

SUPREME COURT OF NOVA SCOTIA

Citation: Gerhardt v. Scotia Best Christmas Tree Ltd., 2004 NSSC 053

Date:20040205

Docket: SBW 211445

Registry: Bridgewater, N. S.

Between:

William A. Gerhardt

Appellant

v.

Scotia Best Christmas Tree Ltd.

Respondent

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Judge: The Honourable Justice John D. Murphy

Heard: February 5, 2004 in Bridgewater, N. S.

Written Decision: March 5, 2004 (*Oral Decision Rendered February 5, 2004*)

Subject: Small Claims Court Appeal

Summary: Appellant, who had been self-represented Defendant at Small Claims Court hearing, alleged that he was not informed by adjudicator that he had a right to cross examine the Plaintiff's witness, he was not aware he could do so, and he would have exercised the right had he known it was available. The Claimant's representative, the Respondent at the Appeal, confirmed that no advice was provided concerning the right to cross examine until later in the Small Claims Court hearing, when the Claimant asked if he could cross examine the Defendant. There was no "record" from the Small Claims Court proceeding.

Issue: Was the Small Claims Court hearing unfair, in that the rules of natural justice were not followed?

Result: Appeal allowed and new hearing directed. When self-represented Defendant was not made aware of the right to cross examine Plaintiff's witness and did not realize he could do so, and entitlement to cross examination was addressed for the first time later in the hearing when Plaintiff requested and obtained the right to cross examine Defendant's witness, a breach of the rules of natural justice occurred and the hearing was unfair.

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