IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Hubley v. Scott Slipp Nissan, 2003 NSSC 236

Date: 20031127
Docket: SK 204051
Registry: Halifax

Between:

Murray Leon Hubley/The Hubley Farm Limited

Appellant

v.

Scott Slipp Nissan/All Credit Solutions Inc.

Respondent

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: October 2, 2003, in Kentville, Nova Scotia

Counsel: Murray L. Hubley, self
Robert Bradstock, for the Respondent

By the Court:

[1] This is an appeal of a Small Claims Court decision, where the Adjudicator refused the Appellant's request for a 4-month adjournment. In the Small Claims Court action, the Respondent, Scott Slipp Nissan Ltd. ("Slipp Nissan"), sued the Appellant, Murray L. Hubley and the Hubley Farm Ltd. ("Mr. Hubley"), to recover the balance on an outstanding account. Slipp Nissan was represented by Bob

Bradstock of All Credit Solutions, which was the collection agency Slipp Nissan had engaged to collect the alleged debt from Mr. Hubley. The hearing was scheduled for May 12, 2003. Citing business obligations, Mr. Hubley requested an adjournment until September 2003. The Adjudicator re-scheduled the hearing for June 13, 2003, but declined Mr. Hubley’s repeated requests to adjourn the matter until September of 2003. The matter was heard on June 13, 2003. Prior to hearing the claim, the Appellant’s lawyer, who had been retained by the Appellant to seek an adjournment, made a final request for adjournment on behalf of Mr. Hubley. The adjudicator refused this request and proceeded to the hearing. After hearing Slipp Nissan’s submissions, the Adjudicator ordered Mr. Hubley to pay $9,576.50 to Slipp Nissan. Mr. Hubley did not attend the hearing or make submissions.

[2] Mr. Hubley now appeals the Adjudicator’s decision to refuse the adjournment. Mr. Hubley argues that, given the circumstances, the Adjudicator’s decision was an error of law or a failure to follow the requirements of natural justice, or both. I agree.

FACTS

[3] The Appellant, Murray L. Hubley, operates The Hubley Farm Ltd., which is a beef farm located in Annapolis County, Nova Scotia. The Respondent, Scott Slipp Nissan Ltd. ("Slipp Nissan"), is an automotive dealership in Kentville, Nova Scotia. On April 19, 2001, Mr. Hubley purchased a 1997 GMC truck from Slipp Nissan. Slipp Nissan claims that Mr. Hubley took possession of the truck, but failed to make the agreed payments. In March of 2003, Slipp Nissan started a Small Claims Court action against Mr. Hubley and the Hubley Farm Ltd., claiming the balance of monies owed on the truck.

[4] The hearing of this matter was originally set for May 12, 2003. In a letter to the Kentville Justice Centre dated May 8, 2003, Mr. Hubley requested that the hearing be adjourned until mid-September, in order to accommodate his business obligations.

[5] By a letter dated May 9, 2003, the Adjudicator informed both parties that the hearing could be re-scheduled during the months of May or June, 2003, but that a

delay until September, 2003 would be unfair and perhaps prejudicial to Slipp Nissan. In a second letter, dated May 15, 2003, the Adjudicator informed the parties that the hearing was re-scheduled for June 13, 2003 at 11:30 a.m.

[6] After receiving notice of the re-scheduled hearing, Mr. Hubley responded to the Adjudicator in letter dated May 22, 2003. In the letter, Mr. Hubley repeated his request that the hearing be adjourned until mid-September 2003. He stated that June 13, 2003 was a particularly problematic, because two of his cows were due to give birth on June 9, 2003. He stated that the cows would require his personal attention during this time:

> Two of our farm's heifers are due to calve on June 9, 2003. "Due" and "when" they actual calve is an unknown factor, however, I must remain at the farm and tend to their feeding, watering, bedding and health checks every few hours both prior to their calving and for a few weeks thereafter.
>
> Being "heifers", this will be the first calving for both of them and as such it is even more imperative that I remain in close attendance for 24-hours per day.

[7] On the morning of June 13, 2003, the date of the hearing, Mr. Hubley, once again, contacted the Kentville Justice Centre to seek an adjournment of the hearing. In a letter-by-fax, he notified the Adjudicator that he was unable to attend the hearing because both cows were in labour, and required his personal attention:

> In a previous *Request For Adjournment* it was mentioned that we are, on the farm, in *calving season* and as such two (2) heifers, (1st time calving for both), were due to calve on June 9, 2003.
>
> As of this morning, (9:20 a.m.), neither of the two, expectant, heifers has calved although the preliminary labour physical manifestations have commenced. Calving is expected within the next 24-36 hour period.
>
> I, personally, must attend to the care and health of both heifers. Calving period is an extremely "sensitive" time for the new Moms to be, especially since it will be the first calve for both heifers.
>
> There are no other persons capable of *filling in for me* and my duties.

[8] Mr. Hubley did not attend the hearing on June 13, 2003, but was represented by Kelly Richards-Arubé, who appeared for the sole purpose of seeking an adjournment. The Adjudicator denied Mr. Hubley's preliminary motion to adjourn, and cited the following two reasons:

> a. The Defence filed on April 4, 2003 requested a daytime hearing and that request had been met by the Small Claims Court; and
>
> b. That a delay of 5½ months to accommodate the Defendants/Appellants business was unreasonable. The Defendant/Appellant had months to find a temporary helper or replacement and that this business was no different than many other businesses. It was noted that calves are born on many farms and that there are many possible areas of assistance for 4-5 hours on any given day available to the Defendant/Appellant.

[9] Mr. Bob Bradstock, of All Credit Solutions Inc., appeared on behalf of Slipp Nissan. He argued that a delay until September 2003 would prejudice Slipp Nissan because there was a risk that Mr. Hubley would dispose of or lose all of the assets required to satisfy the claim:

> [T]here could be a sale of the farm or the truck or assets with resulting loss of ability to perfect any claim in this matter.

[10] After hearing Slipp Nissan's submissions and reviewing its evidence, the Adjudicator granted an order for Mr. Hubley to pay $9,576.50 to Slipp Nissan.

[11] Mr. Hubley now appeals the Adjudicator's decision to refuse his request for adjournment. He argues that, given the circumstances, the Adjudicator's decision was an error of law or a failure to follow the requirements of natural justice, or both.

ISSUES

[12] 1) Whether the Adjudicator's decision to refuse the adjournment was an error of law or a failure to follow the requirements of natural justice, or both?

2) If there was an error of law or failure to follow the requirements of justice, what is the appropriate remedy?

ANALYSIS

Grounds of Appeal

[13] Given that this is an appeal of a Small Claims Court decision, this Court is subject to section 32(1) of the *Small Claims Court Act*, R.S.N.S. 1989, c. 430 as amended (*"Small Claims Court Act*"), which sets out the grounds for appeal:

> 32 (1) A party to proceedings before this Court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of
>
> (a) jurisdictional error;
>
> (b) error of law; or
>
> (c) failure to follow the requirements of natural justice

Standard of Review

[14] In *Moore* v. *Economical Mutual Insurance*, [1999] N.S.J. No. 50 at para. 33 (C.A.), Cromwell J.A. set out the standard of review for adjournment decisions: first, he noted that the presiding judge has the discretion to grant or refuse an adjournment, and, second, that the appellate court should limit its review to determining whether the judge applied a wrong principle of law or whether the decision gave rise to an injustice:

> The decision to grant or refuse an adjournment is within the discretion of the presiding judge. It is a discretion which the judge is particularly well placed to exercise. An appellate court should not substitute its judgment for that of the presiding judge but should limit its review to determining whether the judge applied a wrong principle or the decision gave rise to an injustice.

Principles Applicable to Adjournment Decisions

[15] Taking this scope of review into account, I will now turn to the other principles applicable to adjournment. While the presiding judge or adjudicator has the discretion to grant or to refuse a request for adjournment, he or she must exercise this discretion in accordance with the following principles of law. First, the judge must take the context of the proceedings into account when making an adjournment decision. Second, a decision to grant or to refuse an adjournment

must be grounded in the interests of justice. The presiding judge determines the interests of justice by balancing the interests of the plaintiff with the interests of the defendant, to determine the relative prejudice, of an adjournment decision, to both parties. The aim is to minimize the prejudice, and a judge should be hesitant to exercise his or her discretion in a manner that results in disproportionate prejudice to one party over the other: *Moore* v. *Economical Mutual Insurance*, [1999] N.S.J. No. 50 (C.A.).

[16] With respect, the Adjudicator applied the wrong analysis in determining whether it was in the interests of justice to grant the adjournment. The Adjudicator’s reasons for refusing the adjournment were contained in his letter to the parties dated May 9, 2003. In the letter, the Adjudicator informed both parties that the hearing could be re-scheduled during the months of May or June, 2003, but that “a delay until September, 2003 would be unfair and perhaps prejudicial to Slipp Nissan.” The Adjudicator’s finding that granting the adjournment would result in “unfairness” and “possibility of prejudice” to Slipp Nissan, on its own, was an insufficient reason to refuse Mr. Hubley’s request for adjournment. The Adjudicator should have determined the interests of justice by balancing Mr.

Hubley's interests with Slipp Nissan's interests, to determine the relative prejudice to each party of the adjournment decision.

[17] Given the circumstances before the Adjudicator, it was in the interests of justice to adjourn the hearing. His decision to deny the adjournment resulted in disproportionate prejudice to the Appellant, Mr. Hubley, who was effectively denied the opportunity to attend the hearing to present his defence. This result is contrary to principles of natural justice.

[18] In reaching this decision, I have weighed the relative prejudice to both parties within the context of the proceedings. First, Mr. Hubley's evidence provided reasonable grounds for seeking an adjournment. He was a beef farmer. He gave notice that two of his cows were in labour at the time of the hearing, and required his personal attention. There was no evidence to support the Adjudicator's assertion that it was suitable for another person to attend to the cows. Nor was there evidence that Mr. Hubley, in fact, could have arranged for a qualified person to attend to his farm duties for 4-5 hours on June 13, 2003.

[19] Second, adjourning the matter to September 2003 would have resulted in little prejudice to Slipp Nissan. There was no element of surprise. Mr. Hubley had provided sufficient notice of his desire for an adjournment, and of the anticipated delay (i.e., 4 months).While a delay of 4 months (mid-May, 2003 to mid-September, 2003) was an inconvenience to Slipp Nissan, it was not unreasonable in the circumstances, and was not contrary to the purpose (s. 2) of *Small Claims Court Act* . In his decision, the Adjudicator calculated the delay to be five-and-a half-months. This appears to have been an error.

[20] Even if the hearing was delayed until September, this delay would not prejudice Slipp Nissan's claim. Slipp Nissan's claim was for money. Accordingly, it would be entitled to claim an additional 4-months' interest on this alleged debt.

[21] There was no evidence that granting an adjournment until September would have resulted in the Defendant being less likely to satisfy Slipp Nissan's claim.

DISPOSITION

[22] In summary, the prejudice to Mr. Hubley in being denied the opportunity to present his defence significantly outweighed the inconvenience of delay to Slipp Nissan. Mr. Hubley provided a reasonable excuse for requesting the adjournment, which was not contradicted by evidence before the Court. Mr. Hubley gave sufficient notice to the Small Claims Court and to Slipp Nissan. Slipp Nissan's alleged account would continue to accrue interest during the period of adjournment. The proposed delay was only 4 months. There was no evidence that granting an adjournment until September would have resulted in the Defendant being less likely to satisfy Slipp Nissan's claim should they have been successful at trial. Given these circumstances, it was in the interests of justice for the Adjudicator to grant an adjournment. Failure to do so was an error of law and was contrary to the principles of natural justice. Accordingly, I am setting aside the Adjudicator's decision and ordering a new hearing of the matter.

J.