

SUPREME COURT OF NOVA SCOTIA

Citation: Whalen v. Towle, 2003 NSSC 259

Date: November 25, 2003

Docket: S.H. 202064

Registry: Halifax, NS

Between:

Leo Whalen and Jacqueline Corbett

Appellant

v.

Clancy Towle

Respondent

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Judge: The Honourable Associate Chief Justice Michael MacDonald

Heard: November 25, 2003 in Halifax, Nova Scotia

Written Decision: April 21, 2004

Oral Decision: November 25, 2003

Subject: Small Claims Court Appeal, Denial of Natural Justice, Practice; exclusion of one claimant while the other co-claimant testified.

Summary:

This is an Appeal from a decision of Small Claims Court Adjudicator Alexander S. Beveridge dated April 3rd, 2003. The dispute involves alleged faulty services rendered by the Respondent carpenter, for the benefit of the Appellant spouses. The Small Claims Court hearings were lengthy, and laden with factual disputes. In the end the Adjudicator found in part, at least, for the Respondent carpenter.

The Appellant homeowners, have appealed to this Court. Their main ground of appeal involves the Adjudicator's decision to exclude the Appellant, Jacqueline Corbett, while the Appellant Leo Whalen gave evidence. The Appellants assert that this exclusion order denied them natural justice and that the Adjudicator had no jurisdiction to make such an order.

The Respondent, for his part, maintains that the Adjudicator simply, and wisely, used his discretion in a credibility-based hearing to insure a fair trial by excluding one party while the other party testified.

Issue: By having one party testify in the absence of the other, were the claimants denied natural justice?

Result: Appeal dismissed. There was no denial of natural justice. In the exceptional circumstances of this case, where credibility is important, it is a proper exercise of discretion to have one claimant testify in the absence of the other. This is especially so in a small claims hearing where the parties had no opportunity to discover each other pre-trial under oath. Review of the purpose of the *Small Claims Act*, R.S.N.S., 1989, c. 430.

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