

CANADA / JUDGMENT

Alberta Giftwares Ltd. v. R.

[1974] SCR 584

COURT

Supreme Court of Canada

DECIDED

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Alberta Giftwares Ltd. v. R. Collection Supreme Court Judgments Date 1973-05-07 Report

[1974] SCR 584 Judges Fauteux, Joseph Honoré G  rald; Abbott, Douglas Charles; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Hall, Emmett Matthew; Spence, Wishart Flett; Pigeon, Louis-Philippe; Laskin, Bora On appeal from Alberta Subjects Criminal law Decision Content Supreme Court of Canada Alberta Giftwares Ltd. v. R., [1974] S.C.R. 584 Date: 1973-05-07 Alberta Giftwares Ltd. Appellant; and Her Majesty The Queen Respondent. 1972: December 6; 1973: May 7. Present: Fauteux C.J. and Abbott, Martland, Judson, Ritchie, Hall, Spence, Pigeon and Laskin JJ. ON APPEAL FROM THE SUPREME COURT OF ALBERTA, APPELLATE DIVISION Criminal law—Misleading advertisement—Crown’s appeal—Question of law—Combines Investigation Act, R.S.C. 1910, c. C-23, s. 37. The appellant, a discount catalogue firm, distributes a catalogue in which its prices for certain items are indicated. The catalogue contained the statement that “Whenever obtainable, we have included manufacturer’s suggested retail prices. Where no such price is available, we have ourselves suggested what we feel to be a fair retail price”. The “manufacturer’s suggested retail prices” were not only obtainable but in the possession of the accused, but the figures appearing in the catalogue after the word “retail” were in all cases in excess of that price. The appellant was charged with publishing to the public statements purporting to be statements of fact which statements were misleading, contrary to the provisions of s. 37 of the Combines Investigation Act. The trial judge acquitted the accused on the ground that “available” had a much wider meaning than “obtainable” and meant “capable of avail, of use or advantage”, and that therefore the advertisement was not misleading. The acquittal of the appellant was set aside by the Court of Appeal. The accused appealed to this Court. Held: The appeal should be dismissed. In construing a will, deed, contract, prospectus or other commercial document, the legal effect to be given to the language employed, is a question of law and in the construction of such a document, it is an error in law to attribute a fixed meaning to a word of variable connotation by selecting one of alternative dictionary definitions without regard to the context of the paragraph or sentence in which the word is used. Possession of the actual “manufacturer’s suggested retail price” seized the appellant with knowledge of the untruth of the representations which it made in its advertisement and it therefore

knowingly published an advertisement containing a statement that purported to be a statement of fact but which was untrue, deceptive, and misleading. APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division[1], setting aside the acquittal of the appellant. Appeal dismissed. L.H. McDonald, Q.C., for the appellant. I.C. Hutton, for the respondent. The judgment of the Court was delivered by RITCHIE J.—This is an appeal from a judgment of the Appellate Division of the Supreme Court of Alberta setting aside the acquittal of the appellant in respect of three charges that it caused to be published by means of a catalogue distributed to the public statements purporting to be statements of fact which statements were misleading, contrary to the provisions of s. 37 of the Combines Investigation Act, R.S.C. 1970, C. C.23. The relevant section of the Combines Investigation Act reads as follows:

37. (1) Every one who publishes or causes to be published an advertisement containing a statement that purports to be a statement of fact but that is untrue, deceptive or misleading or is intentionally so worded or arranged that it is deceptive or misleading, is guilty of an indictable offence and is liable to imprisonment for five years, if the advertisement is published
- (a) to promote, directly or indirectly, the sale or disposal of property or any interest therein, or
 - (b) to promote a business or commercial interest. The appellant is a discount catalogue firm which serves the public generally and which distributed a catalogue in which its prices for certain types of “Leader” tricycles and bicycles were indicated by a type of code which was explained in the body of the catalogue. The particular items with respect to which charges were laid against the appellant were as follows:
 - (1) Leader Mini Sidewalk Bicycle ‘Duster’ model. Wheels 16” ... VPW 196/3850—Retail \$56.95.
 - (2) Leader Mini Sidewalk Bicycle. ‘Pinto’ model. 12” Wheels. VPW 912/2835—Retail \$33.95.
 - (3) Leader Tike-Trike ... 10” Front wheel ... VPW-T-10/1095—Retail \$15.95. The reference to the explanatory material contained at the beginning of the catalogue shows that the figures or letters appearing directly after the initials “VPW” and before the oblique stroke are the stock number of the article whereas the figures after the oblique stroke represent the sale price from the appellant (i.e. \$38.50, \$28.35, \$10.95). The alleged misrepresentation concerns the listed “retail” price and in this regard the catalogue contains the following information: The prices in this catalogue are not offered as a firm quotation, being subject to market fluctuations without notice. They do, however, concur with the latest current list prices at the time of publication. You will find that our prices are as low as good business practice will allow. Whenever obtainable, we have included manufacturer’s suggested retail prices. Where no such price is available, we have ourselves suggested what we feel to be a fair retail price. (The italics are my own). In all cases the “manufacturer’s suggested retail prices” were, as the learned trial judge found, not only obtainable but in the possession of the accused, but the figures appearing in the catalogue after the word “retail” were in all cases in excess of that price. The goods were manufactured in Montreal and evidence to the effect

that the retail price suggested by the manufacturer was intended to apply in that area was treated by the trial judge as making it “obviously unrealistic in Edmonton” because it failed to take account of the cost of freight, sales tax and local competitive factors governing mark-up. It appears, however, that the actual “manufacturer’s suggested retail price” was in the same range and in some cases higher than the retail price currently charged by other Edmonton dealers. The position can perhaps be most graphically portrayed by expressing it in tabular form as follows: Duster Pinto Trike Catalogue Price..... \$38.50 \$28.95 10.95 Catalogue representation of “Retail Price” \$56.95 \$33.95 15.95 Manufacturer’s Actual Suggested Retail

Price..... \$42.95 \$31.95 12.59 Retail Price from other Edmonton Dealers..... \$36.99 \$44.95 \$24.95 to a high of to to \$29.98 10.00 13.95 I agree with the learned trial judge that the appellant’s listed “retail price”

cannot be construed as a representation of any “prevailing retail price” in Edmonton. The respondent’s main contention, however, is that the catalogue read as a whole constitutes a representation that the “retail price” listed there is the “manufacturer’s suggested retail price” which is “untrue” within the meaning of that word as used in s. 37(1) of the Combines Investigation Act, *supra*, and would have the effect of misleading the public. The learned trial judge agreed that “the bare statement ‘Whenever obtainable, we have included manufacturer’s suggested retail prices’ is untrue”, but he went on to say of this statement: However it must be read with the statement which follows: ‘Where no such price is available, we have ourselves suggested what we feel to be a fair retail price.’ If instead of using the word ‘available’, the accused had repeated the word ‘obtainable’, it would be obvious that the two statements, read together, comprised an untruth. Yet, ‘available’ has a much wider meaning than ‘obtainable’. It does not mean merely ‘capable of being gotten or obtained’, but rather its meaning is ‘capable of avail, of use or advantage.’ The learned trial judge acquitted the appellant because he had “grave doubt ... that the advertisement was misleading” and it is apparent that this doubt was created by the legal effect which he attached to the word “available”. The determining factor which governed his conclusion was that the palpable untruth contained in the advertisement was tempered by the meaning which he gave to the word “available” so as to create a doubt which would not otherwise have existed. “Available”, like many other words in the English language, is capable of different shades of meaning, and in my opinion in construing a will, deed, contract, prospectus or other commercial document, the legal effect to be given to the language employed, is a question of law and in the construction of such a document, it is an error in law to attribute a fixed meaning to a word of variable connotation by selecting one of alternative dictionary definitions without regard to the context of the paragraph or sentence in which the word is used. The learned trial judge, however, substantiated the interpretation which he gave to the word “available” in the following fashion: Both Webster and Oxford dictionaries define ‘Available’ as being capable of being employed with advantage, whereas Bouvier’s Law Dictionary defines the word as: ‘Capable of being used; valid or advantageous.’ Thus, it is evident that the advertising is not untrue. The manufacturer’s suggested retail price was obtainable, but was not ‘available’ in that it was obviously not capable of being used to

advantage in the Edmonton area. Reference to the Oxford English Dictionary indicates that the learned judge has not reproduced the entire definition to which he makes reference. In that work the definition to which he appears to be referring is: Capable of being employed with advantage or turned to account; hence capable of being made use of at one's disposal, within one's reach. (The italics are contained in the Dictionary). There can be little doubt that the "manufacturer's suggested retail price" was within the appellant's reach as it had been supplied to it by the manufacturer. It will be found also by reference to Webster's Third New International Dictionary that although the word "available" is defined as "such as may be availed of: capable of use for accomplishment of a purpose: immediately utilizable", it is also defined as "That is accessible or may be obtained: personally obtainable". I have considered the meaning of "available" found by the learned trial judge in Bouvier's Law Dictionary and find that the only authority cited in support of the meaning given is *Brigham v. Tillinghast*[2], where the words "available means" as they occurred in an assignment for the benefit of creditors, were defined as "a term well understood to be anything which can readily be converted into money". Bouvier's definition does not assist me in determining the true meaning of the word "available" as it occurs in association with "obtainable" in the appellant's catalogue and I adopt the meaning assigned to it by the Court of Appeal, the effect of which is succinctly stated by Mr. Justice Cairns in the course of his reasons for judgment where he said: In this case ... the respondent had in fact a statement from the manufacturers showing the suggested retail price on each article so that its price had been obtained and obviously was available to it at the time it published the catalogue in question. It is the difference between the view of the trial judge and that of the Appellate Division as to the legal effect of the word "available" as used in the catalogue which gives rise to this appeal and, as I have indicated, I am of opinion that the trial judge erred in assigning the meaning which he did to that word in the context of the appellant's catalogue and that his error was one of law. It was contended on behalf of the appellant that the question of whether the advertisement was misleading or not does not involve "a question of law alone" so as to have entitled the Crown to appeal to the Appellate Division under the provisions of section 605(1) (a) of the Criminal Code. In support of this latter contention reference was made to the case of *Sunbeam Corporation (Canada) Limited v. Her Majesty The Queen*[3] and to *Lampard v. The Queen*[4], but in both of these cases the trial judge had determined that the evidence was not sufficient to satisfy him of the guilt of the accused beyond a reasonable doubt and this Court held, while accepting the view of the Court of Appeal, that the evidence was sufficient, that the further question of whether the guilt of the accused should be inferred from it was one of fact within the province of the trial judge and that the Court of Appeal was without jurisdiction to entertain an appeal by the Attorney General. Unlike the *Sunbeam* and the *Lampard* cases, this appeal does not turn on a question of sufficiency of evidence or propriety of inference because the trial judge has made it clear that had it not been for the error in law to which I have referred, he would have been satisfied that the evidence was sufficient to support a finding that the statement referred to was "untrue", and I think it follows that it would therefore have been misleading to at least some prospective purchasers. In my opinion the sole question governing the disposition of this appeal to the

Appellate Division and to this Court is whether or not the trial judge erred in the effect which he gave to the word “available”. As I have indicated, I think that he did and in so doing erred in law so that the appeal on this ground “involves a question of law alone” within the meaning of section 605(1)(a) of the Criminal Code. It was also contended on behalf of the appellant that there was no proof of mens rea but, if intention is a necessary ingredient of the offence charged, as to which it is unnecessary to express an opinion, I am satisfied that possession of the actual “manufacturer’s suggested retail price” seized the appellant with knowledge of the untruth of the representations which it made in its advertisement and it therefore knowingly published an advertisement containing a statement that purported to be a statement of fact but which was untrue, deceptive and misleading within the meaning of section 37(1) of the Combines Investigation Act. For the above reasons, I would dismiss this appeal. Appeal dismissed. Solicitors for the appellant: Friedman, Lieberman, Newson, Cipin, Caffaro & Heffernan, Edmonton. Solicitor for the respondent: D.S. Maxwell, Ottawa.

[1] [1972] 4 W.W.R. 696, 7 C.C.C. (2d) 203, 6 C.P.R. (2d) 10.

[2] (1855), 13 N.Y. 218.

[3] [1969] S.C.R. 221, 1 D.L.R. (3d) 161.

[4] [1969] S.C.R. 373, 4 D.L.R. (3d) 98.

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