

2000

Date: [2002 05 09]
Docket: SN No. 113682

IN THE SUPREME COURT OF NOVA SCOTIA

[cite: Homewood Enterprises Ltd. v. 147486 Canada Ltd., 2002 NSSC 126]

BETWEEN:

HOMEWOOD ENTERPRISES LIMITED, doing
business under the firm name and style of
WATERSIDE AUTO SALES and **DOUGLAS
FORREST**

Respondent / Plaintiff

- and -

147486 CANADA LIMITED, operating under the
firm name and style of **HALIFAX NISSAN**

Applicant/Defendant

DECISION

HEARD BEFORE: The Honourable Justice Frank C. Edwards, in Chambers

PLACE HEARD: Sydney, Nova Scotia

DATE HEARD: May 6, 2002

DECISION: May 9, 2002 - Written

COUNSEL: Hugh R. McLeod, Esq., for the Respondent/Plaintiff
Steven G. Zatzman, Esq., for the Applicant/Defendant

Edwards, J.:

- [1] The Applicant/Defendant makes Application pursuant to Civil Procedure Rule 15.01 for leave to amend its Defence and file a Counterclaim.
- [2] The Plaintiff commenced an action on October 19, 2000, for the sum of \$27,830.00. The amount of the claim was the purchase price of a 1997 Dodge pickup truck which the Plaintiff had purchased from the Defendant. The Plaintiff alleges that the Defendant company failed and refused to deliver the vehicle to the Plaintiff even though the Plaintiff had paid for it.
- [3] Ian Hill is the President of the Defendant company. In his affidavit in support of the application, he states that the Plaintiff and the Defendant had an ongoing business relationship involving the consignment of vehicles to the Plaintiff's lot in North Sydney. The vehicles would be sold by the Plaintiff and the funds remitted to the Defendant. In the proposed counterclaim, the Applicant/Defendant alleges that the Plaintiff/Respondent purchased and received seven vehicles from the Applicant/Defendant and failed to remit the purchase price to the Applicant/Defendant (Plaintiff by counterclaim).
- [4] In late January 2002, Counsel for the Applicant/Defendant advised Counsel for the Plaintiff that he would be amending his Defence and filing a Counterclaim. Plaintiff's Counsel indicated his opposition. On February 19, 2002, Plaintiff's Counsel filed a Notice of Trial Without a Jury and Certificate of Readiness. The Applicant/Defendant objected and a conference was held with the Honourable Justice Moir. Justice Moir suggested that the application to amend be brought to Chambers and the date assignment conference was adjourned until June 2002. To date, there have been no discoveries in this proceeding.
- [5] Civil Procedure Rule 15.01 provides that a party may amend any document filed by him in a proceeding "(c) at any time with leave of the court".

[6] The leading case on amendments is *Harness Horse Owners Association of Halifax County v. Sussex Racetracks Inc.* (1989), 94 N.S.R. (2d) 449 where at page 450 stated:

“This court has consistently stated that an amendment should be allowed if it can be made without injustice to the other party and further that there is no injustice if the other party can be compensated with costs. See *White and White v. Pellerine* (1988), 84 N.S.R. (2d) 341; 213 A.P.R. 341.”

[7] This test for the existence of injustice was set forth in *Micmac Agencies Limited v. Prudential Assurance Co.*, (1988) 86 N.S.R. (2d) 14 at page 17 where the Court stated:

“The test for the existence of injustice to the other side is whether the other side will have the opportunity to meet the case against it if the amendment is granted. If it has the opportunity, the amendment may be granted. If it has not, the amendment will not be granted.”

[8] The Court must also be cognizant of Civil Procedure Rule 1.03 which reads:

“1.03 The object of these Rules is to secure the just, speedy and inexpensive determination of every proceeding.”

[9] Civil Procedure rule 16 deals with counterclaims.

[10] In *Llewellyn (R.) Building Supplies Ltd. v. Nevitt* (1987) 80 N.S.R. (2d) 415 where the Court at page 417 stated:

“In Nova Scotia, under Civil Procedure Rules, the pleading of a claim for set off is preserved by Rule 14.20. Under the provisions of Rule 16, it is clear that a counterclaim encompasses claims being advanced by a Defendant, whether arising out of the same transaction or whether arising as a set off out

entirely separate matters (16.01(1)).”

[11] I am satisfied that the amendment being sought here does not create any injustice which cannot be compensated by way of costs. There have been no discoveries and the Plaintiff will have the opportunity to meet the case against it if the amendment is granted. As the earliest possible trial date is now in the fall of 2002, there is sufficient time for both the amendment to be made, a Defence to the Counterclaim to be filed, and an exchange of a List of Documents and discoveries if required.

[12] It is significant that both the claim and the counterclaim are contractual in nature and arise out of the same business relationship between the parties which would be reflected in both the claim and counterclaim. In the circumstances, it is not reasonable to expect that there would have to be a separate action brought to deal with each individual vehicle.

[13] I am therefore allowing the application. The parties will each bear their respective costs of the application.

J.