SUPREME COURT OF NOVA SCOTIA

Citation: *Bennington Financial Group v. EOH Mechanical Systems and Bell*, 2025 NSSC 162

Date: 20250502
Docket: HFX No. 535025
Registry: Halifax

Between:

Bennington Financial Group

Plaintiff

v.

EOH Mechanical Systems Inc., and Thomas Bell

Defendants

DECISION ON MOTION FOR SMMARY JUDGMENT

Judge: The Honourable Justice John A. Keith

Heard: April 23, 2025, in Halifax, Nova Scotia

Counsel: Tony Richardson, for the Plaintiff
Self-represented, for the Defendants

By the Court:

INTRODUCTION

[1] By Notice of Action for Debt issued July 12, 2024, the Plaintiff Bennington Financial Group, ("**Bennington**"), brought an action against the Defendants EOH Mechanical Systems Inc., ("**EOH**") and Thomas James Bell personally for $30,347.17, plus interest at the rate of 26.82% per annum ($22.30 per day) from June 18, 2024, to the date of payment or judgment.

[2] The claim is founded in contract and, in particular, an alleged breach of a Secured Loan Agreement dated October 8, 2021, bearing number 20005570 (the "**Loan Agreement**"). Bennington alleges that the Defendants signed the Loan Agreement as Co-Debtors for the purpose of leasing a Bayrunner Zodiac boat and outboard motor.

[3] By Notice of Defence issued August 6, 2024, the individual Defendant, Thomas Bell, denied any liability under the Loan Agreement. Mr. Bell states that:

1. He did not sign the Loan Agreement and had no knowledge of the underlying transaction involving the Bayrunner Zodiac boat and motor;
2. He neither took possession of nor used the Bayrunner Zodiac boat; and
3. Mr. Bell's former business partner, Tyler H. Rose, fraudulently signed the Loan Agreement on behalf of Mr. Bell - without Mr. Bell's knowledge or consent. It is alleged that Mr. Rose then used the Bayrunner Zodiac boat for his own personal benefit.

[4] EOH did not defend the Bennington's action.

[5] By Notice of Motion filed September 24, 2024, and amended on April 7, 2025, Mr. Bell applied for summary judgment dismissing the claims against him on the basis that "the Plaintiff's claim is based on a contract that contains a fraudulent signature and identity theft, and there is no genuine issue for trial."

[6] In support of this motion, Mr. Bell filed his personal affidavit sworn April 8, 2025 (the "**Bell Affidavit**").

[7] Bennington opposed the motion for summary judgment and, in response, filed an affidavit from a Bennington Law Clerk named Marina Ryskin on December 10, 2024 (the "**Ryskin Affidavit**").

[8] In my view, the issue in this motion can be distilled to a simple question: is there a genuine issue of material fact regarding the authenticity of Mr. Bell's signature? If there is no genuine issue of material fact around Mr. Bell's allegation that he did not sign the Loan Agreement and that, instead, it was fraudulently signed by Mr. Rose, then the remaining question of law narrows to whether there is any legal basis to hold Mr. Bell personally liable for the debt created under a Loan Agreement which he did not know about and which was fraudulently signed by Mr. Rose posing as Mr. Bell.

THE TEST ON A MOTION FOR SUMMARY JUDGMENT

[9] Motions for summary judgment are designed to cull unmeritorious claims or defences which do not require the time, expense and procedural rigours associated with a full trial.

[10] In *Hercules Management Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165, ("***Hercules Management***"), the Supreme Court of Canada developed the following two stage test for summary judgment:

Stage 1: The moving party bears the evidentiary burden of demonstrating that there is no genuine issue of material fact for trial. If there are genuine issues of material fact, the motion for summary judgment must be dismissed; and

Stage 2: If there are no genuine issues of material fact for trial, the Court examines whether the party opposing summary judgment had a real chance of success.

(*Hercules Management*, at para. 15).

See also, for example, *Guarantee Company of North America v. Gordon Capital Corp*., [1999] 3 S.C.R. 423, at para. 27; *Coady v. Burton*, 2013 NSCA 95, ("***Coady***"), at paras. 26 – 29; and *2420188 Nova Scotia Ltd. v. Hiltz*, 2011 NSCA 74, at paras. 21 - 28 ("***2420188***").

[11] In *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, ("**Shannex**"), the Nova Scotia Court of Appeal sought to clarity the two-stage test in *Hercules*

Management by creating the following five questions which the motion judge must consider in sequential order:

1. Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?
2. If the answer to question 1 is "No", then the issue becomes whether the challenged pleading requires the determination of a question of law, either pure, or mixed with a question of fact?
3. If the answers to questions 1 and 2 are No and Yes respectively, does the question of law arising out of the challenged pleading have a real chance of success?
4. If there is a real chance of success, should the judge exercise the discretion to finally determine the issue of law? The motion judge's discretion to determine a question of law is confirmed in *Civil Procedure Rule* 13.04(6)(a).
5. If the motion for summary judgment is dismissed, should the action be converted to an application, and if not, what directions should govern the conduct of the action? Rule 13.08 confirms the judge's obligation to convene a post-motion conference and provide appropriate directions.

[*Shannex*, at paras. 34 - 42]

QUESTION 1 AND THE LAW AROUND GENUINE ISSUES OF MATERIAL FACT

[12] For present purposes, it is necessary to briefly elaborate on certain aspects of the law which surround the assessment of "material facts" in a motion for summary judgment.

[13] A "material" fact is one which will affect the outcome of a trial (*Tri-County Regional School Board v. 3021386 Nova Scotia Limited*, 2021 NSCA 4 ("***Tri-County Regional School Board***"), at para. 20). In this motion, the factual issue around whether Mr. Bell signed the Loan Agreement is not incidental. If Mr. Rose fraudulently signed the Loan Agreement posing as Mr. Bell, that underlying fraud would very clearly affect the outcome of Bennington's claim.

[14] There are a number of legal principles which imposes certain basic evidentiary standards upon a responding party who seeks to raise a genuine issue of material fact (Bennington, in this case). They include:

1. Genuine issues of material fact must be grounded in the evidence before the Court. A responding party seeking to raise a legitimate factual dispute cannot rest on conjectural narratives, speculative thinking, imagined assertions, or artful pleadings (*Risley v. MacDonald*, 2022 NSCA 76, at para. 56; *Coady* at para. 87; and *SystemCare Cleaning and Restoration Limited v. Kaehler*, 2019 NSCA 29, at para. 37);
2. There is an evidentiary obligation for responding parties to "lead trump" or "put their best foot forward". A responding party risks having its claims or defences summarily struck if it fails to make every reasonable, good faith, effort to marshal its evidence prior to the motion for summary judgment being heard. It is insufficient for a responding party to offer the Court hopeful forecasts or vague suspicions about the issues and evidence that might emerge in the future. The time to present evidence is at the motion for summary judgment — not later (*Nova Scotia Association of Health Organizations Long Term Disability Plan Trust Fund v. Amirault*, 2017 NSCA 50, at paras. 14 - 15).

[15] There are a number of well-established restrictions which constrain a motion judge's ability to resolve genuine issues of material fact at a motion for summary judgment. They include:

1. The Court will not evaluate credibility at a motion for summary judgment (*Coady* at para. 87, point 11). Credibility assessments are within the exclusive purview of the trial judge;
2. The Court will not weigh evidence at a motion for summary judgment. The process of assigning weight to particular pieces of evidence or comparing aspects of the evidence for the purpose of assessing its comparative strength (or weakness) should occur at trial (*Hatch Ltd. v. Atlantic Sub-Sea Construction and Consulting Inc.*, 2017 NSCA 61 ("***Hatch***"), at paras. 26 - 30). Thus, in *Hatch*, the motions judge erred when weighing (and assigning no value) to an expert opinion (*Hatch* at paras. 44 - 45 and 50); and
3. The Court's ability to draw inferences at a motion for summary judgment is very limited. The motion judge "may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts" (*2420188* at para.

> 53, quoting with approval from the Supreme Court of Canada decision in *Canada (Attorney General) v. Lameman*, 2008 SCC 14, at para. 11 ("***Lameman***"). The same quote from *Lameman* is also included in Coady at para. 210, and the principle is confirmed at para. 29 of *Globex Foreign Exchange Corporation v. Launt*, 2011 NSCA 67, at para. 29.

THERE A GENUINE ISSUE OF MATERIAL FACT FOR TRIAL

[16] In this case, there is a genuine issue of material fact for trial. As indicated, the *Civil Procedure Rules* and related jurisprudence accord to the motion judge a limited mandate to resolve issues of credibility, weigh evidence and draw inferences. The nature, content and paucity of evidence before this Court preclude making the definitive factual determinations being proposed by Mr. Bell.

[17] The weakness of Mr. Bell's motion for summary judgment becomes more apparent when comparing the evidence filed by Mr. Bell against the serious nature of the allegations he asks the Court to accept as fact (i.e. that he was defrauded by Mr. Rose and this fraud entirely invalidates the alleged contract between Bennington and Mr. Bell personally).

[18] Mr. Bell asks the Court to accept an underlying fraud for two main reasons.

[19] First, Mr. Bell says that signature located above his typewritten name on the Loan Agreement bears no resemblance to his actual signature. He asks that the Court compare the signature on the Loan Agreement to actual, proven samples of his signature as found on his valid Driver's License, for example, and then conclude that the signature attributed to Mr. Bell on the Loan Agreement:

1. Is not actually Mr. Bell's signature; and
2. Was fraudulently made by Mr. Rose.

[20] On a very cursory view, the signature attributed to Mr. Bell on the Loan Agreement superficially appears to be different from the signature on his driver's license and, indeed, may show similarity to a signature on the same document which, in turn, may belong to Mr. Rose. In other words, there may be an argument that similarities between these signatures may demonstrate that Mr. Rose may have improperly signed the document on behalf of both Mr. Bell and the corporate co-Debtor, EOH.

[21] For emphasis, I make no determinations at all on this issue and these reasons must not be read or interpreted as suggesting otherwise. I am simply recording an initial impression based on a quick review of the documents. As important for present purpose, at a motion for summary judgment, the Court will not compare signatures and conduct its own handwriting analysis for the purposes of making a definitive finding of fraud against Mr. Rose. Respectfully, this goes well beyond the Court's jurisdiction and, in particular, the much more narrow scope of the Court's fact-finding mandate at a motion for summary judgment.

[22] Second, Mr. Bell argues that his allegations regarding the false signature on the Loan Document are supported by an expert opinion dated August 20, 2024 and written by Dwayne Strocen of DOCUFRAUD Canada, Forensic Document Examiners. However, again, there are problems with this opinion:

1. It does not comply with mandatory requirements for filing expert opinion reports under Rule 55.04. Indeed, Mr. Strocen's opinion actually concludes by saying:

   > This letter is verification of the examiners findings which explains the completed results from the examiner known as a verbal opinion. This communication does not represent an official notarized forensic report, and thus cannot be used or relied upon for that purpose. If you require an official forensic report which can be used in court please contact DOCUFRAUD, a Canadian company.

   Obviously, this type of expert opinion evidence is relevant and important given Mr. Bell's allegations. However, if he proposes to introduce expert opinion evidence, he must comply with the *Civil Procedure Rules* including, in particular, Rule 55.04;

2. Even if Mr. Bell had filed a proper expert handwriting analysis under Rule 55.04, there are still significant issues with simply assessing and weighing expert opinion evidence at a motion for summary judgment to establish otherwise contested facts. See, for example, Justice Farrar's decision in *Hatch Ltd. v. Atlantic Sub-Sea Construction and Consulting Inc.*, 2017 NSCA 61; and

3. At best, this letter suggests that Mr. Bell did not sign the Loan Agreement. It does not prove (or even discuss) fraud on the part of Mr. Rose.

[23] That said, I am compelled to note that I do not find Mr. Bell simply moved for summary judgment on the basis of bald or unsubstantiated allegations of fraud or forgery in a misguided, pre-emptive but totally baseless attempt to escape personal liability under the Loan Agreement.

[24] I refer first to the Ryskin Affidavit filed by Bennington in this motion. The Ryskin Affidavit includes as exhibits the following documents, all of which purport to contain a signature for Mr. Bell:

1. A photocopy of a Credit Application for EOH dated August 19, 2021 (the "**Credit Application**"). Mr. Bell is identified as the "Contact Person" but there is no actual name typed or printed by the signature at the bottom of the application form. And the signature is essentially illegible although it seems to be a stylized "B";
2. A Personal Financial Statement for Mr. Bell dated September 21, 2021. During cross-examination Mr. Bell admitted that he completed this document in his own handwriting and signed it- although he clarified that it was presented to him by Mr. Rose as a legitimate application for credit from a plumbing supplier;
3. A photocopy of Mr. Bell's driver's licence issued August 23, 2019. During cross-examination, Mr. Bell acknowledged his signature;
4. A photocopy of the Loan Agreement which contains:
5. Page 1: handwritten initials attributed to "Thomas James Bell"; and
6. Page 2: signatures for both "Thomas James Bell" and "EOH".

[25] A number of concerns may be said to at least arise (but are not proven) in connection with these documents and the sworn testimony in the Ryskin Affidavit. They include:

1. At paragraph 7 of the Ryskin Affidavit, Ms. Ryskin testifies that:

   > Prior to approving EOH's application for funding, Bennington compared the signature on Mr. Bell's Driver's Licence to the signature on the Personal Financial Statement and determined that the two appeared to be a match.

   Mr. Bell acknowledged that the signatures on his Driver's License and on the Personal Financial Statement are his. However, the Ryskin Affidavit does not identify the person who actually conducted this

comparison. This gives rise to concerns around admissibility but, setting those aside, more substantive questions arise . For example, why did this unnamed person from Bennington only compare Mr. Bell's Driver's Licence with the Personal Financial Statement? Why did this unnamed person not also compare (or at least indicate whether they did compare) the valid samples of Mr. Bell's signature on his Driver's Licence and Personal Financial Statement against the key contractual document which ground Bennington's claim (i.e. the Loan Agreement). This omission is noteworthy in the sense that, on an initial and cursory review, the signature attributed to Mr. Bell on the Loan Agreement superficially appear to be different. Again, for clarity, I make absolutely no findings of fact on this issue and these reasons must not be read or interpreted otherwise. The point is simply to illustrate that, at a very basic level, Mr. Bell's allegations cannot be rejected as having been manufactured out of whole cloth with no supporting evidence whatsoever;

2. At paragraph 9 of the Ryskin Affidavit, Ms. Ryskin testifies that:

> Bennington received a signed copy of the Loan Agreement with Mr. Bell's signature both in his personal capacity and as an authorized signatory for EOH. Bennington compared the signatures on the Loan Agreement with the signatures on Mr. Bell's Driver's Licences prior to concluding the transaction.

Once again, the Ryskin Affidavit does not identify the person who actually conducted this comparison. But aside from this, the more important question relates to whether Mr. Bell's signature on his Driver's License matches his signature on the Loan Agreement. On this critical issue, the affidavit is silent. The silence is notable when comparing it against the wording of paragraph 7 of the same affidavit. Recall that in paragraph 7, there is evidence that an unnamed person from Bennington compared the signatures found on Mr. Bell's Driver's License and the Credit Application and "determined the [signatures] to be a match". Paragraph 9 contains no such wording. It does not state that that Bennington compared the signature on Mr. Bell's Drivers Licence with the signature on the Loan agreement and determined them to be a match. Ms. Ryskin simply said the two signatures were compared without revealing what determinations were made after this alleged comparison. Again, the omission is relevant as the authentic signature on Mr. Bell's Driver's Licence

superficially appears to be different from the signatures found by his name on the Loan Agreement.

3. Further, and focussed on the Loan Agreement alone, the signature for Mr. Bell appears to be quite different from the signature for EOH – as if two different people were signing the document. A question arises as to who these people were, or if one person was attempting to develop two different signatures to create the impression that there were two different signatories.

[26] Mr. Bell's affidavit and Bennington's internal records diarizing its collection efforts also contain objective evidence which may be relevant the allegations of fraud. They include the following:

1. There is no evidence that Bennington ever had any direct contact with Mr. Bell prior to concluding the Loan Agreement and advancing funds. Rather, based on the evidence before me, all communications appear to have occurred through Tyler Rose, the person Mr. Bell states was responsible for the fraud;
2. The two primary telephone numbers initially being used by Bennington's collection department were attributed to Tyler Rose personally – not Mr. Bell. All calls to these numbers were either answered by Mr. Rose or another person who would state that Mr. Bell was unavailable; and
3. On March 11, 2022, Mr. Rose is said to have called Bennington. During that call, Mr. Rose identified himself as the "owner of the business" while Mr. Bell was a director. Mr. Rose further instructed Bennington to "update the lease agreement as he is the owner of the business". Bennington's representative responded that he would need Mr. Bell's authorization and requested Mr. Bell's email address. Mr. Rose refused to provide that information and gave his own personal email instead. If Bennington needed more information, Mr. Rose explained, it would have to wait for Mr. Rose to return the following month (April, 2022). There is no evidence that Bennington followed up on this issue regarding Mr. Bell's ownership although it would subsequently email Mr. Rose directly - not Mr. Bell (There were other occasions where the persons responding to Bennington's calls refused to give any personal contact information for Mr. Bell.

[27] All that said, and to return to my original point, there are distinct limits to the evidentiary findings which the Court may make in response to a party seeking to summarily dismiss an opposing party's claim or defence. In this case, Mr. Bell's motion fails on at least two grounds:

1. He is asking the Court to assess credibility, weigh the evidence, and make determinative findings of fraud in a way that goes well beyond the Court's limited mandate;
2. While the evidence before the Court is sufficient to raise questions, it is insufficient to render the sort of factual findings Mr. Bell proposes. Indeed, Mr. Bell offered facts in his written and oral submissions which would be relevant – if the required evidentiary support was placed before the Court, but it was not.

[28] I appreciate that Mr. Bell is self-represented. The form and substance of the relatively rough documents which Mr. Bell filed in this proceeding reflect his lack of experience with the relevant procedural and substantive law. Nevertheless, the Court is obliged to protect the process by which evidence is tendered and render fair and impartial decisions based on the admissible evidence.

CONCLUSION

[29] Mr. Bell's motion for summary judgment is dismissed.

[30] Pursuant to Rule 13.08, I am required to convene a hearing as soon as practicably possible to consider whether there are any directions that may facilitate a more efficient, inexpensive and timely resolution of this dispute having regard to the serious but relatively narrow nature of Mr. Bell's defence (i.e. an alleged fraud on the part of Mr. Rose). Given this, the parties should be prepared to discuss the extent to which it will be necessary to join or engage Mr. Rose in these proceedings.

[31] Bennington did not name Mr. Rose as a Defendant and, in fairness, they were under no obligation to do so. Bennington insists that they had no reason or basis to suggest Mr. Rose was defrauding them or Mr. Bell. I certainly have not been provided evidence to conclude at this stage that Bennington knew or ought to have know about any suspected fraud.

[32] Mr. Bell has also not yet joined Mr. Rose in these proceedings by filing a Third Party Claim against him.

[33] I note that in an affidavit sworn April 8, 2025, Mr. Bell attached an exhibit entitled "Bankruptcy and Insolvency Records Search", dated July 11, 2023. That document indicates that:

1. Tyler Rose made a voluntary assignment into bankruptcy on September 23, 2021 – about one month before the Loan Agreement was signed; and
2. 2Mr. Rose was not yet discharged from bankruptcy although it appears a hearing date had been set.

[34] Mr. Bell seems to suggest that Mr. Rose may have insulated himself through bankruptcy proceedings and may not be added as a third party. Given the nature of Mr. Bell's allegations against Mr. Rose, ss. 178(1)(d) of the *Bankruptcy and Insolvency Act* (an order of discharge does not release a bankrupt from debts or liabilities arising out of fraud) or s. 180(2) (a discharge may be annulled if obtained by fraud) may apply if they are proven. To date, for emphasis, they have not been proven.

[35] Regardless, Mr. Bell has been cautioned and encouraged to seek legal advice. Mr. Bell has also been advised that he may engage a lawyer under a limited retainer basis so that he receives legal guidance for important procedural (e.g. properly filing affidavits and expert opinions) or substantive (e.g. proving fraud and the law around admissible evidence) issues.

[36] Mr. Bell was also warned that he should carefully review Civil Procedure Rule 34 which includes information for persons acting on their own behalf. Among other things, it confirms that self-represented parties are, like all parties, subject to the *Civil Procedure Rules* and must make best efforts to become familiar with those Rules (Rule 34.06(1)(a) and (b)). The Court will extend self-represented litigants a degree of flexibility in order to see that justice is done. However, self-represented litigants cannot expect the Court to extend ongoing accommodations where it compromises the integrity of judicial proceedings or causes an unfairness, including undue prejudice an opposing party.

[37] In any event, in considering appropriate directions under Rule 13.08, these are issues for the parties to consider together with any other procedure that may assist in the timely, efficient, and just resolution of these claims.

Keith, J.