

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *INK Painting Ltd. v. Memar Home*, 2010 NSSC 256

**Date:** 20100628

**Docket:** Hfx No. 327733A

SCCH 322533

**Registry:** Halifax

**Between:**

INK Painting Ltd.

Appellant

v.

Memar Home and Samuel Sajjad Rad

Respondent

**Judge:** The Honourable Justice M. Heather Robertson

**Heard:** June 28, 2010, in Halifax, Nova Scotia

**Decision:** June 28, 2010 (**Orally**)

**Written Release:** June 29, 2010

**Counsel:** Eman Karim and Kifah Ali (Arabic/English Translator),  
self-represented appellant  
Samuel Sajjad Rad, self-represented respondent

**Robertson, J.: (Orally)**

[1] This is the appeal from the decision of adjudicator J. Scott Barnett who reluctantly found that the appellant INK Painting Ltd., had not made its case against Memar Home for a contractual debt relating to painting services rendered in the home of Ali Rad, whose son Samuel Sajjad Rad owned the construction company Memar Home.

[2] The adjudicator realized that there was a lack of documentation to prove any element of the contract. In addition there was a very significant language issue in that Mr Karm, who is the owner of INK Painting Ltd., was due to his poor English

really unable to advance his claim before the court. The adjudicator also noted that he was uncertain who the defendants were. He could not establish if the defendants included Samuel Sajjad Rad in his personal capacity or Memar Home or both.

[3] The appellant and respondent appeared before me on this appeal and both agreed there was a problem with language and documentation at the Small Claims Court hearing.

[4] By agreement, the respondent admitted that both he and the company were contracting parties. Samuel Sajjad Rad stated that if a new hearing were ordered he would be agreeable. The Court decided that on the basis of denial of natural justice and in light of the nearly impossible task given the adjudicator in the first instance that a new hearing was warranted.

[5] Mr. Karm was accompanied by a translator friend Mr. Kifah Ali who was able to communicate with both Mr. Karm and the court effectively. He agreed to appear again at Small Claims Court and assist Mr. Karm in a rehearing. The respondent Mr. Rad generously found and shared documentation relating to the contract. He presented copies to the appellant and the court. These will be valuable to all parties in preparation for the rehearing.

[6] Accordingly, given the unusual circumstances the adjudicator found himself in and given the cooperation of the parties, a rehearing of the matter will be ordered. At the request of the parties they would like it to take place before an adjudicator in Dartmouth. In so far as such a request can be accommodated, I would ask the Small Claims Court to entertain this request. The matter is accordingly returned to Small Claims Court for a rehearing.

Justice M. Heather Robertson