

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General), 2006 NSSC 240

Date: 20060802

Docket: SH 184701

Registry: Halifax

Between:

Cherubini Metal Works Limited, a body corporate

Plaintiff

v.

The Attorney General of Nova Scotia representing her
Majesty the Queen in Right of the Province of Nova Scotia,
The United Steel Workers of America and The United Steel
Workers of America, Local 4122

Defendants

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Judge: The Honourable Justice C. Richard Coughlan

Heard: June 29 and 30, 2006, in Halifax, Nova Scotia

Decision: August 2, 2006 (Re: Summary Judgment)

Subject: Practice - Summary Judgment - Application by defendant Unions for Summary Judgment

Summary: Amherst Fabricators Limited operated a steel fabrication plant in Amherst, Nova Scotia. It entered into a collective agreement with the Local Union. Numerous grievances were filed by the Local against Amherst Fabricators Limited. The Attorney General of Nova Scotia issued numerous compliance orders pursuant to the *Occupational Health and Safety Act*, S.N.S. 1996, c. 7. Amherst Fabricators Limited sued the Attorney General of Nova Scotia, United Steel Workers of America and United Steel Workers of America, Local 4122. The claims against the Unions include the torts of negligence, conspiracy and intentional interference with economic interests. Amherst Fabricators Limited was amalgamated with Cherubini Metal Works Limited effective October 1, 2002. The defendant Unions applied for summary judgment.

Issue:

1. Do the matters in dispute between the plaintiff and the Unions arise from the collective agreement and are within the exclusive jurisdiction of the arbitration process established by the agreement, not the courts?
2. Were all matters raised in the plaintiff's claim decided or settled in the binding mediation/arbitration process between the parties?
3. Do the Unions owe the plaintiff a duty of care?
4. Should the action against the Unions for conspiracy be dismissed because the tort of civil conspiracy should not be extended in the facts of this case?

Result: Application dismissed.

The dispute between the plaintiff and the defendant Unions, in its essential character, does not arise from the interpretation, application or alleged violation of the collective agreement. Also the process established by the collective agreement does not provide the plaintiff with effective redress.

The mediation/arbitration process the parties engaged in did not deal with issues raised in the plaintiff's statement of claim.

A *prima facie* duty of care is owed by the Unions to the plaintiff and there are no policy reasons to preclude a duty of care.

The tort of civil conspiracy exists in Canada and it is not for the court, on an application for summary judgment, to deprive the plaintiff of an opportunity to convince a court that the tort of conspiracy should extend to the facts of this case.

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