

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General), 2006 NSSC 180

**Date:** 20060517

**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

**Judge:** The Honourable Justice C. Richard Coughlan

**Heard:** May 15, 2006, in Halifax, Nova Scotia

**Decision:** May 17, 2006 (Orally) (Re: Cal Luedee Application)

**Written Release:** June 15, 2006

**Counsel:** George W. MacDonald, Q.C. and Michelle C. Awad, for the  
plaintiff, Cherubini Metal Works Limited  
Michael T. Pugsley, for the defendant, Attorney General of  
Nova Scotia  
Raymond F. Larkin, Q.C., for the defendants, United Steel  
Workers of America and the United Steel Workers of America,  
Local 4122

**Coughlan, J.:** (Orally)

[1] Cherubini Metal Works Limited applies for an order that at the time of his discovery examination on November 8, 2004, Carl Luedee was an officer, director or manager of a party that is a corporation, partnership or association, and part or all of his discovery evidence, as far as admissible under the rules of evidence, may be used by the plaintiff pursuant to Civil Procedure Rule 18.14(1)(b).

[2] The defendants, Union and Local, oppose the application.

[3] Civil Procedure Rule 18.14(1)(b) provides:

At a trial or upon a hearing of an application, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at an examination for discovery, or who received due notice thereof, for any of the following purposes:

....

(b) where the deponent was a party, or an officer, director or manager of a party that is a corporation, partnership or association, for any purpose by an adverse party;

[4] The parties agree the United Steel Workers of America is an “association”.

[5] In dealing with Civil Procedure Rule 18.14(1)(b), Freeman, J.A., in giving the Court of Appeal's decision in *M.A. Hanna Co. v. Sydney Steel Corp.* (1993), 126 N.S.R. (2d) 155, stated at p. 156:

In *Clayton Developments Limited v. Nova Scotia Housing Commission* (1980), 50 N.S.R. (2d) 214; 98 A.P.R. 214 (T.D.), Cowan, C.J.T.D., held that for the deposition of an officer, director or manager to be binding on a corporation as its own admissions, "that person should be in a position to bind the corporation and the relevant time is at the time when the question is asked and the answer is given".

Referring to that case in *Midland Doherty Limited v. Rohrer* (1983), 62 N.S.R. (2d) 73; 136 A.P.R. 73 (T.D.), at p. 75, Hallett, J., as he then was, said:

The basis for the admissibility of a deposition of this sort pursuant to paragraph (b) is that the evidence constitutes an admission against the party or the corporation by a person with some authority.

Former officers, directors or managers of a company lack that authority; their thoughts and intentions, subjective and objective, are no longer those of an alter ego or directing mind of the company. Regardless of their relationship with the company at the time of their departure and following it, such persons are no longer accountable to the company.

[6] The relevant time for determining if a witness at discovery is an officer, director or manager of, in this case, an association is the time of discovery. Mr.

Luedee's discovery was held between November 8 to 16, 2004. Was Mr. Luedee an officer, director or manager between November 8 and 16, 2004?

[7] His duties with the Union during that period are described in the affidavit of Marie Kelly dated May 4, 2006 in paras. 35, 36, 37 and 40, as follows:

35. Mr. Luedee was an Area Coordinator until March 6, 2002. On March 6, 2002 Mr. Luedee went on sick leave.

36. Mr. Luedee returned to work in or around February 16, 2004, on a modified work arrangement, exclusively as an Organizing Staff Representative. He continued in this role at the time of his discovery examination and up to and including his retirement on or around February 28, 2006. During this period Mr. Luedee's duties involved:

- responding to inquiries by non-members inquiring about unionization
- providing information to non-unionized employees regarding the benefits of unionization with the USWA;
- convincing non-unionized employees to join the USWA; and
- under the direction of the District Director and/or the Organizing Coordinator, filing applications for certification on behalf of local unions with the assistance of the Legal Department.

37. During this period Mr. Luedee did not service any existing locals, did not negotiate any collective agreements, did not meet with any government or company officials on behalf of a local union or the USWA.

....

40. While employed as an Organizing Staff Representative, Mr. Luedee had no independent authority to bind the USWA without the express approval of the District Director and/or Organizing Co-ordinator of District 6.

[8] The role of an organizing staff representative is set out in para. 30 of Ms. Kelly's affidavit, as follows:

30. Organizing Staff Representatives respond to requests from non-members who are seeking information with respect to unionization. In the event that there is interest in organizing and signing union cards, the organizing staff representative must have the approval of the Organizing Co-ordinator, or District Director, prior to starting a formal union drive to seek union membership or file a certification application.

[9] The applicant cited the case of *River Road Co-Op Ltd. v. Ultra Maintenance Ltd.*, 164 N.B.R. (2d) 232, a decision of the New Brunswick Court of Queen's Bench, in which the word "officer" is given a broad meaning, much broader than the Nova Scotia test that the officer, director or manager has the authority to bind the corporation or association.

[10] Considering the evidence, I find Cal Luedee, at the time of his discovery evidence, was not an officer, director or manager of the USWA within the meaning of Civil Procedure Rule 18.14(1)(b). The application is dismissed.

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**Coughlan, J.**