

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

Citation: *Nadolny v. Niagara Varsity Football Club Inc.*, 2017 NSSM 98

Claim No: SCCH 458892

**BETWEEN:**

Tyler Nadolny

**Claimant**

-and –

Niagara Varsity Football Club Inc.

**Defendant**

Tyler Nadolny - Self-Represented.

Raymond Tisi and Kelly Duguay for the Defendant.

***Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.***

**DECISION**

- (1) The Claimant, Tyler Nadolny, operates a sole proprietorship known as “The Motivated Clothing”, where he sells logoed shirts and related items on-line. Some of the articles have team logos while others have motivational sayings. Mr. Nadolny is a former member of the Mount Allison Mounties football team and sought an outlet to support youth sports and reach young athletes. This worthwhile objective manifested itself in the form of his clothing business.
- (2) One of Mr. Nadolny’s first customers was the Niagara Spears football club (“the team”), an amateur football organization operated by the Defendant and based in St. Catharine’s, Ontario. Unfortunately for Mr. Nadolny, things did not go as planned

**Jurisdiction and Procedural Issues**

- (3) The Defendant initially raised the issue of jurisdiction of the Nova Scotia courts to hear this matter. However, at the outset of the hearing, they conceded that Nova Scotia is a proper forum and they were prepared to attorn to this jurisdiction. The Defendant’s witnesses gave evidence by telephone conference.

- (4) Ms. Duguay and Mr. Tisi testified the Defendant's proper name is Niagara Varsity Football Club Inc. The Defendant's name and style of cause is amended accordingly.
- (5) The team ordered polo shirts with their logo at a cost of \$22 each for their players. The team's initial order had several shirts where the wrong sizes were sent by the supplier. The Claimant discounted the order by the number that were sized wrong and provided replacements at no additional cost. Put another way, the Claimant took orders for 276 shirts, 34 of them were sized wrong, so he provided a discount of \$748 plus HST and provided replacements at no additional charge to the Defendants.
- (6) The final number of shirts was provided on May 8, 2016 and the anticipated delivery date was May 31. The product arrived late from Mr. Nadolny's supplier, receiving them during the first week of July. He finally received the replacements by July 28.
- (7) There are several payments which were made and cheques replaced. According to Mr. Nadolny, below are the final tallies:
- |                        |                  |
|------------------------|------------------|
| 242 shirts @ \$22 each | \$5324.00        |
| HST (Ontario rate 13%) | <u>\$ 692.12</u> |
| Total                  | \$6016.12        |
- (8) The club sent him a cheque for \$4499.66.
- (9) In addition to logoed polo shirts, Mr. Nadolny sold compression wear to parents and team members on an individual basis. Some of these items remain unpaid.
- (10) In his Notice of Claim, Mr. Nadolny seeks compensation for the compression wear order and his expenses to travel to Ontario to meet with representatives from the team in hopes of saving the business relationship.
- (11) Kelly Duguay testified that the football season for the Niagara Spears runs from the end of May until August 3. The purpose of the polo shirts was to ensure the team wore identical shirts to games and team events. She indicated Mr. Nadolny told her the order would take four weeks and to expect its arrival by the middle of June, 2016.
- (12) Raymond Tisi is the Treasurer of the Defendant. He testified that the compression wear involved arrangements between Mr. Nadolny and the individual parents. Some of those items have not been delivered. The Spears had nothing to do with the shipment. That work was procured by Mr. Nadolny directly with the parents.
- (13) As for the order itself, he found they used only 181 polo shirts. The remaining amount had arrived late and were not taken by the team members.

## Findings

- (14) Having reviewed all of the evidence, I find the initial order was for 276 shirts and 34 of them were sized wrong. As a result, Mr. Nadolny reduced the price by supplying the replacements for free and allowing the teams to keep the wrongly sized shirts. I find the order was delivered late. I find the lateness was acceptable for 181 of the team members. The remaining 61 shirts (or 54 depending on the evidence of the Spears) were part of the order. It is no consequence that the parents did not take them. The shirts were ordered and delivered. The contract was between the team and Mr. Nadolny. Furthermore, I find there is nothing in the contract stipulating time was of the essence. The shirts were late by a few weeks only. That is not sufficient to order a further discount in the order. I find the Claimant has proven liability for the balance of the order, \$1516.46.
- (15) The same cannot be said for the compression wear. This order was addressed through the parents directly. Mr. Nadolny did not require payment up front and he is having difficulty collecting. The team's involvement was to deal with Mr. Nadolny on behalf of the parents to resolve the difficulties with the compression wear. There is no evidence they intentionally or ostensibly assumed liability for the compression wear. I find they did not. This portion of the claim is dismissed.
- (16) Mr. Nadolny seeks compensation for his trip to Ontario to meet with the representatives of the team. This may have been a prudent move, but the decision was a business decision, not legally required under his contract. I cannot conceive of any legal principle which would impose liability on the Defendant for these expenses. I dismiss this portion of the claim.

## Judgment

- (17) I find the Claimant has established liability against the Defendant for \$1516.46.
- (18) I award prejudgment interest of \$60.00. Typically, costs follow the result. Given that Mr. Nadolny was only partially successful, I limit costs to \$75.
- (19) The Claimant, Tyler Nadolny shall have judgment against the Defendant, Niagara Varsity Football Club Inc., for \$1651.46.

Dated at Halifax, NS,  
on September 28, 2017;

---

**Gregg W. Knudsen, Adjudicator**

Original: Court File

Copy:	Claimant(s)
Copy:	Defendant(s)