

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Stronge v. Athol Forestry Cooperative Ltd., 2004 NSSC 197

Date: 20041006

Docket: S.Am.186391

Registry: Amherst

Between:

Larry V. Stronge

Plaintiff

v.

Athol Forestry Cooperative Limited

Defendant

Judge: The Honourable Justice Arthur W.D. Pickup

Heard: September 8 & 9, 2004, in Amherst, Nova Scotia

Written Decision: October 6, 2004

Counsel: Brian S. Creighton, for the plaintiff
Charles A. Ellis, for the defendant

Pickup, J. :

[1] The Defendant, Athol Forestry Cooperative Limited is a forest cooperative comprised of members who own forest land located primarily in Cumberland County. The Plaintiff, Larry Stronge, is a proprietor of a wood harvesting and trucking business. In 1999 Stronge commenced harvesting for Athol with the use of a skidder and power saw operators. It became apparent to Athol and others engaged in the forest industry that a change from a labour intensive power saw operation to mechanical harvesting was desirable. After discussions with Glynn Speight, a forester, who was in charge of harvesting operations for Athol, Stronge purchased a mechanical harvester in 2000/2001 valued at approximately \$500,000.00 and later a Western Star Log Truck and trailer to transport the harvested wood valued at \$200,000.00.

[2] In the spring of 2002 a problem developed with work that Stronge was carrying out for Athol on the lands of Co-op member Sheila Thompson. As a result the Board through its manager instructed Speight to cease using Stronge's services for harvesting Athol member's lands.

[3] Stronge claims that in discussions they had in 1999, Speight assured him that if he purchased mechanical harvesting equipment there would be sufficient work provided to him by Athol to enable him to pay off the equipment. Athol denies Stronge's claim. Stronge brings action against the Defendant Athol claiming:

- (1) That there was a contract between the parties that Stronge would be employed by Athol until he paid off the purchased equipment.
- (2) In the alternative, there was a relationship of dependency between the Stronge and Athol.
- (3) That Athol made negligent representations.

[4] Athol counterclaimed against Stronge for breach of contract and in negligence for work Stronge carried out on the Sheila Thompson property.

(1) Was there a contract between the parties that Athol would employ Stronge for five years?

[5] In 1999 Stronge was hired to do some trucking of wood for Athol. Stronge was later hired to do some harvesting of wood by power saw and skidder on Athol Co-op members' land.

[6] Stronge testified that during this time he had at least three discussions with Speight about purchasing a mechanical harvester. Athol was interested in increasing its harvesting capacity and was seeking an additional contractor. At the time, it had employed A.K. Goodwin Limited as its main contractor for a number of years. Stronge testified that Speight told him that if he purchased a harvester that he would be given enough work by Athol to allow him to pay off the harvester in five years.

[7] Stronge further testified that Speight told him he could provide six to eight months work a year until the equipment was paid.

[8] Harvesters employed by Athol normally arrange to have their harvested wood trucked to market. Initially Stronge sub-contracted the work out. In December 2000 Speight agreed that if Stronge purchased his own truck and log trailer, Stronge would be guaranteed that he could truck all the wood he harvested for Athol. Stronge agreed to this proposal and in January 2001 he purchased a 2000 Western Star Truck and Log Trailer.

[9] It is clear from the evidence that Speight had the authority to and did in fact engage harvesters on a regular basis for Athol. Speight testified to his authority to do so on behalf of Athol.

[10] Warren Murley the manager of Athol Co-op confirmed that Glynn Speight had the authority to hire harvesters for the Co-op and did so on a regular basis. No one other than Speight engaged harvesters on behalf of Athol.

[11] Stronge testified that based on Speight's promise of work he purchased the new Harvester and later a Truck and Log Trailer.

[12] Stronge testified that he purchased the harvester based on the agreement with Speight that he would be provided sufficient work to allow him to pay off the harvester over a five year period. Speight's evidence is consistent with that of Stronge's as to the promise of work.

[13] Speight testified in response to questions from the Court as follows:

Q. Did you have any specific discussions with Mr. Stronge about keeping him busy until his equipment was paid?

A. That was the intent.

Q. He had to work it five years for sure?

A. Yes.

...

Q. But was there a specific discussion about keeping him working for five years until the equipment was paid?

A. Yes.

Q. Do you recall when that was?

A. It would have been previous to him purchasing the equipment.

[14] I am satisfied on the evidence Speight offered Stronge sufficient work with Athol to keep him busy for five years (the period of amortization of the purchase price of the harvester) provided that Stronge agreed to purchase a mechanical harvester.

[15] Athol argues that Stronge was aware at the time he commenced work with Athol, that the arrangement was based on the availability of work and that the Plaintiff was hired on a job-to-job basis. I am not satisfied that this is supported by the evidence. Even if that were the case Speight's evidence is that there was sufficient work available after the Co-op ceased using Stronge's services. Speight testified that A.K. Goodwin Limited, Athol's long time contractor was kept working full-time and at least three or four months work was available for other contractors. There is no evidence before me to suggest that there would not be

sufficient work for Stronge subsequent to 2002 had the Board of Directors of Athol not terminated his services.

[16] Speight testified that he had a good working relationship with Stronge and described him as a competent harvester. It was the decision of the Board of Directors of Athol to cease using Stronge's services. Warren Murley testified that the reasons the Board ceased using Stronge's services were the lack of work and unsatisfactory work by Stronge on a member's lands.

[17] As to lack of work the testimony of Athol's own witness, Glynn Speight, was that in fact work was available to keep A.K. Goodwin working full-time and as well, to provide three or four months work for other contractors subsequent to the termination of Mr. Stronge's services.

[18] As to Stronge's work on the Sheila Thompson's lands being unsatisfactory, in testimony Glynn Speight accepted full responsibility for the over cut. Speight was clear in his testimony that the over cut on the Thompson lands was a result of Speight's own mapping error and the subsequent inaccurate laying out of the area to be cut.

[19] There was no written contract between Athol and Stronge. However, Stronge testified that Speight offered him enough work to keep him busy for five years provided he agreed to purchase a mechanical harvester.

[20] In *Drysdale v. Sherwin-Williams Canada Inc.* [1999] N.S.J. No. 499 (S.C.) at para. 9 Justice Nathanson speaks of the essential elements of a simple oral contract:

The three essential of a simple oral contract are said to be: offer, acceptance and consideration. In addition, in circumstances such as the present, it is also necessary that the parties have a mutual intention to create legal relations, and that there is sufficient certainty of terms.

[21] Speight offered Stronge sufficient work to keep him busy for five years if he purchased a mechanical harvester. Later he purchased a truck and trailer, following further discussions with Speight. Speight, on behalf of Athol provided Stronge work consistent with this arrangement until Athol's Board of Directors terminated Stronge's services.

[22] The intention of the parties was clear and the terms of the contract were clear:

1. that Stronge agreed to purchase a mechanical harvester, then a truck and trailer; and
2. that Speight on behalf of Athol offered Stronge enough work with Athol to keep him busy for five years.

[23] The Defendant Athol chose to terminate Mr. Stronge's services despite the promise made to him.

[24] I am satisfied that Speight had authority to contract on behalf of Athol and that in that capacity he entered into an oral contract with Stronge, which the parties acted under until Stronge's termination.

[25] The defendant, Athol acknowledges Speight's authority to contract on its behalf and acknowledges Speight made a contract in that capacity with Stronge. It suggests however that the agreement was limited to a job-by-job commitment. I am not satisfied on the evidence that this is the case. There is no evidence before me to suggest that there was not sufficient work available for Stronge subsequent to his termination by the Board of Directors. The promise by Speight to Stronge was clear.

[26] Athol has breached the contract between the parties, as a result I find for the plaintiff.

[27] Having so decided I need not consider the issues of negligent misrepresentation and whether there was a relationship of dependency between the parties.

[28] The plaintiff has counterclaimed for what it alleges was a breach of contract and in negligence in the way the work was completed by Stronge on Sheila Thompson lands. This is not supported by the evidence. The evidence of Speight, Athol's own witness, is that he was solely responsible for the over cut on the Thompson lands.

[29] I will hear the parties as to costs. In the event that the parties cannot reach agreement on the quantum of damages this matter will proceed to trial for an assessment of damages.

Pickup, J.