

Claim No: 376439

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

Cite as: Odim Export v. Doucet, 2012 NSSM 18

BETWEEN:

ALFRED BANIGO, carrying on business as ODIM EXPORT

Claimant

- and -

LOUIS DOUCET and  
LOUIS DOUCET ENTERPRISES LTD.

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 22, 2012

Decision rendered on June 1, 2012

**APPEARANCES**

For the Claimant            self-represented

For the Defendants        self-represented

**BY THE COURT:**

[1] The Claimant in this case, Alfred Banigo, is in the business of buying used clothing in large quantities and having it shipped in containers to Africa. As I understand it, these clothes are distributed by charitable organizations to needy people.

[2] The Defendant Louis Doucet, through his company Louis Doucet Enterprises Ltd., operates a number of used clothing stores and related businesses in Nova Scotia. He is both a buyer and seller of used clothing, depending on the circumstances.

[3] Despite having had an unsatisfactory transaction with the Defendant in the year 2008, the details of which are unimportant, the Claimant again sought out Mr. Doucet in 2010 and made an arrangement to buy a large quantity of used clothing.

[4] The type of clothing that gets shipped to Africa is lightweight summer wear. When Mr. Doucet buys large lots of clothing, typically originating in the United States, he does not necessarily know what proportion will be heavy clothing and which proportion will be light clothing. As such, he does not necessarily know how long it will take to assemble bundles of lightweight clothing that are suitable for the Claimant's purposes.

[5] The transaction was poorly documented, if at all. There was a written note of uncertain origin, but for the most part it was a verbal contract. It is unclear whether or not it was with Mr. Doucet personally, or with his company. For

purposes of this case, I will treat the contract as if it were involving both Defendants.

[6] The idea was for Mr. Doucet to assemble a large container load of clothing, in 1,000 pound bales. A single oceangoing container can hold up to 63,000 pounds of goods, but in the case at hand there was no guarantee that this full amount could be assembled in a timely fashion. The agreed-upon price was \$.12 per pound for one class of clothing, and \$.22 per pound for a more desirable class.

[7] The Defendants' operation is based in Truro Nova Scotia, with stores also in other parts of Nova Scotia. The Claimant lives in Dartmouth. It would appear that the Claimant travelled back and forth between Dartmouth and Truro many times in the course of putting this transaction together. In the period of time of February and March 2010, the Claimant provided the Defendants with \$4,800.00 in deposits. It was also understood that there would be a further \$5,000.00 deposit paid before the container was loaded and shipped.

[8] It appears that the assembling of bales did not go as quickly as the Claimant would have liked, but this does not really figure into the issues that later arose. At one point, the Claimant made an effort to bring another supplier into the picture in order to top up the shipment, but this was unacceptable to Mr. Doucet. Mr. Doucet's reasons for not wanting clothing from outside to enter into his warehouse are questionable, but again, in the end, it does not really make any difference. One of the ways that apparent progress was being made was for some smaller bales of 100 pounds to be assembled.

[9] By mid-June 2010 there was a sufficient quantity of clothing assembled to justify ordering a container and getting it ready to be shipped to Africa. The Claimant had a container transported to the Defendants' warehouse in Truro, and the plan was for the Claimant to drive up to Truro on June 15 to help with the loading and also to pay the further \$5,000.00 deposit.

[10] Early that morning, Mr. Doucet and his employees began the process of loading the 1,000 pound bales into the container. As described by Mr. Doucet, and as confirmed in photographs, which were placed into evidence, it was a tight fit. The large bales of clothing had to be wedged into the container using Mr. Doucet's forklift and a device resembling a battering ram.

[11] At some point in the morning, approximately 10:30 a.m., the Claimant and Mr. Doucet had a phone call and it was confirmed that the container would be loaded that day. According to Mr. Doucet, there was a further phone call approximately one hour later and Mr. Doucet was assured that the Claimant was on his way to Truro along with the \$5,000.00 deposit that was still due. The loading continued apace.

[12] According to Mr. Doucet, who had a more detailed recollection of these events, at about 2:00 p.m., the Claimant called Mr. Doucet from his cell phone and asked whether the container had yet been loaded. There is a slight difference in the evidence as to what was the reply. The Claimant believes he was told that it had not yet been loaded. Mr. Doucet testified that he told the Claimant that it was not yet completely loaded. Again, I'm not sure this makes much of a difference. The fact of the matter is that the container was substantially loaded.

[13] The Claimant instructed Mr. Doucet not to load the container and to return it. This instruction came out of the blue with no apparent explanation for why the plans were being changed. It does not appear that the Claimant explained himself, nor did he give any clear instructions as to what to do with the goods, or precisely how to deal with the container. This was all rather cryptic as far as Mr. Doucet was concerned. From that point onward, the Claimant did not answer his cell phone and was essentially unreachable. Mr. Doucet had no idea what had happened to the Claimant, nor why he was not communicating.

[14] Mr. Doucet testified that it would have been virtually impossible, with the equipment that he had, to unload the container. Even though he had loaded it with his forklift, because the bales were wedged so tightly, he says he would have required special equipment (some form of clamp) to get the bales out. Furthermore, he was concerned about what to do with the bales. The Claimant seriously questioned whether unloading the container would have been as difficult as suggested. He testified that equipment could have been rented that would have enabled Mr. Doucet to use his own forklift and remove the bales. Whether or not this is true, it begs the question of whether or not Mr. Doucet was obliged, under the circumstances, to engage in such an exercise.

[15] For the next number of days, Mr. Doucet basically remained in a holding pattern. Under the financial arrangements between the parties, the cost for the container and the trailer which holds it, was being charged to Mr. Doucet's credit account. On June 20, which was approximately five days after the Claimant had become incommunicado, Mr. Doucet sent an e-mail in which he threatened to sell the load to a third-party if the Claimant did not do something to resolve the situation. This e-mail went unanswered. Mr. Doucet was receiving communications from the container and transport companies indicating that they

wanted their container and their chassis back. After speaking to or communicating via e-mail with a number of people, Mr. Doucet eventually sold the entire load to another dealer in Saulnierville, Nova Scotia, at the highly discounted rate of five cents per pound for all of the goods. The total recovered by Mr. Doucet from this purchaser was approximately \$2,237.60 plus HST.

[16] It was not until August 1, approximately six weeks after the Claimant's last communication, that he surfaced and made contact with Mr. Doucet. He was informed that his load was no longer available, and that his deposits would not be returned. Furthermore, he was presented with an invoice in the amount of \$1,182.69 representing what Mr. Doucet regarded as the shortfall on the transaction. (I note that no counterclaim has been launched in this matter.)

[17] The Claimant was very circumspect about his personal situation, which caused him to disappear off the face of the earth, so to speak, for six weeks. After considerable prompting from me, he revealed that he was apprehended by Canada Border Services agents, and spent that time in Immigration detention. He says he had no access to telephone, e-mail or other communications.

[18] I suspect that the more accurate statement would be that the Claimant had more important issues to deal with than this shipment of clothing. I can accept that he had limited ability to communicate, but I believe that persons being held in immigration detention do have access to visitors, if only legal counsel or other representatives. I find it difficult to believe that he had no ability to deliver a message to Mr. Doucet, possibly via an intermediary. I also believe that had Mr. Doucet understood the predicament that the Claimant found himself in, he might well have taken a different course of action.

## **Legal analysis**

[19] This was a contract for the sale of goods. A price was agreed, and an approximate quantity was understood. In furtherance of that contract, the Defendants acquired approximately 44,000 pounds of clothing to be sold to the Claimant. Because only certain types of clothing were suitable for the Claimant's purpose, a great deal of sorting had to be done. The goods were assembled, baled, and warehoused. Mr. Doucet himself arranged his schedule to be in Truro at the agreed-upon time, and he arranged for the container to be made available and loaded. His part of the contract was virtually complete. All that remained was for the additional money to be paid, and the appropriate instructions to be given to allow the container to be sent to the Port of Halifax where it would be loaded onto a ship bound for Africa.

[20] The Claimant's obligation under this contract was to pay the price and accept delivery of the goods. From a legal standpoint, I have to ask: what right did he have simply to put the contract on hold, or cancel it? Essentially, the answer is that he had no such right, beyond perhaps a right to slow down the transaction, but even so at his own cost in terms of any additional expense incurred. Had Mr. Doucet gone and sold the load a day or two after receiving the Claimant's last communication, I doubt that this could be considered reasonable by any standard. However, as time dragged on Mr. Doucet had to make some difficult decisions. He was basically a seller of goods who had received partial payment from a buyer who had vanished. All of the responsibility of storing the goods, and dealing with the container, fell to him.

[21] From a legal standpoint, the Claimant was the one who breached the contract, even if unintentionally. Intention is irrelevant; what counts is action.

The obligation of an innocent party, when another party commits a breach, is to act reasonably in mitigation of damages.

[22] In judging whether or not someone has reasonably mitigated damages, the standard to be applied is not perfection. Reasonableness is to be viewed somewhat generously. Put another way, the innocent party must not act in a way that is foolish, reckless, profligate or mean.

[23] If damages have not been mitigated, at least up to a reasonable standard, this does not entirely excuse the breach of contract but it may affect the accounting between the parties by reducing the damages recoverable.

[24] It is impossible for me to say how much money it cost Mr. Doucet and his company to acquire, sort, bale and load the goods. I have no idea what sort of profit he stood to make on this transaction. It does not appear that there is a large market for 1,000 pound bales of tropical weight clothing. Although I find quite disappointing the price of five cents per pound that he received, I am not prepared to say that it was unreasonable under the circumstances for Mr. Doucet to make the deal that he did and offload the goods. It is important to put myself in his shoes and imagine what must have been going through his mind when his buyer had not communicated for about nine days. This can be contrasted with the earlier period of time when the Claimant was in very regular contact with Mr. Doucet, almost to the point of annoyance, inquiring as to the progress of assembling the order. Mr. Doucet testified, and it rang true with me, that he wondered whether the Claimant was possibly dead.

[25] In order for the Claimant to succeed in this case, he would have to convince me that he had a legal right essentially to cancel the contract and



simply get his money back. The right to cancel a contract only arises when certain things happen. One such occurrence would be a breach on the other party's part. In other words, if Mr. Doucet had breached the contract this might have given the Claimant a right to cancel. Another possibility might have been if completion of the contract had become inherently impossible. None of that happened here.

[26] Essentially, the Claimant is saying that because of a personal misfortune, namely his immigration problem, the contract should have been cancelled, or at least suspended. I have strained to find some arguable legal basis that would support the Claimant. I am quite mindful of the financial difficulty that it apparently has created for him, as some or all of the money that was paid by way of deposits was supplied by members of his family in Benin. There is no question that this has put him in a very awkward position. However, it is difficult to fault the Defendants for how they reacted under these particular circumstances, and a result that saw them forced to return some or all of the deposits to the Claimant would deny the Defendants the benefit of the contract which they entered into in good faith, and in the course of which they did nothing wrong.

[27] Another principle of contract law is that the innocent party is entitled to the benefit of the bargain. That means that Mr. Doucet was entitled to the purchase price promised under the contract of sale. He had already received \$4,800.00 from the Claimant, and was due at least another \$5,000.00. The amount he received from his other purchaser did not make up the full price to which he was entitled.

[28] Under the circumstances, the claim must be dismissed.

**Eric K. Slone, Adjudicator**