

Claim No. SCCH 206851

Date: 20061111

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: B & D Welder's and Auto Repair Ltd. v. Atlantic Chemex Ltd.,
2006 NSSM 40

BETWEEN:

B & D WELDER'S AND AUTO REPAIR LTD.

CLAIMANT

-and -

ATLANTIC CHEMEX LIMITED and CHRISTOPHER CASEY

DEFENDANT

Adjudicator: David TR Parker

Decision: November 11, 2006

Sale of goods -not fit for purpose intended

ORDER

This case has a fairly lengthy history having come before two adjudicators of the Small Claims Court and then before the Supreme Court of Nova Scotia on at least one occasion and now having to be reheard by the Small Claims Court on a third occasion.

The first time this matter came to Court is was on November 17, 2003. An Order of the Court was filed on November 24, 2003

This was followed up by a second order of the same adjudicator which order is dated February 23, 2004.

The original claim #206851 which the above two orders relate was for \$7,000.00 plus chimney plus fuel costs plus taxes and court costs.

The reasons for the claim state "the furnace never worked from the beginning, heat exchanger is broke/cracked not safe. Never showed up for court does not want to try and gives me a bill for cleaning that never needed it in the first place - ongoing for four years. I just want to purchase another oil furnace elsewhere and have my money back!"

The reasons for the first order were given orally and are not apparent on the face of the Order. The order itself is directory in form; however, it also stated the Defendant will pay all costs associated with the repair of the furnace during the warranty period.

The second order also contains the 1st order and then stated that the requirements of what I have termed, the directory order, have been complied with however the burner continues to malfunction. The adjudicator then directs the parties to provide submissions to the Court on March 1, 2004.

This case then came before J. Walter Thompson, Q.C., another adjudicator of the Small Claims Court on April 19, 2005, and that was followed up by a decision whereby the Claimant was entitled to return of the purchase money together with prejudgment interest amounting to \$780.00 and costs. The Defendant was therefore ordered to pay the Claimant \$6,160.00.

The Decision and Order was subsequently appealed on the basis that the adjudicator erred in law however there were no particulars provided as to why that might be the case. The matter came before Justice LeBlanc of the Supreme Court who then directed there must be a new hearing before a different adjudicator. The reasoning of Justice LeBlanc was to effect that he could not determine if there was an error of law or not by the adjudicator. Justice LeBlanc stated, "The adjudicator's reasons are brief, stating essentially that he accepted the evidence of one party. There is, of course no verbatim record or transcript of a Small Claims Court hearing."

The parties appeared before the Small Claims Court and following a hearing of what the parties had to say and documentation they provided the Court I made the following findings of fact.

Facts

The Claimants ordered and purchased a furnace from the Defendant.

The furnace has never worked properly before it was sent back to the manufacturer and since it was returned and installed, on the Claimant's property. The heat exchanger is also cracked.

The Defendant would not fix the heater as the Claimant wanted a guarantee or warranty from the Defendant that the furnace would work.

This was a specialized furnace for burning off environmentally unfriendly material. The Defendant was aware of the particular purpose for which the furnace would be used. This particular furnace was never and is still not fit for the purpose it was intended.

The Defendant sold the Claimant a furnace that would not operate for short periods of time and after it was sent to the manufacturer, returned and reinstalled it still would not operate and it had a defective heat exchanger.

The Claimant shall have judgement in the amount it paid for the furnace in June of 2001 and I shall allow prejudgment interest of 4% per annum.

\$5,980.00
1,126.00 Interest
180.00 Court costs
\$7,286.00

Dated at Halifax, this 11 day of November, 2006.

David T.R. Parker
Small Claims Court Adjudicator