

SUPREME COURT OF NOVA SCOTIA

Citation: Young v. Refinements-Renovations and Construction Developments
Inc., 2013 NSSC 52

Date: 20130208

Docket: Hfx No. 399740A

Registry: Halifax

Between:

Margot Diane Young

Appellant

v.

Refinements-Renovations and Construction Developments
Incorporated

Respondent

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Heard: December 13, 2012

Counsel: Dennis J. James and Melissa P. MacAdam, for appellant
Tim Hill, for respondent

Moir J.:

[1] The *Small Claims Court Forms and Procedure Regulations* provide that an appeal is commenced not only by filing the notice of appeal before a deadline, but also by serving a copy of the notice on the respondent before the deadline. In this case, the notice was not served on time and the appellant moves for an order extending time.

[2] Citing *Clark v. Canzio*, 2003 NSSC 252; *G.S.H. v. Children's Aid Society of Cape Breton*, 2003 NSCA 84, and; *Briand v. Coachman Insurance*, 2003 NSCA 39, Ms. MacAdam submits that the following three part test applies:

- 1) Was there ... a bona fide intention to appeal while the right of appeal existed;
- 2) Does the appeal have sufficient merit, in the sense of raising a reasonably arguable ground; and
- 3) Was there ... a reasonable excuse for the delay in launching the appeal.

Mr. Hill says that only the second question is in issue.

[3] Does the notice of appeal raise a reasonably arguable ground? The grounds in the notice read:

- 1) The learned Adjudicator committed an error of law in failing [to] address the submission of the Appellant that the Respondent committed fundamental breach of contract;
- 2) The learned Adjudicator erred in failing to apply the proper legal principles with regard to the assessment of the costs of completion of the work required of the Claimant and the cost of repair of deficiencies; and
- 3) Any other such grounds as may become apparent upon reading the summary of the learned Adjudicator.

[4] When read against the adjudicator's extensive written decision, the grounds seem to ask this court to review fact-finding in the Small Claims Court, which is not in my jurisdiction nor, absent a record, possible. However, Ms. MacAdam refines the grounds this way:

The evidence contained within the decision ... [shows] that the calculations were based outside the jurisdiction of the Small Claims Court

This "demonstrates that the ground of appeal has sufficient merit".

[5] Did the approach adopted by the adjudicator exceed the monetary limit for Small Claims Court?

[6] Refinements-Renovations claimed against Ms. Young under a contract for renovation of a house on Fairbanks Street in Truro. The contract had been terminated, and Refinements claimed \$25,000, the Small Claims Court limit, toward what it said was the balance due on the contract, \$26,377. Ms. Young counterclaimed for \$13,564.

[7] Adjudicator David T.R. Parker heard the claim over five evenings in February, 2012. He accepted written submissions in March and released his written decision in May.

[8] The adjudicator found that the original contract price was \$63,250, that \$38,000 had been paid, and that extras totalled \$4,887.50. He found that completing the contract and repairing deficiencies cost Ms. Young \$11,239.73.

[9] Therefore, Ms. Young owed Refinements-Renovations \$18,897.77. With costs and disbursements, adjudicator Parker ordered judgment against Ms. Young for \$19,604.66.

[10] No errors of law are apparent unless the argument for Ms. Young about the Small Claims Court limit has merit. Respectfully, it does not.

[11] Ms. MacAdam submits that the claim should have been assessed as in *Boulet v. Aspen Interiors Inc.*, 2004 SKPC 80. Under that approach, Refinements' claim would have been capped at the \$25,000 Small Claims Court limit and Ms. Young's set off of \$11,239.73 would have led to judgment for only \$13,760.27 plus costs.

[12] In *Boulet* a subcontractor sued his contractor in the Provincial Court of Saskatchewan (Small Claims Court) and proved he was owed \$1,635. The contractor counterclaimed. The amount owing on the counterclaim was found to be \$10,222. The small claims limit was \$5,000.

[13] Judge Dirauf referred to s. 32(3) of the Saskatchewan *Small Claims Act*:

Where the counterclaim established exceeds the plaintiff's claim by more than the amount of the monetary limit, the defendant may set-off the amount of the plaintiff's claim but he is not entitled to judgment for the excess unless the defendant abandons that portion of the counterclaim that will reduce the excess to the amount of the monetary limit.

He said that a literal interpretation would lead to a calculation by which the amount due to the subcontractor is subtracted from the amount due to the contractor and judgment is given for the contractor at the monetary limit.

[14] However, Judge Dirauf was satisfied that the correct interpretation of s. 32(3) led to the amount of the claim being subtracted from the monetary limits, giving the contract or a judgment for only \$3,364. This interpretation resulted from contextualizing provisions that included mechanisms for the abandoned portions of claims to be pursued in Queen's Bench. We have no such provisions.

[15] The Saskatchewan legislation is so different from ours that *Boulet* cannot assist interpretation of the *Small Claims Court Act*. On the contrary, Judge Hall, as he was then, decided that "in determining the limits of the monetary jurisdiction of the court, the net amount after it has been settled, is the amount that must be considered": *Hanram Farms Ltd. v. J.G. Vanoostrum Farm Equipment* (1986), 73 N.S.R. (2d) 425 (Co. Ct.).

[16] Our legislation permits both primary claims and counterclaims: s. 9 and s. 21(2). A person may claim a monetary award under a contract for no more than

\$25,000 plus interest: s. 9(a). Thus, the limit for a primary claim is \$25,000 and the limit for a counterclaim is \$25,000. The legislation does not tie the monetary limit for one to the monetary limit for the other.

[17] There was a *bona fide* intention to appeal and there is a reasonable excuse for the delay, but the notice of appeal does not present grounds of sufficient merit because it is clear that Adjudicator Parker had to do as he did: subtract the assessed amount of the lower claim over which he had jurisdiction from the assessed amount of the higher claim over which he had separate jurisdiction.

[18] I dismiss the motion.

J.