

SUPREME COURT OF NOVA SCOTIA

Citation: *Saunders v. KingsAero Tech Inc.*, 2022 NSSC 287

Date: 20221012

Docket: *Kentville*, No. 514240

Registry: Kentville

Between:

John Saunders

Appellant

v.

KingsAero Tech Inc. and Karl Deter

Respondents

Judge: The Honourable Justice Gail L. Gatchalian

Heard: July 12, 2022, in Kentville, Nova Scotia

Counsel: Nick Moore, for the Appellant
Gordon Squirres, Director of Operations, Kings Aero Tech
Inc., for the Respondents

By the Court:

Introduction

[1] The Appellant, John Saunders, appeals the decision of a Small Claims Court Adjudicator dismissing his claims of negligence and breach of contract against the Respondents, KingsAero Tech. Inc. and Karl Deter, arising out of their annual inspection of Mr. Saunders' 1978 Piper Turbo Arrow aircraft. Mr. Saunders alleged that the Respondents had failed to identify that the aircraft had a cracked exhaust transition assembly and a burned turbo heat shield blanket. The Adjudicator did not give a written decision. However, in response to the appeal, she filed a Summary Report as required by s.32(4) of the *Small Claims Court Act*, R.S.N.S. 1989, c.430. The Adjudicator found that the two Aircraft Maintenance Engineers from KingsAero Tech, Mr. Deter and Peter Rouleau, conducted "a methodical and thorough annual inspection in a skillful and competent manner" and that "no cracks in the exhaust or burns in the turbo heat shield were found." In doing so, she implicitly rejected the expert opinion evidence of Aircraft Maintenance Engineer Mike Holzscheiter, offered by Mr. Saunders, that the required repairs should have been identified during the inspection.

[2] Mr. Saunders alleges that the Adjudicator committed errors of law and jurisdiction, and failed to follow the requirements of natural justice.

[3] Mr. Saunders alleges that the Adjudicator **erred in law** by:

- failing to apply the correct test for the tort of negligence, and in particular, in determining the correct standard of care;
- making a palpable error of fact by finding that the standard of care was met despite expert evidence from Mr. Holzscheiter to the contrary;
- failing to consider and weigh the expert evidence of Mr. Holzscheiter, accepting the contradictory evidence of Mr. Holzscheiter and that of the Respondents as to whether the Respondents met the standard of care, and not assessing the credibility and reliability of the contradictory evidence;
- failing to apply the tests for negligent misrepresentation and negligent performance of services; and
- failing to use the principles of contract interpretation in interpreting the contract and failing to apply s.26(5) of the *Consumer Protection Act*, R.S.N.S. 1989, c. 92, which states that “[t]here shall be implied in every consumer sale of services a condition, on the part of the seller, that the

services sold shall be performed in a skilful, efficient and competent manner.”

[4] Mr. Saunders alleges that the Adjudicator **breached the requirements of natural justice** by:

- denying Mr. Saunders’ request to adjourn the hearing, which was to be held virtually, when Mr. Saunders could not safely be in the same room as his lawyer because his lawyer’s daughter had symptoms of COVID-19; and
- denying Mr. Saunders’ request to adjourn the hearing until such time that the hearing could proceed in person in order to allow him to tender physical evidence such as broken aircraft parts and photographs and to have Mr. Holzscheiter and the Respondents comment on the physical evidence; and
- failing to consider Mr. Saunders’ brief of law, which included claims of negligent misrepresentation and negligent performance of a service.

[5] Mr. Saunders alleges that the Adjudicator committed a **jurisdictional error** by denying his request for an in-person hearing, given s.16 of the *Small Claims Court Act*, which states that “[a] claimant or defendant may appear at a hearing in person or by agent and may be represented by counsel.”

[6] I will consider each of Mr. Saunders' grounds of appeal in turn.

Failure to Identify Correct Standard of Care – Error of Law?

[7] The Adjudicator concluded that the Respondents did not breach the standard of care and were not negligent: para. 25, Summary Report. The Adjudicator did not explicitly identify the applicable standard of care. However, there was no dispute between the parties that the standard of care was that of a reasonable Aircraft Maintenance Engineer in the same circumstances, and that the content of the standard of care in this case was found in the *Canadian Aviation Regulations* (“CARs”) Standard 625 – Aircraft Equipment and Maintenance Standard under the *Aeronautics Act*, R.S.C. 1985, c. A-2. From my review of the exhibits and written submissions before the Adjudicator, it is clear that both parties were relying on Standard 625, and that the dispute was about whether or not Messrs. Rouleau and Deter conducted an inspection in compliance with that industry standard. Both parties called evidence from Aircraft Maintenance Engineers (Mr. Holtzscheiter for Mr. Saunders, Messrs. Deter and Rouleau for the Respondents) about whether the inspection met the requirements of Standard 625. I am satisfied that, given this context, the Adjudicator applied the correct standard of care when she concluded that “Mr. Rouleau and Mr. Deter conducted a methodical and thorough annual inspection in a skillful and competent manner”: para.16, Summary Report.

[8] As stated by Wood J., as he then was, in *Eye Catch Signs Ltd. v. Dobbin*, 2017 NSSC 110 at para.10, a Small Claims proceeding is different from other court proceedings because it tends to be somewhat less formal, permitting litigants to represent themselves, and allowing for efficient and less expensive hearings and appeals. The Small Claims process balances fairness and efficiency against traditional legalistic proceedings. Although there is no record of proceedings in a Small Claims hearing, a judge sitting on appeal has access to several sources of information that will assist in assessing the adjudicator's decision, including any exhibits entered at the hearing: para.11. In the case before him, Wood J. held that the adjudicator was not required to decide something that was in fact not in dispute between the parties: paras. 8 and 9. Wood J. held that, after reviewing the documents that were before the adjudicator, there was ample basis for the adjudicator's conclusion, and therefore the failure of the adjudicator to articulate a legal analysis was not an error of law nor a breach of the duty of procedural fairness: at paras.15 and 19-20.

[9] In my view, the Adjudicator's failure to articulate the standard of care is not an error of law in the circumstances of this case, where there was no dispute between the parties about the applicable standard of care or the content of the standard of care and where it is clear from the material before the Adjudicator that

the issue was whether Messrs. Deter and Rouleau complied with Standard 625, the applicable industry standard for an annual aircraft inspection.

Failure to Accept Evidence of Mr. Holzscheiter – Error of Law?

[10] Mr. Saunders' complaints about the Adjudicator's acceptance of the evidence of Messrs. Deter and Rouleau over the expert opinion evidence of Mr. Holzscheiter are challenges to her findings of fact.

[11] The leading case on the role of this Court in an appeal from a Small Claims Court decision is *Brett Motors Leasing v. Welsford*, (1999) 1999 CanLII 1121 (NS SC), 181 N.S.R. (2d) 76 (S.C.), where Saunders J. (as he then was) discussed the restricted scope of factual review on a Small Claims Court appeal as follows:

14 One should bear in mind that *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]

[12] There was some evidence before the Adjudicator to support the conclusions she reached: the evidence of Messrs. Deter and Rouleau. The Adjudicator found that they had over 70 years of combined aviation experience, that they conducted “a methodical and thorough annual inspection in a skillful and competent manner,” and that they did not identify any cracks in the exhaust or burns in the turbo heat shield: paras.4, 16 and 21, Summary Report. She found Messrs. Deter and Rouleau to be credible: para.26, Summary Report. She was entitled to favour their evidence over that of Mr. Holzscheiter, even if she admitted his evidence as expert opinion evidence (she does not characterize his evidence as such in the Summary Report).

[13] In light of these findings, it cannot be said that the Adjudicator committed a clear error in the interpretation of the evidence, that there was no evidence to support her conclusions, or that she clearly misapplied the evidence in material respects thereby producing an unjust result. She did not, therefore, err in law by accepting the evidence of Messrs. Deter and Rouleau over that of Mr. Holzscheiter.

Negligent Misrepresentation and Negligent Performance of Services

[14] Mr. Saunders' additional claims of negligent misrepresentation and negligent performance of a service were based on his allegation that the Respondents' had negligently performed the annual inspection. Given the Arbitrator's conclusion to the contrary, these additional claims clearly failed. In the circumstances of this case, the Adjudicator did not err in law by failing to refer to the tests for negligent misrepresentation and negligent performance of services in her Summary Report.

Breach of Contract

[15] The Adjudicator concluded that the Respondents had not breached the contract to perform an annual inspection: para.27, Summary Report. She did not explicitly refer to the principles of contract interpretation or to s.26(5) of the *Consumer Protection Act*. However, Mr. Saunders's breach of contract claim clearly failed, as it was based on his argument that the inspection was negligent. There was ample basis for the Adjudicator's conclusion that there was no breach of contract, and therefore her failure of the adjudicator to articulate a legal analysis was not an error of law.

Failure to Follow Requirements of Natural Justice?

[16] The hearing before the Adjudicator took place on February 28 and March 28, 2022 by Zoom video.

[17] Natural justice means that the parties are entitled to a fair process. What the requirements of fairness demand depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. A fair process includes the right to be heard, and the right to an independent decision-maker. See *Spencer v. Bennett*, 2009 NSSC 368 at paras.15 and 16.

[18] Mr. Saunders' brief of law is in the Adjudicator's file. The Adjudicator's Summary Report addresses Mr. Saunders' two main claims, which were of negligence and breach of contract. As already stated, there was no need for her to go on to consider the additional torts of negligent misrepresentation and negligent performance of a service, as these claims were based on Mr. Saunders' allegation that the Respondents had conducted a negligent annual inspection. In these circumstances, it was not a breach of natural justice for the Adjudicator to have omitted discussion of these additional torts in her Summary Report.

[19] Mr. Saunders complains that, as a result of the Adjudicator's denial of his request for an adjournment, he had to be in a separate room from his lawyer during

one day of the virtual hearing because his lawyer was a potential close contact of a case of COVID-19. This might not have been fair if Mr. Saunders could not then communicate effectively with his lawyer during the virtual hearing, for example, by phone, by email, by text message, or by asking for a brief adjournment when necessary during the hearing to communicate via video, for example, using another Zoom meeting, Skype, Facetime, or other platform. Mr. Saunders did not provide any detail of his attempts to communicate with his lawyer in any of these ways during the first day of the hearing, and his success or lack of success in doing so. In the absence of any such detail, I am not persuaded that the Adjudicator failed to follow the requirements of natural justice when she denied the adjournment request.

[20] Mr. Saunders also asserted that it was unfair for the hearing to proceed virtually because he wanted to tender physical evidence such as broken aircraft parts and photographs and to have Mr. Holzscheiter and the Respondents comment on the physical evidence.

[21] As for the photographs, the Adjudicator stated in her Summary Report that photographic evidence was of good quality. During oral argument, the Respondents asserted that the parties, witnesses and the Adjudicator all had high-resolution copies of the photographs. This was not disputed by Mr. Saunders.

There are high-resolution copies of photographs in the Adjudicator's file. Mr. Saunders has not satisfied me that it was unfair to proceed virtually because of his wish to personally present the photographs to the witnesses during their testimony.

[22] As for the physical evidence, such as broken aircraft parts, it does not appear from the Summary Report or the file before the Adjudicator that there was any dispute between the parties about what Mr. Holzscheiter found when he examined the aircraft one year later. The dispute was about whether those defects were present in 2019 and if so whether they should have been identified by the Respondents when they conducted the annual inspection. As such, I am not satisfied that having the witnesses comment on the physical evidence, or the photographs, remotely was unfair to Mr. Saunders in the circumstances of this case.

Virtual Hearing – Jurisdictional Error?

[23] Mr. Saunders did not explain how a reading of the words of s.16 of the *Small Claims Court Act* in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of the legislature (see *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para.26), results in an interpretation of that section that gives a party the

right to an in-person hearing upon request. The words of the section, read in their grammatical and ordinary sense, appear only to go as far as allowing a party to represent themselves or to be represented by an agent or by counsel: “[a] claimant or defendant may appear at a hearing in person or by agent and may be represented by counsel.” Mr. Saunders did not explain how interpreting those words as entitling a party to an in-person hearing on demand is consistent with the purpose of the *Act*, which is “to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated *informally* and *inexpensively* but in accordance with established principles of law and natural justice”: s.2 of the *Small Claims Court Act* (emphasis added).

[24] Mr. Saunders has therefore not satisfied me that the Adjudicator committed a jurisdictional error by denying his request for an in-person hearing.

Conclusion

[25] The appeal is dismissed.

Gatchalian, J.