] In a decision dated February 19, 2010, I found Ultramar Ltd. and G & S Haulage Limited (G & S) liable to pay Park Place Centre Limited (Park Place) the sum of \$228,316.71, arising out of the negligent delivery of fuel oil to Park Place I, a business complex in Dartmouth, Nova Scotia.

[2] Ultramar cross-claimed against G & S for contribution and indemnity for any and all amounts it may be required to pay to Park Place and for the cost of defending the action. G & S cross-claimed against Ultramar for contribution and indemnity of any sum G & S may be ordered to pay Ultramar, including costs. Both parties plead the *Contributory Negligent Act*, R.S.N.S. 1989, c.95 and the *Tortfeasors Act*, R.S.N.S. 1989, c. 471.

[3] I found G & S breached the standard of care it owed Park Place as Lloyd Greek, an employee and principal of G & S, continued to deliver oil after the alarm whistle stopped sounding at Park Place I on May 25, 2006. I found Ultramar vicariously liable for the damage caused to Park Place by the negligence of G & S.

[4] In dealing with the issue of indemnity between parties where a party not at fault is variously liable for the tortious act of another, Feldman, J.A. in giving the Court's judgment in *Creasy et al. v. Sudbury (Regional Municipality) et al.* (1999), 133 O.A.C. 54 (C.A.) stated at para. 45:

At common law an implied right of indemnity arises where one person who is not at fault is exposed to liability for the tortious acts of another, such as in situations of vicarious liability: *McFee v. Joss* (1925), 56 O.L.R. 578 (C.A.), *Fenn v. Peterborough* (1978), 25 O.R. (2d) 399 (C.A.), affd. [1982] 2 S.C.R. 613, Rinaldi et al. *Remedy in Tort*, vol. 4, c. 26, para. 60, Fleming, *The Law of Torts* (9th Ed. 1998), at pp. 298-300. Had the trial judge found Sudbury to be vicariously liable for Inco's negligence, by applying the *Saint John* principle, there would be an implied right of indemnity arising at common law that would displace the operation of s. 1 of the *Negligence Act*.

[5] The damage was caused to Park Place because of the negligent delivery of oil by G & S. Ultramar was not negligent, it's liability arose vicariously because of the acts of G & S. Therefore, G & S will indemnify Ultramar for any and all amounts Ultramar may be required to pay Park Place arising out of this proceeding.

[6] I dismiss the cross-claim of G & S against Ultramar.

[7] If the parties are unable to agree, I will hear them on the issue of costs.

Coughlan, J.