SUPREME COURT OF NOVA SCOTIA
Citation: *3042425 Nova Scotia Limited v. Ball*, 2022 NSSC 48

Date: 20220301
Docket: *Halifax*, No. 503360
Registry: Halifax

Between:

3042425 Nova Scotia Limited, Previously Known as Ready Refrigeration Inc.

v.

Leslie Ball

DECISION ON SMALL CLAIMS APPEAL

Judge:	The Honourable Justice Joshua Arnold
Heard:	November 22, 2021, in Halifax, Nova Scotia
Counsel:	Vincent Neary, Agent for the Appellant Leslie Ball, Self-Represented Respondent

Overview

[1] This is an appeal by 3042425 Nova Scotia Limited of a Small Claims Court decision regarding the collection of debt owed by Leslie Ball for the purchase of a heat pump. Small Claims Court Adjudicator Darrel Pink denied the claim at trial. For the reasons that follow the appeal is allowed and a new trial is ordered before another adjudicator.

Facts

[2] Leslie Ball bought a heat pump from Ready Refrigeration Inc. on November 12, 2018. Payment was to be made in monthly installments through pre-authorized automatic withdrawals from her bank account. Due to an administrative error, no money was ever withdrawn.

[3] According to the trial exhibits, on October 29, 2018, 3321245 Nova Scotia Limited was incorporated. On December 7, 2018, Ready changed its name to 3042425 Nova Scotia Limited. On December 10, 2018, 3321245 changed its name to Ready Refrigeration Inc. According to the adjudicator, Ready was sold to 3321245 "in late 2018" (Decision, para 2).

[4] The new owners of Ready also neglected to start the automatic withdrawals. Ms. Ball therefore never paid for the heat pumps.

[5] Gary MacKenzie, on behalf of 3042425, said that it retained the accounts receivable when the business was sold. It tried to collect the outstanding amount from Ms. Ball unsuccessfully and 3042425 engaged the services of a collection agency. It then began an action in Small Claims Court against Ms. Ball to recover the outstanding debt. The matter was heard in Small Claims Court on December 9, 2020. The claim was denied. 3042425 appealed.

[6] What the adjudicator found as fact regarding the retention of the accounts receivable by 3042425 is not clear. For example, he said variously in his decision:

- That Mr. MacKenzie, on behalf of Appellant, "…states he sold the business to the other part owners and as part of the transaction he retained Ready's accounts receivable. Though there were documents produced showing the corporate standing of the Claimant and Ready at the Registry of Joint Stocks, there is no

evidence that the Claimant's obligations to Ready were assigned or transferred to the Claimant" (para 2.). [Emphasis added]

- "If Ready were the Claimant here, this would end the matter. However, it does not because the Claimant is 3042425 Nova Scotia Limited. There is no privity of contract (i.e. a contractual relationship) between the Claimant and the Defendant. There is nothing before the Court to show the contractual obligation owed to Ready was transferred or assigned to the Claimant. Though I have no doubt that is what was intended, as a matter of law, I cannot give a judgement to the Claimant when there is no legal obligation owed by the Defendant to 3042425 Nova Scotia Limited. There is no evidence the Claimant has stepped into the Ready's shoes, entitling it to assert a remedy or obligation owed to Ready" (para. 13).

[7] Following receipt of the Notice of Appeal, the adjudicator prepared a Summary Report, in which he says:

> 5. The Appellant acquired the accounts receivable of Ready Refridgeration Inc, (Ready) in consideration for selling the business and its assets to individuals who previosuly co-owned the business with the principle of the Appellant. Ready Refridgeration was not a party to the claim. [Emphasis added]
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> …
>
> 8. No notice of the sale and the acquisition of the accounts receivable by the Appellant were provided to the Respondent.
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> 9. The principal of the Appellant testified about the sale of the assts of Ready and the acquisition of the accounts receivable. There were no documents evidencing the tranaction. There was no evidence that the Appellant changed the name of Ready Refridgeration to the name 3042425 Nova Scotia Limited.
>
> [As appears in original]

[8] The adjudicator stated variously that Mr. MacKenzie said 3042425 had retained the accounts receivable, had acquired the accounts receivable and that there were no documents evidencing that 3042425 had acquired (or retained) the accounts receivable.

[9] The adjudicator also noted in the Summary Report at paragraph 8 that "No notice of the sale and the acquisition of the accounts receivable by the Appellant were provided to the Respondent" and he found that there was no privity of contract between 3042425 and Ms. Ball.

[10] Trial Exhibits C1 and C2 are "Entity Profile Reports" obtained from the Registry of Joint Stocks online, containing a record of all company activities which must be filed with the Registrar under the *Companies Act,* including dates of incorporation, changes of name, and directors. These details are officially published in the Royal Gazette. According to those exhibits:

- On October 29, 2018, 3321245 Nova Scotia Limited was incorporated and registered;
- On December 7, 2018, Ready Refrigeration Inc changed its name to 3042425 Nova Scotia Limited;
- On December 10, 2018, 3321245 Nova Scotia Limited changed its name to Ready Refrigeration Inc.;
- Both companies currently continue to operate under their new names.

[11] There was clear evidence before the adjudicator that 3042425 was previously known as Ready Refrigeration.

[12] The "Lease Agreement", was entered into evidence at trial as Trial Exhibit D1. No mention was made in the decision or the Summary Report regarding the significance, if any, of Clause 9, which states:

> This agreement and each of its terms shall be binding upon the respective personal representatives, heirs, successors and assigns of the parties hereto.

[13] Because I have ordered the matter back for a new trial for unrelated reasons, I will make no further comment about the lease agreement.

[14] The adjudicator "reluctantly" dismissed the claim. He found that although the Respondent owed the money to Ready Refrigeration, 3042425 had no standing to enforce the obligation.

Issues

[15] The sole issue is whether the adjudicator erred in law by finding there was no privity of contract between 3042425 and Ms. Ball.

Standard of Review

[16] The *Small Claims Court Act*, RSNS 1989, c 430, s. 2, states that Small Claims Court decisions may only be appealed on the basis of jurisdictional error, error of law, or failure to follow the requirements of natural justice.

[17] In *Thorne v Pointon*, 2021 NSSC 293, Bodurtha J. confirmed that the standard of review for errors of law on appeals from Small Claims Court remains as set out by Saunders J. in *Brett Motors Leasing Ltd v Welsford* (1999) 181 NSR (2d) 76, where he said:

> [9] Therefore, this Court cannot review factual errors. The standard of review for errors of law and natural justice is correctness. However, the following often-quoted passage from Justice Saunders in *Brett Motors Leasing Ltd. v. Welsford* provides some insight into these limits (as quoted in *Noble v. Mulgrave (Town)*, 2012 NSSC 248):
>
> > 18 The standard to be applied by this court on an appeal from the Small Claims Court is set out in *Brett Motors Leasing Ltd. v. Welsford* (1999), 1999 CanLII 1121 (NS SC), 181 N.S.R. (2d) 76 (S.C.), where Saunders, J. (as he then was) said, at para. 14:
> >
> > > ... the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the adjudicator. **I do not have the authority to go outside the facts as found by the adjudicator and determine from the evidence my own findings of fact.** "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provisions under legislation pertaining to the case; or **where there has been a clear error on the part of the adjudicator in the interpretation of documents or other evidence**; or where the adjudicator has failed to appreciate a valid legal defence; or **where there is no evidence to support the conclusions reached**; or **where the adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result**; or **where the adjudicator has failed to apply the appropriate legal principles to the proven facts**. In such instances this court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.
> >
> > [emphasis added]

Positions of the parties

Appellant

[18] 3042425 says the adjudicator misapprehended the evidence at trial. It says that there was clear evidence that 3042425 is the same entity which contracted with the Respondent:

> - The trial exhibits, namely the lease agreement (D1) and documents from the Joint Stocks Registry website (C1), reveal that shortly after the lease was signed Ready changed its name to 3042425;
> - Gary MacKenzie testified that while the company's assets were sold to another company, 3321245, the accounts receivable were not. Because the accounts receivable were merely retained by the same company under a new name, no documentation of a transfer or assignment of the debt to another entity is necessary;
> - Exhibit C2, a printout from the Registry of Joint Stocks, shows that the current Ready Refrigeration is the new name of the entity formerly known as 33132425 and, contrary to the Adjudicator's decision, is not the proper claimant.

[19] 3042425 argues that this is a case where the adjudicator made a clear error in interpreting the documents and other evidence at trial. On a similar issue, Bodurtha J. said in *Thorne*:

> Therefore, while this Court must be careful to avoid reweighing evidence, where the report and evidence do not reveal the factual grounds for a legal finding, even when read generously, that can amount to an error of law. In addition, where the report itself and the evidence appear to contradict the legal findings, that can also support a finding of legal error.

Respondent

[20] Ms. Ball simply argues that the adjudicator's decision is correct.

Analysis

[21] Although the record is limited, since the proceedings in Small Claims Court were neither recorded nor transcribed, the adjudicator's legal finding that there was no privity of contract is unsupported by the documentary evidence presented at

trial. The adjudicator's misinterpretation of the documentary evidence influenced his view of the oral evidence

Trial Exhibits: Corporate Name Changes in Nova Scotia

[22] All the companies involved in this proceeding are incorporated under the *Nova Scotia Companies Act*, RSNS 1989, c 81. The procedure for changing a company name is set out in section 17 of that act:

> **Change of name**
> **17 (1)** Subject to Section 16, a company may by special resolution change its name.
>
> **(2)** A change of name is effective on such day as the Registrar determines.
>
> **(3)** The Registrar shall issue to the company a certificate of change of name.
>
> **(4)** The Registrar shall cause to be published in the Royal Gazette a notice of the change of name.

[23] As noted above, Trial Exhibits C1 and C2 are "Entity Profile Reports" obtained from the Registry of Joint Stocks online, containing a record of all company activities which must be filed with the Registrar under the *Companies Act,* including dates of incorporation, changes in name, and directors.

[24] The adjudicator's finding in his Supplemental Report at paragraph 4 that there was "no evidence that 3042425 Inc was previously known as 'Ready Refrigeration Ltd.'" was plainly wrong based on the documentary evidence before him, including the Entity Profile Reports, as well as the testimony of Mr. MacKenzie referenced in his reasons.

[25] Section 18 of the *Companies Act* states that a change in name does not affect a company's legal rights:

> **Effect of name change**
>
> 18 No alteration of the name of a company shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

[26] This provision reflects a long-standing common law principle, which was upheld in the context of a small claims appeal in *TD Financing Services Inc v McInnis,* 2012 NSSC 52, where LeBlanc J. said:

> [29] A corporate "name is merely a means of identification and a change of name does not affect the identity of the company nor its continued existence as the original body corporate" (*Alliance Securities Ltd v Posnekoff* (1922), 16 Sask LR 214, 1922 CarswellSask 227 at para 2 (KB)). Just as changing a human person's family name has no bearing on that person's debt obligations or assets, so too does changing a corporate person's name have no bearing on the corporation's legal obligations or entitlements (*Provincial Insurance Co v Cameron* (1881), 31 UCCP 523, 1881 CarswellOnt 146, aff'd (1883), 9 OAR 56 (Ont CA)).

[27] According to the evidence presented at trial, 3042425 was the company that contracted with Ms. Ball on December 7, albeit under the name Ready Refrigeration Inc.

"Ready Refrigeration's" Accounts Receivable

[28] The lack of a record from the trial makes review of factual conflicts challenging. There is no ability to appeal on questions of fact, but the adjudicator's dealing with factual matters can be relevant to an alleged error of law.

[29] 3042425 says Mr. MacKenzie testified that on December 7, 2018, Ready's assets were sold to 3321245 and the accounts receivable, including the debt, were retained by 3042425. As noted above, the adjudicator's decision and summary report give inconsistent accounts of Mr. MacKenzie's testimony. In the decision, the adjudicator states:

> The Claimant's shareholder, Gary MacKenzie, was previously a part owner of Ready Refrigeration Incorporated (Ready). In late 2018 he states he sold the business to the other part owners and as part of the transaction he retained Ready's accounts receivable. Though there were documents produced showing the corporate standing of the Claimant and Ready at the Registry of Joint Stocks, there is no evidence that the Claimant's obligations to Ready were assigned or transferred to the Claimant.

[30] There is no specific mention of a sale of assets in the decision, only references to the sale of "the business". However, the adjudicator's Summary Report characterizes the testimony differently:

> The principal of the Appellant testified about the sale of the assts of Ready and the acquisition of the accounts receivable. There were no documents evidencing the tranaction. There was no evidence that the Appellant changed the name of Ready Refridgeration to the name 3042425 Nova Scotia Limited.
>
> [As appears in original]

[31] The adjudicator makes a slightly different finding of fact in another area of his Summary Report:

> The Appellant acquired the accounts receivable of Ready Refridgeration Inc, (Ready) in consideration for selling the business and its assets to individuals who previosuly co-owned the business with the principle of the Appellant. Ready Refridgeration was not a party to the claim.
>
> [As appears in original]

[32] Did 3042425 retain the accounts receivable or acquire the accounts receivable? Did the adjudicator accept Mr. MacKenzie's testimony about the accounts receivable or did he require documentary evidence to confirm that testimony? Between the lack of a record and the inconsistent findings of fact made by the adjudicator, it is impossible to determine precisely what Mr. MacKenzie said at trial or what the adjudicator found as a fact.

Section 5(1) of the *Small Claims Court Act*

[33] Part of the adjudicator's assessment of Mr. MacKenzie's testimony regarding the sale appears to have been influenced by the erroneous conclusion that no corporate name change took place. The adjudicator said that Mr. MacKenzie testified that he sold the totality of Ready's assets and his shares to a third party, severing all ownership ties to the company but also said that in the transaction 3042425 either retained or acquired the accounts receivable.

[34] To bring an action in Small Claims Court, 3042425 would be required to show it was an "original party" to the contract under s. 5(1) of the *Small Claims Court Act*. If 304245 retained the accounts receivable and is the same entity that contracted with Ms. Ball, merely with a different name, then there is privity of contract. If 304245 was the contracting party with Ms. Ball and sold all of its assets to 3321245, but then bought back or acquired the accounts, then there was no privity of contract between 304245 and Ms. Ball.

[35] Section 5(1) of the *Small Claims Court Act* states:

Restriction on corporation or partnership

5 (1) To better effect the intent and purpose of this Act and to prevent the procedure provided by this Act being used by a corporate person to collect a debt or a liquidated demand where there is no dispute, no partnership within the meaning of the Partnerships and Business Names Registration Act and no corporation may succeed upon a claim pursuant to this Act in respect of a debt or liquidated demand unless the claimant is one of the original parties to the contract or tort upon which the claim is based or unless the claim is raised by way of set-off or counterclaim.

[36] In *VFC Inc. v MacLean* 2009 NSSC 314, MacLellan J. considered this provision, and said:

> [13] The case upon which the Adjudicator in this case based his decision is ***McGraw v. Merchant Retail Services Limited*** *(supra)* by Palmeter, J. of the County Court. In that case, Judge Palmeter held that in circumstances where a contract involving a revolving account for the purchase of furniture was assigned to the claimant upon notice to the customer and after default the claimant could not proceed in Small Claims Court because of Section 5(1). That was based on his view that the claimant was not an original party to the contract and that the assignment of the account did not make it an original party.
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> [14] In reviewing that case of Judge Palmeter, I note that the Adjudicator in the case had relied on a case also from the County Court. That is the case of ***Superior Acceptance Corporation v. Clarence R. Pyke*** (1986) "C" SN 15448, a decision of now Justice Simon J. MacDonald, who at that time was a Judge of the County Court. That case does not have a citation but is a Sydney case being SN 155448 and is dated May 7th, 1987.
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> [15] In that case, MacDonald, J. held that where a direct sales contract indicated that the contract was being assigned to Superior Acceptance and that payments should be made to Superior, the Small Claims Court would have jurisdiction despite Section 5(1) of the ***Act***.
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> [16] Palmeter, J. in considering the Adjudicator's decision based on that case, said that he disagreed with Judge MacDonald's decision in Superior, and that he was, in any regard, not bound by a decision of the Court provided that Court was at the same level as he was, which would be the case.
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> [17] Counsel here has also provided me with another case from Judge Simon MacDonald, who at that time was on the County Court. That is the case of ***MacDonald v. White*** (1984) 63 NSR (2d) 173. In that case Judge MacDonald was once again dealing with the issue of Section 5(1) of the ***Act*** and he held in overturning an Adjudicator's decision that an insurance company with a subrogated claim against the defendant could proceed in Small Claims Court despite Section 5(1).

[18] It is apparent, therefore, that I have before me conflicting decisions of the County Court on this issue. I have been encouraged by counsel for the appellant to actually look at the Conditional Sales Contract in this case. When I do so, I note that on the face of the document it very clearly indicated VFC Inc. Conditional Sales Contract. The document is dated December 8th, 2006 and is signed by the defendant Mr. MacLean. The document is also signed by a person indicating that he/she is signing on behalf of Bob Allen Auto Sales.

[19] Obviously these two parties are the two parties to the contract, however, the contract clearly is headed with the name VFC Inc. with an address in Ontario. It indicates clearly that Bob Allen Auto Sales is the dealer selling the vehicle and it also provides the following:

> In this Contract, you, your, yours and the Buyer means each person who signs this Contract as a Buyer, Co-buyer or Co-signor. We, our, us, and the Dealer mean the company that sells you the Vehicle, until when the Dealer transfers its right under this Contact to VFC Inc. ("VFC") and then we, our, and us means VFC, the company to which you owe payment under this Contract.

[20] Based on the wording of the contract, the defendant was aware that VFC Inc. was directly involved with providing the funds for the purchase of the vehicle and that he must repay VFC these funds, plus interest, over the course of the contract. He clearly knew that the contract was to be assigned to VFC.

[21] I accept the argument of the appellant here that despite not having actually signed the contract VFC was an original party to the contract as that concept can be interpreted in the legislation, and therefore avoid the prohibition set out in Section 5(1) of the ***Act***. I do not believe that Section of the ***Act*** was ever intended to prohibit a party, such as VFC, from taking action on the contract which the defendant willingly entered into. I believe the section was mainly intended to prohibit collection agencies, which purchase contracts after default, from proceeding in Small Claims Court. Such companies normally would have nothing to do with the original contract and therefore should be prohibited from proceeding in Small Claims Court.

[22] Based on my interpretation of the words of the contract and the facts before me, I find that the Adjudicator erred when he found that the action here was prohibited because of Section 5(1).

[37] Although not expressly stated by the adjudicator, his decision shows some reluctance to find that 3042425 had either retained or acquired the accounts receivable based exclusively on Mr. MacKenzie's testimony. Additionally, curious is his comment at paragraph 8 in the Summary Report as noted above about the lack of notice to Ms. Ball regarding "the sale and the acquisition of the accounts receivable by the Appellant." This comment is consistent with the older line of County Court authority rejected by MacLellan J. in *VFC*. (Further, *VFC*

was explained and followed in *TD*, supra, where Leblanc J. held that s. 5(1) did not exclude expressly listed assignees from proceeding where the signatories knew and agreed to the assignment. See *TD* at paras. 23-27). Clause 9 of the Leasing Agreement may have some relevance depending on the status of the accounts receivable.

[38] In any event, the trial exhibits confirm that 3042425 was an original party to the contract and merely changed its name. The company operating as Ready Refrigeration today is a different corporate entity. As noted in *Ritchie v Vermilion Mining Co.*, [1902] OJ No 223, the fundamental corporate legal principle of perpetual existence holds that the sale of the Appellant company's physical assets to 3321235 would not end its corporate existence. The records from the Registry of Joint Stocks show both companies continue to exist.

[39] The adjudicator said in his decision that Mr. MacKenzie testified that as part of the transaction he "retained" Ready's accounts receivable (para. 2) and said that "There is nothing before the court to show the contractual obligation owed to Ready was transferred or assigned to the Claimant" (para. 13). Later, in his Summary Report, he said the Appellant "acquired" the accounts receivable (para. 5) and said that Mr. MacKenzie testified about the sale of the assets and "acquisition" of the accounts receivable (para. 9). Did Mr. MacKenzie, on behalf of 3042425, testify at the trial that the accounts receivable were not a part of the asset sale and therefore were simply retained or did he testify that they were sold and then acquired in some more complicated fashion? None of the areas of ambiguity in the evidence are resolved by the adjudicator in a satisfactory manner. I conclude that the adjudicator erred in law in the manner described in *Brett Motors*, in particular by making clear errors in the interpretation of documentary evidence.

Conclusion

[40] Accordingly, the adjudicator erred in law in dealing with the documentary evidence as it went to the questions of whether 3042425 retained the accounts receivable or acquired them, whether 3042425 was in privity of contract, and whether s. 5(1) of the *Small Claims Court Act* prohibited 3042425 as the proper claimant. As a result, the matter will be remitted back to the Small Claims Court for trial with a different adjudicator.

[41] The parties may make any submissions on costs as permitted by the *Small Claims Court Forms and Procedures Regulations* within 30 days of the release of this decision.

Arnold, J.