SUPREME COURT OF NOVA SCOTIA

Citation: *GNF Commercial Management Limited v. Dijla Bakery*, 2024 NSSC 317

Date: 20241022
Docket: Hfx No. 531495
Registry: Halifax

Between:

GNF Commercial Management Limited

Appellant

v.

Dijla Bakery

Respondent

Decision

Judge:	The Honourable Justice D. Timothy Gabriel
Heard:	August 12, 2024, in Halifax, Nova Scotia
Final Written Submissions:	August 23, 2024
Counsel:	Kent Noseworthy, for the Appellant Olga Young, for the Respondent

By the Court:

[1] This is an appeal from the Order of an adjudicator of the Small Claims Court of Nova Scotia, dismissing the application of the Appellant GNF Commercial Management Limited ("GNF") to set aside a Quick Judgment Order of that Court, which was granted on October 2, 2023. In addition to the appeal, the Appellant brings a preliminary motion seeking to amend its notice of appeal to add "denial of natural justice" to its pleadings. GNF, in its Notice of Appeal filed March 11, 2024, had originally only signified one basis for its appeal, namely, "error of law".

Background

[2] The Respondent Dijla Bakery ("Dijla") entered into a commercial lease agreement with the Appellant in June 2021. They intended to utilize the premises as a bakery. The lease was to commence on November 1, 2021, but the Appellant failed to provide the Respondent with possession of the leased premises. So the Respondent filed a claim in the Small Claims Court. Facially, the notice said that $25,000 in damages, arising from the Appellant's failure to provide them with possession of the premises, was sought.

[3] All of the standard information with respect to that proceeding is found on page 1 of the Notice of Claim, SCCH No. 521805. Most pertinently, in section 1.4 of the Claim, Ms. Al Anbagi, as the representative of Dijla, described what she was seeking from the Appellant in the following terms: "Payment of money, general damages, interest, costs, claim amount $25,000". Below this, under the heading REASON FOR THIS CLAIM (capitalization in original) she stated:

> GNF Commercial Management Limited has breached our contract of leasing the commercial space to open Dijla Bakery. They have refused to return security deposit.

[4] The Appellant was served with the Claim. On April 18, 2023 the Small Claims Court held a pre-hearing telephone conference for the parties. The Claimant's representative, Ms. Al Anbagi, attended by telephone, but no representative of GNF did. The adjudicator explained to her that GNF had not filed a Defence (I will discuss why it says that it did not do so further on in these reasons). The adjudicator further explained to her that, because a Defence was not filed, Dijla was at liberty to apply for "quick judgment" pursuant to section 23(1) of the *Small Claims Court Act* ("the Act").

[5] The section reads as follows:

> 23(1) Where a defendant has not filed a defence to a claim within the time required by the regulations and the adjudicator is satisfied that
>
> (a) each defendant was served with the claim and the form of defence and with notice of the time and place of adjudication; and
>
> (b) based on the adjudicator's assessment of the documentary evidence accompanying the claim, the merits of the claim would result in judgment for the claimant,
>
> the adjudicator may, without a hearing, make an order against the defendant.

[6] On September 21, 2023, Dijla filed an Application for Quick Judgment. It was accompanied by the sworn Affidavit of its sole proprietor, namely, Fareda Tawfeik. Ten exhibits were appended to the document. The Appellant was not provided with this paperwork.

[7] On October 2, 2023, the adjudicator granted the claimant's quick judgment application, as a result of which GNF was ordered to pay the Respondent a total of $19,446.32. On October 18, 2023, the Appellant, now represented by counsel, filed an application to set aside the quick judgment. It was accompanied by the sworn Affidavit of Michael Quigley, GNF's General Manager.

[8] In its "Application to Set Aside Quick Judgment" notice, the Appellant listed three grounds:

> 1. The Appellant, GNF Commercial Management Limited, had no knowledge of the Small Claims Court Hearing because it was not served proper notice once a date had been set.
>
> 2. The claim of the Respondent is without merit, because at all times the Appellant was prepared to return the security deposit they sought, and the Respondent provided no evidence disclosure to the Appellant proving they suffered damages and/or incurred costs.
>
> 3. If the Appellant had been given proper notice of the scheduled hearing, either by the Respondent or the Small Claims Court, and if they had been provided evidence disclosure by the

> Respondent they would have attended and defended against the Claim.

[9] The application was scheduled to be heard on November 21, 2023 at 6:00pm by way of telephone conference call. As noted above, Mr. Quigley's Affidavit was filed in support of the application. It is dated October 27, 2023 and is reproduced below:

> …
>
> I, Michael Quigley of Halifax, Province of Nova Scotia make oath and give evidence as follows:
>
> 1. I am employed as the General Manager of GNF Commercial Management Limited ("GNF").
> 2. I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief to which I due verify belief the truthfulness.
> 3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief in the source.
> 4. GNF is the former commercial landlord of the Respondent.
> 5. There was a duly executed lease between the parties, signed on June 24, 2021.
> 6. The lease was terminated on or about May 3, 2022.
> 7. The tenancy was terminated and the tenant's request for the return of their deposit was initially refused.
> 8. I understand that the Respondent filed a claim for the return of the deposit with the Small Claims Court on March 6, 2023.
> 9. I then reviewed this specific lease in greater detail and discovered that the typical non-refundable clause was not included.
> 10. Having discovered the source of the misunderstanding, and that the tenant was entitled to a refund of their damage deposit, I prepared a cheque in the amount of $3,200 on March 20, 2023. for pickup. I notified the Respondent of this fact however they refused telling me that they preferred to wait for the outcome of the hearing.
> 11. I had received the Notice of Claim indicating that there was to be a scheduling hearing on April 18, 2023.
> 12. I did not attend this hearing for the following reasons:
>
> a. First, my reading of the Notice of Claim was that it was only for the return of the damage deposit and I was uncertain whether this proceeding was even necessary. GNF attempted to resolve the dispute by preparing a

cheque, and I had communicated to the Respondent personally that we were now prepared to return the deposit.

b. Second, on the day of the hearing I was unexpectedly very ill with COVID and resting at home and unable to get the claim form from my locked filing cabinet at the office and so was unable to call the phone line for the hearing.

c. I did not make alternate arrangements because, as indicated above, I was uncertain whether my presence was necessary and whether this case was moot for the reasons described above.

13. After this initial hearing, GNF received no further communications from the Respondent or any clerk of the Small Claims Court that there was a hearing on the merits scheduled and that GNF was to attend.

14. I made no further inquiries because I assumed if there was a hearing that some form of notice would have been sent to me.

15. I received no evidence disclosure or itemization of the claim from the Respondent or the clerk of the Small Claims Court.

16. Additionally, I was still operating under the assumption that the hearing was not necessary and the matter was concluded because GNF was prepared to return the damage deposit and I had communicated this personally to the Respondent.

17. Neither myself nor GNF received any further communication from the Respondent either to make arrangements to pick up their damage deposit or to advise that there was another hearing.

18. For these reasons, GNF had no notice or knowledge that the claim was proceeding.

19. <u>If we had known there was another hearing on the merits we certainly would have attended and defended against the claim by stating:</u>

a. <u>the amount of damages sought ($25,000) is unreasonable because it is grossly disproportionate to the amount of the damage deposit and we are unaware of any damages suffered or costs incurred by the Respondent and</u>

b. at all times we were prepared to return the damage deposit.

20. I was shocked to receive the Order on Quick Judgment Application dated October 3rd, 2023 but received by mail on October 10th, 2023.

21. I depose this affidavit in support of an application to set aside Quick Judgment in this proceeding and for no improper purpose.

…

[emphasis added]

[10] The application to set aside the quick judgment was heard on November 21, 2023, and by written Decision dated February 12, 2024, it was dismissed. The adjudicator considered the provisions of section 23 of the Act, and, in particular, subsection 2 thereof. The substance of his interpretation thereof is set out below:

> [5] It [s. 23 (2)] provides that if I am satisfied of two things that I may set aside the order. The use of the word "may" suggests that whether or not to set aside a quick judgment order is a discretionary exercise and that other considerations could potentially be part of the decision of whether or not to set aside the original order. To be clear, the two requirements of s. 23(2)(a) - a reasonable excuse for failure to file a defence, and s.23(2)(b) - no unreasonable delay after learning of order, are essential conditions that must in all cases be satisfied by the defendant. However, even if both requirements are satisfied, it does not automatically follow that the order must be set aside; as noted above, the wording only says the Adjudicator may set aside the order.
>
> [6] What is clear is that if either or both of (a) and (b) are not satisfied, an adjudicator would have no authority to set aside the original order.

[11] The basis for the dismissal of GNF's application to set aside the quick judgment was based upon the adjudicator's conclusion that the Appellant had not demonstrated a "reasonable excuse for failing to file a defence within the time required." It should be noted that the adjudicator did agree that the second of the two criteria specified in section 23(2) of the Act, namely, that the Defendant appeared before the adjudicator without "unreasonable delay after learning of the order", had been satisfied (*Decision, para.7*).

[12] There are three issues raised in this proceeding:

A. Should the Appellant be allowed to argue that it has sustained a "denial of natural justice", a ground which is not specifically mentioned in his Notice of Appeal to this Court dated March 11, 2024?

B. If yes, did the Appellant actually sustain a denial of natural justice in the circumstances of this case?

C. Did the adjudicator err when he determined that the Appellant had not demonstrated a "reasonable excuse for failing to file a defence within the time required"?

Analysis

A. Should the Appellant be allowed to argue that he has sustained a "denial of natural justice", a ground which is not mentioned in his Notice of Appeal to this Court dated March 11, 2024?

[13] The Respondent provides the chronology leading up to this appeal:

> 10. The Appellant's Brief is scare [sic] on background details so a chronology of the events leading up to the application hearing is below:
>
> i. On March 7, 2023, Dijla Bakers (hereafter the "**Claimant**" or the "**Respondent**", as the case may be) filed a claim in the Small Claims Court of Nova Scotia against GNF Commercial Management Limited (hereafter the "**Defendant**" or the "**Appellant**", as the case may be). The Claim was for $25,000 in damages arising from the Defendant's failure to provide the Claimant with possession of certain leased commercial premises in which the Claimant intended to establish and operate a bakery business (hereafter, the "**Claim**").
>
> ii. On March 8, 2023, the Defendant was served with the Claim.
>
> iii. On April 18, 2023, the Small Claims Court held a pre-hearing telephone conference for the parties. The Claimant's representative, Ms. Zahraa Al Anbagi, attended the conference by telephone but neither the defendant nor any representative acting on its behalf dialed in to attend the pre-hearing. During the telephone conference, the Adjudicator confirmed to Ms. Al Anbagi that no defence had been filed. The Adjudicator did not set a hearing date and explained the concept of a Quick Judgment to the Claimant's representative.
>
> iv. On September 21, 2023, the Claimant filed an Application for Quick Judgment. It was accompanied by the sworn affidavit of Fareda Tawfeik (who is the sole proprietor of Dijla Bakery) including ten exhibits in support of the requirements of the application.
>
> v. On October 2, 2023, Adjudicator Michael O'Hara granted the Claimant's Quick Judgment pursuant to section 23(1) of the Act and ordered the Defendant pay a total of $19,446.32 to the Claimant (hereafter, the "**Quick Judgment**").
>
> vi. On October 18, 2023, counsel for the Defendant filed an Application to Set Aside Quick Judgment in the Small Claims Court. The Application listed three grounds for appeal and was accompanied by the sworn affidavit of Michael Quigley, the Defendant's General Manager.

11. On November 21, 2023, Adjudicator O'Hara held the application hearing by telephone. The Defendant was represented by its counsel and the Claimant was represented by Ms. Zahraa Al Anbagi, who is not a lawyer.

12. During the application hearing, Adjudicator O'Hara heard oral arguments from both parties. He reserved making a decision that evening and allowed the parties to provide post-hearing written submissions and case law. The defendant's submissions were delivered to the Adjudicator and Ms. Al A[n]bangi by email on November 27, 2023.

13. On February 12, 2024, Adjudicator O'Hara rendered his decision to dismiss the Defendant's application and to confirm the Quick Judgment. He provided written reasons for the decision in the Decision and Order dated February 12, 2024 (hereafter, the "**Decision**").

[14] I invited post-hearing submissions from the parties on the issue of whether the Appellant should be permitted to raise the issue in its arguments on appeal, given that its Notice of Appeal did not mention this ground specifically. I have considered these submissions carefully and have concluded that the Respondent had notice before it filed its brief of the substance of what the Appellant was arguing. Regardless of whether one categorizes the argument as "an error of law" or "denial of natural justice", the Respondent was aware that the argument would be advanced.

[15] Even by the time it filed its brief within the context of this appeal, GNF still had no idea of the existence of the sworn Affidavit of Fareda Tawfeik, which had accompanied the application of the Respondent, which was filed with the Small Claims Court, on September 21, 2023, for quick judgment. The obvious corollary of this is that the Appellant, although represented by counsel, did not have these materials when the application to set aside the quick judgment was heard on November 21, 2023 by the adjudicator.

[16] This may be why the Appellant, both in that application before the adjudicator, and in much of the materials with which it has provided this Court, focused primarily upon whether the adjudicator erred in concluding that the Defendant had a reasonable excuse for failing to file a defence within the time required.

[17] Further, the substantive basis for GNF's argument that it was denied natural justice was stated in grounds #2 and #3 in the Application to set aside the quick judgment dated November 21, 2023, and in paragraph 19 of Mr. Quigley's Affidavit.

[18] For these reasons, I will allow the Appellant to raise the issue of denial of natural justice.

B. If yes, did the Appellant actually sustain a denial of natural justice in the circumstances of this case?

[19] When a failure to follow the requirements of natural justice is alleged, a standard of review analysis is not engaged. Rather, the Court is tasked with the determination of whether the process followed was fair to the respective parties. In the specific circumstances of this case, and although the Appellant unwisely declined to file a Defence for the reasons explained in the affidavit of Mr. Quigley, I have concluded GNF nonetheless sustained a denial of natural justice in the manner in which the proceedings unfolded. In these circumstances, natural justice requires a hearing on the contractual breach alleged, an assessment of the damages that are properly attributable thereto, as well as other collateral factors (if raised) such as, for example, the sufficiency of the Dijla's efforts to mitigate. I will explain.

[20] In rendering his Decision, the adjudicator stated:

> [14] After considering this at some length, I have determined that I cannot accept what is stated in Mr. Quigley's Affidavit, particularly paragraphs 12(a) and 16 of.
>
> [15] I refer to the Notice of Claim and in particular, section 1.4. It states:
>
> **1.4 ABOUT YOUR CLAIM**
> CLAIM FROM THE DEFENDANT(S)
>
> ☒PAYMENT OF MONEY ☐RETURN OF GOODS ☒GENERAL DAMAGES ☒INTEREST ☒COSTS CLAIM AMOUNT: **$25,000**
>
> REASON FOR THIS CLAIM (*what happened? Where?) (If you need more space, attach another sheet of paper)*
>
> *GNF Commercial Management limited has breached our contract of leasing the commercial space to open Dijla Bakery.*
> *They have refused to return security deposit.*
>
> *March 7/2023* (signature)
> DATE SIGNATURE OF CLAIMANT(S) OR THE LAWYER(S) FOR THE CLAIMANTS
>
> [16] This clearly indicates that the claim amount is for $25,000.
>
> [17] No one reading this would reasonably think that the claim was limited to a $3,200 damage deposit. Respectfully, this is neither a credible proposition nor is it reasonable.
>
> [18] The Affidavit of Mr. Quigley in paragraph 10 underscores this. He states:

> I prepared a cheque in the amount of $3,200 on March 20, 2023, for pickup. I notified the Respondent of this fact however they refused telling me they preferred to wait for the outcome of the hearing.
>
> [19] It is clear from this that there was no resolution based on the payment of $3,200 given Mr. Quigley's own wording.
>
> [20] Even if a person in the position of Mr. Quigley had any doubt or confusion about what was being sought in terms of the amount of money (a suggestion which I reject in any event), that doubt would surely have been erased by this communication.
>
> [21] I am very mindful of the relative prejudice to the Defendant by not having their day in Court. But, as I read the *Small Claims Court Act* and the case law, particularly the *George Mitchell* case of Justice LeBlanc, it would appear that the consideration of the relative prejudice which, in accordance with my earlier comments, might be a consideration affecting the adjudicator's discretionary exercise, is not a consideration in determining whether or not there is a "reasonable excuse" for not filing a defence.

[21] As I consider these reasons, I remain fully aware of the mandate of the Small Claims Court. Among other things, that mandate is to provide a quick and inexpensive forum within which litigants, who are frequently unrepresented and relatively (legally) unsophisticated, may have their differences resolved. The Court must, to some extent, tolerate the concomitant laxity and or lack of precision in pleadings to which this sometimes gives rise. I also do not wish to be taken to suggest that defendants may cavalierly ignore the statutory requirement of filing a defence. Defendants who have something to say and do not file a defence, do so at their significant peril.

[22] But with that having been said, I must observe that the object of a Notice of Claim (indeed, any originating pleading), in the simplest sense, is to provide the Court and defendant notice of what is being sought, and a brief explanation as to why. In this case, the Notice of Claim is egregiously lacking. The information to be gleaned from reading it is that:

1. Dijla says that GNF has breached "our contract of leasing the commercial space";
2. They have refused to return the security deposit; and
3. A claim of $25,000 is being advanced.

[23] GNF asserts that the only specific of the Claim with which they were provided was the failure to return the security deposit. None of the other

constituent elements of the Claim were ever given to them until well after they had appealed to this Court. As we have earlier seen, GNF further asserts that they did not bother defending this Claim because they were prepared to return the security deposit, and thought that the $25,000 claim was simply, to paraphrase, a case of a legally unsophisticated claimant "picking an amount out of the air" by claiming the utmost limit of the Court's monetary jurisdiction.

[24] At a minimum, there must be enough information provided in the Notice of Claim to enable a defendant to determine whether they wish to contest it. In most cases, it will be difficult for a party neglecting to file a defence to claim that they were not provided with minimally enough information to make that determination. In this case, GNF thought that what was at issue was a security deposit, and says it was unaware of the possibility of Dijla having sustained any losses beyond that. It attempted to return the security deposit to the Respondent, on March 23, 2023 (16 days after the Notice of Claim was issued), which is not disputed (*Quigley Affidavit, para 10*). Facially, by reading the Notice of Claim, one can understand how the Appellant might have come to the conclusion which it did.

[25] The adjudicator, as noted above, pointed out that it ought to have been obvious to Mr. Quigley and GNF that there was no resolution based on Dijla's having refused the payment of $3,200, and further, that "even if a person in the position of Mr. Quigley had any doubt or confusion about what was being sought in terms of the amount of money … that doubt would surely have been erased by this communication" (*Decision, para 20*).

[26] With respect, the refusal merely speaks to the fact that Dijla wanted more than $3,200. It still provides not even a bare indication of "why." For example, did they want an award of costs? Were they seeking interest on the security deposit monies?

[27] It is particularly difficult to understand why the Respondent would make specific mention in its Notice of Claim of the security deposit, an amount which comprises less than 17% of the amount which the adjudicator eventually awarded, and say not a word about any of the other items which were subsequently said to comprise the amount of their alleged losses (in documents with which the Appellant was never provided).

[28] As we have seen, the wording of section 23(1)(b) contemplates a process whereby the adjudicator must assess "the documentary evidence accompanying the claim" to determine that "the merits of the claim would result in judgment for the

claimant" before granting quick judgment. In the circumstances of this case, how a process whereby "the merits of the claim" for losses, that are never referenced in the Notice of Claim (even indirectly), and are only subsequently determined on the basis of paperwork that is never provided to the Defendant, nor of whose existence the Defendant is ever even made aware, can be said to be in conformity with the principles of natural justice.

[29] This is reinforced by a consideration of the document in question, the "Affidavit in Proof of Application" that was filed by the Respondent in support of its Application for Quick Judgment. It was filed on September 21, 2023, but, to repeat, never given to GNF.

[30] Consider the information on the final page:

17. That I have had no written communication from the Defendant to the effect that the Defendant intends to defend this action.

18. That, to date, no payments have been made to me by the Defendant.

19. That the following breakdown of my Claim is a true and accurate statement of the account owing by the Defendant, and documentation supporting my claim is attached:

Debt (amount claimed before costs)	**a) $3,200.00** (lease deposit) **b) $15,779.45** (unrecovered payments for bakery equipment) **c) $132.52** (unrecovered payments for baking supplies) **Total debt due (a + b + c) = $19,131.97**
Credit (if any)	$ Not applicable.
Cost of filing claim	**$ 199.35**
Cost of service	**$ 115.00**
Total:	**$ 19,446.32**
Pre-judgment interest to date at 4%	To be determined by the Adjudicator.
TOTAL:	**$ 19,446.32 plus prejudgment interest at 4%**

20. That I request judgment be issued in this matter in the amount of $19,446.32 as well as prejudgment interest at a rate of 4% in accordance with section 16 of the *Small Claims Court Forms and Procedures Regulations*, O.I.C. 2019-204, N.S. Reg 114/2019.

AFFIRMED before me, in the City of Bedford, in the Province of Nova Scotia, on this 15th day of September, 2023 through the interpretation of Zahraa Al-Anbagi in the Province of Ontario said Zahraa Al-Anbagi having been first virtually affirmed truly and faithfully to interpret the contents of this affidavit to the deponent, and truly and faithfully, to interpret the oath about to be administered to them.

Olga Young
Barrister of the Supreme Court of Nova Scotia & Commissioner of Oaths

Fareda Tawfeik
Applicant & Affiant

[31] This is the first time that almost $16,000 in unrecovered payments for bakery equipment is even mentioned. Compounding the magnitude of this, it was confirmed in the Respondent's post-appeal submissions that the Respondent is still in possession of this bakery equipment and is "attempting to sell it".

[32] Indeed, counsel for the Respondent, in those post-appeal submissions, set out as follows:

> … paragraph 10 of Ms. Tawfeik's Affidavit states:
>
> > That in early June 2022, I contacted I FoodEquipment.com to ask if they would accept the return of the bakery equipment so that I could recover some of my costs arising from my previous purchases but it did not agree to any returns.
>
> Following the [appeal] hearing, I [counsel for the Respondent] confirmed that the Respondent has not yet received any money back for the bakery equipment. I also learned that the Respondent paid iFoodEquipment a flat fee to store and to re-sell the equipment on the understanding that any sale proceeds are to be given to the Respondent.
>
> With this information in mind, I can appreciate that the Court may have concerns about the Respondent being able to recover her losses twice … The Respondent agrees that a double recovery should be avoided and she is agreeable to assigning all of her rights, title and interest in the equipment to the Appellant *once* the judgment has been fully satisfied. This arrangement would ensure that any recovered monies in the future will be directed to the Appellant rather than the Respondent.
>
> If the above solution seems like a sensible one to the Court, the Respondent seeks permission to amend its requested relief in this appeal to the following:
>
> > The Respondent respectfully request this Court find that and no error of law was committed and order that the Order dated October 2, 2023 be upheld with one minor amendment: that the Claimant [Respondent] be required to assign all rights, interest, and title to the bakery equipment to the Defendant [Appellant] once the Defendant [Appellant] has satisfied its payment obligations under the Order.
> >
> > (*Respondent's submission, August 16, 2024, p. 2*)
>
> [emphasis added]

[33] First, the fact that the award determined by the adjudicator will result in double recovery for at least a portion of the amount that he granted, in the event that the Respondent is successful in selling any of this equipment, does not appear to have been considered. Nor was there any evidence before him as to the residual

value of the equipment that formed the overwhelming majority of the award which the Respondent received and still possesses.

[34] Second, the Court (although invited by the Respondent to do so) has no jurisdiction to impose what would essentially become a "compromise" between the parties' respective positions (i.e. dismiss the appeal, but direct the Respondent to assign the right to title to the bakery equipment after the Appellant satisfies the judgment).

[35] The cumulative (and unusual) circumstances of this case have resulted in the Appellant being denied procedural fairness.

C. Did the adjudicator err when he determined that the Appellant had not demonstrated a "reasonable excuse for failing to file a defence within the time required"?

(i) What is the applicable standard of review?

[36] If I have erred in concluding that the above-noted process amounted to a denial of natural justice to the Appellant, I would have concluded, for essentially the same reasons, that the adjudicator made an error of law when he determined that the explanation offered by Mr. Quigley in his Affidavit did not rise to the level of a "reasonable excuse" for his failure to file a defence.

[37] The seminal case on the scope of review in an appeal from the Nova Scotia Small Claims Court is *Brett Motors Leasing Ltd.* v. *Welsford*, [1999] N.S.J. No. 466. Justice Saunders there articulated the permissible scope of review (when error is alleged, on appeal) in the following passage (at para. 14):

> One should bear in mind that the jurisdiction of this Court is confined to questions of law which must rest upon findings of fact as found by the adjudicator. I do not have the authority to go outside the facts as found by the adjudicator and determine from the evidence my own findings of fact. "Error of law" is not defined but precedent offers useful guidance as to where a superior court will intervene to redress reversible error. Examples would include where a statute has been misinterpreted; or when a party has been denied the benefit of statutory provisions under legislation pertaining to the case; or where there has been a clear error on the part of the adjudicator in the interpretation of documents or other evidence; or where the adjudicator has failed to appreciate a valid legal defence; or where there is no evidence to support the conclusions reached; or where the adjudicator has clearly misapplied the evidence in material respects thereby producing an unjust result; or where the adjudicator has failed to apply the appropriate legal principles

> to the proven facts. In such instances this Court has intervened either to overturn the decision or to impose some other remedy, such as remitting the case for further consideration.

[38] Since this case has consistently been applied by this Court in many subsequent decisions, it is not necessary to refer to multiple authorities. I will refer to one other, however, namely, the decision of Justice Moir in *Maloney* v. *Hoyeck*, [2013] N.S.J. No. 421. The relevant passages are as follows:

> [19] The need for deference to fact-finding becomes acute on a Small Claims Court appeal. The *Act*, true to its purpose of economical dispute resolution, limits appeals to an error about jurisdiction, an error of law, and a failure in the duty of fairness: s. 32(1). Note the absence of palpable and overriding error of fact.
>
> [20] "... [T]he jurisdiction of this court is confined to questions of law that must rest upon findings of fact as found by the adjudicator": *Brett Motors Leasing Ltd. v. Welsford*, 1999 CanLII 1121 (NS SC), [1999] N.S.J. 466 (Saunders J.): para. 14. Despite what s. 3(1) of the *Small Claims Court Act* says, it is not a court of record in the ordinary sense of that phrase. The testimony is not recorded. This, too, accords with the economical purpose of the *Act*.
>
> [21] Instead of a record, the statute requires the adjudicator to prepare a "summary report of the findings of law and fact" if there is an appeal: s. 32(4). In recent years, Small Claims Court adjudicators have shown a tendency to burden themselves with written decisions in more complicated cases. The decision is attached to the summary and makes for a fresher record of the adjudicator's thinking.
>
> [22] We have to rely on the adjudicator's summary: *Victor v. City Motors Ltd.*, [1997] N.S.J. 140 (Davison J.) at para. 14. The summary may offend the duty of fairness when it gives no information on the evidence that stood as the basis for an important finding of fact: *Morris v. Cameron*, 2006 NSSC 9 (LeBlanc J.) at para. 37. That does not mean that the adjudicator has to labour over the summary to nearly replicate a transcript. It is just a "summary" after all.
>
> [23] We do not review Small Claims Court findings of fact for palpable and overriding error. Our jurisdiction to review for error of law may extend to the situation "where there is no evidence to support the conclusions reached : *Brett* at para. 14. That would have to be apparent from the summary.
>
> [24] In conclusion on this point, fact-finding in Small Claims Court is only reviewed when it appears from the summary report and the documentary evidence that there was no evidence to support a conclusion. An insufficient summary may attract review on the third ground, fairness, but it is not insufficient just because it is less satisfying than a transcript.

(ii) Analysis

[39] Obviously, the Nova Scotia Small Claims Court is a creature of statute. Section 2 outlines the Court's *raison d'être*:

> It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.

[40] The Appellant argued, *inter alia*, in its Appeal brief:

> 15) A reading of the Notice of Claim form supports the understanding of Michael Quigley that the claim was for a return of the security deposit of $3,200.00 as there is no detail of any other damages being claimed and the defendant is entitled to know in the Notice of Claim form what is being claimed so the defendant knows what they are expected to contest or defend against. The reference to **Claim Amount-$25,000** was interpreted by him as a simple reference to the monetary jurisdiction of the court.
>
> 16) In this case, GNF thought the Notice of Claim was regarding the tenant seeking a return of its pre-paid security deposit which it had already agreed to refund to the Claimant and had already prepared the cheque for pickup. Michael Quigley says his reading of the Notice of Claim was that he understood that was the extent of the relief being sought by the Claimant and didn't understand differently even after talking to the tenant. GNF thought it was unnecessary for it to file a Defence as they had agreed to pay the Claimant what they reasonably thought was the whole subject of the Small Claims proceeding. It is submitted that the Notice of Claim – Form 1 is far from clear that the tenant is seeking anything more than a refund of its deposit.
>
> 17) <u>It is noted that GNF has never seen or been provided any documentary evidence the claimant would have filed in support of its application for quick judgment that would justify the damages of $19,446.32 determined by the adjudicator.</u>
>
> [emphasis added]

[41] It is undeniably true, as the adjudicator pointed out, and as I have also mentioned above, that the "pool" of available reasonable excuses is extremely small, and it should remain so. It is trite to observe that if a party has something to say in their defence, they should file their defence and, as a consequence, they will

be permitted to say it. Anyone failing to file a defence as the (then) unrepresented Appellant did here, is, at the very least, extremely reckless.

[42] However, as also noted above, there is a corresponding obligation upon the claimant to provide at least a minimal amount of information upon the basis of which a defendant may determine whether they wish to, or need to, defend a claim. In this case, the only specific loss mentioned was that of the security deposit, which was known to be $3,200.00. GNF was prepared to return this money, at least after the Claim was initiated, and in fact took steps to attempt to do so. Dijla refused to accept it. This is the only loss, of which Mr. Quigley was aware, that the Respondent had sustained.

[43] In particular, there was no evidence of the $16,000 plus losses (occasioned by the purchase of bakery equipment) subsequently mentioned in Dijla's Affidavit filed in September 2023 in support of its Application for Quick Judgment being provided to GNF. There was not even any evidence provided to the adjudicator which could serve as a basis upon which he could conclude that the Appellant ought to have been aware of the likelihood of the existence of such additional losses.

[44] Quigley's explanation amounts to "I thought all they were claiming was $3,200, because the only loss they specifically mentioned was the damage deposit. I was prepared to give them back their damage deposit, so I did not see the need to file a defence." I have discussed above how GNF interpreted the claim's quantification at $25,000 in light of the lack of specification of any other category of damages other than the security deposit – a layperson picking a figure out of the air by claiming the complete monetary jurisdiction of the Court.

[45] Equally as important, recall that s. 23 provides:

> 23 (1) Where a defendant has not filed a defence to a claim within the time required by the regulations and the adjudicator is satisfied that
>
> …
>
> (b) based on the adjudicator's assessment of the documentary evidence accompanying the claim, the merits of the claim would result in judgment for the claimant,
>
> The adjudicator may, without a hearing, make an order against the defendant.

[46] Specifically, it requires that prior to granting a quick judgment, the adjudicator must be satisfied, on the basis of the notice of claim, and the

information accompanying that notice of claim, that the claimant is entitled to the judgment he eventually grants. There was no information "accompanying the claim" with which the Defendant was served explaining or even alluding to the provenance of the other approximately $16,000 over and above the security deposit. It does not appear that the Quick Judgment was properly granted in the first place.

[47] Finally, even if it were to be assumed that the adjudicator did not err, in granting judgment on the basis of documents that were never provided to GNF at any time, whose existence was known only to the Respondent and the Court, and of whose existence it was not even hinted in the Notice of Claim, the adjudicator erred in law, in my respectful view, in granting judgment without properly quantifying the Respondent's losses. Specifically, as earlier discussed, he did not take into account the residual value of the bakery equipment which, even now, is still possessed by the Respondent, and which the Respondent is actively endeavouring to sell, when he made the award which he did.

Conclusion

[48] For the above reasons, the matter is remitted back to Small Claims Court, before a different adjudicator, for hearing.

Gabriel, J.