

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: Lantz v. Grand Lodge of Nova Scotia Ancient Free and Accepted
Masons, 2010 NSSM 69

Between:

William James Lantz

Claimant

and –

Grand Lodge of Nova Scotia Ancient Free and Accepted
Masons

First Defendant

-and-

Roy Lively

Second Defendant

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: October 19, 2010

Decision: December 27, 2010

Counsel: The Claimant was self represented

The Defendant was represented by Counsel, **Blair Mitchell**

Parker:- this matter came before the Small Claims Court in Halifax, Nova Scotia on October 19, 2010.

This is a claim for breach of contract. The claim was originally commenced against Grand Lodge of Nova Scotia Free and Accepted Masons (" the Grand Lodge") as first defendant and Roy Lively as a second defendant. The claimant subsequently amended the claim and dropped Roy Lively from the action. The claimant at trial made it crystal clear that Mr. Lively should not be a defendant in this action and was solely looking for compensation from Grand Lodge.

The evidence shows that Philip King was involved in setting up the meetings through his father's assistance, his father being a Mason, with Mr. Roy Lively also a Mason. The idea that was formulated between the claimant and Roy Lively was that the claimant would sell trees at the claimant's Christmas tree lot. Mr. Lively however told the claimant that they wanted to sell them from a lot where the Masons were located. The claimant did not see this as a viable selling lot but said he would sell the trees from their provided he had 250 pre-sold trees guaranteed. The discussions the claimant had regarding the terms of the agreement were with Philip King who in Mr. King's words was the goal between person.

These trees were within a certain height range and the claimant referred to them as "Mason trees". For every tree sold the claimant would donate five dollars to a charity and the Masons would donate five dollars. Trees that were shorter and taller than the Mason trees and which were sold by the claimant would result in 10% going to a charity. During the time the claimant was setting up on the Masons' tree lot, he was requested to sell some of the trees from another lot being a schoolyard. The claimant did this reluctantly as he did not believe these were good lots from which to sell his trees. At the end of the day he ended up selling 30 Mason trees and a few of the other trees. The claimant submitted his bill to Roy Lively who subsequently paid the claimant by personal cheque for some of the claimant's bill.

The claimant tried to get paid by contacting Mr. Lively, Mr. Philip King, Reno Favretto Grand Master of the Masons and eventually started this action against Grand Lodge and Roy Lively. As stated earlier, Mr. Lively was discontinued as a party to this action by the claimant.

On January 15, 2010 prior to the commencement of this action Roy Lively On Behalf of the Trees for Kids Masonic sent the claimant \$1222.90 plus the promise of a \$516.00 tax receipt as their "net remittance" for the trees. Mr. Lively's remittance is a result of the claimant's letter and invoice. Mr. Lively's letter starts off by saying; "thank you for your letter and invoice in regards to the Christmas tree project (Trees for Kids) by local Freemasons." Mr. Lively goes on to justify the remittance in terms of paying a guarantee wholesale price for the number of trees for which the Trees for Kids Masonic was responsible.

Analysis:

The problem with the claimant's claim is twofold. The terms of any agreement between the parties are in dispute. It is unclear what the terms actually were as Mr. Lively is saying one thing and the claimant is saying quite another. It is also unclear with whom the claimant had an agreement. The claimant suggests that Mr. Lively was the actual or ostensible agent of the Masons. The question I am left with is; who are the Masons? Are they a group of individuals, a society, or a company? Certainly the claimant has not clarified this. During the trial we heard from a representative of the defendant to explain it was an administrative body for Masons and had nothing to do with any agreement with the defendant. He also indicated the defendant leases property where the trees were sold from a company of the Freemasons. We also have letters from the claimant to Freemasons Society, Freemasons Society NS Grand Lodge of Nova Scotia and also from Roy Lively on behalf of The Trees for Kids Masonic Project. Which one of these did the claimant contract? The claimant in his written arguments stating clearly that Roy Lively acted with the apparent authority to enter into a contract on behalf of the Masons. Again I asked the question; when who are the Masons? It is simply impossible to tell which entity

if any should be the defendant in this case. Further Philip King according to the claimant did much if not all the negotiations with the claimant and "the Masons" and yet he was not considered an agent by the claimant. Therefore the only reasonable conclusion is there is no valid contract or it is voidable if there was one between the claimant and the defendant in this action.

It is therefore ordered that the claim against the defendant be dismissed with no order as to costs. The claim against Roy Lively is discontinued