

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
NORTHERN PETROLEUM, a body corporate	- and -	SYDNEY STEEL CORPORATION, a body corporate
(Appellant)		(Respondent)
CA 161662	Halifax, N.S.	Flinn, J.A.

[Cite as: **Northern Petroleum v. Sydney Steel Corp., 2000 NSCA 104**]

APPEAL HEARD: September 18, 2000

JUDGMENT DELIVERED: September 18, 2000

WRITTEN RELEASE OF ORAL: September 18, 2000

SUBJECT: **CONTRACTS - Whether contract between parties obligates the purchaser to purchase a minimum quantity of product in each year of the contract term - whether there is a collateral contract - whether there is negligent misrepresentation.**

SUMMARY: The appellant sued the respondent for damages for breach of contract, alleging that the contract required the respondent to purchase a minimum quantity of product, the respondent having purchased less than the alleged minimum. The appellant claimed, in the alternative, collateral contract and negligent misrepresentation. The trial judge dismissed the action.

RESULT: Appeal dismissed.

1. The contract dated June 20, 1990 contains no provision, either express or implied, whereby the respondent agrees to purchase a minimum quantity of 140,000 barrels of Bunker C fuel oil per year during the five year term of the contract.

2. As to the claim of collateral contract, and judging all of the circumstances from the perspective of the reasonable bystander, it could not be reasonably inferred that the respondent was warranting that it would purchase from the appellant, through Ultramar, a minimum quantity of Bunker C fuel in each of the five years of the contract. (See **Dick Bentley Productions Ltd. et al v. Harold Smith (Motors) Ltd.**, [1965] 2 All E.R. 65 (C.A.).

3. There was no evidence before the trial judge of negligence on the part of the respondent in respect of any representations which the respondent made prior to the date of the contract; namely June 20, 1990. Therefore, there can be no claim against the respondent for negligent misrepresentation.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.