

SUPREME COURT OF NOVA SCOTIA

Citation: I.M.P. Group Ltd. v. J. Ray McDermott Canada, Ltd., 2013 NSSC 382

Date: 20131128

Docket: Hfx No. 349438

Registry: Halifax

Between:

I.M.P. Group Limited, a body corporate

Plaintiff

v.

J. Ray McDermott Canada, Ltd., a body corporate

Defendant

Judge: The Honourable Justice Allan P. Boudreau

Heard: October 28, 29, 30 and 31, 2013 in Halifax, Nova Scotia

**Final Written
Submissions:** November 15, 2013

Written Decision: November 28, 2013

Counsel: John Merrick, Q.C. and Kelly Buffett, for the plaintiff
George W. MacDonald, Q.C. for the defendant

By the Court:

INTRODUCTION

[1] I.M.P. Group Limited ("IMP") has sued Secunda Marine Services, a division of J. Ray McDermott Canada Ltd. ("Secunda") for goods and services obtained by IMP and resold to Secunda. The goods and services were requested

by Dwayne Murphy ("Mr. Murphy"), the procurement manager of Secunda, purportedly for use in Secunda's normal course of business. The goods were obtained and, in some cases, outsourced by IMP for resale and delivery to Secunda. A dispute has arisen resulting in Secunda refusing to pay IMP for some \$140,000 worth of goods and services supplied by IMP during 2010.

[2] In support of its position, Secunda alleges that Mr. Murphy obtained these goods from IMP without authority from Secunda and that Secunda never received the goods or received any benefit from them. This fact does not appear to be contested.

[3] What is contested by IMP is Secunda's position that Mr. Murphy did not have the authority to purchase these items from IMP.

[4] Conversely, Secunda alleges that IMP employees, particularly Paul Johnston ("Mr. Johnston"), the manager of IMP's Marine Division, Dartmouth Branch, were complicit and/or negligent in failing to follow established purchase order, delivery and invoicing procedures which would have alerted Secunda to the purchases by Mr. Murphy.

[5] Secunda claims that it is not liable to IMP in the circumstances.

The Issues:

1. Did Mr. Murphy have the authority to contractually bind Secunda for the purchases in question?
2. Do the unpaid final invoices of IMP flow from enforceable contracts with Secunda?
3. Do the actions or inactions of Mr. Johnston and others in the Finance and Invoicing Department of IMP, by not following their own established procedures and by cancelling and reissuing invoices with different, and in some cases, false product descriptions, affect the enforceability of IMP's unpaid invoice amounts?
4. If the answer to Issue No. 3 is yes, then what is the effect on those unpaid amounts?

BACKGROUND

[6] IMP is composed of a large group of companies or subsidiaries which, in 2010, included a significant Marine Division. This division was primarily involved in supplies for the commercial fishing industry and it also provided a large quantity of marine safety equipment and products, with life rafts and their inspection and accessory items being a large part of that business. Another large part of the Marine Division's business was providing safety equipment and supplies to the offshore petroleum industry.

[7] Secunda was a large part of the "supply vessel business" for the offshore petroleum industry, particularly off the coast of North America. As such, it required a substantial amount of the products and services offered by IMP's Marine Division and was one of its Dartmouth Branch's top 10 customers. Secunda had a good business relationship with IMP and had had such for some years.

[8] Mr. Johnston was the Manager of IMP's Marine Division, Dartmouth Branch, in 2010. He had been with that company since 1988, except for a seven-year period between 1998 and 2005 when he worked for Associated Marine Equipment, a subsidiary of the Secunda Group of Companies. Prior to becoming the manager of the Dartmouth branch, he had been the sales manager of that branch. Mr. Johnston acknowledged that he was very familiar with Secunda, having been involved in its sales division until 2003, when that division was sold. He stayed on as an employee of Secunda until 2005, when he went back to IMP. Mr. Johnston stated that he first met Mr. Murphy in 2008.

[9] Secunda had been sold to the defendant, McDermott, in 2008 and Mr. Murphy was its procurement manager. Mr. Johnston testified that he had a good relationship with Mr. Murphy and considered him a friend/business associate. He said he spoke to Mr. Murphy on a weekly basis and that the two met face to face two to three times per year for lunch meetings, but that they had no outside of work social contact. Mr. Murphy was not a witness at this trial.

[10] Mr. Johnston testified that IMP did between \$80 million to \$150 million worth of business with Secunda in a typical year and that the 2010 sales to Secunda were close to \$200 million. He described the process for initiating a business transaction with Secunda. IMP, usually Mr. Johnston, would receive a telephone call or email from Secunda, usually from Mr. Murphy, but, at times, also

from Natasha Clyke. The contact would be a request to see if IMP could supply a particular product or service and at what price. If Mr. Murphy agreed with IMP's offer, then a Purchase Order ("PO") should follow formally requesting the product from IMP. As it turns out, sometimes an actual PO would follow, and other times IMP was just given a PO number. Without a PO the product description, quantity and price would have to be deciphered by IMP from the previous emails, and/or telephone discussions. Those details would then be transcribed on an eventual invoice from IMP once the product had been delivered in some fashion to Secunda.

[11] Invoices from IMP were usually mailed to customers and at times they were mailed to Secunda; however, all the invoices in question in these proceedings appear to have been personally delivered to Mr. Murphy by Mr. Johnston or someone else in the invoicing department of IMP. According to Mr. Johnston, if the invoices were not paid as anticipated, the finance department would contact Mr. Johnston and request contact be made with the debtor in an effort to expedite payment. Stephen Rowe of the IMP Group and President of CanJet Airlines said that this should commence after 60 days of nonpayment; however, it appears that Secunda was "cut considerable slack" in that regard.

[12] There is no evidence or indication that IMP sent any monthly statements to its debtor customers, even though its invoices indicated that the terms were net 30 days and that 2% interest would be charged monthly after that period of time. It was stated by both Mr. Johnston and Mr. Rowe that Secunda was considered a good credit risk customer.

The Products and Invoices in Dispute

1. The Plasma Cutter and Air Wrench

[13] In February of 2010 Mr. Murphy emailed Mr. Johnston and requested a quote for the supply by IMP of a "plasma cutter" and an "air wrench." IMP quoted a price and anticipated delivery. Agreement was reached and Mr. Murphy indicated he would personally pick up the items, even though Secunda had a warehouse man, John Syliboy ("Mr. Syliboy") who usually did this. A PO for these items was eventually received by IMP. On March 4, 2010, IMP issued an invoice to Secunda, in the amount of \$4,135.69, for those items. Secunda claims that it had never received these items. IMP claims this amount is owing.

2. The Table Saw

[14] Shortly after the transaction in No. 1 above, Mr. Murphy requested a quote and the supply of a table saw. IMP quoted a price and anticipated delivery date. Agreement was reached and the table saw was picked up at IMP and receipted for by Mr. Syliboy. On March 16, 2010, IMP issued an invoice to Secunda in the amount of \$3,897.37 for this item. Shortly afterwards management at Secunda objected to the price of the table saw and threatened to return it. Agreement was subsequently reached on a reduced price of \$2,456.62 (including 13% HST); however, there does not appear to be an invoice from IMP reflecting this price reduction.

[15] The items in headings one and two above continued to be invoiced at a total price of \$8,033.06 when it should have been \$6,592.31.

[16] On July 12, 2010, IMP re-invoiced Secunda for all three items, the table saw, the air wrench and the plasma cutter, all in one invoice (see Tab 103 of Exhibit 1).

3. The Two Scuba Gear Transactions

[17] Between May 27 and July 2, 2010, Mr. Murphy requested that IMP obtain for Secunda many items of scuba gear and accessories, the lists of which can be found at Tabs 16 and 21 of Exhibit 1. Mr. Murphy, through a Jim Bacon, had already sourced these items and obtained quotes from Torpedo Rays Scuba Dartmouth, a supplier located in relatively close proximity to both IMP and Secunda. Mr. Murphy was simply asking Mr. Johnston to obtain these items for Secunda, collect a 10% to 15% markup and pass them on to Mr. Murphy. Mr. Johnston said he saw nothing unusual about these requests because he was under the impression that Mr. Murphy did not want to go to the "trouble" of getting Torpedo Rays approved as a vendor to Secunda. These supplies were apparently picked up directly from Torpedo Rays by Mr. Murphy or Jim Bacon.

[18] These items were invoiced to Secunda by IMP on June 20 and July 20, 2010 in the amounts of \$11,898.06 and \$5,264.70 respectively.

[19] The evidence is that actual POs were never received by IMP for these items, nor were they requested, let alone followed up. All that was obtained were PO numbers contained in emails. Apparently both scuba gear orders were given the same PO number.

[20] The evidence also indicates that Secunda had not purchased such scuba gear items and accessories in the past and that it did not receive these items. Their whereabouts and ultimate destination are unknown.

4. 1998 Sea Ray 330 Pleasure Power Yacht (“the boat”)

[21] On July 21, 2010, Mr. Murphy sent the following email to Mr. Johnston:

"Hurst Marina, Ontario, phone 1-613-692-1234 1998 Sea ray 330 sun dancer
\$82,900.00 + 20% markup = \$99,480.00"

[22] Mr. Johnston immediately researched the item on the internet, spoke to representatives at Hurst Marina, and within two hours was back to Mr. Murphy with his findings. A few hours after that Mr. Murphy emailed Mr. Johnston with two PO numbers, one for the purchase of the boat and one for its inspection. As with the scuba gear transaction, Mr. Johnston never requested a PO for the boat and none was ever received. All he had were PO numbers, which Mr. Murphy had a habit of changing. It is interesting to note that Mr. Johnston, in one of his first emails regarding the boat, had suggested that a reasonable offer would probably be acceptable to the vendor; however, this was never followed up by Mr. Murphy who was apparently willing to pay the full asking price. It is also interesting to note that a Jim Bacon was copied with most of the emails concerning the boat and that is the same Mr. Bacon who ended up with the boat. It appears that Mr. Bacon is a past, or maybe even a present, employee of Secunda. Both James Bacon Jr. and James Bacon Sr. worked for Secunda at one time or another. One of the Mr. Bacon's eventually reimbursed Secunda for the freight expenses for transporting the boat to Nova Scotia. Mr. Murphy had arranged for the transportation and delivery directly to Mr. Bacon. Mr. Bacon told Mr. Rowe that he paid \$30,000 for the boat; however, no one said to whom the payment was made. It appears that it was not to Secunda nor to IMP and neither has ever had possession of the boat.

[23] On August 27, 2010, IMP invoiced Secunda \$114,402.00 for the cost of the boat plus some inspection fees. The status of the registered ownership of the boat is unclear because a current Registered Owner document from Transport Canada was not placed in evidence; however, it appears the boat and/or license were registered to IMP at some stage of the process.

The Cancellation of Invoices and the Replacement Invoices which followed:

[24] It was not until early December of 2010 that Mr. Johnston emailed Mr. Murphy inquiring about unpaid invoices by Secunda. It appears that the accounts receivable "folks" had finally gotten after Mr. Johnston regarding the Secunda invoices mentioned above, all of which remained unpaid. Mr. Johnston, in his email to Mr. Murphy on December 8, 2010, surmised that the problem may be in regard to a large supply order for Secunda vessel 102, or with the boat. In his reply email of the same day, Mr. Murphy indicated an urgency to meet with Mr. Johnston and stated that December 10, 2010 would be his last day at Secunda. In his reply of the same day, Mr. Johnston asked, "Do you see these invoices being a problem." In that series of emails (See Tab 75 of Exhibit 1) Mr. Johnston agreed to meet Mr. Murphy at 11:00 a.m. the next day. Mr. Murphy asked Mr. Johnston to bring copies of the outstanding invoices to their meeting, although Mr. Murphy had received all of those invoices directly from Mr. Johnston or someone else in IMP's invoicing department, obviously directed by Mr. Johnston. Mr. Murphy had apparently not passed these invoices on to Secunda's financing department.

[25] It was at their December 9, 2010 meeting that Mr. Murphy requested that Mr. Johnston change all the outstanding invoices which are in issue in these proceedings, and to which Mr. Johnston agreed. Mr. Johnston then directed IMP's invoice clerk, Lisa Caron ("Ms. Caron"), to cancel all the outstanding invoices in question and to reissue them, some with changed PO numbers, some with changed descriptions and some with changed amounts. Ms. Caron complied with Mr. Johnston's directives.

[26] The changes to the new invoices were all under Mr. Johnston's directives and they are as follows: The Table Saw, Plasma Cutter and Air Wrench:

[27] As I stated previously, these items had all been placed on one invoice on July 12, 2010. On December 9, 2010, IMP staff, Ms. Caron, reissued the above

items and changed the description to read "Inspection Services," with the total price being the same (see Tab 116 of Exhibit 1).

[28] The explanation given by Mr. Johnston was that he understood that Mr. Murphy had exceeded his "tool budget" and Mr. Johnston thought the change would facilitate payment to IMP. He admitted that this latest description was false.

The Two Scuba Gear Transactions

[29] The invoices for these two transactions were reissued on December 9, 2010 by changing the description of the goods provided from "scuba gear," something which Secunda apparently did not use in the ordinary course of its business, to "Dive Gear Misc. Safety Gear Line 44."

[30] Mr. Johnston testified he understood that the latter description would better match Mr. Murphy's purchase order; however, Mr. Johnston had never obtained a PO, nor did he ever request to see one. The amounts remained unchanged (see Tabs 117 and 118 of Exhibit 1).

The Boat

[31] The original invoice for the full cost of the boat was cancelled. The original invoice for the boat was divided into two more or less equal amounts, one of which may have included the boat or motor inspection. Two new invoices dated December 10, 2010 were prepared by Ms. Caron, one in the amount of \$55,177.00 and one in the amount of \$59,225.00. Besides the "split" of the original invoice, the description was changed from "Boat" to "Boat Safety Equipment" (See Tabs 122 and 124 of Exhibit 1).

[32] The evidence is overwhelming that this new description does not refer to a "Boat" and "Safety Equipment" but refers to "Boat Safety Equipment", which may not be unusual for Secunda.

[33] Mr. Johnston's explanation was that he understood Secunda's local office could only authorize payments up to \$100,000 and anything above that would require approval from head office in Houston, Texas, which would delay payment.

Mr. Johnston admitted that the description "Boat Safety Equipment" and the splitting of the invoice were false. This transaction and the explanation given by Mr. Murphy did not meet the usual reasons for splitting an invoice. Mr. Johnston testified that he did not think his superiors would have approved his actions, but that his motive was to expedite payment of the outstanding invoices. He was obviously becoming quite concerned about the state of those invoices.

[34] Mr. Rowe testified that Mr. Johnston and indeed the collection and monitoring staff of IMP's Finance Department did not follow normal and set procedures in the invoicing nor in the follow-up of these receivables. He said Mr. Johnston showed poor judgment by his actions, but he appears to have accepted Mr. Johnston's explanations and motives. Mr. Rowe said that an internal investigation was ordered by him and conducted by a senior employee of IMP. He said he received a verbal report but he is not aware if a written report was prepared. Certainly no such report was produced.

THE LAW

[35] The applicable law is relatively clear as it applies to the circumstances of this action. The case is primarily fact driven; however, the legal issues, of an employee/agent's authority to bind his or her employer/principal arises from the facts of this case.

[36] The circumstances of this case, as pleaded in the defence and counterclaim, also give rise to the issue of the alleged contributory negligence of the plaintiff in causing the losses in question.

[37] There can be no doubt that Mr. Murphy had the authority to make purchases for goods and services required in the normal course of Secunda's business operations. This is not contested by Secunda. What is argued by Secunda is that Mr. Murphy was not "cloaked" with the authority to make purchases which, on their face, IMP ought to have known were not reasonably required in Secunda's normal course of business. Secunda contends that, at the very least, IMP ought to have questioned these requests by Mr. Murphy and requested formal POs and assured that these goods and/or services were properly receipted for by Secunda.

[38] A determination of those issues depends on the Court's findings of fact regarding Mr. Murphy's "apparent" authority and the checks and controls placed on that authority by Secunda.

[39] The other issue is the alleged actions or lack of actions by IMP which it is argued was negligent and contributed to the loss by, innocently or otherwise, enabling Mr. Murphy to make these purchases undetected by Secunda, until the losses had been incurred and he had left his employment with that company.

[40] IMP questions whether negligence, which is primarily a tort issue, by one or both parties has any application to a contractual relationship. There can be no question that negligent performance of a contract has long been alleged as a cause of action; however, simple negligence may also give rise to a remedy.

[41] This latter question was discussed by me in **Dexter Construction Co. v. Nova Scotia (Attorney General)**, [2004] N.S.J. No. 310; 2004 NSSC 160 at paras. 28, 29 and 30:

28 If Dexter was aware of an apparent or probable problem in the tender documents with regard to the two items in question, did it have any obligation or duty to bring it to DTPW's attention? In this case, I find that the parties owed a duty to each other by virtue of the direct contractual relationship between them. There can be no closer proximity than that in business dealings.

29 On the other hand, did Dexter owe a duty to DTPW to bring any apparent or potential problems of which it was aware to the attention of DTPW. Recent cases in Nova Scotia have interpreted duty very broadly, to include acting reasonably in one's own interest. In *Sydney Co-Op Society v. Coopers and Lylerand* (2002), 213 N.S.R. (2nd) 115, Justice LeBlanc of this Court said the following at paragraph 171:

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[171] I accept the defendant's argument that in assessing whether or not the plaintiff's are contributorily negligent for the loss they

sustained, it is not a question of a standard of care test but whether they acted reasonably for their own safety.

In the above noted quote, the word "interest" could be substituted for the word "safety". The interests of Dexter obviously include the finalization of a bid or contract on terms which are mutually understood and accepted by the parties. Surely the tendering process should not be allowed to degenerate to something less.

30 In *Hustins Enterprises v. Byrne Architects*, [2003] N.S.J. No. 32, [2002] N.S.R. (2nd) Uned. 96, our Court of Appeal appears to also adopt the broader concept of fault when Hamilton, J.A. stated the following at paragraph 56:

[56] ... It is trite to say that the doctrine of causation requires that Hustins only receive damages from Byrne for the loss caused by Byrne's breach of contract. If Hustins suffered a loss due to its own unreasonable conduct it must bear the cost itself of its contributory fault.

[42] Although the words "potential problems of which it was aware" are used in the first line of paragraph 29 cited above, those words could be supplemented with the words "or potential problems of which it reasonably ought to have been aware."

[43] Therefore, the alleged negligence of one or both parties is relevant and a factor which can be considered in deciding the appropriate and just remedies in this case.

ANALYSIS

1. Did Mr. Murphy have the authority to contractually bind Secunda for the purchases in question?

[44] As I stated previously, there can be no doubt that Mr. Murphy had the authority to make purchases required in the ordinary course of Secunda's business operations. There is also no question that Mr. Murphy did not have the apparent unfettered authority to make any purchases whatsoever.

[45] The problem with Secunda asserting that Mr. Murphy was not "cloaked" with the authority to make the purchases in question is that it did nothing to

monitor or enforce its purchasing protocols. We heard testimony from Barbara King ("Ms. King"), the controller for Secunda at the time of these transactions. She testified that, for purchases to be initiated, there was first a three-step requisition process. An employee would have to initiate a request for a needed product or service. That request would have to be approved by a second individual and a third individual would have to issue the formal requisition. The requisition would stipulate the description of the product sought, the quantity and the price at which the vendor could supply the item. If the quoted price was acceptable to Secunda, then it would issue a formal purchase order.

[46] Ms. King testified that the PO stage required a similar three-step procedure, performed by different individuals. She said a PO was always required; however, in emergency situations, the PO stage could be initiated by simply providing the vendor, in this case IMP, with a PO number. She said the latter situation was "not common at all," and a formal PO would have to follow the issuance of the simple PO number. She said it was possible for one person only to issue a PO number in such situations, but a formal PO would have to follow.

[47] It is clear from the evidence that the procedures and protocol testified to by Ms. King were not followed, monitored or enforced. It also appears that IMP, Secunda's main supplier, was not apprised of these protocols and procedural requirements. There can be no doubt that the procurement department at Secunda, particularly Mr. Murphy, was left to his own devices.

[48] I find that the actions or inactions of Secunda amounted to negligence which resulted in Mr. Murphy being able to make questionable purchases from IMP, undetected until after he had left Secunda.

[49] In the result, Mr. Murphy did not have the authority to make the purchases in question from IMP, but that is not the end of the matter. Secunda had not done what it ought reasonably to have done to monitor its procurement department, especially Mr. Murphy who had purchasing authority up to \$100,000, or to advise IMP, its important operations supplier, of its procurement requirements.

[50] Secunda must accept part of the blame and responsibility for the losses in question.

2. Do the unpaid final invoices of IMP flow from enforceable contracts with Secunda?

[51] As a preliminary point, Secunda argues that the final invoices issued by IMP on December 9 and 10, 2010 contain the description of products or services which are false and which were not the ones provided in accordance with Mr. Murphy's requests. The evidence shows that that is the case; however, the amounts invoiced on December 9 and 10 are the exact amounts of the products and services previously invoiced, albeit with different descriptions, and in the case of the boat, different split amounts. I find that the December 9 and 10 invoices, which cancelled and replaced the original invoices would not, in the course of events, render Secunda's contractual obligations null and void. The same unpaid invoiced amounts flowed through to the final invoices. Had these amounts been the product of *bona fide* transactions from the beginning and had Secunda received the benefit of the products or services supplied, then the changes effected on December 9 and 10 would not affect the enforceability of those final invoices. But, as we know, the latter was not the case.

3. Do the actions, or inactions, of Mr. Johnston and others in the Finance and Invoicing Department of IMP, by not following their own established procedures and by cancelling and reissuing invoices with different, and in some cases, false product descriptions, affect the enforceability of IMP's unpaid invoice amounts?

[52] We have to begin by reiterating that Mr. Johnston had worked in the Secunda operations for some seven years and that he agreed he was very familiar with Secunda. It is difficult to accept that Mr. Johnston did not at any time query Mr. Murphy's purchases or mode of operation. It appears that the business relationship was "too cozy" and Mr. Johnston did not apply his mind to his task at hand. This task was to act reasonably to protect the interests of his employer, IMP, and incidentally, that of Secunda. Mr. Johnston was aware that Secunda had never before purchased such large amounts of scuba gear and accessories. It had also never before purchased a pleasure boat, although it had previously purchased a Fast Rescue Craft for its offshore operations. The latter was an inflatable type speedy boat for rescue operations, not a \$100,000 pleasure boat.

[53] The fact that Mr. Murphy was requesting IMP, on two occasions, to arrange the purchase, at a 15% markup, an extensive list of scuba gear and accessories to be picked up by Mr. Murphy or Mr. Bacon at a nearby Dartmouth dealer ought to have seemed odd to Mr. Johnston. This is especially so since Mr. Murphy had already sourced the products and obtained a quote from the dealer. Mr. Johnston never obtained any PO from Mr. Murphy for these items, just a PO number, and he never followed up on the matter. Again, this speaks to the "lackadaisical" way in which Mr. Johnston treated requests from Mr. Murphy.

[54] Then we have the request regarding the boat. This can only be described as an unusual request by Mr. Murphy, especially when one considers the lack of information provided in Mr. Murphy's email to Mr. Johnston dated July 21, 2010 (see Tab 26 of Exhibit 1). Mr. Johnston immediately pursued Hurst Marina to obtain more details about the boat and to begin arrangements to source this boat for Mr. Murphy. The transaction gets more bizarre as its progresses. Mr. Murphy appears to ignore Mr. Johnston's suggestion that a "realistic offer" be made. Various PO numbers are changed, but Mr. Johnston never obtains a PO for the boat, an item which costs in excess of \$100,000. It is ironic that Mr. Johnston, in his email of August 10, 2010 to Mr. Murphy, inquires and requests POs for the vessel 102 supplies, but does not request a PO for the boat (see Tab 44 of Exhibit 1). In the end, IMP never obtains delivery or possession of the boat but Mr. Murphy and Mr. Bacon make those arrangements, with the boat ultimately ending up in Mr. Bacon's possession for a payment of \$30,000, the recipient of which is not in evidence. The way this entire transaction was handled ought to have raised some concerns on the part of Mr. Johnston such that he would have at least sought a formally executed PO from Secunda.

[55] Then we have the manner in which the invoices were delivered to Mr. Murphy at Secunda. They were not mailed to Secunda, as was the normal practice for invoices. Moreover, IMP never followed up on these invoices nor were any regular statements mailed to Secunda. The whole thing was ignored by Mr. Johnston and the IMP Finance and Accounts Receivable Department until some time around early December of 2010.

[56] Mr. Johnston, in early December, is alerted to the fact that the invoices in question have not been paid. He does not contact the Finance Department at Secunda to see what they delay is. Instead, he arranges a meeting with

Mr. Murphy on December 8, 2010, at which he agrees to cancel the existing unpaid invoices in question and to reissue new invoices, which I have already stated were incorrect in that they bore false product or service descriptions and in the case of the boat, false cost amounts as well.

[57] Mr. Johnston's and IMP's Finance Department's actions and lack of actions were clearly a violation of IMP's normal practices and procedures. There is no way to describe those actions other than negligent. IMP and Mr. Johnston did not act reasonably to protect their own interests, and consequently, the interests of Secunda. Their actions contributed to enabling Mr. Murphy to make the purchases in question. As a consequence, IMP must accept part of the blame for the losses in question.

4. What then is the effect of my findings and conclusion on the unpaid IMP invoices?

Summary Findings

[58] I therefore find that both Secunda and IMP acted unreasonably in protecting each other's interests. I find that they are equally responsible for the losses which occurred as a result of Mr. Murphy's purchases.

CONCLUSION

[59] In the result, Secunda shall pay IMP for the table saw the amount of \$2,456.62 and one-half of the remaining unpaid invoices as follows:

Item(s)	Invoice total	One-Half share
Plasma cutter and air wrench	\$4,135.69	\$2,067.85
1 st Scuba gear invoice	\$11,898.06	\$5,949.03
2 nd Scuba gear invoice	\$5,264.70	\$2,632.35
Two invoices for the boat	\$114,402.00	<u>\$57,201.00</u>
SUB TOTAL		\$67,850.23
Table Saw		<u>\$2,456.62</u>
TOTAL		<u>\$70,306.85</u>

[60] IMP shall have judgment against Secunda in the amount of \$70,306.85, plus simple prejudgement interest at the rate of 3.5% per annum from January 1, 2011 to the date of payment.

[61] If any of the parties obtain any funds recovered from any individual concerning these invoices, or from the items in question, then the party receiving the benefit of same shall provide the other party with one-half of the net proceeds of such recovery.

[62] I shall hear the parties on the question of costs at a mutually-convenient time, if agreement cannot be reached on this issue.

[63] I will grant an order accordingly, prepared by counsel for IMP and consented to as to form by counsel for both parties.

Boudreau, J.