

SCCH 355480

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: **Shree Ganesh Ltd. v. Perks Coffee, 2011 NSSM 70**

BETWEEN

Shree Ganesh Ltd.

CLAIMANT

-and-

Mark Cullen [doing business as Perks Coffee] and Perks Coffee Limited
DEFENDANT

Heard: November 3, 2011
Decision: November 4, 2011

Adjudicator: David TR Parker

ORDER

This case came before the Small Claims Court on November 3, 2011.

This matter came before the Small Claims Court by way of an application for Quick Judgment against Perks Coffee Limited as the company had not filed a defence. Mark Cullen had entered a defence so the application was only against the company. A Quick Judgment was not granted at the time as there was no supporting documentation. The matter then came forward again on November 3, 2011 at which time the claimant's representative Rajesh Popat appeared and the defendant Mark Cullen appeared. There was no representation by Perks Coffee Limited.

The claimant's evidence was that it supplied goods to various store outlets in the Halifax regional municipality known as Perks Coffee. The testimony of the claimant was that he was contacted by Mr. Cullen who advised the claimant that he was operating a number of coffee stores and was interested in the claimant's product for those stores. E-mails between the claimant and defendant Mark Cullen indicated that it was the defendant with whom the claimant was dealing. For example prior to ordering the defendant Mark Cullen wrote from his e-mail address mcullen@perkscoffee.ca the following:

"I see that you supply Presto Pasta with year samosas. I was looking for some samples of your samosas and pakoras with pricing. I currently use Staff of life product but find them inconsistent and a little large for some of my customers. I like what I see in the showcase at Presta Pasta and would consider selling yours if the quality and pricing is good. I currently sell them in all of my five locations" the e-mail was from Mark Cullen and under his name was the name *Perks Coffee*.

The claimant met with Mr. Cullen and family members and as indicated in his e-mails and also in the testimony of the claimant, Mr. Cullen was operating a family-owned business with family members.

The claimant supplied goods for Mark Cullen over a two month period but did not get paid. Eventually the claimant was supplied with a Cheque from Perks Coffee Limited but this cheque was dishonored. This was the first time the claimant was aware that he was dealing with a limited liability company. He told the court that he would have gone in a different direction if he knew he was dealing with a limited company.

Mr. Cullen in his testimony said that he never told the claimant he was not working for a limited company. He also advised the court he was an employee of Perks Coffee Limited owned by family members. There was no supporting documentation to say he was an employee and more importantly he held himself out as the person with whom the claimant was contracting. All the elements of contract existed between Mark Cullen and the claimant. There was no contract with Perks Coffee Limited and the claimant. The claimant will succeed in its claim against Mark Cullen as that is who it had the contract with. The invoices support this, the testimony of both parties supports this and the e-mails and documentary evidence supports this contractual relationship. There was no mistake in the contractual sense of who the parties were in this contract.

It Is Therefore Ordered that the claim against Perks Coffee Limited be dismissed and that the defendant Mark Cullen pay the claimant the following sums:

\$2446.40
\$ 275.47 costs
\$2721.97 total

Dated at Halifax this 4 day of November 2011