**SUPREME COURT OF NOVA SCOTIA**
**Citation:** Frank E. Illsley Woodworking Ltd. v. D & M Lightfoot Farms Ltd., 2004 NSSC 40

**Date:** 2004/01/26
**Docket:** SK No. 8898
**Registry:** Kentville

**Between:**

Frank E. Illsley Woodworking Limited

Plaintiff

v.

D & M Lightfoot Farms Limited; and Roscoe Construction Limited

Defendants

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| **Judge**: | The Honourable Justice Allan P. Boudreau |
| **Heard:** | December 6, 9, 10, 11, 12, 2002, April 28, 29, 30, May 1, 5, 2003, at Kentville, Nova Scotia (Final written post trial submissions received June 2, 11 and 18, 2003.) |
| **Last Written Submissions:** | June 2, 11 and 18, 2003 |
| **Written Decision:** | January 26, 2004 |
| **Subject:** | Contracts - Sale of Goods - Negligent performance of building contract - Damages. |
| **Issues:** | - Do warranty of fitness for purpose provisions of the *Sale of Goods Act* apply?<br>- Does the *Contributory Negligenct Act* apply to building contracts?<br>- What are the damages caused by the parties negligence? |
| **Summary:** | - This case involves the respective obligations or responsibilities of general contractors and sub-contractors when it comes to ascertaining the specifications for specialized components in the construction of farm buildings. The defendant, Roscoe Construction Limited ("Roscoe"), contracted to construct two large egg laying barns for D & M Lightfoot Farms Limited ("Lightfoot"). One barn, 70 feet wide by 400 feet long and another, 70 feet wide by 200 feet long. The construction of these barns |

required the design and manufacture of 70 foot wide trusses to support the roof of each building, plus any other forces or weights which may be required to be supported by the trusses. Frank E. Illsley Woodworking Limited ("Illsley") supplied the trusses for the construction.
- Identical trusses were designed for both barns. The trusses for the 400 foot long barn were fabricated first and delivered to the site, accepted and partially erected before some collapsed. In the meantime, the 68 trusses for the 200 foot barn had also been delivered. While the cause of the collapse is not in issue in this trial, it was thereafter realized that the trusses, as designed, would not be able to accommodate or support the loads, primarily equipment, which Lightfoot intended to hang from the trusses. New trusses were designed to accommodate the intended weights or loads and these were also supplied by Illsley. The replacement trusses were more costly than the originals. Roscoe has refused to pay the additional costs of the redesigned trusses or the cost of the first set which could not be used as designed. Roscoe and Illsley blame each other for the inadequate design of the first set of trusses, claiming it was the other party's responsibility to ascertain any additional loads, beyond the roof itself, which would be supported by the trusses.
- Illsley has now sued Roscoe for payment of the first set of trusses and for any unpaid portion of the second set of trusses. Roscoe had also counterclaimed, as set off, the cost of removing the partially erected first set of trusses and for installing the second set, but this cost appears to have been covered by an insurance payment which Roscoe received as a result of the collapse.

**Result:** Found the warranty of fitness provisions of the *Sale of Goods Act* did not apply because the buyer (Roscoe) had not made the particular purpose of the goods (trusses) known to the seller (Illsley). Found the *Contributory Negligence Act* did apply to the circumstances of this case and found the parties equally at fault for the inadequate design of the first set of trusses. Awarded damages to Illsley for one half of the additional costs, being the second set of trusses, plus the original contract price for the first set of trusses. Allowed Roscoe a partial restocking credit for unused trusses from the first set. Also allowed partial pre-judgment interest.