

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: Lake Mechanical v. Ainsworth Atlantic 2006 NSSM 18

Date:20060814
Claim: SCCH 267190
Registry: Halifax

Between:

Lake Mechanical

Claimant

v.

Ainsworth Atlantic

Defendant

– and –

Claim: SCCH 267191
Registry: Halifax

Between:

Lake Mechanical

Claimant

v.

Ainsworth Atlantic

Defendant

– and –

Claim: SCCH 267193
Registry: Halifax

Between:

Lake Mechanical

Claimant

v.

Ainsworth Atlantic

Defendant

Adjudicator: W. Augustus Richardson, QC

Heard: August 8, 2006 in Halifax, Nova Scotia.

Revised Decision: The text of the original decision has been corrected. The name of the defendant is “Ainsworth Atlantic”, not “Atlantic Electric.” This corrected decision is being released on August 24, 2006.

Appearances: Allan Lake, for Lake Mechanical, Claimant
Jeff Aucoin, for Ainsworth Atlantic, defendant

By The Court:

[1] These three claims came on before me on August 8, 2006. They all involved the application of s.15 of the *Small Claims Court Act*, RSNS 1989, c. 430, as amended (the “Act”), which provides as follows:

s.15 “The Court does not have jurisdiction in respect of a claim where the issues in dispute are already before another court unless that proceeding is withdrawn, abandoned, struck out or transferred in accordance with Section 19.”

[2] These three claims arise out of mechanical work done for the defendant by the claimant three separate building sites. Each job was performed under a separate contract, but all of the work was performed pursuant to—and as subcontracts to—an overall contract between the defendant Ainsworth Atlantic (as Contractor) and Qualtech Building Solutions Limited and Sobeys Land Holdings Limited. The main contract specified the totality of the work to be done at, *inter alia*, the three building sites in question. Ainsworth Atlantic subcontracted various parts of that contract work to various subcontractors, including Lake Mechanical (hereinafter the “Subcontractor”).

[3] It appears from the materials put into evidence on behalf of the defendant (hereafter the “Contractor”) that it has not been paid in full by Qualtech Building Solutions Limited and Sobeys Land Holdings Limited (hereinafter collectively the “Owner”). It has commenced an action or actions in the Supreme Court of Nova Scotia for the balance of the contract price.

[4] The Contractor filed its Statement of Claim in the Supreme Court Action in evidence before me. Relying on s.15 of the Act, it submitted that the existence of this action denied jurisdiction to hear the subcontractor’s claim, because there was “a claim where the issues in dispute are already before another court.” (I should note that at the beginning of the hearing the Defendant expressly disavowed any reliance by it on s.13 of the Act, which prevents a party from splitting its claim. I

took that to be an acknowledgment that the claimant in these three claims had three separate and distinct claims, and that it was not splitting one claim into three.)

[5] I note that the Contractor did not file the Supreme Court defence of the Owner into evidence. Nor was it prepared to say that there was any dispute between it and the Subcontractor that was raised in or formed a foundation to any dispute between it and the Owner. It agreed that the Subcontractor had done the work required of it under its subcontract. It also agreed, subject to one point discussed below, that it had no issue with that work, or with the subcontractor's entitlement to be paid (subject to its argument concerning jurisdiction).

[6] In my opinion a party relying on s.15 to dispute jurisdiction has the onus of establishing that there is some connection between the issues raised in the claim filed in the Small Claims Court and those in the other dispute that is "already before another court." In the case at bar the Defendant Contractor could not say—and indeed would not say—that the Owner had any concern or issue with the work done by the Subcontractor; or that the Subcontractor's work played any role at all in the Owner's refusal to pay the Contractor for the balance of the Main Contract price. That being the case there was no evidence that would enable me to determine whether there was any overlap between this court and the Supreme Court in respect of the issues being raised in either court.

[7] I was accordingly of the view that the defendant had failed to establish its right to rely on s.15. This court accordingly had jurisdiction to hear the claims.

[8] The defendant did have an additional defence in SCCH 267193. It submitted that the claim in that case (which involved certain ventilation work) was subject to a term in its contract that stated that the Subcontractor could not be paid in full until the Contractor was paid in full. However, the copy of the contract that the defendant put into evidence (which did contain the clause relied upon) was not an original. It was a photocopy. On the other hand, the claimant had an original signed copy of the contract, one which did not appear ever to have been unstapled: see Ex.C2 in the file. The claimant's original copy did not have the clause being relied upon by the defendant. Based on the evidence I was not satisfied that the defendant had established the existence of the clause it was relying upon. I was of the opinion (and so found) that the contract did not contain the clause in question. There was accordingly no bar to the claimant's claim.

[9] I will accordingly make an order in each of the three claims that the defendant pay the claimant the amount of the claim with costs.

Dated at Halifax, this 14th day of August, 2006

Original: Court File)
Copy: Claimant)
Copy: Defendants)

W. Augustus Richardson, QC
ADJUDICATOR