

SUPREME COURT OF NOVA SCOTIA

Citation: Boudreau v. Darnoc Investments Inc., 2014 NSSC 98

Date: 20140311

Docket: Halifax No. 275528

Registry: Halifax

Between:

Donald Boudreau

Plaintiff
and Defendant by Counterclaim

v.

Darnoc Investments Inc., and Lawrence Conrad

Defendants
and Plaintiffs by Counterclaim

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Judge: The Honourable Justice Allan P. Boudreau

Heard: January 13, 14, 15, 16, 20, 21, 22, 23, 27 and 28, 2014 in
Halifax, Nova Scotia

Written Decision: March 11, 2014

Subject: Contract – Privity of Contract – Breach of Warranties –
Causation – Contributory Negligence

Summary:

This case involves the rather intriguing and sometimes bizarre workings of what has been referred to as the “White Label” Automatic Teller/Cash Machine (“ATM”) business. These ATMs are owned privately. They are not owned by large financial institutions such as Chartered Banks, Credit Unions, etc. In fact, it appears that practically anyone can own one of these “White Label” machines.

In 2005 Donald Boudreau (“Mr. Boudreau”) and Lawrence Conrad (“Mr. Conrad”) were joint owners and equal

shareholders in two companies, Independent Armored Transport Atlantic Inc. (“IATA”) and Independent Security Services Atlantic Inc. (“ISSA”). IATA was in the business of providing services for certain owners of “White Label” ATMs. Those services included installation, maintenance and repair, and by 2005 had progressed to transporting cash in armoured vehicles and filling these ATMs with cash, usually the cash belonging to the various customers of IATA.

ISSA was in the business of providing security guard services apart from the ATM business and its operations are not part of the disputes in this proceeding.

On August 21, 2006, Mr. Boudreau entered into an Agreement of Purchase and Sale (“the Agreement”) whereby he agreed to sell his 50% share interests in IATA and ISSA to Mr. Conrad for the total price of \$300,000. Mr. Conrad has paid \$250,000 of the sale price to Mr. Boudreau, but Mr. Conrad has deposited the final \$50,000 in trust with the law firm which acted for both parties on instructions not to release it to Mr. Boudreau. Mr. Conrad alleges breaches of the Agreement and a resulting setoff and counterclaim.

Mr. Conrad alleges that Mr. Boudreau failed to warn him that monies owned by a customer of IATA, Bullion Investments Limited, (“Bullion”), and its principal, Richard Morse (“Mr. Morse”), were not adequately documented and that the collection of this debt of approximately \$62,000 was questionable.

Mr. Conrad also alleges that Mr. Boudreau failed to take over, as agreed, a small portion of IATA business referred to as the Ontario operation, and claims a loss of \$21,000.

The non-payment of Mr. Boudreau’s remaining \$50,000 of the sale price is admitted, and it is the Defendants’ claim of a setoff and counterclaim of some \$83,000 which is in dispute.

Issues:

It should be noted that the purchaser of Mr. Boudreau's shares in IATA and ISSA under the Agreement was a numbered company which has now changed its name to the defendant, Darnoc Investments Inc. ("Darnoc"). Mr. Conrad is the owner of Darnoc and the Guarantor on the transaction. Therefore, the first issue raised is question No. 1:

1. Are amounts paid by or losses claimed by IATA captured by the Agreement?
2. If the answer to question 1) is yes, then have the defendants proven that Mr. Boudreau breached any covenants or warranties which he made in the Agreement?
3. If the answer to question 2) is also yes, then have the defendants proven that Mr. Boudreau's breaches caused the losses?
4. If the answer to question 3) is also yes, are the defendants partially or contributorily responsible for any of the losses?
5. And, finally, have the defendants proven the amount of the alleged losses?

Result:

Found breach of warranties – also found Defendants contributorily negligent – awarded one half of the setoff and counterclaim.

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