

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Aldridge v. Hefler Forest Products*, 2023 NSSM 17

Claim: SCAR No. 519249
Registry: Ammapolis Royal

Between:

Charles Aldridge

Claimant

–and–

Hefler Forest Products and Paul Sibley

Defendants

ADJUDICATOR: Andrew S. Nickerson, K.C.

HEARD: February 22, 2023

DECISION: April 11, 2023

The Claimant - self represented
Colin D. Bryson K.C. for the Defendants

DECISION

[1] I wish the parties to know that I have carefully reviewed all of the written material supplied and my notes of the oral evidence. If I do not mention a particular piece of evidence in this decision it is not because I have not considered it, but because I have found it does not directly bear on my decision.

[2] There was no evidence before me that Mr. Sibley at any time was acting in his personal capacity, and at all times was acting in his capacity as President of Hefler Forest Products. I therefore dismiss the claim against Mr. Sibley personally.

EVIDENCE

[3] The Claimant placed an advertisement on Facebook in the summer of 2022 advertising logs for sale at a rate of \$140 per ton. The Claimant testified that he was called by Mr. Sibley. The two subsequently met at the Claimant's log yard. The Claimant's evidence was that Mr. Sibley stated that the price he would pay was \$120 per ton. The Claimant told Mr. Sibley that he wanted \$140 ton. The Claimant denies that he received any pricelist from the Defendant at this meeting, or at any other time. He says that Mr. Sibley said he would get back to him. He says that there was a subsequent telephone conversation whereby Mr. Sibley agreed to pay the hundred and \$40 a ton and wanted the logs cut to 12 foot lengths.

[4] Ultimately the Defendant sent its truck to pick up the logs. There appears to be no dispute that the Defendant received 35.4 tons of logs. The Defendant issued a check in payment for 32.4 tons at a rate of \$90. It appears common ground is that that rate was determined by deducting \$30 per ton for the transportation from a rate of \$120 per ton.

[5] The Claimant testified that there was no deduction for transportation discussed and insists that he should be paid hundred and \$140 per ton.

[6] Mr. Paul Sibley, who is the President of the corporate Defendant, stated that he, in that capacity, called the Claimant because he had received a note from one of his workers that Mr. Aldrich may be interested in selling logs. Mr. Sibley says that at no time did he see the advertisement referenced by the Claimant. He says that he did speak to the Claimant indicating that they discuss cutting the logs to 12 foot lengths, that he would have to attend at the Claimant's facility to verify quality and that the list price was \$120 per ton. He indicated that he was in the Claimant's area 2 to 3 weeks later and visited. He says that the price discussed was \$120 per ton and that he provided the Claimant with the standard pricelist (which is contained in the Defendants exhibits and does state \$120 per ton).

[7] The said pricelist contains the following notation "price/ton DLVD". Mr. Sibley testified that the price on his list is "delivered". He also stated that that was standard in the industry that the price would be as delivered to his facility.

[8] Mr. Sibley says that Mr. Aldridge called and asked him to send a truck. Mr. Sibley gave the driver's number to the seller and afterward the logs were delivered. He testified that \$30 per ton would be deducted for the transportation and that calculation is based on the distance that had to be travelled.

ISSUES AND POSITION OF THE PARTIES

[9] I see two issues that I must resolve:

- what was the agreed price of the logs?
- was transportation to be included?

ANALYSIS

[10] Regrettably, neither of these parties saw fit to clarify the transaction between them in writing. I am left to assess the verbal evidence given to me. The burden of proof lies on the Claimant on the balance of probabilities. This means that the Claimant must satisfy the Court that it be that it is more likely than not that his version is correct, after I have considered, not just his evidence, but the whole of the evidence.

[11] I am satisfied that the Claimant was in fact supplied with the pricelist. I am also satisfied that Mr. Sibley did not agree to pay the \$140 per ton. In my view, based on all of the evidence, I am not satisfied that the Claimant has established that the price agreed was \$140 per ton. Therefore, I conclude that the Claimant should be paid at the rate of \$120 per ton.

[12] However, the issue of the transportation is not the same. I am not satisfied that Mr. Sibley made it clear to the Claimant that there would in fact be a deduction for transportation. I note that Mr. Sibley testified that the payment by the seller for transportation was “standard” in the industry. This suggests that Mr. Sibley was assuming that the standard would apply, but I don’t find anything in his evidence that makes it clear that he brought that to the Claimant’s attention.

[13] Further I am not satisfied that the notation “price/ton DLVD” on the pricelist would have brought to the attention of the Claimant that there was to be a deduction for transportation.

[14] As a result, I am not prepared to agree that the transportation costs should be deducted in this case. This is an assertion made by the Defendant, and therefore the burden is on the Defendant to establish on the balance of probabilities the

transportation was included. I am not satisfied that the Defendant has met that burden.

[15] In the result, I will not allow the Claimant's claim based on the difference between \$140 per ton and \$120 per ton. However, I believe that the Claimant should be paid an additional \$30 per ton that was charged for transportation. I award \$972.00 (32.4x \$30) to the Claimant.

[16] This case illustrates the problems that parties can get into when they don't clearly define their agreement in writing. The problem here is that both parties seem to have made assumptions about what they thought the terms were. Both parties are at fault by not clarifying these terms.

[17] Given that there has been divided success I decline to award costs.

Dated at Annapolis Royal this 11th day of April, 2023.

Andrew S. Nickerson K.C., Adjudicator