

Claim No. SCCH 264634

Date:20070101

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Gillis Truck Leasing and Sales Ltd. v. Woody's Auctions Ltd., 2007 NSSM 2

BETWEEN:

GILLIS TRUCK LEASING AND SALES LIMITED

Claimant

- and -

WOODY'S AUCTIONS LIMITED

Defendant

Adjudicator: David TR Parker

Counsel: Kevin A. MacDonald, Counsel represented the Claimant.

Dan Woodfield represented the Defendant

ORDER

Parker:-This matter came before the Small Claims Court of Halifax and Province of Nova Scotia on the 7th day of November, A.D. 2006

Kevin A. MacDonald, Counsel represented the Claimant.

Dan Woodfield represented the Defendant.

This case involves a public auction where the Claimant purchased equipment however he did not receive what he intended to purchase and therefore is seeking a return of his money paid to the auctioneer.

Facts

This case is relatively straightforward and the salient facts are as follows:

The Claimant attended a public auction with the intent of purchasing various items.

The Claimant's owner viewed a four post hoist it wished to purchase, part of the hoist that was

viewed had beside it a scissors lift.

At some point either before or after the bidding on the hoist the scissor lift parts were removed from Lot 435 which was the numbered lot of the hoist.

The Claimant offered to buy the hoist and his offer was accepted by the Defendant.

After paying for the hoist the Claimant discovered the scissor lift was removed and was not sold as part of the hoist.

The Claimant paid \$1,300.00 and tax and fees associated with the purchased items which amounted to \$1,599.65.

The auctioneer said that he explained to the bidders that parts of Lot #435 had been removed and that the Claimant had every opportunity to view the item prior to it going up for final bidding.

The Claimant said this was never told to him or announced at the auction. The Claimant's owner's son said there were items that were no longer part of the action and they were moved to a back part of the fenced in area. He looked at these items but the hoist and the scissor lift part were not there.

The Law and Analysis

There are several elements to a contract that must be met in order to have a valid contract. Offer and acceptance which occurred in this case; consideration, which also occurred and there are others elements, legal authority and so on. The element that has been pleaded as missing in this contract is genuine consent. One of the factors which can take away genuine consent is mistake. Normally the rule of caveat emptor applies unless there has been mutual mistake, a unilateral mistake or a common mistake. In this case there has been a mutual mistake that is where each party is mistaken as to the others intention, through neither party realizes it. In order to determine this intention I have employed the reasonable person test rather than the subjective test. Looking at all the circumstances of this case, it is apparent that the Claimant concluded mistakenly that what he viewed was what he was purchasing and yet that was not what the Defendant was selling.

For these reasons there was a true lack of consent which is a requirement of any bargain, and therefore no contract.

IT IS THEREFORE ORDERED that the Defendant shall pay the Claimant the following sums:

\$1,599.65

80.00 Court costs

\$1,679.65 Total

The hoist is with the auctioneer Defendant and it is not necessary to order it to be delivered up to the auctioneer.

Dated at Halifax, on the 1 day of January, 2007.

David T.R. Parker
Small Claims Court Adjudicator