

Claim No: 432256

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Allen Print Ltd. v. Joepop Images, 2014 NSSM 78

BETWEEN:

THE ALLEN PRINT LTD.

Claimant

- and -

JOEPOP IMAGES and COLIN MacDOUGALL

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 25, 2014

Decision rendered on December 1, 2014.

APPEARANCES

For the Claimant Lori Voogt, sales consultant

For the Defendants self-represented

BY THE COURT:

[1] The Claimant is a printing company. The Defendant Colin MacDougall is a graphic designer and entrepreneur who appears to use the business name JoePop Images, although there does not appear to be any such registered name with the Registry of Joint Stock Companies. I will therefore refer to Colin MacDougall as the Defendant (singular) as he is the only legal person named in the Claim.

[2] The Claimant printed up a glossy magazine-type “program” for the Defendant, on behalf of the Defendant’s client the Strait Pirates Junior Hockey Club, a Junior B club that plays out of the Port Hawksbury area. The total bill for the printing on April 16, 2014 was \$5,540.56. The Defendant paid \$2,000.00 on or shortly after delivery, and promised to pay the balance later.

[3] There is no complaint about the quality of the printing job.

[4] For various reasons of poor health and business problems, the Defendant was unable to pay his balance. There were phone calls and emails from the Claimant, usually but not always from Ms. Voogt, following up. Eventually, the Claimant (or Ms. Voogt personally) lost patience. On September 17, 2014 she sent an email to the Defendant, expressing disappointment about the non-payment. She also added several names to the list of recipients which included two people who are or were on the board of directors of Strait Richmond Minor Hockey, an association that is not the same as the Strait Pirates club, but which is the association with which the club is affiliated.

[5] The email in question read, in part:

“.... I have enjoyed our working relationship with yourself and Strait Richmond Minor Hockey. I have always been patient with the agreed upon payment terms, however, this time your lack of payment, commitment and communication leave me wondering if I should be seeking legal council (sic) in regards to getting paid.

I have attached the invoice again for your records. As Strait Richmond Hockey Minor Hockey was the end user of the program, they should be aware that this invoice remains unpaid.

[6] There is no doubt in my mind that the purpose of copying the email to the organization that Ms. Voogt thought was the end user of this program, was to put pressure on the Defendant and, to an extent, to shame him in the eyes of his supposed client.

[7] The Defendant testified that, as a result of this email, he lost stature in the eyes of Strait Richmond Minor Hockey, who were not associated with this printing job, but with whom he did other business, and from whom he expected some lucrative contracts. Specifically, he hoped or expected to get the contract to design and print so-called 50-50 tickets.

[8] Ms. Voogt testified that she had made an assumption that the job had been for the Strait Richmond Minor Hockey association, and that this was the name in her computer system; as such, the invoice had been directed to Strait Richmond Minor Hockey c/o the Defendant. (I note that at no time did the Defendant seek to correct the invoice between April 22 when it was issued, and September 17 when the email went out.)

[9] Ms. Voogt further testified that after receiving the email, one of the executive members of Strait Richmond Minor Hockey called her on the phone, asking what this was about, and in the course of that conversation asked her if her company would be interested in quoting on the contract to print 50-50 tickets. She said that she was interested, and put in a bid shortly thereafter. The Claimant company did not get the 50-50 contract.

[10] The Defendant testified that he was also asked to quote some weeks later, which he did, but that he also did not get the contract. He stated that in previous years he was simply awarded the contract, without the need to quote. He believes that the actions of the Claimant in contacting his client, Strait Richmond Minor Hockey, had the effect of damaging his reputation and caused him to lose business. He claims that this amounts to defamation, and a breach of confidence in that the status of his account with the Claimant was information that should have been kept confidential. He says that, as a result, he has suffered business losses which would more than offset any amount he otherwise owes the Claimant.

[11] There are several problems with the Defendant's position.

[12] First of all, there is no evidence that he lost the Strait Richmond Minor Hockey contract because of the email from the Claimant. No one ever told him that directly. It is an assumption that he makes. I am not saying that the assumption is outlandish, but the connection has not been proved on a balance of probabilities. There are many possible reasons why the Strait Richmond Minor Hockey people might have been looking to put their business out to tender. Unless the Defendant had been directly told that, and reported the conversation

to the court, or someone from the organization had been called to testify to that effect, it remains speculative.

[13] Secondly, the Defendant has not established that there was anything unlawful about the email. There was an inaccuracy in the sense that Ms. Voogt was wrong in her assumption that Strait Richmond Minor Hockey was either the same entity as the Strait Pirates club, or that it had commissioned the program. But she was not otherwise wrong in her statement that the invoice was unpaid and that there had been an unreasonable delay by the Defendant. I understand also that Ms. Voogt did not specifically mention that there had been a \$2,000 payment on account, but I do not think this would have made any difference. The thrust of the email was that the Defendant was someone who had not paid a legitimate bill, and that he was ducking communication, as he appeared to be toward the end. A statement made to third parties is not defamatory if it is true.

[14] Nor was the information confidential, in a legal sense. It may well be seen to lack discretion to share information about a client's bill-paying habits with third parties, but I do not see that it offends any laws concerning privacy or confidentiality.

[15] Thirdly, the Small Claims Court has no jurisdiction in matters pertaining to defamation. Section 10(c) of the *Small Claims Court Act* states as follows:

10 Notwithstanding Section 9, no claim may be made under this Act

.....

(c) for defamation or malicious prosecution;

[16] I appreciate that the Defendant is not making a claim for defamation, *per se*, but his position is in the nature of a counterclaim which is covered by the same limitation on jurisdiction. His remedy, if any, would have to be pursued in an action in the Supreme Court of Nova Scotia.

[17] As such, I cannot find that the Defendant has mounted any legitimate defence to the claim.

[18] In finding as I do, I should not be taken to approve wholeheartedly of Ms. Voogt's action. She was careless in her choice of recipient. In this day and age, it is all too easy to add extra email addresses to a communication, which have the effect of amplifying the negative effects of an ill-advised message. Even had she correctly identified the Defendant's client, shaming the Defendant in the eyes of his client was not necessarily a right or honourable thing to do. I am not without sympathy for the Defendant in this situation. However, nothing that was done here excuses payment of the bill.

[19] The Claimant will have a judgment for \$3,540.56 plus costs of \$113.83, for a total of \$3,654.39.

Eric K. Slone, Adjudicator