

SUPREME COURT OF NOVA SCOTIA
Citation: *O'Neil v. Chopra*, 2022 NSSC 316

Date: 20221102
Docket: Halifax No. 506554
Registry: Halifax

Between:

Peter O'Neil and O'Neil's Property

Appellant

v.

Lalit Chopra

Respondent

DECISION

Judge: The Honourable Justice Glen G. McDougall

Heard: October 31, 2022, in Halifax, Nova Scotia

Oral Decision: October 31, 2022

Counsel: Peter O'Neil, for the Appellant
Lalit Chopra, for the Respondent

By the Court:

Introduction

[1] The Appellant, Peter O’Neil, appeals from a decision of Small Claims Court Adjudicator, Mr. Darrel Pink.

[2] Mr. Pink heard the matter, via telephone, on April 15, 2021. An oral decision was given, followed by an Order, which bears the same date.

Background

[3] There is a slight disagreement between the Order and the Summary Report prepared by Adjudicator Pink on July 28, 2021. The Order states the hearing took place on April 14, 2021, whereas the Summary Report indicates it took place on April 15, 2021. Nothing really turns on this and consequently it has no impact on my decision. After hearing evidence and after hearing the submissions of the parties, the Adjudicator concluded that the Defendant, who is the Appellant in the matter that is now before me, breached an oral contract to perform landscaping work on behalf of the Claimant – Lalit Chopra, who is the Respondent herein – and he ordered Mr. O’Neil to return the deposit paid to him by Mr. Chopra in:

...the sum of \$1328.71 together with costs for court filings of \$99.70 and service costs of \$103.50 for a total of \$1531.91.

[4] Mr. O’Neil appeals this decision. A Notice of Appeal was filed on May 13, 2021, which is within the 30-day time period set out in s. 22(2) of the Small Claims Court Forms and Procedures Regulations made pursuant to s. 33 of the *Small Claims Court Act*, R.S.N.S. 1989, c. 430.

[5] The Appellant checked all three grounds of appeal that are available to a party who chooses to appeal to the Supreme Court from an order or determination of an adjudicator, viz.:

- (a) jurisdictional error;
- (b) error of law; or
- (c) failure to follow the requirements of natural justice.

[6] The Appellant, as he is required to do, provided particulars of the error or failure which forms the grounds of appeal. The stated particulars are as follows:

1. the deposit was non-refundable due to I lost profit and any delay in work was due to wet grounds and covid restrictions.
2. my questioning of the my questioning of the respondents witness was interrupted and I was not given the opportunity to complete the questioning
3. I did not get the opportunity in court (by phone) to speak and give all my evidence but the respondent was able to do so.

[7] Previously, I mentioned that a Summary Report was provided to the Court by the Adjudicator bearing the date of July 28, 2021. The three page Summary Report contains a concise, yet detailed, report of his findings. It laid out the procedures and the evidence offered by the parties during the course of the hearing. At para. 22, the Adjudicator laid out his findings as follows:

- a. There was an oral contract for completion of the work on the Respondent's property.
- b. The contract stipulated a price and the need for a 50% deposit.
- c. There were no terms in the contract relating to the deposit.
- d. The Appellant estimated the work would take about three days and would be done in late June 2020.
- e. The Appellant did not attend at the property to complete the work.
- f. The Appellants' evidence regarding the property being marshy was not accepted based on the evidence of the Respondent and Mr. Rivin, who undertook the work shortly after the Appellant failed to perform his contractual obligations.
- g. The Appellant did not perform the work required by the contract and therefore, in the absence of any contractual terms relating to the deposit, the Respondent was entitled to have the deposit returned.

[8] I commend the Adjudicator for both the clarity and completeness of his Summary Report.

Appellant's Position

[9] Mr. O'Neil argues in his brief and in his oral submissions that he was prevented from performing his contractual obligations by rainy weather and the impact this had on the Respondent's back yard as well as Covid restrictions.

[10] This is consistent with his testimony at the hearing in Small Claims Court. Adjudicator Pink captured the essence of Mr. O'Neil's defence as evidence in his Summary Report.

Analysis

[11] An appeal to the Supreme Court is not an opportunity to simply re-try the case before another judge.

[12] For the Appellant to succeed on appeal, he has to show that there was an error of law, or a jurisdictional error, or a failure to follow the requirements of natural justice.

[13] Justice Jamie Saunders, formerly of this Court and later the Nova Scotia Court of Appeal, and now retired, stated this in the case of *Brett Motors Leasing Ltd. v. Welsford*, [1999] NSJ No 466; 181 N.S.R. (2d) 76; and 1999 CarswellNS 410, at para. 14 on p. 4 of 5:

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.

Conclusion

[14] The Appellant has not established an error of law nor has he offered any thing pertaining to a jurisdictional error.

[15] Furthermore, it is clear on the face of the record (particularly the Adjudicator's Summary Report) that Mr. O'Neil was given the opportunity to present evidence and

to cross-examine both the Respondent and the one witness called on behalf of the defence, that being Mr. Rivin John. Mr. Rivin John was the landscaper Mr. Chopra retained to perform the work that Mr. O'Neil promised but failed to carry out. Mr. O'Neil cross-examined Mr. Chopra but declined to cross-examine the other witness. He has provided reasons why he chose not to cross-examine the witness and that is a choice that not only did he make but he has every right to make that choice, but he has to live with the consequences of that as well.

[16] To now suggest that the Adjudicator prevented him from presenting his evidence by cutting him off is not supported by the Summary Report. I am not suggesting that Mr. O'Neil is in any way fabricating this. Indeed, he might honestly believe that the Adjudicator was more open to Mr. Chopra's testimony and that of his witness, but I am not persuaded that by curtailing Mr. O'Neil's questions to witnesses and the delivery of his own evidence warrants overturning Adjudicator Pink's decision. It is not uncommon for a trial judge to interject to ensure that the line of questioning that is being pursued is appropriate. It is questions that are designed to obtain relevant evidence that pertains to the matters that are before the Court; that is what a trial judge is required to do. We are gatekeepers. It is not an opportunity for people who are not trained in the law, or for that matter, people who are trained in the law, such as legal counsel, just to go off on a line of questioning that has no relevance to the matters before the Court. We owe it to both parties to ensure that the evidence that gets presented is evidence that's relevant, that pertains to the matters that are before the Court, and do not stray from that objective.

[17] As a consequence of what I have read and what I have heard, I am not satisfied that any of the three grounds of appeal that have been advanced on behalf of the Appellant have been established.

[18] As a consequence, I am going to be dismissing the appeal.

[19] The Order of Adjudicator Pink remains valid. It is for Mr. O'Neil to pay the full amount ordered by the Adjudicator, failing which it will be left to Mr. Chopra to initiate proceedings to collect it.

[20] I have the authority to order costs at this level, but neither one of you are represented by counsel and the nominal \$50 counsel fee I don't think is appropriate because particularly Mr. Chopra has not engaged legal counsel and has not incurred that expense.

[21] I will not be ordering any costs, but the appeal is dismissed and the Order that was issued by Adjudicator Pink to reflect his decision will remain in place.

McDougall, J.