SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Himmelman v. Fancy*, 2024 NSSM 11

Date: 20240306
Docket: 529194
Registry: Bridgewater

Between:

Maurice E. Himmelman

Claimant

v.

Rick Fancy

Defendant

Adjudicator:	Eric Slone
Heard:	March 4, 2024, via zoom
Decision:	March 6, 2024
Counsel:	Claimant, self-represented Defendant, self-represented

By the Court:

[1] This case concerns the purchase of a portable sawmill, and poses the question of who should bear financial responsibility after a planned joint venture did not turn out as anticipated.

[2] In December 2021, the Claimant, Mr. Himmelman, approached the Defendant, Mr. Fancy, with an idea that he would purchase this portable sawmill, and they would go into business cutting wood together. Mr. Fancy had a place to put the sawmill near his woodlot which would be the source of the timber for the woodcutting venture.

[3] The actual cost of the sawmill, as shown on the purchase invoice, was $12,306.46.

[4] It was a point of contention in the hearing as to whether or not Mr. Himmelman disclosed to Mr. Fancy the fact that he was planning to finance the purchase through a finance company at a fairly significant rate of interest. In fact Mr. Fancy testified that he understood that Mr. Himmelman was purchasing the sawmill with funds he had left over from refinancing his mortgage. Mr. Himmelman admits that he hoped to use some of that refinancing money, but in the end he borrowed the whole amount. In fact, the amount borrowed was $14,604.16, which included a delivery fee and various administration fees payable back to the finance company.

[5] For purposes of this claim, I regard the actual purchase price to be just over $13,000.00, including the actual purchase price plus the delivery fee. Any administrative fees to the finance company are not reflected in the value of the sawmill itself.

[6] There is a disagreement as to what the actual business plan was, but it is obvious that there was a loose arrangement that would ultimately result in some profits being shared.

[7] In fact, the sawmill has never been put into service. When it was delivered in late 2021, there was no prospect of cutting wood until the spring, and with a particularly wet spring in 2022 no woodcutting got done. For reasons not fully explained, nothing happened in 2023 either.

[8] By late 2023, Mr. Himmelman was getting restless because he had been making loan payments without receiving any income to offset it. The parties then agreed that Mr. Fancy would pay off the balance of the loan, and that there would

be some money paid back to Mr. Himmelman out of the profits of woodcutting when it eventually happened. According to Mr. Fancy, whose evidence I accept, it was only then that he learned that the loan carried a high rate of interest and that much of what Mr. Himmelman had been paying was interest on the loan.

[9] The balance of the loan at that time was $13,100.00, which Mr. Fancy paid in full. At some point a little later, he paid Mr. Himmelman a further $900.00, which means that he has now paid $14,000.00 toward this sawmill which he has never put into use.

[10] Mr. Himmelman is suing for $5,754.36, which is what he says he paid into the loan. Put another way, he seeks to be absolved of any expense paid toward this ill-fated joint venture, by placing the entire cost on Mr. Fancy. Put yet another way, he is trying to hold Mr. Fancy responsible for over $19,000.00 toward a $12,306.46 sawmill.

[11] Mr. Fancy says that he has paid $14,000.00 for the sawmill, which exceeds its value and in fact slightly exceeds the hard costs that Mr. Himmelman put into it. His position is that he's willing to relinquish the sawmill back to Mr. Himmelman upon being reimbursed the $14,000.00 that he has paid. It does not appear that Mr. Himmelman wants the sawmill.

Disposition

[12] I am not convinced that Mr. Himmelman was totally transparent at the outset about how he planned to pay for the sawmill. I believe that had he disclosed to Mr. Fancy that he was planning to borrow money at 16.9% interest, with other financial fees payable, this arrangement would never have taken place. Mr. Fancy testified, and I accept, that he had cash on hand that he could have used to buy the sawmill himself, in which case he would not have needed Mr. Himmelman in the venture.

[13] When I look at the credit agreement that Mr. Himmelman signed, the cost of borrowing over the 8-year course of the agreement was almost $11,000.00. I doubt that Mr. Fancy would ever have agreed that he was responsible to cover any of that extra expense.

[14] Like many verbal agreements, there was a lot of vagueness in these dealings. But in order for Mr. Himmelman to succeed, he must establish that there was some clear understanding that he would be fully reimbursed for his expenses into this failed enterprise.

[15] I cannot find that there is any such understanding. In the end, Mr. Fancy has possession of a mill that he has never used, and does not really want, for which he has paid $14,000.00. There is no guarantee that he could recover his money by selling it. There is no justice in requiring him to pay even more, on any principled legal theory that I can discern.

ORDER

[16] In the result, the claim should be, and is hereby dismissed.

Eric K. Slone, Small Claims Court Adjudicator