

Claim No: 314036

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Cite as: King v. Haddad, 2009 NSSM 63**

**BETWEEN:**

**FINWICK GEORGE KING**

CLAIMANT

- and -

**WALID HADDAD**

DEFENDANT

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**DECISION**

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DATE OF HEARING: October 7, 2009

DATE OF DECISION: October 23, 2009

PLACE OF HEARING: Dartmouth, Nova Scotia

HEARD BEFORE: Patrick L. Casey, Q.C.  
Small Claims Court Adjudicator

COUNSEL: Finwick George King, Claimant, appeared on his  
own behalf

Walid Haddad, Defendant, appeared on his own  
behalf

**FACTS**

- (1) The Claimant, Finwick George King (King), and the Defendant, Walid Haddad (Haddad), entered into negotiations for the purchase by King of Haddad's business known as Krazee Kue Billiards Club Ltd. (Krazee Kue).
- (2) Negotiation of the terms of the purchase took place at several meetings between King and Haddad. At various times during these meetings other persons were present, including Dave Major (Major), Danny Daoud (Daoud), and Akram Ribahi (Ribahi). Ribahi was the owner of the premises from which the aforesaid business operated and had leased the premises to Haddad for that purpose.
- (3) As a result of negotiations between King and Haddad, the basic terms of an agreement were reached between them, including a purchase price of \$16,000.00, to include all equipment, furniture, pool tables, and other equipment, leasehold improvements, and Haddad's interest in all lottery machines or video lottery terminals, all inventory and goodwill.
- (4) Once King and Haddad reached the final terms of sale, a meeting with King, Haddad, and Ribahi was arranged.
- (5) At that point, King mentioned to Haddad that he wanted to ensure that Ribahi was "onboard" with the terms of the deal before King retained a lawyer to draft a Purchase and Sale Agreement. Haddad spoke to Ribahi and Ribahi indicated his acceptance to the terms of the deal.
- (6) At the meeting between Haddad, King, and Ribahi, King presented a Purchase and Sale Agreement which had been prepared by his lawyer. There were some small errors, mainly typographical errors, but no concerns were expressed about the basic terms of the deal. King agreed to have his lawyer make the requisite changes and the parties agreed that they would then have another meeting for purposes of signing the document. The next meeting was scheduled within a very short time frame.
- (7) Due to illness, King was unable to make the meeting and there were several other brief postponements. In the meantime, Ribahi advised Haddad that another prospective purchaser had come forward offering the sum of \$20,000.00. Ribahi indicated to Haddad that he was no longer prepared to lease the premises to King. He was going to proceed with the new prospective purchaser.
- (8) Haddad advised King what had occurred. The uncontradicted evidence is that Haddad was very upset by Ribahi's decision. He disagreed with the decision by Ribahi. He felt that his personal word was at stake. He also felt caught in the middle since he had no control over what Ribahi might or might not do.

- (9) Needless to say, King was upset that the deal was not going to go through and mentioned to Haddad that he believed Haddad should be responsible for the legal expenses incurred by King in preparing the Agreement of Purchase and Sale. Haddad objected and told King that he should not be responsible since what Ribahi had decided was beyond his control.

### **ANALYSIS OF LEGAL ISSUES**

- (10) There was a verbal agreement between Haddad and King with respect to the sale of Krazee Kue. The agreement included an arrangement whereby the business would be placed in the name of King's wife for reasons related to the obtaining of a liquor license. The agreement was also expressly contingent upon Haddad being able to assign his interest in the existing lease to King or his nominee with the consent of the landlord.
- (11) For reasons beyond Haddad's control this did not occur.
- (12) In these circumstances, I am unable to conclude that Haddad has breached an agreement between himself and King. There is no evidence that Haddad was complicit in Ribahi's decision not to proceed with King as a lessee of the premises, to the contrary, I conclude that this was Ribahi's decision alone.
- (13) While King and Haddad both honestly believed that Ribahi would accept King as a lessee, this was a matter which was beyond the control of both of them.
- (14) Based on these circumstances, I am not prepared to find that Haddad had misrepresented the situation in any way to King. Both of them fully understood that Ribahi's consent was necessary. Both of them honestly believed that it would be forthcoming. Both of them were wrong.
- (15) I find that the consent of Ribahi to lease the premises to King was a condition precedent to any agreement between Haddad and King. The subsequent rejection by Ribahi of King as a tenant for whatever reason prevented the performance of the contract terms by Haddad. It would have been impossible for Haddad to carry out performance of the contract without Ribahi's acceptance of King as a lessee.
- (16) For this reason, I am unable to find any basis upon which Haddad is liable to King for the costs incurred by him for the preparation of the Agreement of Purchase and Sale.
- (17) Further, there is an express provision contained in Section 29(1)(b) and Regulation 15(2) of the Small Claims Court Act of Nova Scotia which prevents this Court from awarding legal fees to a litigant. In that regard, I refer to the case of Burgess v. Rickard, 2008 CarswellNS 110 decided by Adjudicator Slone of this Court in which he stated as follows at paragraph 52:

“The costs for legal research consist of 14 hours at the rate of \$50.00 per hour, plus HST, said to have been paid to "C. Burgess, LL.B." I am not aware of who C. Burgess is, although it really does not matter because the regulation is quite clear that money paid as "agent or barristers fees" is not recoverable. That is a policy decision made by the Legislature to promote access to the Small Claims Court without fear of having to pick up the tab for the other party's legal expenses.”

(18) For these reasons, the claim is therefore dismissed.

Dated at Dartmouth, Nova Scotia,  
on October 23, 2009.

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Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)

