

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Howard E. Little Excavating Ltd. v. Blair's Custom Metals, 2006 NSSC  
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**Date:** 2006/09/12  
**Docket:** SK 248246  
**Registry:** Kentville

**Between:**

Howard E. Little Excavating Limited

Applicant

v.

Blair's Custom Metals

Respondent

**Judge:** The Honourable Justice Gordon A. Tidman

**Heard:** July 21, 2006, in Kentville, Nova Scotia

**Written Decision:** September 12, 2006

**Counsel:** Robert Stewart, Q.C. for Applicant

**By the Court Orally:**

[1] The Court is prepared to decide the issue on the basis of the briefs that were filed and what was said supplementary to those briefs this morning.

[2] The Respondent, Blair's Custom Metals, brought the original action against Howard Little Excavating Limited in the Small Claims Court in Truro, Colchester County. The action is for the price of supplying metal containers to or at the request of the Appellant. The Appellant defends the action on the basis that the work was unsatisfactory and that it did not request or agree on a price certain for work to be done. The Respondent has its place of business in either Enfield or Elmsdale in the Municipality of East Hants. The Appellant has its place of business in the Municipality of Kings County. The hearing took place in Truro in the Municipality of Colchester County.

[3] At the hearing before a Small Claims Court Adjudicator, James Richards, the Appellant objected to the jurisdiction of the Court to hear the matter. It did so on the basis of Sections 19 of the Small Claims Court Act. Section 19 provides as follows:

The claim before the court shall be commenced in the County in which (a) the cause of action arose, or (b) the defendant, or one of several defendants resides or carries

on business by filing a claim in the form prescribed by the Regulations accompanied by the prescribed fee with the Prothonotary of the Supreme Court in the proper County.

[4] It is common ground that the Appellant does not reside or carry on business in Colchester County, nor did the cause of action arise in Colchester County.

[5] Adjudicator Richards decided that he had jurisdiction. In doing so he noted that the Municipality of East Hants does not have its own Small Claims Court and that all Small Claims Court matters related to the Municipality of East Hants are dealt with by the Small Claims Court in Truro, Colchester County.

[6] The Small Claims Court is a creature of Statute. All of its powers are derived from the provisions of the Statute. It has no inherent jurisdiction as do superior courts in the Province, so that its jurisdiction is limited to what is set out in the provisions of the Act. Nowhere does the Statute provide that a court in a County may hear matters that arose in another County where the defendant does not reside or carry on business. The Legislature of this Province made the jurisdictional determination. Therefore, it is the Province's responsibility to ensure the administrative functions required to give effect to the legislation or to change the legislation if it so wishes. It may be that as a practical matter it is convenient to have East Hants Small Claims Court matters dealt

with in Colchester but, unfortunately, no provision for such is contained in the relevant Legislation.

[7] Consequently, the Court finds that the Small Claims Court Adjudicator, Richards, lacked jurisdiction to hear the matter and I would grant the appeal on that basis. In doing so I have perused cases that have been provided to me including, **InterSupply Limited v Saulnier Pumping Ltd.** (1982), 54 N.S.R. (2d) 181 and **Balcom (Joan ) Sales Inc v Poirier** (1991), 106 N.S.R. (2d) 377. Appeal allowed.

TIDMAN, J