IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as Kent Homes v. Balcom, 2005 NSSM 6

BETWEEN:

KENT HOMES, A Division of J. D. Irving Limited

Claimant

-and-

BYRON BALCOM, ANDERSONSINCLAIR,
Barristers and Solicitors and HALLMARK HOMES LIMITED

Defendants

INTERLOCUTORY DECISION AND ORDER (PLEADINGS)

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[1] The Claimant has applied for an Order directing the Defendants, Byron Balcom and AndersonSinclair, Barristers and Solicitors ("Balcom and AndersonSinclair", to particularize their Defence.

[2] In a Defence/Counterclaim dated July 21, 2005, Balcom and AndersonSinclair pleaded only that: "I dispute the claim". In addition, Balcom and AndersonSinclair have counterclaimed for general damages from the Claimant in the sum of $100.00.

[3] In a written submission dated October 21st, Balcom and AndersonSinclair argued that they were not obligated to file and serve any form of Defence/Counterclaim beyond a general denial. They then went on to file an Amended Statement of Defence which simply denies all of the Claimant's various and very specific allegations. I disagree with the general argument offer by Balcom and AndersonSinclair, with respect to the pleading obligations in the Small Claims Court. I also reject the sufficiency of those Defendants' Amended Statement of Defence. It merely repeats and denies the Claimants' various and very specific allegations. It does not respond to them.

[4] Accordingly, the pleading by Balcom and AndersonSinclair remains insufficient. Those

Defendants are required to particularize their reasons and their bases for disputing the Claimant's claim in a properly drafted, filed and served Defence/Counterclaim. Their properly drafted Defence/Counterclaim will be filed with the Court, served on the Claimant and delivered to me not later than noon on Wednesday, October 26th. Service on the Claimant's counsel and delivery to me via facsimile will be acceptable.

[5] Just as Civil Procedure 1.03 generally governs proceedings in the Supreme Court of Nova Scotia, Section 2 of the *Small Claims Court Act* has been held to generally govern all proceedings in the Small Claims Court of Nova Scotia.

[6] Balcom and AndersonSinclair rely on Section 2 of the *Small Claims Court Act*. The Section provides that:

> It is the intent and purpose of this Act to constitute a Court wherein claims up to but not exceeding the monetary jurisdiction of the Court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice. [underlining added]

[7] Regardless of the precise interpretation to be given to that Section, it was drafted at a time when the Court's monetary jurisdiction was limited to $2,000. Since then, the Court's monetary jurisdiction has increased to $15,000. I note, parenthetically, that the Court's monetary jurisdiction will soon increase to $25,000. As such, the established principles of law and natural justice must be seen as variable. Procedural niceties might be viewed as being at least somewhat less important to claims involving $2,000 then to claims involving $15,000.

[8] That said, I doubt that there are greater established principles of law and natural justice than those which require litigants to clearly set out the cases which their opponents must meet. I do not accept the argument on behalf of Balcom and AndersonSinclair that the requirement is circumscribed only by the provisions of *Rule* 14.14(a) of the *Civil Procedure Rules*.

[9] In *Copeland v. Commodore Business Machines Limited*, Master Sandler of the Supreme

Court of Ontario Masters' Chambers held that:

> Thus it becomes necessary, in any specific type of action, to determine the minimum level of material fact disclosure required for any particular pleading, in order to determine if the pleading is or is not regular. It is not an easy task by any means, and much common sense must be brought to bear in this endeavour. As well, the purpose and function of pleadings in modern litigation must be kept constantly in mind. It is often difficult to differentiate between, and articulate the difference between material facts, particulars and evidence.
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> Some assistance is obtained, as to statements of defence, from new Rule 25.07(4) which seems to be the successor of parts of former Rules 144 and 145. Under this new Rule, a party must plead "...any matter on which the party intends to rely to defeat the claim of the opposite party...", and the "material facts" in relation to such matters must be set forth as required by Rule 25.06(1).

[10] The Small Claims Court of Nova Scotia is of course not governed by Rule 25.07(4) or old Rules 144 and 145 of the Ontario Supreme Court Practice. Nevertheless, the principles expressed by Master Sandler make for sound common sense regardless of to which Court or to which pleadings they are said to apply. They are really no more than an extension of the principle, noted above, that all parties to litigation are entitled to know in advance which case or cases and which allegation or allegations they will be required to meet.

[11] In Perell, M. "*The Essentials of Pleading"* (1995) 17 the *Advocate's Quarterly*, 205-223, the learned author posits that:

> For statements of defence, with an exception for damages which are deemed to be in issue unless specifically admitted, Rule 25.07 and the case law discourage general denials and silence; the Defendant should plead his verison of the facts. Undenied allegations from the Statement of Claim are deemed to be admitted, unless the Defendant pleads that he has no knowledge about the allegation. Under Rule 25.06(4) a Defendant must disclose any defence that would take the Plaintiff by surprise.

> ...
>
> The case law recognizes that a Statement of Defence should be responsive to the Statement of Claim. This means that the adequacy of a Statement of Defence must be judged, in part, by reference to the action's Statement of Claim. In *Cherry v. Patch*, a Plaintiff successfully moved to have a Statement of Defence struck out for failure to be responsive to the Statement of Claim. The Master concluded that given the nature of the Plaintiff's allegations and given the Rule that a Defendant must not take the Plaintiff by surprise, an answer was called for and the Defendant could not rely on a general denial. [underlining added]

[12] *The Small Claims Court Forms and Procedures Regulations*, made pursuant to the provisions of s. 33(1)(a) of the *Small Claims Court Act* do not specifically govern this sufficiency of pleadings. That said, the standard Form of Defence/Counterclaim set out by the *Regulations* provides the following nomenclature:

> My reason for disputing the claim is (if you need more space, attach another sheet of paper): ... [underlining added]

[13] According to Balcom and AndersonSinclair, their reason for disputing the Claimant's claim is that they "dispute the claim". This phrase is not a reason or set of reasons at all. It simply sets about a circumlocution. Put another way, Balcom and AndersonSinclair dispute the Claimant's claim because they dispute the Claimant's claim.

[14] Even in its amended from the Defence filed on behalf of Balcom and AndersonSinclair is, at best, a further form of a general denial. It offers nothing of those Defendants' "positions" on the allegations made against them. It offers nothing of the Defendants' role in the transaction alleged to be at issue. It denies the Claimant of any opportunity to know and understand any case which it may be called upon to meet. It is insufficient on any reading of any of the applicable authorities.

[15] Ms. Hellstrom, on behalf of the Claimant, has drawn to my attention the decision of Haliburton, Co. Ct. J. (as he was) in *Waterview Machine Works Limited v. Peters*, (1988), 88 N.S.R.

(2d) 232.

[16] At issue in *Waterview Machine* was a procedural decision of an Adjudicator of this Court wherein he allowed a Defendant to lead evidence in support of a Counterclaim at the hearing of the matter when no Defence and Counterclaim had been earlier pleaded.

[17] In considering the procedural rules applicable to pleadings in the Small Claims Court, Haliburton, C.C.J. held (at paragraph 11) as follows:

> There is, therefore, in the Small Claims Court no requirement that the Defendant file pleadings before he is entitled to have his trial. Where pleadings are filed, however, the *Civil Procedure Rules* would clearly apply to those pleadings and where a party wishes to plead issues, it is clear that those issues must be raised in the pleadings. Thus, the Plaintiff is not at liberty to raise issues of possible dispute between the parties which are not pleaded in his 'claim' and by the same token, the Defendant is not at liberty to appear at the trial and testify about a claim by way of set-off or, as in this case, a claim for overpayment where the issue has not been raised by the pleadings. I find the following Rules to be applicable:
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> 14.04 Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which the facts are to be proved, and the statement shall be as brief as the nature of the case admits.
>
> 14.11 Unless a party amends his pleading, he shall not in any pleading make any allegation of fact or raise any new ground or claim, inconsistent with a previous pleading of his.
>
> 14.14 Subject to Rules 14.15 and 14.18, a party in his defence or in any subsequent pleading shall:
>
> ...
>
> (b) <u>where it is intended to prove a different version of facts and that relied upon by the opposing party, plead his version of the facts; and</u>
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> (c) <u>specifically plead any matter</u>, for example,

> performance, release, payment, any relevant statute of limitations, statute of frauds, fraud or any fact showing illegality that,
>
> (i) might make any claim or defence of the opposing party not maintainable;
>
> (ii) if not specifically pleaded, might take the opposing party by surprise;
>
> (iii) raises issues of fact not arising out of the preceding pleadings. [underlining added]

[18] Haliburton, C.C.J. went on to discuss the general legal principles applicable to all pleadings. These comments were not tied specifically to the *Civil Procedure Rules* or to the *Small Claims Court Forms and Procedures Regulations*. On these general principles, Haliburton, C.C.J. held (at paragraph 13) that:

> It is surely the essence that the pleadings filed by the parties will set out the position of the respective parties so that each party will know reasonably and fairly the case which he will have to meet at the hearing. The evidence must be relevant to that case in order to be admissible. The base of premise must be no less applicable in Small Claims Court where parties represent themselves than it is in other Courts where lawyers customarily are involved. This is not be unduly technical. While the Adjudicator, like any other judge, has a duty to be aware of the contents of the pleadings and has the obligation to restrict the evidence to that which is relevant and admissible, he has, nonetheless, the overriding power to control the processes of his Court and, where it is apparent that one of the parties has filed to effectively plead his case, the Adjudicator would have the right, in my view, the duty, to invite the party to amend or file the appropriate pleading. If such a situation arises, however, it would be only proper in all cases to invite the opposing party to seek an adjournment to consider the appropriate response and indeed in many cases, it might be incumbent upon the Adjudicator to insist upon an adjournment. [underlining added]

[19] Given the principles expressed by Haliburton, C.C.J., binding on me as they are, the present pleading on behalf of Balcom and AndersonSinclair offers two distinct problems. First, it unfairly fails to alert the Claimant to the case which it must meet. Second, it potentially circumscribes

the abilities of those Defendants to lead a fulsome case in their defence.

[20] On both problems, the present pleading on behalf of Balcom and AndersonSinclair is not acceptable. It is inconsistent with the general requirements of Section 2 of the *Small Claims Court Act.* It is inconsistent with the common law applicable to pleadings. It is inconsistent with those provisions of the *Civil Procedure Rules* held by Haliburton, C.C.J. to be applicable to pleadings in the Small Claims Court. It is by all accounts insufficient.

[21] Clear from the pleading which Balcom and AndersonSinclair did file is that they have a different view of the impugned transaction then that alleged. Their pleading, at a minimum, must articulate that view.

[22] The costs of this application are in the cause.

DATED at Halifax, Nova Scotia, this 23rd day of October, 2005.

Gavin Giles, Q.C.
Chief Adjudicator,
Small Claims Court of Nova Scotia

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