



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Sansome v. Sheppard*, 2022 NLCA 24

Date: April 18, 2022

Docket Number: 202001H0012

BETWEEN:

GARRY SANSOME

APPELLANT

AND:

SCOTT SHEPPARD

RESPONDENT

Coram: Fry C.J.N.L., Welsh and Butler JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
Corner Brook, 201504G0261

Appeal Heard: April 6, 2022

Judgment Rendered: April 18, 2022

Counsel for the Appellant: Self-Represented

Counsel for the Respondent: Robby D. Ash

Reasons for Judgment by: Fry C.J.N.L.

Concurred in by: Welsh and Butler JJ.A.

Authorities Cited:

STATUTES CONSIDERED: *Insurance Adjusters, Agents and Brokers Act*, RSNL 1990, c. I-9

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

Fry C.J.N.L.:

[1] Garry Sansome appeals his unsuccessful claim for damages for a breach of an alleged verbal agreement with Scott Sheppard. He claimed that Mr. Sheppard was to pay him 30% of commissions earned by servicing some of Mr. Sansome's former clients in the financial services industry.

[2] The judge heard an application by Mr. Sheppard for summary trial pursuant to rule 17A of the *Supreme Court Rules* and an application by Mr. Sansome for summary judgment pursuant to rule 17.01. The judge conducted a summary trial, gave judgment in favour of Mr. Sheppard on the basis that the agreement was illegal and, therefore, unenforceable. He dismissed Mr. Sansome's application for summary judgment.

[3] Mr. Sansome contends the judge was incorrect and that the verbal agreement he made with Mr. Sheppard was valid and binding.

The Factual Background

[4] In his analysis, the judge set out the facts in paragraphs 27-42 of his decision. I provide the following summary.

[5] Mr. Sansome was formerly a licenced insurance representative and a financial advisor agent who received commissions from selling life and group insurance policies. Mr. Sansome conducted his financial services business through a company, Financial Consultants Limited, of which he was the sole shareholder.

[6] On February 23, 2007, Financial Consultants Limited entered into a Producer's Agreement (the "Agreement") with Manulife Financial whereby the company became a General Agent Broker (the "broker"). The Agreement required that Financial Consultants Limited identify its shareholders on

Schedule A and all “representatives” (which representatives were required to be licenced) on Schedule B. Financial Consultants Limited designated Mr. Sansome on both schedules noting that he was its President, held 100% of its outstanding shares and that the Sponsoring Company was Manulife.

[7] Schedule B to the Agreement also contained a number of conditions of particular relevance in these circumstances. The broker, Mr. Sansome, could not use any other representatives without the consent of Manulife and was required to notify Manulife immediately of any change in the employment or licensing status of any of the representatives. Any representative who ceased to be licenced for any reason would be required to cease to act on behalf of, or in the name of, the broker or Manulife.

[8] Paragraph 7.04(d) of the Agreement states: “This Agreement will terminate automatically upon the happening of any of the following events: ... (d) the bankruptcy, insolvency or winding-up of the General Agent Broker or of all shareholders.”

[9] Mr. Sansome made a voluntary assignment in bankruptcy on September 15, 2009.

[10] Mr. Sansome approached Mr. Sheppard towards the end of 2009 and told him that he had lost his licence to sell insurance products when he made an assignment in bankruptcy. He asked Mr. Sheppard to work with him on some of Financial Consultants Limited’s clients, including one in particular, with whom he did a lot of business. Mr. Sansome proposed that he introduce Mr. Sheppard to the client to arrange a new life insurance policy and in return, Mr. Sheppard would pay 30% of the commissions earned tax-free to Mr. Sansome.

[11] Mr. Sheppard agreed to meet with the client, but not without some uncertainty. He quickly realized that the client did not want to change his insurance arrangements. Mr. Sheppard advised Mr. Sansome accordingly.

[12] The National Vice President of Manulife wrote Financial Consultants Limited, to the attention of Mr. Sansome, on July 27, 2010. He advised Mr. Sansome that the Agreement automatically terminated in accordance with its terms on September 15, 2009 when he, as the sole shareholder, declared his insolvency and filed a voluntary assignment in bankruptcy. Mr. Sansome and Financial Consultants Limited were also advised that they would not be offered a servicing contract, could no longer represent Manulife and that they must no longer deal with any of Manulife’s clients in respect of the Manulife’s products.

[13] Manulife, through the intervention of Keith Newhook, the owner of Atlantic Marketing Centre, appointed Mr. Sheppard as Agent of Record to service Mr. Sansome's former clients in September of 2010, following the termination of its Agreement with Financial Consultants Limited and Mr. Sansome.

[14] Mr. Sheppard ultimately took over the previously mentioned client's insurance account in September 2010, not at the behest of Mr. Sansome, but as an appointed representative of Manulife.

[15] The judge found that Manulife terminated its agreement with Financial Consultants Limited and Mr. Sansome before Mr. Sheppard transacted any business on the particular account or on the accounts of any of the group insurance clients.

[16] Mr. Sansome claimed that he was owed commissions earned by Mr. Sheppard from his work with Mr. Sansome's former clients.

[17] Mr. Sheppard refused to pay and denied the existence of an agreement when he filed his defence to Mr. Sansome's claim. Mr. Sheppard also claimed that any contract that might have existed between him and Mr. Sansome was illegal because Mr. Sansome was prohibited, both by law and by his contract with Manulife, from providing any financial services to its customers.

[18] The evidence and exhibits before the judge support these factual findings.

Applicable Legislation

[19] The judge reviewed the relevant provisions of the legislation that regulate adjusters, agents and brokers who work in the insurance industry in the Province, being the *Insurance Adjusters, Agents and Brokers Act*, RSNL 1990, c. I-9 ("the Act").

[20] He referred to section 7(3) of the *Act* which provides:

[w]here...[a] representative ceases to be sponsored by the sponsor whose name is specified in his or her licence, the licence of the adjuster or representative is considered to be suspended for the purposes of this *Act*, and the sponsor, adjuster or representative shall immediately return the licence to the superintendent, who may cancel that licence.

[21] The judge also reviewed other relevant sections of the *Act* including sections 12(1), 28(1)(a), 45(13) and 46 which provide that licences only remain in effect until suspended, revoked or cancelled, and compensation cannot be

paid to an unlicensed person acting as an agent, broker or representative. Offence and penalty sections are set out for those in breach of the provisions of section 28(1).

[22] The judge made no error in his statement of the applicable provisions of the legislation.

Analysis and Application of the Law to the Facts

[23] The judge noted that the letter from Manulife dated July 27, 2010 advised Mr. Sansome that its Agreement with Financial Consultants Limited had been automatically terminated when Mr. Sansome made a voluntary assignment in bankruptcy on September 15, 2009. The judge found that this correspondence also ended Manulife's sponsorship of Financial Consultants Limited and Mr. Sansome's status as a representative of Manulife.

[24] The judge, at paragraph 52, found that (at the very latest) on July 27, 2010, Financial Consultants Limited was not a sponsored broker and Mr. Sansome was not a licensed representative of a broker as required by the *Act*. He concluded that it would have been illegal for Mr. Sheppard to pay any amounts to Mr. Sansome, or for Mr. Sansome to demand any payments from Mr. Sheppard for any services that Mr. Sheppard provided to Mr. Sansome's former clients by virtue of section 28(1)(a) of the *Act*.

[25] At paragraphs 55 and 56 of his decision, the judge summarized the implications of the relevant provisions of the *Act* and the Agreement and concluded:

[55]...

- Both Garry Sansome and Financial Consultants Limited were automatically terminated in their respective roles as agent and key representative of Manulife when Mr. Sansome made the assignment in bankruptcy on September 15, 2009;
- Financial Consultants Limited could no longer act on behalf of Manulife after September 15, 2009;
- Garry Sansome could no longer represent Financial Consultants Limited in its dealings with Manulife and he could not act on behalf of Manulife himself after September 15, 2009;

- Without Manulife's written approval, Scott Sheppard could not represent Financial Consultants Limited in its dealings with Manulife and Mr. Sheppard could not act on his own on behalf of Manulife after September 15, 2009; and
- Any dealings Scott Sheppard had at Garry Sansome's behest with any of Manulife's customers after September 15, 2009 were contrary to the Producer's Agreement with Manulife and section 45 of the *Act*.

[56] The result is that Garry Sansome's claim against Scott Sheppard is based on an illegal contract and is unenforceable.

[26] Mr. Sansome argued at trial and on appeal that he remained licenced until April 4, 2011 when he received a letter from a compliance officer with Financial Services Regulations Division, Department of Government Services of the Government of Newfoundland and Labrador stating:

... [w]e have received a Notice of Termination of Sponsorship of your LIFE (INCLUDING ACCIDENT AND SICKNESS) INSURANCE REPRESENTATIVE: LEVEL III Licence No. #05-81-GS003-2 from THE MANUFACTURERS LIFE INSURANCE COMPANY with effect from April 4, 2011.

[27] The judge canvassed this argument. He considered that both Financial Consultants Limited's status as a broker and Mr. Sansome's status as a licenced representative were affected not only by operation of legislation but also by the Agreement of February 23, 2007. Paragraph 7.04(d) provided that the Agreement terminated automatically if either Financial Consultants Limited or all of its shareholders became bankrupt or insolvent, which event occurred on September 15, 2009.

[28] The judge concluded that Mr. Sansome's claim, that he continued to be licenced for approximately 19 months after he made his assignment in bankruptcy on September 15, 2009 and that everything transacted with Mr. Sheppard in those months was legal and enforceable, was unsustainable. The judge concluded that Mr. Sansome's argument ignored the relationships between Manulife and Financial Consultants Limited and between Manulife and Mr. Sansome. It also ignored the dictates of the *Act* that licences are suspended when a representative ceases to be sponsored by the sponsor named in the licence, Manulife, in this case.

[29] The judge queried whether the effective date of Financial Consultants Limited's termination as Manulife's broker was when Mr. Sansome made his assignment in bankruptcy, or July 27, 2010, when Manulife wrote to Financial Consultants Limited to notify the company that the Agreement was terminated.

[30] The judge concluded that the effective date of termination was when Mr. Sansome made his assignment in bankruptcy:

[60] ...if, for no other reason, that is when Mr. Sansome should have informed Manulife of the material change in his status. He did not notify Manulife, of course, and continued to operate contrary to the Agreement and the *Act* as though nothing had changed, until Manulife found out and told him so.

[31] The judge also concluded that nothing turned on the date of July 27, 2010 because Mr. Sheppard earned no benefits from working with Mr. Sansome's former clients until after that date. Mr. Sheppard did not begin to draw benefits from this work until after Manulife had retained his services.

[32] In the result, Mr. Sansome has failed to demonstrate any error in the findings of fact or application of the law by the judge in concluding that the agreement relied on by Mr. Sansome was an illegal contract and unenforceable.

DISPOSITION

[33] I would dismiss the appeal and award the respondent his party and party costs of the appeal on Column 3.

D.E. Fry C.J.N.L.

I concur: _____

B.G. Welsh J.A.

I concur: _____

G.D. Butler J.A.