

**ONTARIO SUPERIOR COURT OF JUSTICE
Small Claims Court**

B E T W E E N:

2471947 Ontario Limited)	Mr. Mahabalarajan, Paralegal
)	
)	
- and -)	
)	
LANDSTAR EQUIPMENT & LEASING INC.)	Ms. Appdoo, Paralegal
DEO NARAYAN, RANJIT PANDORI AND)	
ROYAL BANK OF CANADA)	
)	
)	
)	Heard: November 16, 2021, March 2, 2022, June 22, 2022, and August 15th,2022

REASONS FOR JUDGMENT

Deputy Judge R. Sharda

PRELIMINARY MATTER

Prior to the commencement of trial on November 16th, 2021, The Action against the Royal Bank of Canada and Mr. Pandori was dismissed on a without costs basis. Mr. Pandori was, however, bound over by the Court to remain as a witness in this matter going forward.

Nature of the Claim

The Parties:

2471947 ONTARIO LTD., represented by Mr. Arulshanhar Sinniah (Arul).

LANDSTAR EQUIPMENT & LEASING INC. Represented by Mr. Deo Narayan (Deo).

1. Arul had an agreement to buy a tractor and trailer for the transportation of vehicles, (the Equipment) from his employer (Shiva Mohan) so that he could operate as an owner

operator with Shiv Mohan's company, Joes Hauler Limited (Joes). He required financing to do so. After failing to acquire financing from Sommerville due to the age of the Equipment. He was introduced to the Defendant and its account manager Mr. Steven Narayan and Deo.

2. Deo then engaged several sources to acquire financing for Arul initially they failed however eventually financing was arranged through the Royal Bank of Canada.
3. After completing the financing the defendant paid Joes through Mr. Shivmohan's the original price negotiated with him by Arul namely \$95,000.00 plus HST being \$107,350.00 (original amount)
4. After Joes was paid the original amount, the Equipment's ownership was eventually transferred to Arul's company.
5. Arul then sued after he calculated that the deposit he paid to the Defendant and the Loan amount he had contracted with RBC added up to an amount which was more than the original amount that was required to be paid Joes.

Decision of the Court

6. For reasons given below the court is satisfied that the parties never properly discussed what compensation the Defendant was to receive for arranging the financing. Arul failed to scrutinize at the relevant times the amounts was paying as a deposit and how the amount was arranged. Arul further did not scrutinize the financing documents which he signed with the RBC (Royal Bank of Canada) representative, which he now alleges, he did not agree with the financed amount and the monthly payments indicated in the documents but signed the documents anyway. At best, Arul was desperate to acquire financing and therefore, was willfully blind at the relevant times, to the facts he now objects to.

7. The Defendant also made no effort to explain to the Plaintiff how he was getting compensated for his convoluted efforts to acquire the financing for the plaintiff to purchase the Equipment.
8. The Court is satisfied that the fair resolution of this matter is that a portion of the deposit paid by the Plaintiff shall be returned to it. Therefore, Judgment is granted in favor of the Plaintiff for \$14,000.00.
9. The court did not receive any evidence regarding the Defendant's claim however by allowing the Defendant to retain some of the deposit in lieu of its Defendant's claim, the Defendant's claim is otherwise dismissed.
10. The Plaintiff has shown no basis to justify a claim against Deo Narayan and that claim is dismissed on a without cost basis.
11. No costs shall be awarded to parties on their respective claims as the matter is a split decision and neither party won its case entirely. Furthermore, both parties and their principals contributed to their own misfortune.

Plaintiff's Evidence

12. Arul's evidence on behalf of the Plaintiff:
 - a) Arul stated he worked as driver of the equipment of Shiva Mohan's company. He and Shiva Mohan agreed that he could purchase the equipment he operated from Joes.
 - b) The original purchase amount was \$95,000.00 plus HST, Shiva Mohan drafted the bill of sales for the Equipment between Arul's company and Joes.

- c) Arul then sought financing to pay for the Equipment. He was introduced to Sommerville a leasing company. They could not finance the equipment due to its age.
- d) The Sommerville representative then introduced Arul through an intermediary to the Defendant Company and its representatives Steven and Deo Narayan.
- e) Deo eventually arranged financing with RBC and closed the transaction.
- f) The area of dispute in this claim is that Arul states now that he paid a deposit to Deo's company in the amount of \$27,494.00. In addition, his company became liable for a loan with RBC which accumulatively exceeded the \$107,350.00, he needed to purchase the Equipment.
- g) When asked about the numerous documents including the RBC loan documents, presented to the court with Arul's signature on it, when asked whose signature was on the documents Arul's response fell within the following:
 - i. "It is my signature and I remember signing the document (the original Bill of Sales)."
 - ii. It looks like my signature, but I do not remember signing this document. (The bank's loan documents);"
 - iii. "It looks like my signature, but I do not think I signed it, I do not remember, (the 3 other bill of sales documents and other documents provided by Deo)."
- h) Arul stated that he had objected to the amount of the RBC loan documents but he signed them anyway as the bank representative had told them they could not be changed.

- i) Arul did not remember signing the Landstar document which stated if Landstar arranged financing and for the Plaintiff but the Plaintiff refused to engage that financing then the Plaintiff would pay a fee of \$10,000.00 plus hst (\$11,300.00).
- j) Since the financing was accepted by the Plaintiff this fee was not applicable but will be referenced later in this Judgment.
- k) Ultimately, Arul conceded that the Defendant should get a fee of \$11,130.00 as its compensation and the rest of the deposit should be returned to the Plaintiff.

13.

- l) Mr. Pandori the bank Representative stated that Arul understood the amounts and signed the documents without objection.

14. Deo's evidence on behalf of the Defendant's:

Deo stated:

- a) That Arul was introduced to them to arrange financing for the equipment he wished to purchase.
- b) His son Steven and an intermediary Isaac, were initially involved in the search for financing and eventually her became involved in the process and the conclusion of the financing that was arranged through RBC for the Plaintiff.
- c) He stated that Arul knew that the way the transaction was going to proceed was that the Defendant would buy the Equipment from Joes and then sell it to the plaintiff at a higher amount and the profit would be the Defendant's fee for arranging the financing. Hence the Deposit amount was requested.

- d) The Defendant had been in the business for a long time and was a reputable business and was successful in getting financing for parties who could not get financing elsewhere.
- e) He said that the many versions of the Bill of Sale were needed to show that the transaction was going through Landstar as the financing company's such as RBC trusted Landstar.
- f) He acknowledged that he had Shiva Mohan sign one of the sets of Bill of Sales.
- g) He acknowledged that the financing was advanced to his company as well as the Deposit and he paid funds to Joes to complete the purchase of the Equipment for the Plaintiff.

The Issues:

15. The issues to be determined by the court are.

- a. Did Arul on behalf of the Plaintiff knowing sign the Loan documents and provide funds to the Defendant for the purposes of completing the purchase of the Equipment.
- b. Did the Parties come to an agreement as to whether the Defendant's fee should be the profit, he would make on paper for the convoluted financing transaction he arranged?
- c. If there was no agreement as to the Defendant's fee what compensation should the Defendant have received for acquiring the financing for the Defendant?

Analysis:

16. This case at bar rests entirely on credibility, whether the court is to believe or prefer the plaintiff's evidence or the defendant's evidence. The onus is on the plaintiff to prove its case.

Credibility test

17. In the case at bar the two contrary sets of facts presented by the parties cannot co-exist.
18. The court has held the test to be applied to the facts by a judge in determining credibility of one witness over another. I am directed by plaintiff's counsel to the following test for credibility:
- ‘‘In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.¹’’
19. In applying this test to the facts before me I note that the plaintiff's facts are not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize in this case and within the facts presented as follows.
- a) He provided a deposit to the Defendant of \$27,494.00 and did not ask for any accounting of that amount was calculated.
 - b) He signed RBC loan documents, but at trial he states that he had disagreed with the amount of the deposit and the RBC loan amount.
20. These facts support a conclusion that Arul was desperate to acquire financing to but the Equipment as he had been refused financing on several occasions. As a result, the court finds that he knew or ought to known what amounts he was paying and taking liability for to compete the purchase of the Equipment.
21. Arul's position that he had objected to the deposit amount and the loan documents are not supported by the facts. In the text messages provided to the Court when asked for the Deposit. He delivers the deposit but makes no inquiry as to how the amount is calculated and why he is paying the deposit since he is getting financing.
22. Similarly, his evidence that he had objected to the RBC loan amount is not supported by the fact he signed those very documents, as evidenced by Mr. Pandori, without objection.

¹ Faryna v. Chorny, [1951] B.C.J. No. 152
Faryna v Chorny, [1951] BCJ No 152, [1952] 2 DLR 354, 4 WWR (NS) 171, 1951 CarswellBC 133, 1951 CanLII 252

23. The court finds that Arul actively participated in the financing transaction as he was desperate to acquire the Equipment. At the relevant times he therefore became willfully blind to how the financing was acquired or how much it would cost him.
24. If he truly disagreed with, the Loan amount he should not have signed any of the Loan documents and he should have requested a break down of the deposit amount before he paid it.
25. The Defendant is equally not credible in regards to the compensation he was entitled to in the following ways:
 - a. He states that he runs a reputable company which acquire financing for companies that need to buy Equipment however, He failed to properly explain his process to Arul.
 - b. He failed to explain why he generated multiple Bills of Sale for the same equipment naming different parties.
 - c. He failed to provide any evidence to the court, as to Arul agreeing that the Defendant could engage in a convoluted process to acquire financing on the equipment and keep the profits.
 - d. The only evidence provided of a fee acknowledgment, was a document drafted by Deo which alleges to confirm that the Plaintiff would pay Landstar a fee of \$11,130.00 if the Plaintiff did not engage the financing arranged by the Defendant for it.
 - e. However, the plaintiff did engage the financing, hence this cancellation fee would not have been applicable.
 - f. Clearly the Defendant should have fully informed the Plaintiff as to its expected compensation for competing this transaction. There is no evidence of this which would be expected from a reputable Company.
 - g. The fact that almost four Sets of Bills of Sale were presented three drafted by Deo was never explained by Deo and defied logic at best.

Conclusion

26. I therefore conclude that the parties were engaged in a financing transaction so that the Plaintiff could purchase the Equipment.

Issue one:

I conclude that the Plaintiff knowingly provide a deposit and signed RBC loan documents to help him acquire the Equipment. However, at the relevant times he did not ask for an accounting of the amounts he paid or took liability for. He basically choose to remain willfully blind to the amounts the Equipment would cost him as he was desperate to acquire the Equipment.

Issue two:

I conclude that there was no agreement between the parties as to what compensation the Defendant would get to arrange the financing of the Equipment. The defendant had to onus to properly describe the transactions process to the Plaintiff and the compensation he was expecting to earn. In this case the Defendant states he was entitled to the profit that was shown on paper to acquire the financing through RBC.

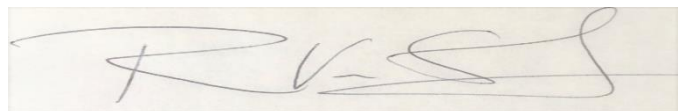
Issue three:

I conclude that the reasonable and fair compensation for the work completed by the Defendant is \$13,494.00, as it completed the transaction, all be it in a convoluted manner.

JUDGMENT

27. The court therefore grants judgment to the plaintiff as follows:

- a) Judgment in the amount of \$14,000.00.
- b) No costs will be awarded to the parties as the case had a split decision.
- c) No prejudgment or post judgment interest is awarded as there was no agreement as to interest.
- d) The Defendant's claim and Claims against Deo Narayan are dismissed on a without costs basis.



Released:

, 2022,

Deputy Judge, R. Sharda

COURT FILE NO. SC-18-0204

ONTARIO

SUPERIOR COURT OF JUSTICE

SMALL CLAIMS COURT

BETWEEN:

2471947 ONTARIO LTD.

Plaintiff

-and-

**LANDSTAR EQUIPMENT & LEASING
INC. DEO NARAYAN, RANJIT
PANDORI AND ROYAL BANK OF
CANADA**

Defendants

REASONS FOR JUDGMENT

Deputy Judge R. Sharda

Released:

, 2022