

CANADA / JUDGMENT

Hornby Equipment Ltd. v. Andrushko

2000 BCSC 938

COURT

Supreme Court of British Columbia

DECIDED

19 June 2000

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

Source record

2000 BCSC 938

Citation: Hornby Equipment v. Andrushko 2000 BCSC 938

Date: 20000619

Docket No.:

12184

Registry: VERNON

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HORNBY EQUIPMENT LTD.
PLAINTIFF

AND:

STEVEN ANDRUSHKO
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE DAVIES

Counsel for the Plaintiff: Michael J. Yawney

The Defendant, Steven Andrushko, Appearing on his own behalf

Date and Place of Trial: January 8, 1999

May 1, 2 and 3, 2000

Vernon, B.C.

NATURE OF THE PROCEEDINGS

- [1] This is an action for monies allegedly owing under an equipment lease agreement (the "Lease"). The defendant defends the action and counterclaims seeking rescission of the Lease and damages. The defendant alleges fraudulent or, alternatively, negligent misrepresentation, breach of condition and failure of consideration and, in the further alternatives, alleges breaches of implied warranties or conditions under of the Sale of Goods Act, R.S.B.C. 1996, c. 410 and deceptive practices under the Trade Practice Act, R.S.B.C. 1996, c. 457.
- [2] Although Hornby Equipment Ltd. commenced this proceeding as plaintiff, the evidence disclosed that there is no such legal entity. After unopposed application by the plaintiff at the end of the trial I allowed an amendment to the style of cause to reflect that the proper plaintiff is Hornby Equipment, a corporate partnership comprised of Hornby Equipment (1981) Ltd. and Baron Equipment Ltd. which also became the defendant by counterclaim. In these reasons I shall refer to the plaintiff as "Hornby Equipment".

ISSUES

- [3] This proceeding requires determination of the following questions:
- (1) Has Hornby Equipment proven that the sum of \$85,431.72 is due and owing to it pursuant to the terms of the Lease as alleged?
 - (2) Has the defendant proven that Hornby Equipment made fraudulent misrepresentations which induced the defendant to enter into the Lease, breached fundamental Lease conditions, breached implied warranties or conditions under the Sale of Goods Act or engaged in deceptive trade practices under the Trade Practice Act so that the defendant is now entitled to rescission of the Lease?
 - (3) Alternatively, has the defendant proven that Hornby Equipment made negligent misrepresentations which induced the defendant to enter into the Lease such that the defendant is now entitled to damages? and
 - (4) Has the defendant proven that Hornby Equipment failed to mitigate its losses under the Lease?

BACKGROUND

- [4] On January 11, 1993 the defendant, Steven Andrushko, purchased a used Ford tractor (the "Tractor") and a used Alamo mower (the "Mower") from Hornby Equipment who knew that the defendant intended to use the Tractor and Mower in his commercial business of the mowing of grass abutting highways and other roads.

- [5] The defendant paid Hornby Equipment a total purchase price of \$74,000.00 for the Tractor and Mower. The entire purchase price was financed by means of the Lease which was underwritten by the plaintiff, Ford Canada Credit Ltd.
- [6] The Lease was for a term of 60 months at a rental rate of \$1,726.77 per month (including taxes) payable on the 15th day of each month commencing on March 15, 1993.
- [7] The defendant took possession of the Tractor and Mower by providing an initial payment under the Lease of \$3,453.54. Thereafter he made only one payment (in July, 1993 in the amount of \$3,000) under the Lease.
- [8] The trial of this proceeding was delayed on many occasions. The defendant was at one time represented by counsel who conducted examinations for discovery of Hornby Equipment and was also involved in the taking of deposition evidence from William Rawlinson. Mr. Rawlinson was the former owner of the Tractor and Mower and would not have been available to attend the trial when it was then scheduled to commence.
- [9] The trial did not in fact proceed as scheduled and Mr. Rawlinson's deposition had not been completed when the trial was adjourned. After many further delays Mr. Andrushko chose to proceed to trial on January 8, 1999 without counsel and without intending to have Mr. Rawlinson testify.
- [10] Considerable confusion arose on January 8, 1999 as to the extent to which Mr. Rawlinson's deposition evidence should be admitted. Mr. Yawney on behalf of Hornby Equipment was of the view that the deposition evidence was not admissible. I initially agreed and refused to accept Mr. Rawlinson's deposition evidence as evidence at trial.
- [11] As a result of this confusion, however, and other evidentiary issues raised by Mr. Andrushko in subsequent written submissions, I became concerned with possible prejudice to Mr. Andrushko arising from his lack of counsel and understanding of the trial process.
- [12] I eventually determined to re-open the proceedings to allow Mr. Andrushko to adduce further evidence. I also made orders relating to the production of any documentation held by Hornby Equipment which Mr. Andrushko said he did not now have but which he said had been in the possession of his former lawyer and produced to Hornby Equipment. In addition I made orders requiring the defendant to list and produce by specific dates all documents upon which he intended to rely at the continuation of the trial. I later allowed amendments to his statement of defence and counterclaim. The trial then recommenced on May 1, 2000.
- [13] In his original Statement of Defence and Counterclaim the defendant pleaded that he was induced to purchase the Tractor and Mower and enter into the Lease because of representations made to him by Hornby Equipment that:
- (a) The tractor was in "as new" condition;

- (b) The individual who had leased the unit before had been unable to keep it working because of his drinking problem;
- (c) The boom on the back of the unit was completely reconditioned;
- (d) Any parts required were readily available from Hornby Equipment;
- (e) A new clutch had been installed on the tractor unit the year before and would be "good for three years".

[14] In his evidence at trial on January 8, 1999 Mr. Andrushko expanded upon the representations he said had been made by Barry James of Hornby Equipment. He testified that Mr. James told him:

There were ten conditions of agreement that Mr. James and I did agree to. The first one was that the things he told me about the unit were, in fact - were, in fact, so, which included a one year warranty, that the unit was in excellent, as new, field-ready condition, that disassembly and inspection of the telescopic arm was going to be done in the shop before it left - it left their facility.

...

Disassembly and inspection of that telescopic arm was mandatory and a condition of lease. The lift arms for the unit were to be supplied. I needed them as a condition of work for - for the summer - for the - for the season as well as for winter snow ploughing . . .

... Installation of the ca- -- of the counterweights, I felt that was a safety - a safety factor, because when I did have the unit out behind their shop for the half an hour, as soon as you extended the arm you had no traction with that -- with that outside tire. So there was - there was little or next to nothing that you could actually do as far as telescopic extension and - and things like that. Installation of the counterweight was done.

...

I had also requested that the condition of lease was that the shift lever be raised, and that was done as well.

...

I was informed that a new clutch was installed in 1992 and I should get three years out of the clutch.

...

As far as parts being readily available at Hornby, that was also a - a statement made by Mr. James.

...

And also a condition and agreement of the lease were that - was that I was able to find work, to keep the work - to keep the unit working to be able to afford - afford payments.

[15] In his Final Amended Statement of Defence and Counterclaim (Amended on February 28, 2000) Mr. Andrushko made further allegations. He pleaded that Hornby Equipment had represented that:

- (a) The unit was in EXCELLENT CONDITION, as AS NEW, COMPLETELY GONE OVER, TIP TOP, NEW CONDITION, FIELD READY CONDITION.
- (b) The individual (MR. Rawlinson) who had leased the unit before was unable to keep it because of his drinking problem. That he was an alcoholic. The loss of work was no fault of the equipment.
- (c) The ALAMO portion of the unit was completely reconditioned.
- (d) Parts for the unit were readily available at Hornby Equipment.
- (e) A new clutch had been installed on the tractor the previous year and would be good for three years.
- (f) A ONE YEAR FACTORY WARANTEE remained on the Tractor.
- (g) A six-month Warrantee on the Alamo.
- (h) The rear lift-arms are attachments to the unit and will be supplied.
- (i) Monthly Lease payments of \$1200 per month for a 60 month period with a residual value of \$25,000.
- (j) The first OPTION to PURCHASE the unit at the conclusion of the lease was the Defendants for the price of \$25,000, after a short waiting period.
- (k) The only past mechanical repair to the UNIT was the clutch.

Further agreed conditions of the Lease were:

- (l) Disassembly and inspection of the telescopic arm.
- (m) Installation of additional counter-weight.
- (n) Raising the shift lever.
- (o) Cleaning the unit.
- (p) That the Defendant confirm work for the unit prior to signing the LEASE agreement and was able to keep the unit working.
- (q) The understanding that if the Defendant was unable to keep the unit that it be LEASED to another party.

(quoted as written)

- [16] The evidence establishes that Mr. Andrushko used the Tractor and Mower for mowing contracts from May to the fall of 1993. Mr. Andrushko testified, however, that immediately after he started to use the equipment it developed problems, broke down continually and required constant and expensive repairs and maintenance. Mr. Andrushko testified that the work done by the Tractor and Mower from May through August of 1993 was approximately 270 hours less than that performed by a companion unit used on the same projects.
- [17] In late June of 1993 Mr. Andrushko began to look for a different tractor and mower unit to alleviate the impact on his business from the problems associated with the Tractor and Mower leased from Hornby Equipment. Sometime in mid-July 1993, he entered into an agreement to lease such a unit from others at a rate of approximately \$1,250 per month.
- [18] In August of 1993 Hornby Equipment replaced a clutch in the Tractor. It later wrote off the bill relating to the replacement by providing the defendant with another piece of equipment without cost.
- [19] Mr. Andrushko testified that from September through November of 1993 the Tractor and Mower performed a further 171 hours less work than its companion unit on the same projects. He attributes all of the reduced billing hours to break down and repair.
- [20] In the late fall of 1993 the defendant approached Mr. James and advised that he was having problems with the lease payments. Mr. James suggested a new payment schedule involving the transfer of another tractor owned by the defendant as value towards outstanding arrears. Mr. Andrushko did not accept this proposed solution. In late December he returned the Tractor and Mower to Hornby Equipment with the intention that he would neither take them back nor make any further payments under the Lease.
- [21] On January 6, 1994 Hornby Equipment's counsel wrote to the defendant advising that Hornby Equipment did not accept the return of the Tractor and Mower in satisfaction of the defendant's obligations under the Lease and advising further that if the defendant did not pay all outstanding arrears the plaintiff would proceed to enforce the terms of the Lease by selling the Tractor and Mower and then seek recovery of any shortfall from the defendant.
- [22] On July 21, 1994 Hornby Equipment sold the mower for the sum of \$37,500.00. It continued to attempt to sell the Mower but it has remained unsold. It was advertised for sale for approximately \$7,500.00 in January of 1999.

ANALYSIS AND DISCUSSION

ISSUE 1: Has Hornby Equipment proven that the sum of \$85,431.72 is due and owing pursuant to the terms of the Lease as alleged?

- [23] I am satisfied that subject to the issues of rescission, set off of damages and mitigation raised by the defendant Hornby Equipment has proven a debt of \$85,431.72 owed by Mr. Andrushko pursuant to the Lease. That amount as claimed by Hornby Equipment is calculated as follows:

- (a) Principal lease payment due over a 60 month term at \$1,582.11 per month (net of taxes) = \$91,686.50

Less: (b) Payments made (net of taxes) \$ 6,254.88

Balance Owing

\$85,431.72

ISSUE 2: Has the defendant proven that Hornby Equipment made fraudulent misrepresentations, which induced the defendant to enter the Lease, breached fundamental Lease conditions, breached implied warranties or conditions of fitness for purpose under the Sale of Goods Act or engaged in deceptive trade practices under the Trade Practice Act so that the defendant is now entitled to rescission of the Lease?

- [24] Consideration of the pleadings filed by Mr. Andrushko and the differences between his testimony at trial in January of 1999 and in May of 2000 has convinced me that I cannot rely upon Mr. Andrushko's recollection of the events of December, 1992 and January, 1993 relating to the Lease negotiations with Mr. James and the alleged "conditions of lease" he says were agreed to. Although I do not believe that Mr. Andrushko was intentionally deceitful in his attempt to recall the events, I am satisfied that the passage of time has eroded any real recall by him of the details of the negotiations and has been replaced by seriously flawed reconstruction.
- [25] The passage of time has of course also affected Mr. James' memory but his version of events has been far more consistent throughout than Mr. Andrushko's many versions. Mr. James' testimony is also consistent with commercial reality and is largely supported by the documentary evidence.
- [26] To the extent that there are conflicts in the evidence between Mr. James and Mr. Andrushko concerning the Lease negotiations and any alleged representations, conditions or warranties related to or arising from those negotiations I accept Mr. James' evidence.
- [27] I am, however, also satisfied that the written Lease document did not include the entirety of the terms of the agreement between the parties. I find that Mr. James did represent to Mr. Andrushko that the equipment was in "tip top" condition and that a new clutch had been put in the Tractor in 1992. In addition he offered an extended six month "50/50" warranty on parts and labour which was not included in the formal Lease or the other documentation which resulted in the signing of the Lease. Further, Mr. James acknowledged that the Lease was subject to an agreement that Mr. Andrushko would have the right to purchase the Tractor and Mower at the end of the Lease term for a residual value of \$10,000.
- [28] I find that Mr. James made no other material representations and offered no other warranties. I also find that the Lease was not subject to any other conditions.

- [29] Mr. Andrushko has failed to prove that any representations made by Mr. James on behalf of Hornby Equipment were made recklessly with any intent to deceive. He also has not proven any breach of any contractual or statutory condition which would entitle him to rescind the Lease.
- [30] Mr. Andrushko has proven that he suffered problems with the Tractor and Mower which were more numerous and extensive than should have been the case but he has not established that the Tractor and Mower were unfit for the purpose for which they were purchased.
- [31] Finally, Mr. Andrushko has not established any right of rescission under the Trade Practice Act not only because this was not a consumer transaction but because no deceptive practices were proven.

ISSUE 3: Has the defendant proven that Hornby Equipment made negligent misrepresentations which induced the Defendant to enter into the Lease such that the defendant is now entitled to damages?

- [32] I am satisfied that in all of the circumstances the representation by Mr. James that the equipment was in "tip top" condition was negligently made. I am also satisfied that Mr. Andrushko relied upon that representation in determining to acquire the equipment and enter into the Lease. I am further satisfied that although the statement that the Tractor had a new clutch in 1992 was in itself true it was incomplete in that it failed to disclose that Hornby Equipment had also replaced a clutch in the Tractor in 1991. In my opinion, although the failure to advise of the 1991 clutch replacement was not made with deliberate intent to mislead Mr. Andrushko the failure to disclose that fact while at the same time maintaining that the equipment was in "tip top" condition did offer a level of assurance both as to the present condition and past history of the Tractor and Mower which were not warranted in the circumstances. It also evidences a general failure by Mr. James to take sufficient care in representing the condition and history of the unit.
- [33] My conclusion as to that lack of care is also supported by Mr. Rawlinson's evidence as to his experience with equipment breakdowns while the Tractor and Mower were in his possession. Although Mr. James denies knowledge of problems with the Tractor and Mower experienced by Mr. Rawlinson I accept Mr. Rawlinson's evidence over that of Mr. James on this issue. I do so in part because of the failure of Hornby Equipment to maintain its repair records relating to the equipment after 1997. That occurred notwithstanding that the matter of those records was put in issue at Mr. James' Examination for Discovery in 1995.
- [34] While I do not believe that the failure to maintain the repair records was a deliberate attempt to conceal evidence the failure to maintain the records causes me to doubt Mr. James' recollection of the extent to which Hornby Equipment was aware of difficulties Mr. Rawlinson had experienced with the equipment. Whether those difficulties arose because of abuse of the equipment by Mr. Rawlinson or problems with the equipment itself is not of great importance. Mr. James was in a unique position to know the history of the Tractor and

Mower and the repairs which had been made to them. His assertion as to the combined unit being in "tip top" condition was inconsistent with Mr. Rawlinson's problems with it. In my opinion in those specific circumstances the representation constituted more than mere "puffery" notwithstanding that the equipment was being sold as used equipment.

- [35] Mr. Andrushko has proven that he suffered some losses as a consequence of the fact that the equipment was not in fact in "tip top" condition. I accept Mr. Andrushko's evidence concerning the almost constant difficulties experienced with equipment breakdown. I am also satisfied that while some of those problems may have been related to normal wear and tear they did not arise entirely from that cause or from operator abuse. No evidence of such abuse was advanced by Hornby Equipment and while I am satisfied that the equipment did require some repair which arose in the ordinary course of its operation, the nature of the breakdowns, their consistency and their similarity to those suffered by Mr. Rawlinson lead me to conclude that they were far more serious and numerous than should have been the case in the ordinary course of operation with such near new equipment.
- [36] Mr. Andrushko has not, however, proven damages in the amounts he alleges which would entirely relieve him of obligations under the Lease and establish a counterclaim for additional damages. Specifically, Mr. Andrushko has not proven that his business failed as a consequence of the problems with the Mower and Tractor. Mr. Andrushko's damages claim was not well documented notwithstanding the many opportunities which were given to him to correct that deficiency. His record keeping was poor and many claims lacked credible substantiation by independently verifiable source documents.
- [37] I find that Mr. Andrushko has proven that the Tractor and Mower suffered more downtime and revenue loss than the companion unit which worked with it. I also find, however, that any claim for losses of revenue arising after he rented the replacement tractor and mower in July of 1993 are not recoverable because they would result in double recovery.
- [38] I also find that although Mr. Andrushko has established that he suffered damages arising from the cost to repair the equipment he has not proven that those costs were not reasonably reimbursed by Hornby Equipment through the provision of replacement equipment.
- [39] Doing the best that I can with the evidence presented by the defendant and which I consider sufficiently reliable I have determined that Mr. Andrushko is entitled to damages in the amount of \$11,000 as a consequence of Mr. Jones' negligent misrepresentation as to the condition of the Tractor and Mower. That total amount is calculated as follows:
- (a) Damages for lost revenue prior to rental of the replacement equipment in mid-July, 1993, based upon a loss of 76 hours at \$62.50 per hour (in which amount I include any incidental costs associated with downtime arising from repairs or from transportation of the equipment for repair): \$4,750;

- (b) Damages for the cost of rental of replacement equipment from mid-July, 1993 to mid-December, 1993 at \$1,250.00 per month: \$6,250.00

ISSUE 4: Has the defendant proven that Hornby Equipment failed to mitigate its losses under the Lease?

- [40] When Mr. Andrushko returned the Tractor and Mower to Hornby Equipment in December of 1993 Hornby Equipment took steps to sell both units. It did so by advertising the units in "Country Life Magazine" a magazine which it often used to market used equipment. The Mower was also advertised in a newspaper in Salem, Oregon on at least one occasion. The advertising in Country Life Magazine resulted in the sale of the Tractor in July of 1994 for \$37,500. The Mower still remains unsold but when it was last listed for sale Hornby Equipment advertised it for sale at \$7,500.
- [41] Mr. Andrushko asserts that the sale of the Tractor and Mower separately rather than as a single unit constituted unreasonable mitigation. He complains that the sale of the Tractor without the Mower diminished the value of the two pieces of equipment as a readily usable unit. Secondly he complains that the advertising of the Tractor and Mower in a farm magazine gave little exposure to many potential purchasers of the combined unit; i.e. those who would use it in the same road maintenance business for which he had purchased the unit.
- [42] I am satisfied that Mr. Andrushko has met the burden upon him of proving that Hornby Equipment failed to properly mitigate its losses. In my opinion that failure is established both by reference to the price obtained for the Tractor and the failure to sell the Mower. It is also established by the failure of Hornby Equipment to follow the notice and sale procedures set forth in Part 5 of the Personal Property Security Act, R.S.B.C. 1996 c. 359 (P.P.S.A.).
- [43] Mr. James' evidence establishes that the residual option to purchase the Tractor and Mower for \$10,000 at the end of the term of the Lease was intended to allow Mr. Andrushko to purchase the equipment for less than its anticipated value at that time. Mr. James also testified that in his opinion the value of the Tractor and Mower at the end of the five year term of the Lease should have been worth "a minimum of from \$40,000 to \$45,000".
- [44] In my opinion, in those circumstances the Lease constituted a security agreement in the nature of a conditional sales agreement under the provisions of the P.P.S.A. Although the failure of Hornby Equipment to comply with the notice and sale provisions of Part 5 of the P.P.S.A. after the surrender of the Tractor and Mower by the defendant in December, 1993 did not give the defendant the right to treat the Lease as at an end (since he could not unilaterally through his own default obtain a right of rescission), the failure to comply with the notice and sale provisions does, in my view, obligate Hornby Equipment to prove that its failure to comply did not result in an improvident sale.

- [45] Mr. James' evidence of the anticipated value of the equipment after 5 years being a minimum of between \$40,000 and \$45,000 establishes that a sale of the Tractor at \$37,500 and the listing of the Mower at \$7,500 (totalling \$45,000) after only slightly more than one year after the sale for \$74,000 in March of 1993 was improvident. In my opinion the value of the Tractor and Mower as a combined unit after one year should be taken to have been approximately one-fifth of the difference between the sale price for the equipment as used equipment in early 1993 (\$74,000) and its anticipated value in early 1998 at the end of the 60 month term of the Lease, i.e., a minimum of \$40,000 to \$45,000.
- [46] Taking the mid-point of Mr. James' assessment of anticipated value that difference would be \$31,500 (\$74,000 minus \$42,500). One-fifth of that amount would result in a loss of value over one year of approximately \$6,300. I consider straight line depreciation to be an appropriate approach to the issue of depreciation and fair to the plaintiff because it seems reasonable to assume that the value of used equipment would accelerate with age and usage rather than be affected only on a straight line basis. Given that the sale of the Tractor occurred relatively early in what would have been the second year of the Lease, I assess the appropriate amount of depreciation as being \$10,000.
- [47] Since Hornby Equipment failed to obtain a fair price for the Tractor and Mower as a combined unit and still retains the Mower, Hornby Equipment's failure to mitigate should be dealt with by allowing Mr. Andrushko a credit for the real value of the equipment which I assess as being \$64,000 (after the deduction of \$10,000 from the purchase price as appropriate depreciation).
- [48] That amount should, however, be further reduced by a reasonable amount to reflect the cost of selling the equipment and the inconvenience caused by the defendant's return of the equipment in breach of his obligations under the Lease. While I recognize that the determination of such an amount is somewhat arbitrary I assess 5% of the \$64,000 realizable value of the Equipment (\$3,200) as the appropriate deduction for the costs of disposition. Deduction of that amount results in the defendant's entitlement to receive a credit of \$60,800 for the value of the Tractor and Mower. That amount must then be set off against the amounts otherwise owing under the Lease.

SUMMARY OF DAMAGES

- [49] I have determined that the plaintiff has proven that the defendant is indebted to it in the amount of \$85,471.32 under the Lease. The defendant has not proven any right to rescission of the Lease but has proven that the Plaintiff negligently represented the condition of the Tractor and Mower as a consequence of which the defendant suffered damage in the amount of \$11,000. The defendant has also established that the plaintiff failed to mitigate its losses.
- [50] In summary, therefore I have determined that Mr. Andrushko is indebted to Hornby Equipment as follows:

- (a) Owing pursuant to Lease for unpaid payments: \$ 85,431.72
- (b) Less damages for negligent misrepresentation resulting in losses and equipment replacement costs: \$ 11,000.00
- (c) Less value of Mower still retained and value of Tractor if it has been sold without failure to mitigate \$ 60,800.00

TOTAL:

\$ 13,631.72

INTEREST

- [51] The defendant will have interest on the sum of \$11,000 from and after January 1, 1994 and the plaintiff shall have interest on the sum of \$13,631.72 after February 15, 1998, that being the date of the expiry of the Lease. Interest will be calculated at Registrar's rates under the Court Order Interest Act and the difference in interest which accrues in favour of Mr. Andrushko shall be set off against the debt of \$13,671.32 owing to Hornby Equipment.

COSTS

- [52] Hornby Equipment has been successful in its claim but in an amount far less than that claimed. The defendant has been successful in proving some entitlement to set off and failure to mitigate but has failed to prove many allegations including those of fraud.
- [53] I have determined that unless there are any matters of which I am now unaware Hornby Equipment is entitled to its costs on Scale 3 except that it is not entitled to costs relating to its defence of the defendant's counterclaim. Hornby Equipment shall also be entitled to recover one-half of all of its reasonable disbursements from the defendant.
- [54] The defendant is entitled to no costs but is entitled to be reimbursed for one-half of all of his reasonable disbursements.

"B.M. Davies, J."

The Honourable Mr. Justice B.M. Davies

June 23, 2000 -- Corrigendum issued by Justice Davies advising that minor discrepancies in the figures and dates referred to in my judgment dated June 19, 2000 have been brought to my attention and accordingly the judgment should be amended as follows:

- (a) The balance owing of \$85,431.72 was in accordance with calculations provided by counsel. That figure should be substituted for the figure of \$85,471.32 in paragraph 50 so that the total in that paragraph will now be calculated as \$13,631.72;
- (b) That total of \$13,631.72 should also be substituted for the figure of \$13,671.32 in the last line of paragraph 51.

(c) The second line of paragraph 39(b) should read;

"... mid-July, 1993 to mid-December, 1993..."

In all other respects I confirm my said Judgment.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/00/09/s00-0938.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hornby-equipment-ltd-v-andrushko-2000>

Prepared on 30 October 2026 · Esheria