

Claim No. SCCH 268577

Date: 20061127

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: JPMorgan Chase Bank v. Petrovici, 2006 NSSM 29

BETWEEN:

JPMORGAN CHASE BANK, N.A.

CLAIMANT

-and -

PENNY PETROVICI

DEFENDANT

ADJUDICATOR: David TR Parker

Heard: September 12, 2006

Decision November 27, 2006

ORDER

This matter came before the Small Claims Court of Dartmouth and Province of Nova Scotia on the 12th day of September A.D. 2006.

This is an Application by the Claimant JPMorgan Case Bank, N.A. (previously Sears Canada Bank) for an Order against the Defendant Penny Petrovici pursuant to the provisions of the Small Claims Court Act specifically section 23(1) of that Act.

Section 23(1) states 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

In this particular case the Claimant served the Defendant pursuant to the rules and regulations of the Small Claims Court Act and the Defendant did not file a defence within the prescribed time to do so, resulting in the present application for an Order against the Defendant.

There is sufficient documentary evidence in the court file to conclude there is an overdue amount on a MasterCard statement which is being claimed by the Claimant in this action.

However, there really should be the contract or at least some evidence of what the contract is that the Defendant entered into including whether it was assignable or not.

I dealt with this application without the Claimant or its representative present and had the Court contacted the Claimant with respect to my concerns that the

Claimant was barred from presenting a claim pursuant to section 5(1) of the Small Claims Court Act.

Section 5(1) states as follows:

5 (1) To better effect the intent and purpose of this Act and to prevent the procedure provided by this Act being used by a corporate person to collect a debt or a liquidated demand where there is no dispute, no partnership within the meaning of the Partnerships and Business Names Registration Act and no corporation may succeed upon a claim pursuant to this Act in respect of a debt or liquidated demand unless the claimant is one of the original parties to the contract or tort upon which the claim is based or unless the claim is raised by way of set-off or counterclaim.

Colin Kelly subsequently appeared before the Court on behalf of the Claimant and advised the Court that a similar application had come before the Court in Cape Breton and the Order was granted. I do not know the particulars of that Order and there is nothing before me that I can comment on same.

Mr. Kelly referenced correspondence from Assistant General Counsel, Peter Bean for the Claimant JPMorgan Chase Bank, N.A. which letter stated in part,

"...I confirm that all Sears private label and MasterCard branded credit card accounts (collectively "Accounts") were acquired by JPMorgan Chase Bank, N.A. ("Chase") pursuant to a purchase agreement dated August 31, 2005. The

transaction closed November 15, 2005.

Accordingly, all receivables in respect of Accounts issued by Sears Canada Bank or its predecessors become the property of Chase on November 15, 2005. All accounts issued since that date were issued directly by Chase.

A copy of the official press release is attached to this letter"

The attached "press release" stated in part,

"November 15, 2005 - Today, Chase [NYSE JPM} announced the completion of its purchase of the Sears Canada Inc. [TSX: SCC] credit and financial services operations, including its private-label Sears credit card accounts and its co-branded Sears MasterCard. The purchase announcement by the two companies in August includes approximately 10 million accounts and CAD \$2.5 billion in outstanding loans."

This application is not going to succeed at this stage for the following reasons:

I cannot determine if the contract with the Defendant was with Sears Canada Bank or Sears Canada Inc.

It would appear that JPMorgan Chase Bank, N.A. is not an original party to the contract I simply just do not know. The correspondence from the Claimant's solicitor indicates that all accounts [I assume this means contracts] issued since November 15, 2005, were issued [I assume this means contracted] by JPMorgan Chase Bank, N.A. and the using party. In

this case I have no evidence who the parties to the contract are for use of this MasterCard. The claim pleads that it involves purchases made at Sears Canada stores since May 20, 2006, however I cannot extrapolate from that statement that the contract was between the defendant and JPMorgan Chase Bank, N.A. or someone else. It is not necessary at this stage to comment on whether a party who purchase contractual rights or another concerning a liquidated demand can sue in Small Claims Court. In the event this matter is appealed or is referred to the Supreme Court of Nova Scotia they may at that point address the issue. I would point out that Justice Palmetier then of the County Court in Merchant Retail Services Ltd. V. McGraw [1989] N.S.J. No. 294 dealt with matter and I am not convinced his analysis is necessarily similar to the case at hand. Certainly there is no problem with subrogated claims with insurers and it also seems logical that one party who is not privy to a contract can change into an original party through amalgamation, purchasing shares and possibly purchasing assets of another which is the case here.

The third problematic matter with this application is the Corporations Registrations Act specifically section 17(1). In this particular case it would be beneficial for the Claimant to provide evidence that it is a party that is capable to bringing an action before the Court.

It may well be that the purpose of section 5(1) of the Small Claims Court Act is to avoid having the court turn into a debt collection court as was the concern in the Quebec Small Claims Court where a research paper was done on this issue. However while taking a purposive approach to interpreting the legislation does not allow this court to ignore what I consider the clear

wording of Section 5.

For all these reasons I am going to deny this application.

Dated at Halifax, this 27 day of November, 2006.

David T.R. Parker
Small Claims Court Adjudicator