

**SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation:** *Day v. Heffler Forest Products*, 2023 NSSM 88

**Date:** 20231117  
**Docket:** 523844  
**Registry:** Halifax

**Between:**

Michael Kenneth Day

*Claimant*

v.

Heffler Forest Products & Navid Saberi

*Respondent*

**Adjudicator:** Darrell Pink

**Heard:** November 16, 2023, in Halifax, Nova Scotia

**Decision:** November 17, 2023

**Counsel:** Kenneth Day – self-represented  
MacAdam Construction, Navid Saberi – Kent Noseworthy,  
Counsel  
4325842 Nova Scotia Ltd. – did not participate.

**By the Court:**

[1] Is a company liable for the obligations of another entity if that entity operates using a business name of that company? That is the issues in these two matters, that were heard together. Claim 526002 is a claim over or the equivalent of a third party claim if MacAdam Construction Inc. in claim 523844, is liable to the Claimant.

[2] The Claimant, Ken Day, resides in Mount Uniacke, Nova Scotia.

[3] Heffler Forest Products (Heffler) is a business name derived from a former limited company that operated a well established sawmill and lumber operation in Sackville, Nova Scotia. The limited company was placed in receivership in 2020 or 2021.

[4] MacAdam Construction Inc. (MacAdam) purchased the land and assets of the Heffler limited company, as well as the business name, Heffler Forest Products, from the Receiver. MacAdam registered Heffler Forest Products as a business name for its use at the Registry of Joint Stock Companies.

[5] Navid Saberi is a shareholder and director of MacAdam.

[6] 4325842 Nova Scotia Limited leased assets, including the former sawmill and the name Heffler Forest Products, from MacAdam in 2021. Paul Sibley is a shareholder and director of 4325842 Nova Scotia Limited.

### **The Facts**

[7] Heffler Forest Products Limited had operated a well known sawmill in Sackville, NS. It had financial difficulties which lead to it being placed in receivership.

[8] In December 2022, the Claimant purchased lumber from Heffler to construct a garage. The purchase price was \$23270.38. The salesperson for Heffler on the sale was Paul Sibley.

[9] Paul Sibley, communicated with the Claimant from an email address, Sibley@hefflerfp.can, regarding the details of the transaction, provision of an invoice and a requirement for a deposit.

[10] Though the Claimant wished to pay a portion of the purchase with a credit card, that was not possible, and rather than pay in installments on December 21, 2022, he provided a Bank Draft, payable to Heffler, for the full purchase price.

[11] Though the Claimant communicated with Heffler in early 2023, the lumber he purchased was never provided.

[12] Heffler Forest Products Limited had operated a well known sawmill in Sackville, NS. It had financial difficulties which lead to it being placed in receivership.

[13] MacAdam purchased assets from the Receiver of Heffler Forest Products Limited. They included the name “Heffler Forest Products”, a power plant that burned wood to generate electricity it sold to Nova Scotia Power, and a sawmill it leased to 4325842.

[14] On May 31, 2021, MacAdam and 4325842 executed a lease for land formerly occupied by Heffler’s sawmill. Included in the lease was permission for 4325842 to ‘use the business name ”Heffler Forest Products” ’. Such permissions expired at the termination of the lease.

[15] Use of the business name by 4325842 was not exclusive. Though public confusion might have resulted, MacAdam, as the owner of the name Heffler Forest Products, had a right to use the name while 4325842 was doing so. Though this was possible, it did not occur. MacAdam was not in the lumber business and had no intention of getting into that business.

[16] The Claimant has never met or spoken to the Defendant, Navid Saberi, but joined him as a Defendant on seeing he is a director of MacAdam, the company that owns the business name, Heffler Forest Products.

### **Findings**

[17] The Claimant purchased lumber from Heffler, a business name of MacAdam, used with MacAdam's permission by 4325842. The Claimant had no dealings with the Defendant Navid Saberi.

[18] It is a first principle of company law that shareholders, officers and directors are separate legal persons from the corporations they own or operate. Mr. Saberi's connection to this matter is as an officer of MacAdam, the owner of the Heffler business name.

[19] Mr. Saberi is a separate legal person from MacAdam. If MacAdam has an obligation to the Claimant, that does not impute any liability to Mr. Saberi. The claim against him is dismissed.

[20] The Claimant dealt with Heffler and had a contractual relationship for the purchase of lumber with Heffler. He believed he was dealing with a corporate entity as 'Heffler' had been a longstanding sawmill in the area and was well-known. The Claimant knew nothing of how 432584 acquired the right to use the

Heffler name to promote and carry on its business. Arrangements between 432584 and MacAdam were private.

[21] It is not uncommon for the public to have no knowledge or appreciation of the corporate structure that support or are behind the entities with whom they do business. There is noting inappropriate about any secrecy or non-disclosure of details of the arrangements embedded in a corporate structure.

[22] Paul Sibley, the salesperson, acted as agent for Heffler in the sales transaction. He was also the principal of 4235842, the company that used the Heffler business name to sell lumber products. The Defendant Saberi argues the Claimant purchased from Mr. Sibley personally, because he was the only person involved in the transaction. That is not a tenable position. Mr. Sibley was the face of Heffler both in person and in his subsequent communications with the Claimant. Though it was not known to the Claimant, he was the face of Heffler as the principal of the company authorized to trade using the Heffler name. Based on the evidence, which does not disclose and misfeasance or malfeasance by him, Paul Sibley has no personal liability.

## **Issue**

[23] The sole issue to be determined is whether MacAdam, as the owner of the business name, Heffler Forest Products, is liable for obligations incurred by Heffler, when the use of the name was contractually assigned to 4325842.

[24] The starting point for my analysis is to consider what is “Heffler Forest Products”? The answer to that question is ‘it is a name.’ It is not a legal entity or a legal person. It is a moniker by which its owner can carry on business.

[25] A recent article published by Law Depot<sup>1</sup> offers the following comments on aspects of the use of business or trade names.

- A business name is a valuable asset. It helps potential customers find a company and understand its purpose. In some cases, it’s the first thing that connects customers to a business’s products or services.
- Many people don’t know that **plenty of businesses have legal names that are different from their commonly known names**. These commonly known names are called trade names or “doing business as” (DBA) names.
- A business’s legal name is **the official name that appears on government and legal forms**. Generally, it’s the name of a person or entity that owns a business.
- **Trade names are not mandatory**, and some companies may even find them unnecessary. In that case, a business can choose to use its legal name as its trade name. However, many businesses of all types use trade names that differ from their legal names.
- A trade name is sometimes referred to as a:
  - Fictitious name
  - Operating-as name
  - Alternate name
  - DBA name

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<sup>1</sup> <https://www.lawdepot.com/resources/business-articles/legal-names-vs-trade-names-in-business/?loc=US>

- If a business owner wants to assign their company's trade name to someone else, they may use an Assignment of Trade Name contract. Assigning a trade name may occur during the purchase of a business

[26] Though Heffler Forest Products Limited was a company, with its receivership and corporate demise, in addition to some physical assets, only a name remained. The legal person that once carried on business ceased to exist. The name 'Heffler Forest Products' could be used by its new owner, MacAdam, to carry on business. MacAdam could trade and rely on the reputation of the former company, but Heffler was not a legal entity that could do business on behalf of the company that owned it.

[27] MacAdam as owner of the name Heffler Forest Products assigned its use to 4325842, who appeared to intend to trade on its former reputation. 4325842 sold the Claimant lumber. 4325842 was the legal person with whom the Claimant did business. It was 4325842 who would be liable to the Claimant.

[28] The Claimant did not sue 4325842 for the loss he suffered when he paid for lumber that was not delivered to him.

[29] 4325842 and its principal, Paul Sibley, did not participate in the hearing for this claim. Though Mr. Sibley filed a defence, he did nothing else. Sometimes it might be appropriate to add a party where to do so would make the style of cause accurately reflect the relationships of parties and the evidence. That



would not be appropriate here, as there is no evidence from 4325841 or Mr. Sibley.

[30] The Claim against Heffler, an entity that is not a legal person, must fail. The claim against Heffler is dismissed.

[31] If the owner of a business name uses the name to carry on business, a claim against that business name will implicate the owner of it. Here had MacAdam carried on business trading on the Heffler name, they would have been responsible for losses resulting from Heffler's conduct on their behalf. Because MacAdam had assigned the right to use the Heffler name, and because the facts do not suggest MacAdam was carrying on a business using Heffler, I find MacAdam has no liability on the facts as I have found them.

[32] On that basis there is no foundation for Claim 526002. It is dismissed.

[33] The Claimant is truly an innocent victim of a corporate failure. That is unfortunate. As counsel for Mr. Saberi expressed empathy for his situation, the Court can do the same, for on the facts as they are here, he had a loss with no prospect of recovering it.