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2000 **S.AT. No. 2406**

IN THE SUPREME COURT OF NOVA SCOTIA

Between:

"Sheldon P. Rudolph", carrying on Business: General Trucking, R.R. No. 1, Liscombe, Nova Scotia, B0J 2A0

Appellant

-and-

Mrs. Bruce K. Walker, R.R. No. 2, Sherbrooke, Nova Scotia, B0J 3C0

Respondent

DECISION

Heard Before:	The Honourable Justice G. Tidman
Place Heard:	Antigonish, Nova Scotia
Date Heard:	May 9th, 2000
Decision Date:	May 9th, 2000 (Orally)
Release of Written Decision:	August 1, 2000
Counsel:	Shawn F. MacLaughlin, Esq., for the appellant Mrs. Bruce K. Walker, respondent, present, unrepresented

TIDMAN, J. (Orally)

This is an appeal from a decision of the Small Claims Court adjudicator Mr. O'Blenis in which he gave judgment for the respondent Mrs. Walker against the appellant Mr. Rudolph. Mr. Rudolph now appeals that decision on the grounds that the learned adjudicator erred in law and on that basis and for that reason the appeal should be granted.

Let me say first of all something about the Small Claims Court and its purpose. The Small Claims Court is there for the purpose of obtaining a speedy adjudication and resolution of disputes between parties at the least possible cost. On appeals from the Small Claims Court, there is no transcript of evidence available to this court, so that it is not the role of this Court, nor is it possible without knowing the trial evidence in hearing an appeal to second guess the Small Claims Court adjudicator.

The adjudicator, however, is required to submit a summary or report of his findings to this Court so that this Court on an appeal has that report and the decision in determining whether or not there are grounds for an appeal in this case, particularly, whether the adjudicator erred in law.

I have received the summary report and decision of the adjudicator. I have also reviewed the claim and the defence and the Small Claims Court file, and I am not

satisfied that an error in law was made by the Small Claims Court adjudicator and for that reason I would dismiss the appeal.

It is unfortunate that the Maccaferri firm was not before the Court in the first instance. Normally, in cases of this nature, the defendant would join as a third party the manufacturer, the Maccaferri firm. If that had been done, there could have been a determination as to whether or not Mr. Rudolph was entitled to any contribution toward the judgment by the manufacturer. I expect that he could still bring action against Maccaferri to claim either indemnity or contribution for the damages he was ordered to pay..

I agree with the logic put forward by Mr. MacLaughlin that it is important to know who the parties are and what the responsibility of each of the parties was at the time this contract was entered into, who failed at what and who should pay the damages. However, the adjudicator made an important finding at paragraph 11 of his report that goes to the heart of this matter which is exactly what Mrs. Walker argued when she first got to her feet. Her argument started and finished within one sentence. She said I hired Mr. Rudolph to do the job, not Mr. Mailman. Mr. O'Blenis found as a fact that it was the appellant Mr. Rudolph and not the respondent who contacted Mr. Mailman, an agent for Maccaferri, and that the respondent was relying at all times on the appellant whom she hired to do the work.

The circumstances in all of the cases to which the Court has been referred in support of the appellant's argument, are materially different than the circumstances in this case. For instance, Mr. MacLaughlin has cited the case of ***Bonavista-Trinity-Placentia Integrated School Board v. Ludrigan's Limited*** (1989), 79 Nfld. and P.E.I. 78 (Nfld. C.A.). The difference there was that the plaintiff, not the contractor, engaged the architect. So the architect prepared plans and specifications for the plaintiff and it was found by the Court that the problem arose out of those plans and specifications. In that case there was a contractual relationship between the architect and the plaintiff and the Court found that the architect, and not the contractor, was responsible for the deficiencies. That is not the case here according to the adjudicator's finding, and as Mrs. Walker argues, she did not engage Mr. Mailman. Mr. Mailman came to her with and through Mr. Rudolph.

Dealing with the New Brunswick Court of Appeal decision in ***Cyr v. Roussel*** (1987), 26 C.L.R. 10 (N.B.C.A.), you have to forgive me Mr. MacLaughlin, I did not read that case because it's in French, and unfortunately I am not bilingual so I could not read that one. But again, in that case as you point out in your brief, the plans and specifications were supplied by the owners, supposedly prepared by their architect, and that's where the difficulty arose.

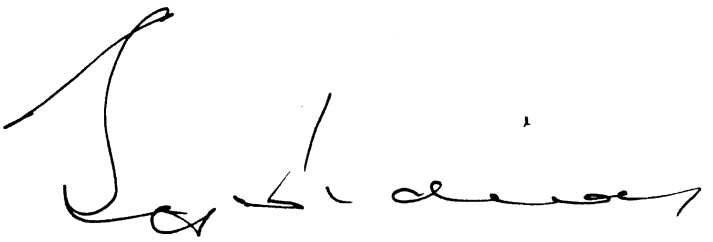
Again, the same thing in ***Edwards and Edwards v. Boulderwood Development Company Limited et al*** (1983) 58 N.S.R. (2d) 288 (N.S.S.C.T.D.). In that case there was a joinder of the third party so that the Court was able to apportion fault. It is important to have all the potential wrongdoers before the Court because not only does it mean that it is much less expensive to have all those matters dealt with in one action, but it avoids the unfortunate possibility of having different findings in different trials. That is pointed out in the ***Edwards and Edwards v. Boulderwood Development Company Limited et al*** case.

Again, in the ***Oromocto Development Corporation v. Montclair Construction Co. Ltd.*** (1973), 7 N.B.R. (2d) 290 (N.B.S.C.A.D.), the architect was retained by the owner and the problem was due to a faulty design by the architect. There was no question that the architect was retained by the plaintiff.

I do not believe you wish me to rely on the result in ***Scott Maritimes Pulp Limited v. B.F. Goodrich Canada Limited and Day & Ross Limited*** (1977), 19 N.S.R. (2d) 181 (N.S.C.A.D.). I presume you cited that case for the purpose of supporting your point on the ***Consumer Protection Act***. As I mentioned during your argument I do not think anything stands or falls on that. I am inclined to agree with you that this is a case of the supply of labour and materials rather than a sale of goods so that it is covered under

the ***Consumer Protection Act***.

Again I do not believe that the appeal can succeed on that basis because of the common law principle properly applied by the adjudicator that work and materials should be reasonably fit for the purpose intended, and in either negligence or in contract the action could also succeed. I do not believe it necessary to deal specifically with the actual grounds of appeal as set out in the Notice of Appeal. I believe they are covered in the decision, the main issue being simply this - that Mrs. Walker, as she says, hired Mr. Rudolph to do a job and the adjudicator found that the job was not done properly and Mr. Rudolph was responsible. So for the reasons given, I would dismiss the appeal.



J.