

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: 265 Commercial Street Ltd. v. C. Aucoin Construction Ltd. and
ING Insurance Company of Canada, 2003, NSSC 043

Date: 20030220

Docket: SN No. 191038

Registry: Sydney

Between:

265 Commercial Street Ltd.

Appellant

v.

C. Aucoin Construction Ltd. and ING Insurance Company of Canada

Respondents

Small Claims Court Appeal

Judge: The Honourable Justice Frank Edwards

Heard: February 17, 2003, in Sydney, Nova Scotia

Written Decision: February 20, 2003

Counsel: Lynn Lyle for the Appellant
Lee Anne MacLeod-Archer for the Respondent ING
Insurance Company of Canada

By the Court:

[1] This is an appeal from a decision of a Small Claims Court Adjudicator dated
November 22, 2002.

- [2] The Appellant is the owner of a building which was damaged by fire. The Claimant / Respondent was hired to effect repairs. There is no dispute about the quality of the work done.
- [3] The Insurer issued a cheque for the invoiced amount less HST payable to both the Claimant and Appellant. The Appellant refused to endorse the cheque. The Appellant took the position that it did not hire the Claimant. The Appellant says that the Claimant was hired by the Respondent Insurer and therefore the Insurer should pay the Claimant.
- [4] The Appellant appears to be standing on a question of principle. As a practical matter, the Appellant would not have been out any money. As an HST registrant, the Appellant was eligible to receive an Input Tax Credit for any HST paid to the Claimant. The Insurer offered to pay the Appellant the full amount including HST in return for an indemnity agreement. In other words, the Appellant would have to remit the Input Tax Credit to the Insurer when it was ultimately received. The Appellant would not agree.
- [5] Unfortunately the Learned adjudicator (adjudicator) did not make a finding of who had hired the Claimant contractor. He appears to have been sidetracked by the HST question. Whoever hired the Claimant has to pay him the invoiced amount plus HST. Whether one party or the other can get

reimbursed for the HST it pays to the Claimant is irrelevant. Industry practice is likewise irrelevant. This is a basic question of contract.

[6] Here the Claimant is suing the Appellant. To be successful the Claimant must prove on a balance of probabilities that it was the Appellant who hired him. I am remitting the matter to the Small Claims Court to have that issue determined by a different adjudicator. The appeal is allowed.

Order accordingly.

J.