

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Boudreau v. Stroud, 2012 NSSM 10

BETWEEN:

JOSEPH R. BOUDREAU and others

Claimants

- and -

THOMAS WILLIAM STROUD

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on February 7, 2012

Decision rendered on February 14, 2012

APPEARANCES

For the Claimants self-represented

For the Defendant self-represented

BY THE COURT:

[1] In late 2008 the Claimant, Joseph Boudreau, brought a claim before this court (claim no. #298292) on his own behalf and on behalf of a group of former investors and shareholders in a company called A-Cab Co. Ltd. That company had been formed as a cooperative venture by a group of taxi drivers, who hoped to succeed in a venture that had drivers owning their own taxi business. Unfortunately, there was dissension within the larger group and approximately ten people joined in that claim to try to recoup their investment.

[2] The Claimants in that case also sought some recognition that they were still shareholders. In my decision I made the following findings:

[46] It is my finding that, in the absence of any binding terms to the contrary, the investors are entitled to have their shareholder loans repaid.
.....

[48] It is also my finding that the Claimants abandoned their shares in the company, for which they paid \$10.00. This is not big loss as there is no evidence that those shares would have been worth anything at this time.

[3] In the result, I gave a judgment requiring the company to pay \$9,023.00 to the group, broken down into individual amounts as not all of them had the same amount invested. The final order in that matter was issued in January 2009, which is more than three years ago.

[4] The records in that file indicate that the Claimants had an execution order issued. As the facts now appear, they have not collected anything on their judgment.

[5] The current claim was issued by Mr. Boudreau (on behalf of the same group) on the 7th of July 2011, naming as Defendant an individual named Thomas William Stroud (“Stroud”). Essentially, the Claimants now contend that Stroud should be held responsible for the judgment amount because he operates the business known as A-Cab Service Ltd. ,

[6] The facts which emerged at the trial before me on February 7, 2012 are pretty clear. After the defection (or ouster) of the Boudreau group from A-Cab Co. Ltd. in late 2007, the company limped along. The number of drivers dwindled to about ten die-hards, which would hardly be enough for a thriving taxi company. The number of calls from members of the public dropped to levels only a small fraction of what they had once been. The company was losing money, despite the fact that most if not all of its office work (such as dispatching) was being done on a volunteer basis by the drivers themselves. It was stuck with more radios under lease than it needed, because of the loss of drivers. One of the witnesses pegged the monthly shortfall at \$600.00. It had to scrape to raise the rent on its small office.

[7] According to the witnesses who were involved with the company in these later, dark days, it was virtually hopeless. They were struggling to keep it going and struggling to make a living. Several of the key individuals actually signed up with a rival taxi company in order to earn a living. The company had no assets of any value. In fact, what it had mostly were liabilities, including the judgment for \$9,000 plus held by Boudreau and others. One of the individuals took over the lease payments on the radios, because the company could no longer afford to make them.

[8] I can easily infer that had the company had any real assets, such as money, the Boudreau group would have been able to collect on their judgment.

[9] A-Cab Co. Ltd. did have some intangible assets. It had the name "A-Cab" which actually had a lengthy history in Halifax dating back to a predecessor enterprise. It also had a phone number - 445-8888 - which doubtless resided in some people's memories, although as the evidence shows, it was not producing many calls by 2011. It is difficult, if not impossible, for me to make any finding as to what value the name and number had, as I heard no evidence on that point. However, what is clear is that Stroud saw some value in them.

[10] Mr. Stroud is an individual with a long and successful history in the taxi business, with another well-known taxi company. He had terminated his association with that company and planned to start his own venture. Somehow he learned about the struggling A-Cab enterprise and entered into discussions with the remaining ownership group. What he eventually proposed to do was acquire its assets. He essentially assumed the lease for the office and equipment, and took over the name and phone number. He signed an agreement with the four remaining owners and engaged their services to help him build a successful company. He paid them a nominal amount (\$500) on signing and offered them more substantial payments one or more years down the road, assuming the business could be made profitable.

[11] To accomplish this, several things had to be done at a corporate level. The company A-Cab Co. Ltd. changed its name to a numbered company, 3167537 Nova Scotia Limited, which then freed up the name "A-Cab" to be used by someone else. The new company A-Cab Service Ltd. was incorporated at

that same time. Shortly thereafter, 3167537 Nova Scotia Limited had its registration revoked for non-payment of its annual fees.

[12] In the result, the company against which the Claimants had a judgment essentially ceased to exist in any but the technical sense, while a new A-Cab company began operation. It is no wonder that the Claimants are frustrated and angry. They believe that the managers of the former company essentially gave it away for nothing. They also believe that this violated their rights, and they seek to hold Stroud responsible by making him pay the judgment.

[13] It became clear at the trial that the Claimants misunderstood their rights under the previous court order. They believed that they were both creditors and shareholders. This is not what I found when I adjudicated the earlier case, as is made clear by the paragraphs quoted above. In the unique circumstances of that case, I found that they had abandoned their shares. As such, the judgment that they received made them ordinary creditors.

[14] It is common experience that ordinary creditors can have a difficult, if not impossible time, collecting judgments against debtors that are (or appear to be) insolvent. The procedures for collecting commercial debts can be cumbersome and expensive. Where there is enough at stake to justify the expense, a debtor company can be placed into receivership or bankruptcy, and the trustee or receiver can take over the operation and try to shake loose some value for the creditors. But in the case of a small judgment such as this, that effort would cost far more than the debt itself.

[15] In any event, it is probably too late for such extreme measures, and moreover that is not the case before me. The only question that I have to

answer is whether Stroud became liable to pay the judgment, by doing what he did.

[16] On the evidence, he knew something about the judgment because the old management of A-Cab disclosed it to him. Stroud is an experienced enough businessman to understand that by acquiring the assets he did not take on the company's liabilities, in the way he would have had he bought the shares of the company. He knew, as is the case, that small companies dispose of their assets every day of the week, leaving creditors on the outside looking in.

[17] On the evidence before me, Stroud could see that these assets had no real value apart from the people who were still valiantly trying to run the business. As he described it, there was a lease on an office that he did not really need, and which was a liability rather than an asset. There was some ancient furniture of no real value. There was an easy-to-remember telephone number and the possibility that the name A-Cab could be revived as a viable taxi company. But what he was acquiring had no present value unless people worked to create value.

[18] There is no legal theory of which I am aware which would transfer liability for the Claimants' judgment to Stroud. Nor did the Claimants offer any such theory, beyond the implicit allegation that Stroud conspired with the previous managers to deny them their money and their rights.

[19] I am unable to find that what happened here was illegal. As such, there can be no illegal conspiracy. It is not unlawful for a group of people to "conspire" to do something that is perfectly lawful, even where it has the effect of leaving creditors unsatisfied.

[20] I do not lack sympathy for the Claimants. Obviously, by granting them their judgment in 2008 I had intended to help them recover their money. Circumstances have gone against them, including (sadly) their own apparent stubbornness in failing to recognize the limitation of their rights. Simply put, they overplayed their hand. Several of the witnesses associated with the old company testified that they actually raised the money personally at one point to pay out the judgments, and got as far as writing out cheques to the entitled individuals. This attempt to resolve the matter fell apart when the Claimants refused to sign Satisfaction pieces or releases, evidently in the belief that they still wished to exercise rights even after being paid out. Understandably, the people associated with the company were not inclined to put up their personal funds, only to continue to face claims by the Claimant and his group.

[21] In the result, for all of the reasons expressed, the claim against Mr. Stroud is dismissed.

Eric K. Slone, Adjudicator