

Claim No: 289782

Date:20080409

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

**Cite as: Conrod v. Abbott, 2008 NSSM 58**

**BETWEEN:**

Name Rickey Conrod Claimant

Name Adriane Abbott Defendant

REVISED DECISION: The text of the original decision has been revised to remove addresses and phone numbers of the parties on September 23, 2008

**DECISION**

**NATURE OF CLAIM**

- (1) The Claimant, Rickey Conrod (Conrod), claims the sum of \$5,600.00 from the Defendant, Adriane Abbott (Abbott).
- (2) The reason for the claim is given as “payment of GST on equipment that was sold”.
- (3) Abbott did not file a Defence in this proceeding. At the hearing, she stated that the basis of her defence was that she had no knowledge that Conrod was acting as a business in regards to the transaction and, further, that it was not her responsibility to collect and remit the Harmonized Sales Tax (HST).
- (4) Despite the failure by Abbott to file a Defence, Conrod did not request an adjournment of the hearing and the matter proceeded on the hearing date.
- (5) Prior to proceeding, the hearsay evidence rule was explained to both parties. Neither of them sought an adjournment to bring in other witnesses.

- (6) The Court heard the sworn testimony of both Conrod and Abbott. Both parties were advised of their right to cross-examination, which was exercised by Conrod and waived by Abbott.
- (7) Both parties provided oral submissions to the Court.

### **THE EVIDENCE**

- (8) Conrod testified that he was contacted by David Johnson (Johnson), Abbott's boyfriend, about purchasing an excavator, dump truck, and trailer and that a price of \$40,000.00 was settled upon.
- (9) On July 28, 2006, Johnson and Abbott came to Conrod's home and, at that time, Abbott provided a \$40,000.00 cheque to Conrod and three receipts were issued to "Adriane Abbott" in amounts totalling \$40,000.00 for purchase of the excavator, dump truck, and trailer.
- (10) Conrod testified that there was a conversation during that meeting to the effect that Johnson would be responsible for payment of any applicable taxes.
- (11) Conrod stated in his evidence that he was unaware that he was obligated to collect and remit HST with respect to this transaction.
- (12) In July 2007, Conrod received notice that he was being audited by Canada Customs and Revenue Agency, and that he had been advised to collect the tax "in order to make it a legal sale".
- (13) Based on his communications with Peggy Goulden (Goulden), a representative of Canada Customs and Revenue Agency, he prepared an invoice and forwarded same to Johnson. The invoice in question was tendered into evidence and is dated September 9, 2007, and is directed to "David Johnson, All Needs Excavating" showing the amounts paid for the excavator, dump truck, and trailer and stating in part, "HST was not collected on sale of equipment. Amount due to be collected \$5600.00".

- (14) Conrod states that he subsequently received a letter from Abbott denying any responsibility. This letter is dated September 19, 2007, and stated in essence that Abbott was entitled to assume that the funds paid included any HST owing at the time of the sale.
- (15) Following this, Conrod filed a Notice of Claim on December 19, 2007, claiming the amount of \$5,600.00 from Abbott.
- (16) Abbott testified that she resides with Johnson. Johnson was a mechanic but was looking for another career. Johnson discussed with Abbott that Conrod was selling some equipment and Abbott suggested to him that he call Conrod to see if he could arrange to purchase same.
- (17) After Johnson advised her that a \$40,000.00 price had been agreed to, Abbott obtained a bank loan using her own building lot as collateral.
- (18) Following advice she had received, she wanted the equipment to be put into her name as she and Johnson had not been cohabiting for a great length of time and, at the time, Johnson was separated but not yet divorced. Accordingly, it was discussed between Abbott and Johnson that the chattels would be purchased by Abbott and leased to a business to be operated by Johnson. The name of the business was "All Needs Excavating". Johnson is the sole proprietor of All Needs Excavating and Abbott leases the equipment to him.
- (19) Abbott stated that she would not have purchased the equipment if the total cost was greater than \$40,000.00.
- (20) Abbott acknowledges a conversation between herself, Johnson, and Conrod in Conrod's home on July 28, 2006, about the issue of taxes, and it is her recollection of the conversation that Johnson agreed at that time to pay the sales tax necessary to register the vehicle. She tendered exhibits confirming that Johnson did pay sales tax and gave unrefuted evidence that Johnson paid the sales tax.
- (21) Abbott testified that Conrod made no reference to being in a business at that time. I accept her evidence that the funds were made payable to Conrod personally.
- (22) No invoice was provided at the time of the sale of the equipment and there was no documentation other than the receipts referred to earlier.
- (23) No reference was made to an HST registration number on the receipts.

- (24) Abbott next heard from Conrod when he contacted Johnson in the summer of 2007 advising that he had been audited. He had submitted an invoice to her for HST he claimed was due and owing from this transaction.
- (25) Abbott then wrote to Goulden on August 9, 2007. The letter stated in part as follows:

“The land that is collateral for this gear is my only asset, and although separated for six years, my partner Dave is not yet divorced from his wife. I was advised by both my lawyer and our accountant to buy the truck and keep it in my name. So to begin with, All Needs Excavating did not buy the dump truck, excavator and trailer from Rickey, I did. As a routine, I do not receive my personal cheques back from the bank, but I attach my statement (see ‘A’) so that you can see it came from my personal account via certified cheque and if you require me to go to the bank to retrieve the cheque, I’m happy to do so and assume it’s possible.

I made the cheque payable to Rickey Conrad (sic) and as far as I know, I bought this equipment from him, an individual, who told me if I paid him \$40,000 I could have the gear. The only receipts I received from Rickey are copied and provided (B). He gave these receipts to me after I gave him the cheque. I never received an invoice from him, company or otherwise and I have nothing from him with a company hst # on it. There was no discussion about this being a sale through a business.

The only conversation we had about tax that night was one where my partner said he would pay the tax that would be owing on the dump truck and trailer when we went to the Registry of Motor Vehicles to transfer ownership, which we did (C). I would never have considered this conversation to be a conversation about hst owing. The tax you and Rickey are now asking about is a tax that a vendor levies and collects.”

“I am also enclosing my partner’s acceptance for Goods and Services collection with his business number (D) so that you can look up his file up (sic) to be assured that he never claimed any aspect of this purchase through his company.

I have also enclosed the front page of the Lease agreement (E) I hold with my partner for this equipment. If it has relevance, I can fax you all 6 pages.

In a nutshell, I am of the impression that I bought this gear directly from Rickey Conrad (sic). He told me that the total owing was \$40,000, and I paid it.”

“Frankly, if this was a business sale, and as my total owing was \$40,000 then I assume Rickey charged me tax on all three pieces of equipment and I have already paid it. No invoice of any kind was ever produced. I can’t believe he can call me, a year after the transaction and then manufacture one.”

- (26) Abbott introduced into evidence a booklet which she obtained from Canada Revenue Agency, “General Information for GST/HST Registrants” and referred to various portions of the booklet which she believed were relevant, including reference to an obligation upon HST registrants to advise their customers if HST is being applied to their purchases and, further, a reference to an obligation upon HST registrants to give customers who are also HST registrants specific information on the invoices, receipts, contracts, or other business papers to allow them to substantiate their claims for Input Tax Credits (ITC’s) or rebates for the HST charged.

## **ANALYSIS**

- (27) At the time of the sale, Conrod did not provide an invoice to Abbott showing his HST registration number or confirming whether HST was being collected.
- (28) Conrod stated that he was not aware that he had to collect HST on the transaction, although he admitted that he paid HST when he purchased the equipment. He tried to rationalize this apparent contradiction by saying that although he had a business, the business name was not registered. I do not accept his explanation that he believed that this would preclude him from being obliged to collect and remit HST upon the sale of this equipment. He freely acknowledged that he used the equipment in his business.
- (29) Abbott was not prepared to pay any more than \$40,000.00 for the equipment and Conrod understood that he had a ready buyer at that price.

- (30) There is no credible evidence however supporting an Agreement that the \$40,000.00 price was exclusive of HST.

**SUMMARY**

- (31) The legal issue is the interpretation of a verbal contract, specifically, whether the \$40,000.00 purchase price was exclusive of HST or not.
- (32) Based on the above analysis, I conclude that the \$40,000.00 purchase price was not exclusive of HST.
- (33) I do not accept that Conrod was unaware of his obligation to collect and remit HST on the sale of this equipment.
- (34) Abbott agreed to be responsible for the payment of the sales tax, and the unrefuted evidence is that Johnson in fact did pay the sales tax.
- (35) It was not until he was audited by Canada Customs and Revenue Agency that Conrod attempted to collect HST from Johnson in regards to the transaction.
- (36) Based on the evidence provided, I am unable to conclude that Abbott agreed to pay \$40,000.00 plus HST for the equipment, and I find therefore that the \$40,000.00 purchase price included HST.
- (37) For these reasons, the claim is dismissed.

Dated at Dartmouth, Nova Scotia,  
on April 9, 2008.

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Patrick L. Casey, Q.C., Adjudicator

