

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

LIBRARY HEADING

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

Subject: Contract - Agent's Authority - Exceeding Agent's Authority -
Negligence of Contracting parties -Apportionment of Fault

Summary: 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.

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.

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

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.

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

- 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?

Result: Found agent exceeded his authority - Found both parties negligent in the circumstances and apportioned fault for the resulting losses equally between the parties.

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