

Claim No. SCCH 312957

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Irving Oil Marketing Ltd. v. Palmer Refrigeration Inc., 2010 NSSM 17

BETWEEN:

IRVING OIL MARKETING LIMITED

Claimant

- and -

PALMER REFRIGERATION INC.

Defendant

Claim No. SCCH 316684

PALMER REFRIGERATION INC.

Claimant

- and -

HIGH PERFORMANCE ENERGY SYSTEMS INC.

Defendant

ORDER

Adjudicator: David T.R. Parker

Heard:

Counsel:

**Noelle England represented Irving Oil Marketing Limited
Kent Noseworthy represented Palmer Refrigeration Inc.
David Stewart represented the Company High Performance Energy Systems Inc.**

The Claim of Irving Oil Marketing Limited (“Irving”) against Palmer Refrigeration Inc. (“Palmer”) was commenced in the Supreme Court of Nova Scotia as an action for damages under \$100,000 pursuant to Rule 57. The Defendant Palmer subsequently elected to have the proceedings adjudicated in the Small Claims Court. The second action was subsequently commenced by Palmer against High Performance Energy Systems Inc. (“HPES”) in the Small Claims Court and pursuant to Section 25 of the Small Claims Court Act and with the consent of the parties both actions were heard together.

SECTION 25

“Joinder of hearing of claims

25 Where an adjudicator is satisfied that there are two or more claims before the adjudicator which would be best dealt with together, the adjudicator may in his discretion hear the claims at the same time. *R.S., c. 430, s. 25.* “

Pleadings in Claim 312957

The Claim by Irving was that Palmer owes money to Irving resulting from unpaid invoices for ULS Premium Diesel fuel.

The Defendant Palmer’s position was that the contract was for diesel fuel delivered to the Waterton Condo Project was at the request of and on the account of High Performance Energy Systems Inc. “HPES”. All fuel deliveries were signed for by employees of HPES and payments on the account were by way of HPES cheques. Palmer stated that it contacted Irving a number of times when receiving billing statements to advise Irving that Palmer was not liable for these fuel deliveries and would not be paying the bills and in spite of this Irving continued to make fuel deliveries to HPES.

Pleadings in Claim 316084

The Claimant Palmer in this action is cross-claiming against HPES for the amount in the Irving Claim #312957. In the pleadings Palmer stated it was hired as a sub-contractor for HPES and that any diesel fuel supplied to the Waterton Project on the Irving Account as detailed in Irving Claim #312957 was at the request and for the sole benefit of HPES and not Palmer. Therefore HPES is liable for any debts incurred and owing to Irving and Palmer seeks indemnification from HPES for any monies owed Irving.

The Defendant HPES did not file a defence.

Prior to commencing the proceeding the parties in both actions were asked if there were any questions about the procedures that would be followed in the Small Claims Court action and if there were any motions either party would like to make. There were no questions or motions by any of the parties. The parties were then asked if any of the parties wished to amend their pleadings in any of the actions and there were no requests.

At this point in the proceedings I went through the pleadings and Palmer and Irving confirmed their claims and defence. David Steward represented HPES and was advised HPES did not file a defence and did HPES have a defence to Palmer's claim. His response to the Court was that it paid Palmer a great deal of money and should not owe it any more monies.

Facts

Palmer applied for a commercial account with Irving in January 2008. Palmer made the credit application for business reasons. Credit was extended to Palmer and fuel was delivered to two different sites by Irving.

The fuel was used by HPES in projects it had with the Halifax Regional Municipality.

Some payments for the fuel were made by James Bardsley an officer of Palmer and some payments were made by HPES. James Bardsley was reimbursed for his Visa payments by HPES.

All invoices by Irving were to the account of Palmer.

Fuel deliveries were purchased on the account for several months commencing January 14, 2008, and ceasing in November of 2008.

In March 2009 the bookkeeper at HPES requested Irving seek payment from HPES and that statements be issued in the name of HPES. This request was followed by a written request, undated and on the letterhead of HPES and signed by James Bardsley, President.

Irving in correspondence dated April 7, 2009 demanded payment from Palmer of all outstanding invoices.

Analysis

There was an agreement between Palmer and Irving. At the time James Bardsley was associated both with Palmer and HPES and he was aware that Palmer would be able to obtain credit where HPES was unlikely to obtain same. Also Palmer would be able to get a better rate than HPES. Irving believed it was doing business with Palmer and while others paid on that account, i.e. James Bardsley with his Visa and HPES with cheques made payable to Irving, Irving relied on its agreement with Palmer. The witness from Irving indicated it was not unusual for others to make payment for those with whom Irving had contracted. There is no clear evidence that Palmer made Irving aware that it was acting as agent for a principal nor is there sufficient evidence to convince me that Irving made the assumption that Palmer was an agent. Therefore Irving will succeed in its claim against Palmer.

With respect to the second action it is also clear that Palmer was acting for HPES in obtaining credit from Irving so that it could complete its job at the two different sites. While the principle of HPES made it clear that they had paid a large sum of money to Palmer or James Bardsley it also made it clear that they would reimburse James Bardsley personally for payments made for the fuel and that they would pay for the fuel that they receive from Irving notwithstanding Palmer had the contract with Irving. Therefore Palmer will succeed in its action against HPES.

IT IS THEREFORE ORDERED THAT in Claim SCCH #312957 the Defendant Palmer Refrigeration Inc. shall pay the Claimant Irving Oil Marketing Limited the following sums:

\$20,995.25
294.41 Costs
70.00 Costs
196.16 Costs
<u>20.25 Costs</u>
\$21,576.07

IT IS FURTHER ORDERED THAT in Claim SCCH #316684 the Defendant High Performance Energy Systems Inc. pay the Claimant Palmer Refrigeration Inc. the following sums:

\$20,995.25
<u>179.36 Costs</u>
\$21,174.61

Dated at Halifax, this 25 day of February, 2010.

David T.R. Parker,
Small Claims Court Adjudicator