IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *EOS Canada Inc. v. Bennett,* 2019 NSSM 32

Date: 20190715
Claim: No. SCP487943
Registry: Pictou

Between:

EOS Canada Inc.

CLAIMANT

And

Lilla K. Bennett

DEFENDANT

Adjudicator: Raffi A. Balmanoukian, Adjudicator

Heard: July 15, 2019, in Pictou, Nova Scotia

Counsel: none

Balmanoukian, Adjudicator:

[1] This Court is a creation of statute. It has no inherent jurisdiction. It has only the powers conferred upon it by the Legislature. It follows that when the enabling law specifically denies this Court jurisdiction over a particular matter, it is not for the Court to "read in" an authority it does not have, or otherwise eviscerate that prohibition.

[2] This is an application for Quick Judgment. The Claimant, EOS Canada Inc., is an assignee of the defendant's account with Canadian Tire Bank, to wit a Mastercard credit card account. There is no evidence that EOS is either a party to or mentioned in the original agreement between the defendant and Canadian Tire Bank. Indeed, all indications are to the contrary – the claim states that the original contract between the defendant and Canadian Tire Bank was in October 2015 and was only assigned to the Claimant in November 2018 after the account went into default and collection attempts by Canadian Tire Bank amounted to naught. The "instant credit" application in evidence is to Canadian Tire Financial Services.

[3] Ms. Bennett did not file a defence. When the matter was forwarded to me for Quick Judgment, I alerted the Clerk to 5(1) of the *Small Claims Court Act*, RSNS 1989 c. 430, as amended (the "Act"), and asked her to invite both parties to present any argument on jurisdiction that they sought to make, prior to July 12, 2019. That invitation took place, and I am advised that neither party wished to make use of that opportunity.

[4] Section 5(1) of the *Act* is clear enough. It reads:

> 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.

[5] It is not for the Court to speculate on the rationale of this provision. It may well be, as the late adjudicator Parker mused in *JPMorgan Chase Bank v. Petrovici*, 2006 NSSM 29, that the purpose is to prevent this Court from being the mercantile exchange of collection agencies. If so, the case at bar illustrates that danger in stark relief. The purpose of the Act is, as stated in Section 2:

> It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.

[6] It may also have been enacted to prevent the use of this Court to adjudicate subrogated claims within the Court's monetary limits – see *TD Financing Services Inc. v. McInnis*, 2012 NSSC 52 at para. 37.

[7] That is not to say the door is closed to commercial or corporate interests – although it may have a gatekeeper pursuant to regulations made under Section 5(2) of the *Act*. None so exist at present. Nonetheless, it is clear that the overall thrust of the *Act* is to allow for *original parties* to have access to justice and their literal and proverbial "day in court" in a just and expeditious fashion and for the Court not to be unduly encumbered by third party interests.

[8] Section 5(1) recently came before Justice Campbell in *Preferred Credit Resources Limited v. O'Halloran* 2018 NSSC 73. His Lordship navigated an

unusual fact situation with his usual literary aplomb. The Claimant began its case in Supreme Court. The defendant then elected to transfer the matter to Small Claims, and then in turn pleaded that the Small Claims Court lacked jurisdiction under Section 5(1), as the Claimant as an assignee of the debt. The adjudicator agreed and dismissed the claim.

[9] On appeal, Justice Campbell was faced with the unusual situation in which the appellant thought the decision correct and the respondent, vice-versa. He concluded that the adjudicator was correct in finding that the Small Claims Court was without jurisdiction, and that dismissing the claim was the appropriate remedy. The matter accordingly remained as a Supreme Court action – the alternative would have been the incongruous situation in which a defendant in an assigned debt action could elect to transfer, and then have the matter dismissed.

[10] In the case at bar, the matter was commenced in this Court, not the Supreme Court. When the case lands in this Court through no fault of the Claimant and the Court has no jurisdiction (as with *Preferred Services*), it must follow that it cannot have jurisdiction when the Claimant *commences* the action in this Court.

[11] This is also different from a situation in which it is specifically contemplated in the defendant's original contract that the claimant would become the creditor,

such as was the case with the vehicle loan agreements in *TD Financing Services Inc., supra* and *VFC Inc. v. MacLean*, 2009 NSSC 314.

[12] Every indication here is that the original and only contemplated parties in the Mastercard contract were Canadian Tire Bank and the Defendant. When the facility (allegedly) went into default, it appears Canadian Tire Bank attempted to effect its own collection. When, and only when, that failed did the putative creditor appear to assign its interest to the Claimant, apparently under some sort of standing arrangement (according to the tenor of para. 8 of the Claim referring to a "Forward Flow Credit Purchase Agreement).

[13] EOS is therefore squarely the type of entity precluded from bringing this claim in this Court.

[14] The appropriate remedy, pursuant to *Preferred Credit, supra*, is to dismiss the claim. It is, however, still open to the Claimant to reinitiate its claim in Supreme Court.

Conclusion

[15] The Claim is dismissed.

Balmanoukian, Adj.