

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** *GE Canada Equipment Financing G.P. v. 3068485 Nova Scotia Ltd.*, 2006 NSSC 360

**Date:** 20061215

**Docket:** SH 264303

**Registry:** Halifax

**Between:**

GE Canada Equipment Financing G.P.

Plaintiff

v.

3068485 Nova Scotia Limited, DRL Coachlines Limited,  
DRL Vacations Limited and Ruth Roberts-Tetford

Defendants

**Judge:** The Honourable Justice M. Heather Robertson

**Heard:** August 1 and 4, 2006, in Halifax, Nova Scotia

**Written Decision:** December 15, 2006

**Counsel:** David Coles, Q.C., and Jeysa Martinez-Pratt, Articled  
Clerk, for the plaintiff  
Jason P. Gavras, for the defendants

**By the Court:**

[1] On August 1, 2006, GE Canada Equipment Financing G.P. (“GE”) sought and was granted a summary judgment against the defendants, 3068485 Nova Scotia Limited (“3068485”) and DRL Vacations Limited (“DRL Vacations”) in the amount of \$633,514.44 representing the balance of the loan owing to the plaintiff with respect to monies originally borrowed for the purchase of 95 school buses.

[2] This is the decision with respect to GE’s application for summary judgment against the defendant DRL Coachlines Limited (“DRL Coachlines”). GE did not seek summary judgment against the defendant Ruth Roberts-Tetford on August 1, 2006. However, Ms. Roberts-Tetford appeared and gave evidence on behalf of DRL Coachlines.

**BACKGROUND**

[3] GE Canada is a business name registered by 3072427 Nova Scotia Company registered under the laws of Nova Scotia with its registered office in Halifax. Bruce Rutherford is the Senior Manager - Atlantic Canada for GE. His affidavit dated May 18, 2006, sets out the details of and appends the security documentation as between GE and the defendants.

[4] The defendant, 3068485 is an incorporated company registered pursuant to the laws of Nova Scotia. The defendants, DRL Coachlines and DRL Vacations are companies incorporated under the laws of Newfoundland and Labrador and both are registered to carry on business in Nova Scotia having an office located in Dartmouth, Nova Scotia.

[5] By agreement dated February 6, 2003, DRL Vacations borrowed the amount of \$5,923,000.00 from GE Canada to purchase 95 international conventional passenger school buses. The Equipment Loan and Security Agreement dated February 6, 2003 (the “Loan Agreement”) is attached to the affidavit of Bruce Rutherford at Exhibit “A.” Jarvis Roberts signed as Secretary, on behalf of DRL Vacations.

[6] 3068485, DRL Coachlines and Ms. Roberts-Tetford all signed Guarantees, guaranteeing the indebtedness of DRL Vacations to GE Canada.

[7] DRL Coachlines signed a Guarantee and Indemnity on February 6, 2003 (the "Coachlines Guarantee") which is attached at Exhibit "B" of the affidavit of Bruce Rutherford. Jarvis Roberts signed that document as Secretary of the company. His mother, Ms. Roberts-Tetford, signed a Guarantee and Indemnity on February 6, 2003 (the "Roberts-Tetford Guarantee") which is attached at Exhibit "C" of the affidavit of Bruce Rutherford. On this page there was a signature line for a corporate guarantor, but it remained blank. 3068485 signed a Guarantee and Indemnity on March 14, 2005, which is attached at Exhibit "D" of the affidavit of Bruce Rutherford. Jarvis Roberts signed this document as President of the company.

[8] Subsequently, all of the defendants, 3068485, DRL Coachlines, DRL Vacations and Ms. Roberts-Tetford entered into a Supplemental Equipment Loan and Security Agreement ("Supplemental Equipment Loan and Security Agreement") with the plaintiff dated March 23, 2005. That documentation set forth that total balance outstanding plus interest was \$3,770,592.59 and that the interest rate applicable was 7.15% on the outstanding balance. This document is found at Exhibit "E" of the affidavit of Bruce Rutherford. The signator for DRL Coachlines as Guarantor is Jarvis Roberts. Ms. Roberts-Tetford signed in her personal capacity as Guarantor but not on behalf of DRL Coachlines.

[9] Following that, on August 29, 2005 an Amended Supplemental Equipment Loan and Security Agreement was entered into by all the parties (the "Amended Supplemental Equipment Loan and Security Agreement") wherein it shows that the balance outstanding plus unpaid accrued interest was \$1,418,153.36 with the interest rate of 7.15%. A copy of the Amended Supplemental Loan and Security Agreement is found at Exhibit "F" of the affidavit of Bruce Rutherford. Ms. Roberts-Tetford signed this document in her personal capacity as a Guarantor and Jarvis Roberts signed as an Officer of DRL Coachlines.

[10] In January of 2006, GE Canada released its security interest in the school buses which were sold by DRL Vacations for the amount of \$877,800.00. The parties then entered into an agreement entitled Acknowledgement and Agreement dated the \_\_\_\_ day of January 2006 found at Exhibit "G" to the affidavit of Bruce Rutherford. This document sets out that DRL Vacations and the Guarantors would remain liable to the plaintiff for the balance of the indebtedness in the amount of \$633,514.44 plus costs of \$2,000.00. This amount was to be paid on or before 12:00 noon on Monday, January 30, 2006 and if not repaid in full on that date, the

loan would be in default and GE Canada would be entitled to take such further action as it deemed appropriate. The signator to this Agreement on behalf of the three companies is Jarvis Roberts. A copy of the Release is found at Exhibit "H" of the affidavit of Bruce Rutherford.

[11] The balance of the loan was not paid by the deadline of January 30, 2006.

### **PLEADINGS:**

[12] On March 30, 2006, GE Canada sued DRL Vacations, 3068485, DRL Coachlines and Ms. Roberts-Tetford jointly and severally for special damages in the amount of \$633,514.44, representing the balance of the loan owing to GE Canada, special damages in the amount of \$2,000.00, representing costs pursuant to the Agreements, interest on all damages, costs, and such further other relief as this honourable Court deems just.

[13] On April 25, 2006, Jarvis Roberts filed defences on behalf of 3068485, DRL Coachlines and DRL Vacations and Ms. Roberts-Tetford. He described himself as "an officer for these (corporate) defendants."

[14] The nature of the joint defence filed contains a standard denial and alleges that the plaintiff either innocently or negligently misrepresented the nature of the documents to be executed and in doing so induced the defendants to execute Guarantees and that the defendants did not understand that they were executing Guarantees and were pressured by the plaintiff into signing Guarantees. They further allege the underlying security documents were invalid and not properly executed and that the plaintiff breached a "duty to inquire" by failing to advise the defendants to retain independent legal advice.

[15] On June 14, 2006, an amended defence was filed on behalf of the defendant, Ms. Roberts-Tetford and DRL Coachlines by their counsel Jason Gavras.

[16] The nature of the defence carries a standard denial and alleges that Ms. Roberts-Tetford is the sole shareholder of DRL Coachlines and was resident in Newfoundland at all material times when the security documents were executed. She pleads that she was never advised by GE of the nature and meaning of the documents she signed, the terms of the documents, nor was she advised to seek independent legal advice. She says that she only received the final "signing" page

of the Guarantees by facsimile in Newfoundland and was not provided with the full document to review prior to signing. She pleads *non est factum* and further says that there was no fresh consideration at all flowing to her in return for signing the documents and that they are not therefore legally binding.

[17] DRL Coachlines says in their defence that Jarvis Roberts was never a shareholder nor officer nor director of Coachlines and never had authority, real or apparent, to sign guarantee documents on behalf of Coachlines.

[18] Further, DRL Coachlines says that at the time the signing pages of the Guarantee document were faxed through and signed by Roberts-Tetford there was no signature in the space provided for DRL Coachlines and Roberts-Tetford refused to sign for DRL Coachlines and had no intention for DRL Coachlines to be a signator to any business document.

[19] And further, that Roberts-Tetford only learned of the nature of the Guarantee documents upon being sued in the action.

[20] DRL Coachlines says that had the plaintiff performed a rudimentary corporate search, it would have discovered that Jarvis Roberts was not an officer nor director of DRL Coachlines and had no authority to sign a Guarantee on behalf of DRL Coachlines.

## **LAW AND ARGUMENT:**

[21] The parties agree that the test for summary judgment is well settled. The onus is on the applicant to show there is “no genuine issue of material fact requiring trial.” *Guarantee Co. of North America v. Gordon Capital Corp.*[1999] 3 S.C.R. 423. Once the applicant has discharged this burden the defendant must demonstrate that it has *bone fide* defence and a real chance of success at trial.

[22] It is the plaintiff’s position that there is no factual issue requiring trial. The plaintiff argues that Ms. Roberts-Tetford by her own evidence acknowledges that Jarvis Roberts had authority to execute documentation on behalf of DRL Coachlines and that the plaintiff was entitled to rely on the borrowing resolution provided by DRL Coachlines. The plaintiff argues that Jarvis Roberts had the apparent authority to bind DRL Coachlines.

[23] In this regard, the plaintiff tendered copies of documents filed on behalf of DRL Coachlines with the Nova Scotia Utility and Review Board (Exhibit 4 of the court record), wherein Jarvis Roberts filed for motor carrier licenses. In these documents he is described as the Manager of DRL Coachlines and in one document as its Agent.

[24] They also rely on filings with the Registrar of Joint Stock Companies on behalf of DRL Coachlines and DRL Vacations Limited (Exhibit 3 of the court record) allowing them to carry on business in Nova Scotia. He is described therein as General Manager.

[25] The plaintiff further relies on the borrowing resolution of DRL Coachlines dated February 4, 2004 authorizing the secretary to execute the Indemnity and Guarantee. Jarvis Roberts signed this document as Secretary of the Company.

[26] The defendant DRL Coachlines resists the application for summary judgment saying that DRL Coachlines' Guarantees are void and unenforceable since they were signed by a person without signing authority and that GE knew or ought to have known that this was the case and it failed to make inquiries to confirm signing authority.

[27] The defendant DRL Coachlines submits that GE knew as early as July 2000 that Jarvis Roberts did not have authority to bind DRL Coachlines to the Guarantees in dispute signed in 2003 and 2005.

[28] Ms. Roberts-Tetford in her affidavit evidence asserts that in July 2000 Jarvis Roberts negotiated the lease of two buses for DRL Coachlines through GE. The then Accounts Manager for GE, Brian Brown, in a letter dated July 7, 2000, asked Jarvis to confirm his signing authority for DRL Coachlines. DRL Coachlines says no confirmation was ever provided and instead Ms. Roberts-Tetford signed the lease as President of DRL Coachlines. This correspondence and lease agreement are found as Exhibit "D" to Ms. Roberts-Tetford's affidavit sworn July 21, 2006.

[29] The defendant argues that Jarvis Roberts was no more than the Manager of the day-to-day operation of DRL Coachlines and that his duties were nominal as DRL Coachlines owned only one bus in Nova Scotia to service a Halifax to Yarmouth route.

[30] Ms. Roberts-Tetford gave evidence at this hearing. She agreed that Jarvis had been authorized by her to file for motor carrier licenses on behalf of DRL Coachlines at the Utility and Review Board ("UARB") in Halifax. As well, she acknowledged that he had been authorized to file the required documents with the Registrar of Joint Stock Companies ("RJSC") so that DRL Vacations and DRL Coachlines could carry on business in Nova Scotia. In it he was described as General Manager.

[31] However, Ms. Roberts-Tetford testified that "well these things, like the Public Utilities, Jarvis is looking after the license ... Jarvis does all the paperwork in Nova Scotia. He looked after the URB. He done everything like that and I ... never dealt with it, but that was not putting me on the line for dollars and cents and money."

[32] With respect to the plaintiff's reliance on the borrowing resolution signed by Jarvis Roberts as Secretary of DRL Coachlines, Ms. Roberts-Tetford points out that in contrast, GE sought and received by borrowing resolution dated February 6, 2003. Ms. Roberts-Tetford signed this borrowing resolution from DRL Vacations allowing Jarvis Roberts authority to act for DRL Vacations (Exhibit "5" of the court record).

[33] The two resolutions although in very different form were signed on the same date. Both are resolutions prepared by GE. Ms. Roberts-Tetford asks for the opportunity to conduct discoveries to inquire into the circumstances of the preparation and execution of these resolutions. She asks why GE would require her signature on one document and not the other.

[34] It is clear from Ms. Roberts-Tetford's evidence that she was aware that Jarvis Roberts had considerable authority to conduct business on behalf of DRL Coachlines. Ms. Roberts-Tetford agreed on cross examination that she was aware Jarvis has signed other documents as the Secretary of DRL Coachlines. However, she appeared to draw a distinction between his authority to sign mere paperwork such as licenses and registrations as opposed to security instruments binding her Company.

[35] She was adamant that she never authorized Jarvis to sign guarantees on behalf of DRL Coachlines and chose not to herself by leaving blanks, although she agrees that she did sign as a Guarantor in her personal capacity.

[36] Bruce Rutherford testified that he had not seen and did not rely on any UARB licence documentation or Nova Scotia Registrar of Joint Stock filing on behalf of DRL Coachlines. He testified that he relied on the borrowing resolutions of DRL Coachlines signed by Jarvis Roberts as Secretary. Ms. Roberts-Tetford testified that she did not have any knowledge of this resolution.

[37] Bruce Rutherford also testified that he had not asked GE's agent or solicitor in Newfoundland to search the records of the Registrar of Joint Stock Companies to inquire of the proper signing authority for DRL Vacations or DRL Coachlines. He testified that the on-line service to the Registrar of Joint Stock Companies of Newfoundland which he could access from his office provided information as to whether the company was registered and was in good standing having paid registration fees. The on-line service did not provide him with information as to the officers and directors of the company searched.

[38] A central issue for trial will be that of the actual or apparent authority of Jarvis Roberts to sign these security documents as an Officer and Secretary of DRL Coachlines and thus bind the Company as a Guarantor of the debt. Whether or not the plaintiff GE had actual knowledge that Jarvis Roberts was not an Officer and Director of the Company will be a relevant consideration. Mr. Rutherford was cross examined on his affidavit and the documents appended to it. He did not have with him any other file material relating to his dealings with these defendants.

[39] Counsel for DRL Coachlines asks the court for the opportunity to discover officers of the plaintiff GE respecting these files and the history of its dealings with the defendants.

[40] The issue for me to decide is whether GE has satisfied the court that there is no genuine issue of material fact requiring trial and therefore summary judgment is a proper consideration.

[41] There is no factual dispute as to the signatures on the security documents in Bruce Rutherford's affidavit which purport to bind DRL Coachlines as Guarantor of DRL Vacations debts to GE.

[42] Mr. Coles asserts on behalf of the plaintiff GE that despite the general presumption that a forged document is a nullity, the apparent authority Jarvis



Roberts has been proved and the defendant DRL Coachlines cannot escape liability (The Law of Guarantee, Kevin Patrick McGuinness (2<sup>nd</sup> edition)).

[43] I have reviewed the line of authorities relied on by the applicant GE. *Rockland Industries Inc. v. Ameranda Minerals Corporation of Canada Limited*, 12 Alta. L.R. (2d) 172, [1980] 2 S.C.R. 2, 11 B.L.R. 29, [1981] 1 W.W.R. 110, 108 D.L.R. (3d) 513, 21 A.R. 79, 31 N.R. 393; *Great Northern Grain Terminals Ltd. v. Axley Agricultural Installations Ltd.* (Alta. C.A.) [1990] A.J. No. 817, 76 Alta. L.R. (2d) 156 109 A.R. 16 2 B.L.R. (2d) 56 Appeal No. 9003 0039; *Doiron v. Manufacturers Life Insurance Co. (c.o.b. Manulife Financial)* [2003] A.J. No. 1389, 2003 ABCA 336 Docket No. 0201-0255-AC; and *Canadian Laboratory Supplies Ltd. v. Engelhard Industries of Canada Limited*, 97 D.L.R. (3d) 1, 78 D.L.R. (3d) 232; 68 D.L.R. (3d) 65.

[44] These are authorities that address ostensible authority and reliance.

[45] The outcome of each case was much dependent upon the finding of facts by a trial judge.

[46] The issues of Jarvis Roberts ostensible and apparent authority or Ms. Roberts-Tetford's acquiescence or ratification of his actions are live issues for trial.

[47] It is far from clear on the evidence before me that there are no genuine issues of material fact requiring trial.

[48] I am left with questions concerning GE's conduct in accepting Jarvis Roberts' signing authority and their prior knowledge of corporate structure of DRL Vacations and DRL Coachlines. Each party has addressed the role of a solicitor in acting for DRL Coachlines and subject to the obvious evidentiary issues of solicitor client privilege his role may also give rise to facts that would assist the trial judge.

[49] The conduct of all of the signators to these Agreements and their credibility should therefore be left to the trier of fact to assess at trial.

[50] It is at least premature to consider an application for summary judgment before discoveries of the parties have been conducted.

[51] The applicant GE has not shown me at this stage of the trial process that there is no material fact at issue requiring trial.

[52] The application is dismissed.

Justice M. Heather Robertson