SUPREME COURT OF NOVA SCOTIA

Citation: *Atlantic Outdoor Furnaces Inc., v. Ford*, 2024 NSSC 156

Date: 20240521
Docket: 524375
Registry: Halifax

Between:

Atlantic Outdoor Furnaces Inc.

Appellant

v.

James Ford

Respondent

DECISION

Judge:	The Honourable Justice John A. Keith
Heard:	January 29, 2024, in Halifax, Nova Scotia
Written Submissions:	February 21, 2024
Counsel:	Atlantic Outdoor Furnaces Inc., on its own behalf by its officer Cyrille Michaud Abigail Smith, for the Respondent

By the Court:

Introduction and Summary of Conclusions

[1] The Appellant, Atlantic Outdoor Wood Furnaces Inc. ("**Atlantic Outdoor Furnaces**") sells outdoor wood furnaces in Mount Uniacke, Nova Scotia. The owner and primary directing mind of Atlantic Outdoor Furnaces is Cyrille Michaud. Mr. Michaud represented the company in this proceeding.

[2] The Respondent, James Ford, lives in Prince Edward Island.

[3] Mr. Ford agreed to purchase an outdoor wood furnace from Atlantic Outdoor Furnaces. As of September 29, 2020, he paid the full purchase price ($18,400, including HST) although he had yet to take possession of the furnace.

[4] Less than 48 hours later, Mr. Ford changed his mind. On Thursday, October 1, 2020, Mr. Ford advised that he was going to purchase a used furnace that he found in Prince Edward Island – and would not be purchasing a furnace from Atlantic Outdoor Furnaces after all. Mr. Ford requested the return of the monies previously paid be returned to him.

[5] Atlantic Outdoor Furnaces ultimately insisted that the transaction was concluded and irreversible – and that Mr. Ford was free to fetch his furnace at any time.

[6] Mr. Ford commenced an action in Nova Scotia's Small Claims Court. Small Claims Court Adjudicator Michael O'Hara (the "**Adjudicator**") was assigned to hear the matter. A trial was scheduled for November 30, 2022.

[7] The trial was adjourned three times – each time at Atlantic Outdoor Furnaces' request. The final two adjournments were granted because Mr. Michaud (Atlantic Outdoor Furnaces' owner and representative in this proceeding) said that he was ill.

[8] Eventually, the trial was scheduled for April 19, 2023. The Adjudicator made it clear well in advance of the trial that no further adjournments would be granted absent acceptable, independent medical verification that Mr. Michaud was too sick to proceed. Still, on April 14, 2023, Mr. Michaud requested a fourth adjournment. On April 15, 2023, the Adjudicator denied the adjournment request.

[9] By email dated April 17, 2023, Mr. Michaud repeated that he "may" not be able to participate at the trial due to health problems. Again, no independent medical documentation was presented. Rather, Mr. Michaud said that he had booked an

appointment with his doctor for May 2, 2023. That said, Mr. Michaud's email also included a "Statement of Facts" which summarized Atlantic Outdoor Furnaces' factual and legal position in this dispute.

[10] On April 19, 2023, the Small Claims Court trial took place. Neither Mr. Michaud nor anybody else attended on behalf of Atlantic Outdoor Furnaces. The Adjudicator took Atlantic Outdoor Furnaces' "Statement of Facts" into account but ultimately rendered judgment against it. On April 27, 2023, the Adjudicator ordered that Atlantic Outdoor Furnaces pay Mr. Ford $18,400, prejudgment interest of $1,840 and costs of $232.24 for a total of $20,023.24.

[11] By Notice of Appeal issued June 7, 2023, Atlantic Outdoor Furnaces alleged every available ground of appeal permitted under s. 32(1) of Nova Scotia's *Small Claims Court Act*, R.S.N.S. 1989, c. 430 as amended (the "***Act***") (i.e. jurisdictional error, error of law, and failure to follow the requirements of natural justice). The particulars contained in the Notice of Appeal suggested a more narrow concern:

> I was very sick and I couldn't attend [sic.] Zoom Hearing. I e-mailed 2 times April 13 and 17, 2023 to Claimant and Adjudicator asking for an adjournment of the April 19, 2023 hearing until and after I saw my family doctor May 2, 2023. My request was denied! I also asked for an in-court hearing. The Adjudicator broke our business agreement between two businessmen without me being heard.

[12] The Adjudicator's Summary Report issued July 17, 2023, under s. 32(4) of the *Act* understandably focused on the Adjudicator's refusal to grant a further adjournment and the related, alleged failure to allow Mr. Michaud to be heard. As indicated, that was the only ground of appeal that had been actually particularized in the Notice of Appeal. Nevertheless, a secondary issue arose as to the Adjudicator's decision on damages.

[13] The reasons for Ordering that Atlantic Outdoor Furnaces return to Mr. Ford the total amount originally paid ($18,400) plus pre-judgment interest was unclear. The Adjudicator summarized three alternate legal arguments made by Mr. Ford's counsel at trial followed immediately by a brief conclusory sentence which simply stated: "Based on this evidence I issued an Order for $18,400 plus prejudgment interest of $1,840 representing 4% for 30 months." No explanation was provided.

[14] For the reasons given below, I find and Order that:

1. The Adjudicator very clearly had the necessary jurisdiction to hear and decide this dispute. That ground of appeal is dismissed. There is no need to discuss this issue further;

2. The Adjudicator's refusal to grant Atlantic Outdoor Furnaces a fourth adjournment and the related decision to proceed with the trial on April 19, 2023, did not amount to a denial of natural justice. That ground of appeal is dismissed. I return to this issue below; and

3. As to the substantive relief granted by the Adjudicator (ordering all monies be repaid to Mr. Ford with prejudgment interest), the Adjudicator was placed in a difficult position. Atlantic Outdoor Furnaces failed to appear at the trial and the subsequent Notice of Appeal filed by Atlantic Outdoor Furnaces appeared to focus on only one of the three grounds identified (i.e. denial of nature justice). That said, the Adjudicator was required to explain his decision.

4. As indicated above, the Summary Report does refer to three alternative arguments advanced by Mr. Ford's legal counsel. Those arguments were:

   a. That the agreement was void for uncertainty;
   b. Unjust enrichment; and
   c. That Atlantic Outdoor Furnaces failed to prove any damages

5. In my view the arguments that the agreement between Mr. Ford and Atlantic Outdoor Furnaces was void for uncertainty and/or that Atlantic Outdoor Furnaces was unjustly enriched are without merit. To find otherwise, respectfully, constitutes an appealable error under the Act and misapplies the evidence that was before the Adjudicator in a material way and in a manner which would be unjust. (Brett Motors Leasing Ltd. v Welsford, 1999 CarswellNS 410, [1999] N.S.J. No. 466 (N.S.S.C.) at para.14)

6. The only viable legal basis in support of the Adjudicator's decision is the third argument: Atlantic Outdoor Furnaces failed to prove damages. On that issue:

   a. This argument begins with a presumed breach of contract. Atlantic Outdoor Furnaces must only prove damages (and can only be accused of failing to prove damages) if there was a contractual

breach in the first place. I agree that Mr. Ford anticipatorily breached a binding contract; and

b. Respectfully, I disagree with the next necessary step along the analytical path leading to the Adjudicator's ultimate finding (i.e. that Atlantic Outdoor Furnaces' suffered no damage at all). It is my view that this conclusion constitutes an error of law and misapplies the evidence which was before the Adjudicator in a material way and in a way which produced an unjust result. In my view, Atlantic Outdoor Furnaces is entitled to nominal damages for the contractual breach.

7. I order that:

a. Mr. Ford shall pay Atlantic Outdoor Wood Furnace nominal damages in the amount of $750. This figure takes Atlantic Outdoor Furnaces' failure to mitigate into account. I am prepared to accept the Adjudicator's prejudgment interest rate of 4% per annum. Atlantic Outdoor Furnaces is entitled to an additional sum of $75 for prejudgment interest (4% per annum for a period of 30 months). The total damages award is $825. These amounts are to be offset against the monies retained by Atlantic Outdoor Furnaces; and

b. The excess funds retained by Atlantic Outdoor Furnaces total $17,575 ($18,400 originally paid by Mr. Ford minus $825 in nominal damages). These monies shall be returned to Mr. Ford. Mr. Ford is also entitled to prejudgment interest. Again, I am prepared to accept the Adjudicator's rate of 4% per annum. However, Mr. Ford is not entitled to pre-judgment for 30 months. Atlantic Outdoor Furnaces would reasonably have required time to mitigate damages before pre-judgment interest should begin to accrue. Mr. Ford is entitled to pre-judgment interest for 26 months. The amount of pre-judgment interest owing to Mr. Ford by Atlantic Outdoor Furnaces is $1,523.00.

[15] In sum, Atlantic Outdoor Furnaces shall pay Mr. Ford the total sum of $19,098.00. Atlantic Outdoor Furnaces shall retain possession of the furnace.

[16] In making these findings, two final observations are necessary:

1. This legal dispute devolved into something very personal in nature – particularly for Mr. Michaud and Atlantic Outdoor Furnaces. Mr. Michaud believes that he is the victim of "harassment" and "malicious" litigation, all at the hands of Mr. Ford. Mr. Michaud feels that he is accused of being a "thief". For clarity, I do not find (and do not need to find) that either Atlantic Outdoor Furnaces or Mr. Ford acted in a dishonest, dishonourable, unethical, or fraudulent manner. The legal principles which bear upon the resolution of this dispute do not require that sort of denunciation; and

2. In my view, both sides bear a degree of responsibility for the regrettable communications which arose. On the one hand, while I sympathize with Mr. Ford's frustrations, his statements to Mr. Michaud and others fueled the overheated rhetoric which followed and were not as measured as they might have been – particularly given his anticipatory breach. On the other hand, Atlantic Outdoor Furnaces responding comments and failure to mitigate made the situation much worse and entrenched the parties in their respective positions.

No Denial of Natural Justice

[17] As indicated, the Adjudicator denied Atlantic Outdoor Furnaces' fourth adjournment request on April 15, 2023. He then proceeded with the trial in Atlantic Outdoor Furnaces' absence.

[18] There is no doubt that an Adjudicator of the Small Claims Court retains the discretion to grant or deny the adjournment. In my view, I am of the emphatic view that the Adjudicators' decision was appropriate in the circumstances. There is no reasonable basis upon which that decision should be reversed on appeal.

[19] I note that Atlantic Outdoor Furnaces' primary reason for seeking an adjournment of the trial was that its directing mind and representative in this litigation (Cyrille Michaud) was too ill to proceed. The Adjudicator had previously agreed to delay the matter on numerous occasions due to Mr. Michaud's health without requiring Mr. Michaud to present any meaningful form of medication documentation to help explain his health problems:

1. On January 31, 2023, the Adjudicator convened a pre-hearing conference. Earlier that day, Mr. Michaud wrote to request for a postponement on the basis that he was "very sick with all the symptoms of COVID-19; FEVER, sweats, COUGH, SORE

THROAT, RUNNY NOSE AND AN ENDLESS HEADACHE. IT IS VERY HARD TO CONCENTRATE." (capitalization in Mr. Michaud's email) There was no supporting medical documentation. Nevertheless, the Adjudicator determined that the trial would not proceed until March 13, 2023, giving Mr. Michaud six weeks to recover and obtain the medical information necessary to better assess his capacity, diagnosis, and prognosis.

2. By email dated March 7, 2023, Mr. Michaud requested an adjournment of the March 13, 2023, trial. He stated that he saw a doctor on February 6, 2023, and that he underwent some form of testing on March 1, 2023. However, he had yet to be advised as to the test results. He explained that "my Doctor had been out on a winter break vacation and I will have to make an appointment to see him to get the results and medication required for my sickness."

3. By email sent at 2:46 p.m. on March 13, 2023, (the day of the trial), Mr. Michaud repeated his request for an adjournment due to his health and "competence to deal with this matter at this time." His email concluded: "I now have an appointment with my doctor this Wednesday March 15, 2023 at 12:20 pm and I'm hoping with the proper treatment I will recover my health so that I can deal with this matter." There was no medical information available at that time.

4. Mr. Ford and his lawyer attended the trial on March 13, 2023. Mr. Michaud did not. Nevertheless, the Adjudicator adjourned the trial until March 29, 2023. However, by email dated March 14, 2023, the Adjudicator also said: "If there are medical issues that affect your participation on March 29th, I suggest you have your physician confirm that in writing and send that to me and Ms. Smith [legal counsel for Mr. Ford]. I do not need to know the specific details, only that it is serious enough to affect you from meaningfully participating. Based on that I will consider any further request for an adjournment. If no medical note is received, or it is insufficient, we will proceed on March 29th".

5. Neither the test results from March 1, 2023, nor the details of Mr. Michaud's meeting with his physician on March 15, 2023, are in the record.

6. On March 21, 2023, Mr. Michaud sent an email to the Adjudicator requesting an adjournment of the March 29, 2023, hearing until after May 2, 2023. He cited health issues and the need to see his physician for treatment and he explained that: "My personal Doctor, DR Harding will see me this May 02, 2023 at 10 am. regarding my health problems. He has been recovering from an operation." (capitalization in the original email).

7. By email dated March 26, 2023, Mr. Michaud repeated the request for an adjournment of the March 29, 2023, trial. He began by emphatically stating that: "I DO WANT MY DAY IN COURT TO BE ABLE TO DEFEND MY COMPANY AND MYSELF FROM THIS MALICIOUS AND FRIVOLOUS ACTION!" [Capitalization in the original email] He went on to describe ongoing migraine headaches and issues with his balance and again confirmed an appointment with Dr. Roy Harding on May 2, 2023, at 10 a.m. He said that Dr. Harding "will read the results of all the blood tests taken, scans [sic.] from the Windsor Hospital, the doctors reports from the Cobequid Hospital here in Sackville NS and also the information from Doctor Emad Malak in Dartmouth NS given to me on a USB stick."

8. By email dated March 28, 2023, the Adjudicator granted Atlantic Outdoor Furnaces' request for an adjournment but only until April 19, 2023. He noted that Mr. Michaud had failed to present any medical evidence as requested and that Mr. Ford is also entitled to be heard in a reasonable amount of time. He concluded that "barring some medical verification provided before then, there will be no further adjournments and we will proceed on April 19 at 6:00 PM".

[20] On April 13, 2023, Mr. Michaud again requested an adjournment until after the previously mentioned meeting with Dr. Roy Harding on May 2, 2023. He also acknowledged receipt of documents from the Plaintiff but believed a lot of information was missing. He said that he called lawyers, but they did not have time to deal with this matter on short notice. However, he continued, he will need legal help due to his health and "constant Head Aches 24 hours a day". Finally, unnamed medical professionals said that he "may have LONG HAuL COvid [sic.] 19" but was hoping his upcoming visit with Dr. Harding would help.

[21] By this time, the Adjudicator was not prepared to grant a further (fourth) adjournment without some form of independent, medical opinion. By email dated April 15, 2023, he denied the adjournment request.

[22] By email dated April 17, 2023, Mr. Michaud provided a "Statement of Facts" for the upcoming trial. However, he said that:

> …because of my health problems I may not be able to participate in the Zoom OR phone call. I am 72 years old born December 02, 1950 and its [sic.] not only my health and Constant HEAD ACHES 24 hours a day but I've never done a Zoom call and I only have an old computer to send and receive e-mails with and I'm not a computer guy. My preference would be to attend Court once I get better and I'm legally aloud [sic.] to go out in public.
>
> [Capitalization in original]

[23] Mr. Michaud did not attend the trial on April 19, 2023, as indicated. In this appeal, he took the position that he was too ill to proceed.

[24] The trial proceeded without anyone from Atlantic Outdoor Furnaces present.

[25] In the circumstances, it was not unreasonable for the Adjudicator to insist that Mr. Michaud present some form of independent medical verification before granting any further adjournments of the trial. Indeed, on March 14, 2023, and again on March 28, 2023, the Adjudicator advised Mr. Michaud that independent medical opinion evidence would be required to secure any further adjournments.

[26] No such information was forthcoming. Respectfully, in these circumstances, the Adjudicator reasonably determined that existing trial dates cannot be further delayed.

[27] Pausing here, I would also note that Mr. Michaud made similar arguments regarding frail health in connection with this appeal. However, in my view, Mr. Michaud had the strength and ability to pursue this appeal in a determined and competent manner. I accept Mr. Michaud's statement that he is not an expert in the law and has limited education. Minor typos often appear in his written submissions. However, the quality and certainly the volume of his work product does not suggest that Atlantic Outdoor Furnaces' interests have been unfairly compromised due to Mr. Michaud's health concerns.

[28] Moreover, even on appeal, Mr. Michaud has not attempted to introduce additional medical information to support earlier representations made to the Adjudicator. For example, I have no evidence related to:

1. Any positive COVID testing prior to the original trial;

2. Any diagnosis of "Long Haul Covid" or indication that the symptoms alleged by Mr. Michaud suggest that type of condition;

3. Mr. Michaud's visit to a doctor on March 15, 2023, mentioned above and originally given as a reason for prior adjournment requests;

4. Mr. Michaud's visit to Dr. Roy Harding on May 2, 2023, also mentioned above and previously given as a reason for prior adjournment requests; or

5. Any results together with a physician's opinions regarding any of the medical tests Mr. Michaud says he underwent prior to the trial.

[29] Rather, the first significant medical document submitted by Mr. Michaud in this proceeding is a letter from Dr. Olawumi Adaramodu dated September 29, 2023, - five months after the trial. This additional medical information does not refer to any disabling condition. Rather, it speaks to the stress caused by the outcome of this litigation and the financial implications associated with the Adjudicator's decision. The letter states:

> Mr. Cyrille Michaud has requested that I write this letter to support his ongoing legal case.
>
> He is going through lots of stress for the past four years.
>
> He is awaiting judgement following involvement in a business with Mr. James Ford. This is taking a toll on him and he feels very stressed.
>
> He gets letters from his lawyers from time to time asking for money in a malicious/ frivolous way.
>
> He gets very anxious and panicky when he receives these letters.
>
> He is concerned that this would create financial hardship on him if they succeed and he may lose his house.
>
> These symptoms are affecting his day to day activities of life and psychological well being.
>
> I would be grateful if you can consider his case and support him accordingly.

[30] Overall, the Adjudicator's denial of a fourth adjournment does not constitute an appealable error under the *Act*.

[31] This leads to the next question: having properly refused a fourth adjournment, did the Adjudicator fall into error by proceeding with the April 19, 2023, trial in the absence of Atlantic Outdoor Furnaces and despite Mr. Michaud's April 19, 2023, email stating that he may not be able to attend the trial and would prefer an in-person appearance once his health issues resolved?

[32] I repeat the comments above regarding the Adjudicator appropriately insisting upon an independent medical opinion before further delaying the trial.

[33] However, there is a further issue to consider: the principles of natural justice. More specifically, parties to litigation have a fundamental right of a party to receive notice of judicial proceedings that affect their interests; to be heard on matters relevant to the case before the Court; and, ultimately, to be given a reasonable opportunity to present their case before the dispute is finally decided. (*Waterman v Waterman*, 2014 NSCA 110 at para. 63) This right was historically encapsulated within the Latin maxim "*audi alteram partem*" which, translated literally, means "to hear the other side".

[34] The principles of natural justice are designed to ensure the inherent dignity and equality of litigants who appear before the Court and preserve impartiality in judicial determination of disputes. However, those principles equally yield to certain reasonable limitations including a party's responsibility to act reasonably and the efficient administration of justice. Thus, litigants cannot unilaterally insist that they be heard (and that Court proceedings occur) in a manner of their choosing. Participants in a judicial process seeking to resolve a civil dispute must act reasonably and in a manner that will better fulfill the promise in *Civil Procedure Rule* 1.02 for the "just, speedy, and inexpensive determination of every proceeding." This is particularly true with respect to proceedings under the *Act* which expressly enshrines the statutory goal of creating a process where disputes within a defined monetary limit may be "adjudicated informally and inexpensively but in accordance with the principles of law and natural justice." (Section 2. See also *Whalen v Towle*, 2003 NSSC 259 at paras. 7 – 8)

[35] In this case, the Adjudicator gave proper notice of his intentions to proceed absent reliable, independent verification regarding Mr. Michaud's medical status. Indeed, there has never been any medical evidence presented which, even in hindsight, would have cast doubt on the Adjudicator's decision. At this point and in fairness to all parties, Mr. Michaud must accept the risks and consequences associated with his decision not to attend the trial.

Damages

[36] During the appeal hearing, I raised a further issue related to the sufficiency of the Adjudicator's reasons. In a nutshell, the Adjudicator's Summary Report focused on his decision to refuse a further adjournment and proceed with the trial even though no one was present on behalf of Atlantic Outdoor Furnaces.

[37] In fairness, I appreciate that the Adjudicator responded to the single issue particularized in the Notice of Appeal and obviously cannot be faulted for then focusing on this issue in his Summary Report. At the same time, where there is a finding against one party (Atlantic Outdoor Furnaces, in this case), the decision should provide reasons.

[38] As mentioned, the only substantive reasons in support of the relief granted are contained at paras. 20 - 21 of the Adjudicator's Summary Report. They bear repeating:

> 20. On April 19th the video conference proceeded at 6:00 p.m. The Claimant was present as well as his counsel, Abigaile Smith. Mr. Michaud was not present at 6:00 and I waited until approximately 6:25 to proceed. Mr. Ford gave a solemn affirmation and proceeded to give his evidence of his dealings with the Defendant. At the end of the evidence Ms. Smith made her submission essentially arguing that there was no enforceable agreement for the sale of goods because the delivery date was too vague and therefore the agreement was void. Further, she submitted that unjust enrichment would apply. She further submitted that even if there was an enforceable agreement and breach thereof, at the end of the day the Defendant would have to prove his losses and no such evidence was presented.
>
> 21. Based on this evidence I issued an Order for $18,400 plus prejudgment interest of $1,840 representing 4% for 30 months.

[39] Respectfully, while the Adjudicator summarizes the three alternative arguments made by Mr. Ford at the trial, the Summary Report does not clarify which of these arguments was accepted by the Adjudicator or why that argument prevailed. Was the agreement void due to lack of certainty because the delivery date was too vague? Or was Atlantic Outdoor Furnaces unjustly enriched? Or did Mr. Ford breach the agreement but there were no damages suffered?

[40] For the reasons given below, the only viable legal basis for the Adjudicator's decision was Mr. Ford's argument around damages.

[41] As a preliminary matter, I agree with Mr. Ford's submission that I am limited to the evidence which was actually before the Adjudicator. An appeal under the *Act* is not a trial *de novo*. And a party who appeals the decision of a Small Claims Court Adjudicator is not free to introduce new evidence that ought to have been presented

at the original trial – subject to certain narrow exceptions, none of which apply in this case. (*Luke v Chopra*, 2019 NSSC 145 at paras. 12 – 20)

[42] In short, to the extent I am required to assess any factual findings, I must do so based on the Summary Report and the record before the Adjudicator. In the circumstances, Mr. Michaud and Atlantic Outdoor Furnaces bear the resulting risks associated with failing to appear at the original trial and presenting any additional evidence beyond that which can be gleaned from the Summary Report and the record before the Adjudicator.

[43] To properly frame the questions identified above and explain why the issue of damages is the only viable analytical path, some additional brief chronology is necessary:

1. On September 23, 2020, Atlantic Outdoor Furnaces sent Mr. Ford a quote for a Central Boiler CL 6048 furnace. The quoted price was $16,000 plus HST of $2,400 for a total of $18,400. According to the quote, the furnace came with a 25 Year Limited Warranty;

2. On Friday, September 25, 2020, Mr. Ford transferred $5,000 to Atlantic Outdoor Furnaces as a deposit to secure the furnace;

3. On Tuesday, September 29, 2020, Mr. Ford transferred to Atlantic Outdoor Furnaces the balance of the purchase price ($13,400). At that point, Mr. Ford had fully paid for the furnace and only needed to pick it up;

4. Within 48 hours, on Thursday, October 1, 2020, Mr. Ford advised Mr. Michaud that he found a used furnace in Prince Edward Island and would not be proceeding with the sale. As indicated, however, Mr. Ford had already transferred the full purchase price but had not yet taken possession of the furnace;

5. By email dated Friday, October 2, 2020, Mr. Michaud identified certain problems with purchasing a used furnace and suggested that Mr. Ford reconsider the furnace that he “bought”. There was no mention of a refund in this email although the possibility of a refund was also not rejected outright; and

6. By email dated Saturday, October 3, 2020, Mr. Ford clearly repeated that he was proceeding with the purchase of a used furnace in Prince Edward Island and asked that the $18,400 be returned. In my view, it is clear that as of October 3, 2020, Mr. Ford clearly and unequivocally expressed his intention to not complete the sale. I pause here to note that Mr. Michaud suggests on September 29, 2020, he "registered" the sale of the furnace with the supplier, Central Boiler, and that he also prepared a bill of sale for the purchase. However, a recording of a call between Mr. Ford and a representative from Central Boiler was placed before the Adjudicator. It indicates that Central Boiler's database contains no registration in Mr. Ford's name and no record of a sale to Mr. Ford. That said, I do not find that the sale was conditional upon this registration process being completed prior to Mr. Ford taking possession of the furnace – a process that had now been clearly interrupted by Mr. Ford's decision to buy another used furnace in Prince Edward Island. I return to the issue of registration below.

7. In a responding email, Mr. Michaud expressed his disappointment and suggested that he turned away other customers believing that the furnace had been sold. He characterized this as "lost sales" although there is no evidence as to who these customers were and/or when Mr. Michaud was speaking with them because he did not take their names or phone numbers. In the circumstances, I am compelled to give very little weight to this evidence other than to note that it reveals an active and interested market for this product;

8. There was evidence before the Adjudicator that Mr. Michaud did not register the sale with Central Boiler before Mr. Ford terminated the agreement;

9. The relationship between Mr. Michaud and Mr. Ford deteriorated quickly. By email dated Wednesday, October 14, 2020, Mr. Michaud complained that Mr. Ford and his girlfriend were making numerous calls to himself and Central Boiler which he described as harassment. Mr. Ford also:

   a. Lodged a complaint against Atlantic Outdoor Furnaces with the Better Business Bureau; and

b. Posted messages on Facebook that were very critical of Atlantic Outdoor Furnaces.
As indicated, Mr. Michaud took these complaints personally and felt aggrieved by them; and

10. Ultimately, Atlantic Outdoor Furnaces kept the furnace on site, apparently waiting for Mr. Ford to retrieve it. It also retained the purchase monies ($18,400) although I note that:

a. By email dated October 14, 2020, Mr. Michaud agreed to return $16,000 to Mr. Ford, stating that he would keep the balance ($2,400) as damages for "lost sales". It is unclear how he came up with that figure. The offer was expressly left open for only 24 hours; and

b. In the "Statement of Facts" placed before the Adjudicator in advance of the April 19, 2023, trial, Mr. Michaud stated that Mr. Ford could either pick up the furnace or be repaid $16,000. However, at this time, he added that Mr. Ford must also remove all of the "Faults Complaints". The precise meaning of "Faults Complaints" is somewhat unclear although it appears to be a reference to certain Facebook posts and messages to Central Boiler by Mr. Ford.

[44] I will now briefly address the specific questions related to the arguments referenced by the Adjudicator at paragraph 20 of his Summary Report; and explain why the issue of damages is the only viable analytical path in support of the Adjudicator's conclusions.

The Agreement was Not Void for Uncertainty

[45] In my view, a binding agreement was reached on all essential terms. The parties agreed on the subject matter of the sale (i.e. a specified furnace); the purchase price ($18,400, HST included); and delivery (Mr. Ford would take possession at the Atlantic Outdoor Furnaces' location). Moreover, Atlantic Outdoor Furnaces had the right to sell Mr. Ford the Furnace. There is no evidence that the furnace was in any way encumbered.

[46] The agreement was not invalidated because:

1. Mr. Ford received a clear quote before agreeing to purchase the furnace and before sending along the full purchase price ($18,400). Mr. Ford was clearly anxious to secure and hold the furnace.

2. Although Mr. Ford did not receive a written contract for sale, he terminated the agreement very quickly and there is no evidence to suggest that a formal, written bill of sale was required in the few days before Mr. Ford unilaterally terminated the agreement. It is also clear that Mr. Ford did not expect to receive a formal written bill of sale prior to or immediately after paying the full purchase price – or before he decided to terminate the agreement; and

3. Mr. Michaud did not register the furnace with the supplier (Central Boiler) prior to Mr. Ford terminating the agreement. However, there is no evidence to suggest that the agreement was somehow conditional upon Atlantic Outdoor Furnaces immediately registering the sale before Mr. Ford decided to unilaterally end it.

[47] I acknowledge that Mr. Ford acted quickly (within 48 hours) to terminate the agreement. At the same time, respectfully, Mr. Ford was not entitled to pay the full purchase price, secure and hold the furnace, and yet reserve the right to cancel the agreement and demand a complete refund because he found another deal.

[48] In short, there was a binding contract in which Atlantic Outdoor Furnaces would sell the furnace to Mr. Ford. All material terms were discussed and resolved at or around the time Mr. Ford paid the full purchase price. The agreement was clearly not rendered void due to uncertainty.

No Unjust Enrichment

[49] Atlantic Outdoor Furnaces was not unjustly enriched by depositing and holding the full purchase price paid by Mr. Ford. Unjust enrichment requires an enrichment; a corresponding deprivation; and the absence of a juridical reason to justify the enrichment. (see, for example, *Turf Masters Landscaping Ltd.* v *T.A.G. Developments Ltd.*, 1995 CarswellNS 223, [1995] N.S.J. No. 339 (N.S.C.A.)

[50] In this case, there is a juridical reason for Atlantic Outdoor Furnaces' enrichment: the binding agreement under which Mr. Ford paid the full purchase price for the furnace.

Damages

[51] Mr. Ford's decision to cancel the agreement constituted an anticipatory breach of the agreement giving rise to a claim for damages. In my view, this is the only legally permissible interpretation of the Adjudicator's Summary Report. For the reasons given above, I agree with that conclusion.

[52] The more significant question turns on the Adjudicator's assessment of damages.

[53] The Adjudicator's Order states that **all** purchase funds must now be returned to Mr. Ford. That conclusion implies that either:

1. The evidence before the Adjudicator was insufficient to support any damages by Atlantic Outdoor Furnaces; or
2. Any damages suffered by Atlantic Outdoor Furnaces' were totally undermined by a failure to mitigate.

[54] Respectfully, these conclusions give rise to an error of law and, as well, misapply the evidence that was before the Adjudicator in a material way and in a manner which would be unjust. I note the following:

1. I agree with Mr. Ford that certain alleged damages were not proven. For example, there is no compelling evidence to suggest that Atlantic Outdoor Furnaces suffer losses to "unwind" the transaction with Central Boiler. On the contrary, there is evidence to suggest that the transaction was never registered with Central Boiler. I also agree that the evidence of "lost sales" was suspect. Generally speaking, the evidence of Atlantic Outdoor Furnaces' damages before the Adjudicator was minimal;

2. That said, contractual damages are intended to put the innocent party in the position it would have occupied had the contractual terms been fulfilled. (Semelhago v Paramadevan, [1996] 2 S.C.R. 415 at para. 12, quoting Lord Wilberforce in Johnson v Agnew (1979), [1980] A.C. 367, [1979] 1 All E.R. 883 (U.K. H.L.)). This is sometimes referred to as protection of the "reliance interest" associated with contractual arrangements. Moreover, the assessment of contractual damages is not always carried out with perfect certainty. It is a well-established principle of law that the Court will do its best and will strain to quantify damages to ensure fairness. An early articulation of this principle can be found in Chaplin v Hicks, [1911] 2 K.B. 786 (Eng. C.A.). Indeed, the Court

has the discretion to award nominal damages to an innocent party. (see, for example, San-Co Holdings Ltd. v Kerr, 2009 BCSC 1747);

3. Respectfully, concluding that Atlantic Outdoor Furnaces suffered no damages at all is an error of law and misapplies the evidence (albeit minimal) in a material way giving rise to an injustice. At a minimum, the Court recognizes and does its best to quantify damages, even if they are nominal; and

4. The notion that failing to mitigate is absolute and completely overwhelms any entitlement to damages is similarly unjust. An innocent party is not entitled to do nothing and expect the opposing party to bear all future risks. The innocent party must act reasonably, and that obligation is particularly important where, as here, the innocent party is in the best position to mitigate any damages. Still, an innocent party is not required to perfectly mitigate and instantaneously eliminate all potential losses. That result is exceedingly harsh imposes a standard of perfection that is unrealistic. In my view, any suggestion that Atlantic Outdoor Furnaces' failure to mitigate was so egregious and immediate as to wipe out any claim for damages is an appealable error of law.

[55] Having found an error of law in the assessment of damages, the record before me is sufficient to the finally dispose of this dispute and provide the parties with a degree of certainty. Section 2 of the *Act* states that that civil disputes within a monetary limit will be "adjudicated informally and inexpensively but in accordance with the principles of law and natural justice." Returning this matter to the Small Claim Court for further proceedings would be inconsistent with that statutory intent and purpose. Moreover, it would confer a benefit upon a party (Atlantic Outdoor Furnaces) that failed to attend the original trial. It would also undermine an otherwise appropriate decision from the Adjudicator in denying Atlantic Outdoor Furnaces a fourth adjournment.

[56] In my view, Atlantic Outdoor Furnaces is entitled to nominal damages. Atlantic Outdoor Wood failed to present admissible evidence which would suggest anything more than nominal damages and further failed to act reasonably in mitigating any damages. Mr. Michaud says that he received "legal advice" suggesting that he retain (not sell) the furnace in question. No details are provided,

and I give very little weight to this evidence in any event. In any event, this does not excuse the failure to mitigate.

[57] Respectfully, within 48 hours of receiving the purchase monies and before there was any attempt to retrieve the furnace, Mr. Ford confirmed that he did not intend to proceed with the sale and had no intention of retrieving the furnace. It was not reasonable for Atlantic Outdoor Furnaces to completely ignore any opportunity to sell the furnace and, instead, pretend that it was going to hold the furnace on site until Mr. Ford decided to pick it up – an event that Atlantic Outdoor Furnaces knew was never going to happen. Mr. Ford made it perfectly clear that he had no intention of taking possession of the furnace. Here again, I return to the evidence before the Adjudicator that Atlantic Outdoor Furnaces had not actually registered the sale to Mr. Ford by the time Mr. Ford terminated the contract. This suggests that, consistent with the evidence, Atlantic Outdoor Furnaces understood Mr. Ford was not going to take possession of the furnace.

[58] I find that Atlantic Outdoor Furnaces failed to properly mitigate its damages for the contractual breach. Atlantic Outdoor Furnaces should have taken immediate steps to market and sell the furnace.

[59] I also note that Atlantic Outdoor Furnaces consistently offered to return $16,000, while retaining the balance $2,400 as damages for "lost sales". These admissions further reinforce the notion that Atlantic Outdoor Furnaces understood that the real issue was damages, and that Mr. Ford was never going to retrieve the furnace. Respectfully, again, Atlantic Outdoor Furnaces should have immediately attempted to re-sell this brand-new furnace. Yet, based on the evidence before the Adjudicator, it did nothing at all.

[60] Based on all the foregoing, I award Atlantic Outdoor Furnaces' nominal damages in the amount of $750.

[61] Atlantic Outdoor Furnaces is entitled to pre-judgement interest on its damages.

[62] I am prepared to accept the Adjudicator's rate of 4% per annum for a period of 30 months. The amount of prejudgment interest owing to Atlantic Outdoor Furnaces is $75.

[63] The total amount of Atlantic Outdoor Furnaces' damages is $825, which shall be deducted from the amounts originally paid by Mr. Ford. This results in a subtotal of $17,575.

[64] In my view, Mr. Ford is also entitled to some pre-judgment interest for the monies that Atlantic Outdoor Furnaces retained throughout this proceeding. At the same time, there must be some corresponding recognition of Mr. Ford's anticipatory breach and the fact that Atlantic Outdoor Furnaces, acting reasonably, would have required some time to sell this new furnace. I grant Mr. Ford pre-judgement interest for 26 months. The amount of prejudgment interest owing to Mr. Ford is $1,523.

Conclusion

[65] Atlantic Outdoor Furnaces shall forthwith pay to Mr. Ford the sum of $19,098. Atlantic Outdoor Furnaces shall retain possession of the furnace in question. The Appeal is otherwise dismissed.

Keith, J.