

SUPREME COURT OF NOVA SCOTIA

Citation: *Red Chamber Co. v. Glenn Fitzgerald Trucking Limited*,
2025 NSSC 275

Date: 20250826

Docket: Hfx No. 495638

Registry: Halifax

Between:

Red Chamber Co., a body corporate, and
North Lake Fisheries (2013), Inc., a body corporate

Plaintiffs

v.

Glenn Fitzgerald Trucking Limited, a body corporate, and Zim Integrated
Shopping Services (Canada) Co. Ltd., a body corporate, and Zim Integrated
Shopping Services Ltd., a body corporate

Defendants

DECISION ON SUMMARY JUDGMENT MOTION
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Judge: The Honourable Justice Scott C. Norton

Heard: July 30, 2025, in Halifax, Nova Scotia

Decision: August 26, 2025

Counsel: John Boyle, for the Applicant/Defendant, Glenn Fitzgerald Trucking Limited
Rui Fernandes and Saisha Mahil, for the Respondent Plaintiffs
Robin Squires for the Defendants, ZIM Integrated Shipping Services
(Canada) Co. Ltd. and ZIM Integrated Shipping Services Ltd. (not
participating)

By the Court:

Introduction

[1] The Defendant, Glenn Fitzgerald Trucking Limited (“GFT”), moves for summary judgment on the evidence, disposing of the Plaintiffs’ claim against it.

[2] The claims against GFT arise from a fire that occurred on October 18, 2018. GFT was retained to transport a refrigerated container (“Container”) owned by ZIM Integrated Shipping Services (Canada) Co. Ltd. and ZIM Integrated Shipping Services Ltd. (collectively “ZIM”) from the Port of Halifax to the Plaintiffs in P.E.I. and then return the Container filled with lobster from the Plaintiffs to the Port of Halifax. When returning the Container to the Port of Halifax, the Container caught fire. The cause of the fire is unknown, although it originated in the refrigeration unit in the Container.

[3] GFT claims that there is no issue of material fact. Because the cause of the fire is unknown, there is no evidence that GFT did anything wrong or in any way caused the fire. GFT also claims there is also no issue of law. The applicable test is negligence, although GFT acknowledges that the burden of proof is reversed - it bears the onus.

[4] GFT argues that based on the undisputed facts, there is no issue of law to determine. Summary judgment must ensue. Alternatively, if a question of law exists, the Plaintiffs have no reasonable prospect of success, such that summary judgment should still ensue. In the further alternative, GFT asks that this Court make a final determination of law.

[5] The Plaintiffs say that the motion should be dismissed. They submit that there are genuine issues of fact surrounding (a) the cause of the reefer unit’s malfunctioning, and (b) whether GTF met the standard of care in inspecting the Container during transit as required by law, which is inherently tied to the question of whether GTF discharged its onus of proving it was not negligent. In the alternative, if there are no issues of material fact, there are questions of law that must be determined in relation to GTF’s absolute liability under the regulations; these issues of law establish that the Plaintiffs have a real chance of success and summary judgment is not appropriate.

Facts

[6] The Plaintiff, Red Chamber Co. (“Red Chamber”), is a corporation incorporated in California, and carries on business as a seafood exporter. The Plaintiff, North Lake Fisheries (2013), Inc. (“North Lake”), is a P.E.I. corporation which carries on business as a seafood processor. North Lake is a subsidiary of Red Chamber. The Defendants, ZIM, are companies engaged in various aspects of transportation. The Defendant, GTF, is a trucking company.

[7] On October 10, 2018, Red Chamber entered into a sales contract with Lotte Shopping Co. for the purchase and sale of 114,000 pounds of frozen, whole, cooked, wild-caught lobster (the “Contract”). The lobster was to be shipped in 11,400 10-pound cartons, in three 40-foot shipping containers to Busan, Korea. Red Chamber sourced the lobster for the Contract from its subsidiary, North Lake.

[8] North Lake retained Kintetsu World Express Canada Inc. (“KWE”), a freight forwarder, to manage the transportation logistics for the Contract. North Lake provided KWE with details about the contents of the shipment, shipment deadlines and the shipment destination.

[9] KWE coordinated a contract of carriage with ZIM to transport lobster on ZIM’s vessel, Arsos, from the Port of Halifax to the Port of Busan in Korea. The booking confirmation notes that the commodity is frozen lobster and required a temperature of -18 degrees Centigrade.

[10] KWE also retained GTF to transport lobster from Montague, Prince Edward Island to Halifax, Nova Scotia, on behalf of North Lake. GTF was paid to transport two 40-foot refrigerated containers, including the container at issue in this matter, which bore identification number JXLU5810410 (the “Container”).

[11] The refrigerated containers transported by GTF were provided by ZIM. GTF was not involved in the preliminary inspection of the Container.

[12] GTF employee, Devin Hiltz, was responsible for operating the truck that transported the Container. Mr. Hiltz is a qualified truck driver, but he has no specialized experience in the maintenance or repair of refrigerated containers.

[13] Mr. Hiltz collected the empty Container from the Port of Halifax on October 16, 2018. The Container was secured to the chassis of his tractor-trailer truck. It was

then transported to GTF's facility in Enfield, Nova Scotia, where it remained overnight.

[14] There was no direct electrical connection between the truck and the refrigerated Container. The Container was powered by a clip-on generator, also referred to as a "Genset". GTF did not provide the Genset. It is not known who supplied the Genset.

[15] On October 17, 2018, the Container was transported from Enfield, Nova Scotia, to Montague, Prince Edward Island without incident. The Genset and reefer unit was turned on by Mr. Hiltz to pre-cool the container prior to arriving at Montague. It was then loaded by employees of North Lake at the Montague Cold Storage facility. The reefer unit was turned off while the Container was loaded.

[16] Montague Cold Storage, a subsidiary of North Lake, issued a non-negotiable delivery slip / straight bill of lading confirming the contents of the shipment. Mr. Hiltz also issued a bill of lading as well.

[17] Mr. Hiltz was unable to reach the Port of Halifax by 4:30 p.m. when it closed. GTF could not deliver the loaded Container until the morning of October 18, 2018, which was the earliest delivery date provided by KWE in the booking confirmation. Mr. Hiltz chose to park the Container at Petro Pass in Dartmouth, Nova Scotia. GTF regularly used the Dartmouth Petro Pass as an overnight stop where truckers can rest with their cargo.

[18] Mr. Hiltz conducted daily vehicle inspections on October 16 and 17, 2018, however no documentation evidencing these checks has been produced. Mr. Hiltz says that he conducted a post-trip inspection of the truck, including the Container, reefer unit, and Genset while at Petro Pass but no documentation evidencing this check has been produced. He says that he checked the Container prior to going to sleep to ensure it was set at the correct temperature and had no readily discernable defects. The Container remained attached to the chassis of the tractor-trailer and Mr. Hiltz slept in a sleeper compartment within the tractor. When Mr. Hiltz fell asleep, there were no apparent issues with the Container or its cargo.

[19] Mr. Hiltz was awakened at approximately 5:00 a.m. on October 18, 2018, by an unknown trucker who alerted him that there was smoke coming from the Container. He immediately inspected the container and noted smoke coming from the refrigeration unit. He powered down the Container's refrigeration unit and

Genset to try to prevent damage and stop it from smoking. After turning everything off, the smoke eventually stopped.

[20] Mr. Hiltz immediately phoned the fire department. Mr. Hiltz also called GTF operations manager, Noel Foley, to notify him of the fire when the office opened at approximately 8:00 a.m. Mr. Hiltz testified during cross-examination that when the fire department arrived they took over and would not permit him to try and turn the reefer unit back on.

[21] Mr. Foley emailed KWE at 8:54 a.m. to inform them of the fire and phoned Paul Richard from ZIM. Paul Richard requested that Mr. Hiltz immediately take the Container to Yeoman Marine's yard in Harrietsfield, Nova Scotia, as Yeoman Marine performs all ZIM container repairs at that facility. By the time Paul Richard provided his instructions, Mr. Hiltz was already transporting the Container to the Port of Halifax. The Container arrived at the Port of Halifax at approximately 10:00 a.m. Paul Richard revised his instructions to have the Container "in-gated" at the Port of Halifax so that Yeoman Marine could immediately inspect it. At the Port of Halifax, the container was removed from the truck's chassis and GTF had no further involvement with transporting, inspecting or repairing the Container. In cross-examination, Mr. Hiltz testified that when the Container was delivered to the Port of Halifax it had a temperature reading of -19 C.

[22] Mr. Morrissey of North Lake sent an email to Gabriel Fajardo of ZIM on October 20, 2018, attaching a bill of landing for the returned cargo of lobster. The email states:

We hold ZIM responsible for any damage that has occurred to product under this BL due to Container malfunction (refrigeration caught fire).

Analysis

[23] Summary judgment on the evidence is governed by *Rule 13.04* of the *Nova Scotia Civil Procedure Rules*. This *Rule* provides that a judge must grant summary judgment if satisfied that there is no genuine issue of material fact and no issue of law to be determined. Even if a question of law exists though, a judge may exercise his or her discretion to answer that question.

[24] The analytical framework to be applied for summary judgment motions on the evidence was set out in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, where Justice Fichaud organized the analysis around "five sequential questions" at para. 34:

First Question: Does the challenged pleading disclose a “genuine issue of material fact”, either pure or mixed with a question of law?

Second Question: If the answer to #1 is No, then: Does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?

Third Question: If the answers to #1 and #2 are No and Yes respectively, leaving only an issue of law, then the judge “may” grant or deny summary judgment: Rule 13.04(3). Governing that discretion is the principle in *Burton’s* second test: **“Does the challenged pleading have a real chance of success?”**

Fourth Question: If the answer to #3 is Yes, leaving only an issue of law with a real chance of success, then, under Rule 13.04(6)(a): **Should the judge exercise the “discretion” to finally determine the issue of law?**

Fifth Question: If the motion under Rule 13.04 is dismissed, **should the action be converted to an application** and, if not, what directions should govern the conduct of the action?

[25] The Nova Scotia Court of Appeal recently reaffirmed this test in *Arguson Projects Inc. v. Gil-Son Construction Limited*, 2023 NSCA 72, at paras. 33 and 34, and provided further clarification on its application in paras. 35-42.

[26] At paras. 24 to 26 of the Statement of Claim, the Plaintiffs allege that Glenn Fitzgerald acted negligently by failing to deliver the product in the same good order and condition as it was received, breached the terms of its contract with the Plaintiffs by failing to deliver the product in the same good order and condition as it was received, failed its duty as a bailee by failing to take such care of the cargo as would a reasonable and prudent owner, and breached legislation related to a common carrier.

First Question: There is no issue of material fact.

[27] To assess whether certain facts are material requires consideration of what needs to be proven to answer the allegations pleaded by a party (see: *Arguson*, at para. 37). In this case, the material facts are those related to GTF’s business, its conduct in transporting the Container and lobster, and the cause of the fire.

[28] The undisputed facts are:

- (a) ZIM owns the Container and conducted the pre-trip inspection of the refrigerated unit. GTF did not complete a pre-trip inspection specific to the refrigerated unit. Mr. Hiltz did complete a standard vehicle

inspection of the truck and container before commencing his transportation of the Container.

- (b) GTF transported the Container to Montague where North Lake filled the Container with Lobster.
- (c) Mr. Hiltz checked the Container on several occasions and saw no discernable defect. There is no evidence that a defect could have been discerned prior to the fire.
- (d) GTF transported the Container to the Petro Pass in Dartmouth. Mr. Hiltz then slept in the truck transporting the Container.
- (e) The Container caught fire at approximately 5.00 a.m. The cause of the fire is unknown. An unknown individual alerted Mr. Hiltz to the existence of the fire. Mr. Hiltz immediately turned off the refrigeration unit and Genset, which stopped the fire and smoke.
- (f) Mr. Hiltz immediately sought instructions on how to proceed. He delivered the Container to the Port of Halifax when it opened. GTF then had no further involvement in the matter.

[29] The Plaintiffs retained Kenneth J. Huber of HAAG Canada to opine on the cause of the fire based on his review of evidence related to the Container. Mr. Huber opined that no other fire signs were found other than in the electrical compartment of the reefer unit. The origin of heat and/or fire was most likely at the location where the cable was coiled in the reefer unit. Given the extent of damage, however, Mr. Huber could not confirm the exact cause of the heat and/or fire. No where in the report does Mr. Huber make any factual statements concerning GTF's conduct, or in any way suggest that GTF did anything wrong.

[30] What caused the reefer malfunction is a material fact. Absent that, no finding of negligence can be made against GTF. The Plaintiffs acknowledge that no definitive cause of the reefer malfunction has been established. As such a finding of negligence cannot be made. Here, it is accepted that the cause in fact of the fire has not been established. As the evidence negates a genuine issue of material fact as to cause, the first *Shannex* question is answered "no".

[31] I pause here to observe that it does not matter if the onus is on the Plaintiffs or GTF. An onus is only engaged if the evidence is equally balanced. Here, no one disputes that the evidence does not permit a finding as to the cause of the reefer malfunction.

[32] Further, without being able to determine the cause of the reefer malfunction, it does not matter who provided the Genset, whether the unit should have been pre-cooled, or whether Mr. Hiltz failed to record mandatory daily vehicle inspections.

[33] I do not agree that there is any question of law that must be determined. The Plaintiffs argue that whether GTF is a common carrier as defined in the Regulations is a question of law. To the extent that it is, I do not believe that it provides the Plaintiffs with a real chance of success. GTF acknowledges they have the burden of showing the fire occurred without their negligence.

[34] As stated in McNeil, *Motor Carrier Cargo Claims*, 5th ed., at pg. 21:

The onus to be met by the carrier does not require the he prove the cause of the loss, or the mechanism of the loss, but only that he satisfy, on the balance of probabilities, that the occurrence of the loss is one falling within an exemptive set of circumstances, and simultaneously that he was not negligent.

[35] The motion for summary judgment is granted and the claims against GTF are dismissed. The Plaintiffs shall pay GTF costs in the amount of \$3,000 inclusive of disbursements.

[36] GTF will prepare the Order accordingly.

Norton, J.