

Claim No. SCCH 407036

Small Claims Court of Nova Scotia

Cite as: 3225163 Nova Scotia Ltd. v. MacIsaac, 2012 NSSM 51

Between

3225163 Nova Scotia Ltd

Claimant

And

Anne Mary MacIsaac

First Defendant

And

Janis Irene MacGillivray

Second Defendant

Heard: November 5, 2012
Decision: November 7, 2012

Adjudicator: David TR Parker

Amended Decision and Order

[This decision is amended as to the spelling of the defendants names as to correct spelling]

1. This matter came before the Small Claims Court on November 5, 2012 and involved i the sale of assets of a franchise by a franchisee, in this case the claimant to a potential franchisee, in this case the defendants.
2. The franchise in this case is a well-known franchise known as Curves. The claimant alleges that the defendants paid for the assets of its business however the defendants still owed HST in the amount of \$2625.00 an insurance expense of \$79.53 covering the period of one month ending

August 2012 and also \$1374.82 for membership fees which payment the claimant says is being withheld from it.

3. The parties in this case did not enter into a purchase of asset agreement. What they did do was fill out a resale application which application document is provided apparently by the franchisor, Curves for the benefit of the parties and thereby allowing Curves to deal with the transfer of the franchise to the defendants from the claimant.
4. Both parties agree that \$1374.82 was in fact an amount that the defendants held back as they believed it was owing to them. This amount relates to yearly membership dues with Curves franchise that was paid to the claimant prior to the sale date of July 30, 2012. The parties were both aware that the sale involved assets only and did not involve membership fees. Therefore the amount of \$1374.82 should not have been held back from the purchase price.
5. With respect to the insurance the claimant remained on the lease for August 2012 and while the lease was not transferred over to the defendants the insurance should of been the responsibility of the claimant until the transfer was completed.
6. With respect to the HST that is a matter between Revenue Canada and the claimant or Revenue Canada and the defendants. The defendants claim they have paid Revenue Canada directly with the HST. They showed a receipt to that effect to the court and I have no knowledge or information before me that there is a claim against the claimant for HST by Revenue Canada.
7. With respect to the counterclaim of \$13,933.99 it is comprised of renovations to the leased premises required to be done by the defendants in order to operate their business. It also consists of lost revenue and numerous items related to the business or at least the operation of the business such as transfer of telephone numbers.
8. The sale to the defendants was for assets only. The counterclaim relates to other matters.

IT IS Hereby Ordered That the Defendants pay the Claimant the following sums:

\$1374.82
\$ 91.47 court costs
\$1466.29 Total

Is Further Ordered that the counterclaim be dismissed with no order as to costs.

Dated at Halifax this 7th day of November 2012

David T. R. Parker
Adjudicator
Small Claims Court of Nova Scotia