C.D. No. 2582
S.C.C.D. No. 1651

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

DOUGLAS LEROY TRIMPER

RESPONDENT

- and -

DAVE McCLEMENT and NORTH GATE AUTO and COR-DEM INDUSTRIES LTD.

APPELLANT

HEARD: At Digby, Nova Scotia, on the 4th day of January, A.D. 1989

BEFORE: The Honourable Judge Charles E. Haliburton, J.C.C.

DECISION: The 10th day of January, A.D. 1989

COUNSEL: Douglas L. Trimper, the Respondent, for himself

Yvonne R. LaHaye, for the Appellant

D E C I S I O N O N A P P E A L

HALIBURTON, J.C.C.

This is an appeal from a determination made by James L. Outhouse, Esq., Adjudicator of the Small Claims Court for Digby County, arising from an Order made by him in favour of the Plaintiff, Douglas LeRoy Trimper, against Dave McClement, North Gate Auto and COR-DEM Industries Limited. The Statement of Claim discloses that the Plaintiff alleged misrepresentation by McClement in connection with a motor vehicle purchased by Trimper from the Defendants, or one of them.

The Appellant has appealed the decision of the Adjudicator on the basis that it constitutes a **denial of natural justice.** The issues raised involve the question of whether or not the Defendants had been served with the "Notice of Claim". Certain relevant facts found by the Adjudicator may be summarized as follows:

> That the claim was issued on the 14th day of July, 1988, and gave notice of a hearing scheduled for 7:00 p.m. on the 30th of August, 1988. The Adjudicator found that the claim form allowed 20 days for service from the 14th day of July.
>
> The first attempt at service was by registered mail but the envelope was returned undelivered after being held 15 days without acceptance by the addressee. A further envelope was sent by certified mail and delivery was accepted by one Ronald Bleakney on August 11th. "On the advice of the Clerk, the Claimant re-served the same claim form by certified mail on August 19th, 1988". It would appear that the second envelope forwarded by certified mail was also delivered, this time to a person whose signature is not legible.

The Adjudicator further states:

> 8. That I found that service was properly effected by the first certified mail service (August 11, 1988); that the second service was superfluous and that in any event, both services allowed sufficient time for the filing of a defence.
>
> 9. That I further found that such service was effective on Dave McClement, Northgate Auto and Cor-Dem Industries Limited.

The Adjudicator, in his Stated Case, refers to the decision of my brother, H. J. MacDonnell, Judge of the County Court for District Number Five, in the case MacIntosh, MacDonnell & MacDonald v. Gerald Andrew Francis, C P 11,007 and reasons from that, that delivery by certified mail with the completed return card is as effective under the Act as registered mail.

> Section 23 of the Small Claims Court Act
>
> Where the defendant does not appear at the hearing and the **adjudicator** is satisfied that the defendant has been served...

makes it clear that the effectiveness of service is one of those matters to be determined by the Adjudicator. The Adjudicator, in his decision herein, specifies that he concerned himself with whether or not service had been effected. A review of that portion of the Stated Case makes it apparent that there was evidence before him on which he reached his conclusions. There is, of course, no evidence before me. Therefore, unless the Stated Case itself were to reveal that the Adjudicator erred in law in reaching those conclusions, I would have no basis on which to find his conclusion to be in error.

Insofar as service is concerned, Section 21(3) of the Act provides:

> Service of all documents may be by personal service, registered mail, or substituted service in the manner prescribed by the regulations.

The only regulation applicable is 3:

> The time for serving the claim on the Defendant shall be 10 days from the date from which the claim is filed or such additional time as the Clerk or Adjudicator may allow.

It is important to bear in mind the concept behind the implementation of the Small Claims Court system. Section 2 of the Small Claims Court Act provides:

> **Purpose of Act**
>
> 2. 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 in accordance with established principles of law and natural justice.

The Legislature has provided that, in Small Claims Court proceedings, the Notice of Claim may be served by registered mail or by some method of substituted service should the Adjudicator so order. The Appellant takes the position that the term "registered mail" is specific and exhaustive in the absence of an order for substituted service and argues, if I understand correctly, that if the Legislature had intended that certified mail could be substituted, then that would have been specifically provided in the statute. Registered mail and

certified mail have one significant common element which distinguishes both methods from posting by ordinary mail. With both registered and certified mail, the receiving party must sign for the envelope, thus acknowledging receipt. Confirmation thereof is either sent automatically or on request to the sender. On the other hand, registered mail and certified mail are different in that the postal service maintains a register of registered mail and various officers along the route are responsible for tracking that particular item. With certified mail, no such registers are maintained. The relationship then between the post office and the sender of a registered letter is different from certified in that, with the former, the postal service assumes some special responsibility and perhaps liability while with the latter, such is not the case. As between the sender and the addressee, however, the relationship is the same in both cases, and the addressee must acknowledge receipt in writing.

It was held in Blenkhorn v. Burke, 1985, CAM No. 5336, MacDonnell, J.C.C., that mere proof of mailing is proof of service where registered mail has been used, while in another case, Visser v. Blackie, 1984, CAM No. 4988, Judge MacDonnell held that, where the Adjudicator was aware that the unopened registered mail had been returned to the sender, there was no proof of service. It is clear from looking at those cases that the precedent has been established that strict compliance with Section 23 by the "sending" of a registered letter will be deemed to be effective service unless there is evidence to the contrary **before the Adjudicator.**

The Appellant argues for a restrictive interpretation of "registered mail".

In my view, it is clear that the Adjudicator, if requested to do so, might have authorized substituted service by such methods as "posting" the claim on the business premises or even by ordinary mail.

What had the Legislature in mind when approving the Act?

- It had in mind primarily the need to arbitrate minor claims without major expense. Personal service can be a major expense, particularly where the Defendant is not happy to be served.

- It had in mind the requirement that there be a "reasonable" assurance that the Defendant had notice of the proceedings, and that notice be sufficiently timely to give a reasonable opportunity to respond or appear (established principle of law). That "notice" will surely be assured if someone assumes the responsibility of "accepting" the notice in the Defendant's name.

It is that aspect of the "registered" letter that is significant. The quality of that notice is equally fulfilled by the "certified" letter. The existence of a register recording when the envelope departed the Digby postal station, or passed through the Halifax postal station, would be entirely irrelevant to that essential consideration.

I am reinforced in that view by the finding in Visser v. Blackie (supra) which confirms my own view that it is not the

act of "sending" the registered mail and not the tracking of its travels which will effect "service", but rather it is the presumption that the party who signed for and "received" it was the addressee, or someone under his authority.

This, as I understand it, was the conclusion reached by the Adjudicator herein.

After considering the intent of the Act and the cases cited, I am of the view that the Adjudicator did not err in finding that the service "was properly effected" by certified mail.

Counsel for the Appellant argues further that the service could not have been effective, even if delivered, because the claim form included the caveat that that claim is to be served within "20 days of the 14th of July, 1988".

Regulation 3 cited above, however, provides that the claim is to be served within 10 days "or such **additional time as the Clerk** or Adjudicator may allow". Again referring to the intent of Section 2 of the Act, the Small Claims Court is not intended to be a Court in which specious or technical arguments will prevail. The Adjudicator, in his Stated Case, implicitly found that the Clerk had extended the time for service. He found the claim was "received" by the Defendants

> on August **11th**, 1988 **which** by this time was a few days beyond the 20 days set forth by the Clerk on the claim form. On the advice of the Clerk, the Claimant re-served the same claim form by certified mail on August 19th, 1988.

As the Adjudicator observes in any event, whether service was effected on August 11th or on August 19th, it "allowed sufficient time for the filing of a defence". The Small Claims Court, no less than any other Court, has the power and authority to control its own processes. The Adjudicator considered the time when the service was effected and reached his own conclusion as to whether or not service 19 days or 11 days before the date fixed for the hearing was adequate. He concluded that it was. As an Appeal Court, I am not in a position to say that he erred in so finding.

The Appellant argues finally that service on the corporate defendants was not effective because it was not made on the recognized agent of the respective corporations. I would observe only the opening paragraph of the Appellant's submission, which says:

> The Appellant, Mr. David McClement, is the owner/operator of the company known as COR-DEM Industries Limited, and was the owner/operator of the company that was known as North Gate Auto.

As the Adjudicator observes in his Stated Case, the existence of recognized agents is not a fact of general knowledge and that unless claimants retain legal counsel, they are unlikely to have any knowledge of the requirement of effecting service through recognized agents. In this case, the Adjudicator made a finding of fact that the Plaintiff had dealt primarily with "Dave McClement who had the apparent authority to contractually bind Cor-Dem Industries Ltd." In any event, the Corporations

Registration Act provides for service on corporations, giving a much greater latitude than that claimed by counsel for the Appellant and would, in the context of the Small Claims Court Act, clearly permit service on the "owner/operator" or those authorized to pick up his mail.

It is perhaps worth noting that the file reveals that the Order granted by the Adjudicator at the conclusion of the hearing was mailed to the same two addresses as were the original claim forms of the Plaintiff. The Adjudicator's decision brought a response within seven days from the Defendants. That reaction of the Defendants would seem to confirm that the Adjudicator did, in fact, have before him some fairly reliable evidence about the service and delivery of the claim form before making a determination on the merits of the Plaintiff's claim.

The file does not reveal any basis for allowing costs to the Respondent on the appeal. Accordingly, the appeal is dismissed without costs.

The Plaintiff/Respondent is entitled to his judgment.

DATED at Digby, Nova Scotia, this 10th day of January, A.D. 1989.

CHARLES E. HALIBURTON
JUDGE FOR THE COUNTY COURT
OF DISTRICT NUMBER THREE

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CASES AND ACTS CITED:

MacDonnell & MacDonald v. Gerald Andrew Francis, C P 11,007

Small Claims Court Act, R.S.N.S. 1980

Blenkhorn v. Burke, 1985, CAM No. 5336

Visser v. Blackie, 1984, CAM No. 4988

Corporations Registration Act, R.S.N.S. 1967, c. 59

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-and-

DAVE MCCLEMENT and NORTH GATE AUTO AND COR-DEM INDUSTRIES LTD. — APPELLANT

CASE STATED by James L. Outhouse, an Adjudicator of the Small Claims Court of Nova Scotia.

1. On the 30th day of August, 1988, I rendered a Decision with respect to a claim between the above parties, a copy of which is attached hereto.

2. The Appellant is appealing on the following grounds:

> That it constitutes a denial of natural justice, in that, he did not receive notice of the claim or service thereof upon which the Order is based, nor did any officer, Director or Registered Agent of the Appellant companies receive such Notice or service of the Statement of Claim thereof.

3. On the attached pages I set out the stated case for the consideration of this Honourable Court.

DATED at Digby, Nova Scotia this 3rd day of November, 1988.

JAMES L. OUTHOUSE
ADJUDICATOR