

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Wheelers' Refrigerated Transport Ltd. v. White Star Plastic,  
2006 NSSM 51

Between:

**WHEELER'S REFRIGERATED TRANSPORT LTD.**

**CLAIMANT**

-and -

**WHITE STAR 1C1 POLYMER MANAGEMENT & PLASTIC RECYLING  
SERVICES (WHITE STAR PLASTIC)**

**DEFENDANT**

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**DECISION AND ORDER**

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Adjudicator: David T.R. Parker

Heard: January 17, 2006

Decision: February 9, 2006

Counsel: The Claimant appeared and was represented by Bruce Mosher

The Defendant appeared and was represented by Winston Cole and  
Steve Cole

Mr. Mosher presented a number of invoices and purchase orders to this Court. The purchase orders were on the letterhead of White Star Plastics Inc. The invoices were from Wheeler's Refrigerated Transport Ltd.

On the purchase orders, the Vendor is named as Uponor Wirsho Manufacturing of

Saint John, New Brunswick and under the heading "Ship To" is the name White Star Plastics.

The purchase orders that I have before this Court are virtually the same except the date of shipping changes. Each purchase order is to the attention of Brad in Shipping, to Winston Cole and to Steve Cole. They all indicate "shipped via Wheeler Transport".

Purchase Order 44811 (Exhibit C-1, page 2) has Steve Cole's signature under the heading "Approval".

Purchase Order No 4481m has the initials of Winston Cole and the notation "Rec'd April.....". (Exhibit C-1, page 4)

Purchase Order 4481q has Brad's signature and Winston Cole's initials. (Exhibit C-1, page 6)

Purchase Order 4481r has Steve Cole's signature and Brad's signature. (Exhibit C-1, page 8)

The last purchase order submitted by Mr. Mosher is not legible as to its invoice number and as to any signature. The amount of the shipment and the shipping date and to whose attention are legible and it has a notation of "Rec'd" and part of Winston Cole's initials.

Each of the invoices reflects the amount of \$745.00 plus Tax for a total of \$908.16. One of the invoices contains a partial tax amount.

The admission into evidence of the purchase orders and invoices by the Claimant's representative was not objected to by the Defendant and its representatives confirmed their initials and/or signatures on same.

Winston Cole advised the Court that the proper name of the Defendant was N.W. Cole Associate Appraisers Limited and that White Star Plastics was a trade name. He also said there was no proof of delivery and that he could not say whether they have or have not received the goods. The Defendant, through Winston Cole, admitted that his initials were on at least two purchase orders. He told the Court that his company would take leftover materials from Uponor Wirsho

Manufacturing and others as these companies had disposed of the material.

The purchase orders seem to be filled out by the shipper and I say this because they note the approximate quantity shipped and ask the consignee to confirm delivery, and also to forward inventory when picked up. It also notes on the purchase order that the material is being shipped via Wheeler's Transport. Under "Notes/Remarks" on the purchase orders it states that "HD pipe being picked up from Uponor Wirsho and delivered to White Star Plastics at 63 Lively Road, Middle Sackville".

I believe Cole's company, whether it be White Star Plastics Inc. or N. W. Cole Associates Appraisers Ltd., received the pipe. The problem is the claim is not supported except through photocopies of various documents already referred to in this decision. The Claimant called no witnesses and the Defendant's representatives would not admit to receiving the goods.

However, even if the Defendant did receive the goods, was there a contract between the Claimant and Defendant to pay for those goods?

There is no evidence that I have to show there was a contract between the Claimant and Defendant. There is no indication on the purchase order that the Defendant was to pay for the goods or the carriage of the goods.

In the case *Sanborn's Motor Express Inc. v R. E. Newell Fisheries Ltd.* [1979] N.S.R. No. 60, the court permitted evidence on practices in road transportation and documentation in Nova Scotia. In that particular case, the witness that gave evidence said:

*"...the bill of lading evidenced the contract of carriage between the shipper and the carrier. ....F.O.B. Destination [meant] a prepaid freight shipment. It is not unusual to have 'freight collect' shipment which meant the consignee paid the freight charges. The custom is that if the consignee does not pay the freight, the carrier has recourse to the shipper, unless there is a written waiver of claim."*

Another witness in the transport consulting services business also provided that court with opinion evidence. The witness described the bill of lading as a direction rather than a contract. Namely, the person doing the shipping prepares the bill of lading but it is primarily the responsibility of the carrier to prepare the document. The general practice is that the person wanting the goods moved makes out the bill

of lading. "F.O.B. Destination" meant to him that someone was going to pay for the freight after it reached its destination. The manner in which bills of lading in this case were prepared did not indicate to him who was to be responsible for paying the freight. His opinion was the carrier must look for payment to the party with whom he made the original arrangements for carriage.

I cannot take opinion evidence from another case and import it as evidence in this case. However, the general principles of law do apply in this case as well. What evidence is there that the Defendant is contractually bound to pay for these goods? There is none. Even if the purchase orders were properly admitted into evidence, which they were not as no one for the Claimant Company and the shipping company gave testimony, there is no indication that the Defendant had contracted with the Claimant. For all these reasons the claim is dismissed.

IT IS HEREBY ORDERED that the Claim against the Defendant be dismissed with no Order as to costs.

Dated at Halifax, this 9th day of February, A.D., 2006.

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David T.R. Parker  
Adjudicator of the Small Claims  
Court of Nova Scotia