

Claim No: SCCH - 462650

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Billy Stick Food Ltd. v. Khoury*, 2017 NSSM 27

BETWEEN:

BILLY STICK FOOD LTD.

Claimant

- and -

JACK KHOURY and NATALIE KHOURY,
(incorrectly named as Nadia Khoury)

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 23, 2017

Decision rendered on May 25, 2017

APPEARANCES

For the Claimant

self-represented

For the Defendants

self-represented

BY THE COURT:

1. The Claimant seeks payment of the balance allegedly owing for the wholesale supply of donair meat to be used in a restaurant owned by the Defendant Jack Khoury. The amount sought is \$1,566.00.
2. The Defendant Natalie Khoury (incorrectly named as Nadia Khoury) was never a party to any contract, and was only sued because she signed for some deliveries on her husband's behalf. That is not enough to make her liable for any debt, and the claim against her must be dismissed.
3. The Claimant is a wholesale supplier of the meat "cones" that are used to make the donairs, or donair kebab wraps, that are popular in Eastern Canada. As Nabil Toulany, the owner of the Claimant explained, he buys frozen boneless meat and shreds and minces it while still in the frozen state, adds spices, and moulds it into the cones that are placed on a spit close to the burner that roasts the meat while it turns. Mr. Toulany says that he is a major supplier to large grocery chains such as Sobeys, as well as to many other buyers in Nova Scotia.
4. The Defendant Jack Khoury lives in Shubenacadie, Nova Scotia, but owns a restaurant in Saint John, New Brunswick, which serves donairs. He says that he runs through as many as 20 cones per week. The wholesale price of each cone is \$68.00. I believe, though there was no evidence on this point, that each cone weighs between 20 and 25 pounds. This translates into many hundreds of donairs sold every week.

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5. Mr. Khoury described an off and on relationship with the Claimant as a supplier. He says that he stopped doing business with the Claimant because the meat cones were not good quality. He was persuaded again to purchase meat from the Claimant in 2016, but within about six months changed suppliers because of an ongoing quality issue.
6. Specifically, Mr. Khoury says that the cones that came from the Claimant had a tendency to split apart while roasting, with the result that they would fall off and have to be placed into pans to be roasted. This is not ideal, as it is the rotisserie-style roasting that is the signature feature of donairs. Also, it involves extra work for staff, who have to roast and slice the meat in a way that is not intended.
7. Mr. Khoury, who claims credentials second to none as a donair expert in this region, says that the reason cones will split is because there are layers of excess fat that, once they melt under the heat of the broiler, cause the adhesion of the meat to fail and for large chunks to start to fall off.
8. The Claimant simply stated that its meat is widely accepted by other customers and doubts that Mr. Khoury's problems, if they exist, are its fault. Mr. Toulany speculated that it is possible that the cones were allowed to thaw out during transport, or perhaps they are being cooked incorrectly.
9. Both parties appear sincere and the matter is likely mostly a point of pride for both of them.

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10. On balance, I accept that Mr. Khoury had trouble with some of the cones, but not to the tune of \$1,566.00. I believe that he was frustrated and simply chose not to pay this amount. There is no evidence that any of the food was thrown away, just that some of it didn't hold together properly.
11. I believe that the fair result is to split the difference. I will award the Claimant \$783.00.
12. The Claimant spent \$99.70 to issue the claim, and \$150.00 having it served. That amount for service reflected the fact that he unnecessarily sued, and served, Ms. Khoury. I will accordingly only allow \$75.00 for the cost of service.
13. The Claimant shall recover against Mr. Jack Khoury the total amount of \$957.70.

Eric K. Slone, Adjudicator