

**SMALL CLAIMS COURT OF NOVA SCOTIA**

Citation: *44 North Development Consulting v. Colwell*, 2022 NSSM 60

**Date:** 20221130

**Docket:** SCCH 516656

**Registry:** Halifax

Between:

44 North Development Consulting

*Claimant*

- and -

Karyn Ann Colwell and Troy William Bennett

*Defendants*

**Reasons for Decision and Order**

**Adjudicator:** Eric K. Slone

**Heard:** Via zoom on November 23, 2022 in Halifax, Nova Scotia

**Appearances:** For the Claimant, self-represented

For the Defendant, Karyn Colwell  
Rachel Nagy, articulated clerk

The Defendant Troy Bennett not participating

**BY THE COURT:**

[1] The Claimant, 44 North Development Consulting, is a registered business name being used by 3292589 Nova Scotia Limited, a company through which Kathleen O'Donovan provides development consulting services.

[2] On January 20, 2022, the Claimant issued the last in a series of accounts for service in the amount of \$8,973.15 in connection with a project that she had been working on for the Defendants. The first five invoices were paid. The last one has not been paid.

[3] There is no dispute about the quality of the services or the amount of the bill. The only issue is who is responsible to pay it.

[4] The Defendant Troy William Bennett ("Mr. Bennett") does not dispute that he is responsible. He did not file a defence, and when he spoke up at the initial pre-hearing teleconference he made clear that he does not dispute his responsibility.

[5] Based on the evidence before me, I find the following facts.

[6] The Defendant Bennett is engaged primarily in the logging business in the Antigonish area. He may have some previous development experience.

[7] In about June of 2018 Mr. Bennett met the Defendant, Ms. Karyn Ann Colwell ("Ms. Colwell"), who is a nurse by profession. They became romantically involved and by sometime in 2019 they were living together in Ms. Colwell's home in Bedford.

[8] Mr. Bennett has a history of bankruptcies. He was at all relevant times either about to be bankrupt, bankrupt or recently bankrupt. The details were not available as Mr. Bennett did not participate in the hearing, and Ms. Colwell was not sure of these details. However, what is known is that at some point Mr. Bennett had to put his logging business in his mother's name, and then into Ms. Colwell's name, because of his bankruptcy status.

[9] Despite his legal inability to carry on business in his own name, it appears that he was active in the logging business and had ambitions to do some land development.

[10] At some point in about early 2021 Mr. Bennett suggested to Ms. Colwell

that they do some land development together, as partners or joint venturers. Mr. Bennett had already had some initial dealings with Ms. O'Donovan about some proposed development opportunities. For that work, an invoice dated February 18, 2021 in the amount of \$1,487.81 was issued to Mr. Bennett at the address that is Ms. Colwell's home. Mr. Bennett paid that invoice.

[11] Over the course of the coming months there were four more invoices that were issued and paid. There was an invoice in June for \$3,642.86, another in July for \$2,903.00, another in September for \$3,438.50 and a last one in November for \$2,809.25. At her then hourly rate of \$120.00, Ms. O'Donovan spent somewhere in the neighbourhood of 90 hours of her time on this development work.

[12] What is common to these further four invoices is that they are all directed to Mr. Bennett and were paid by him.

[13] What is also common to these bills, as well as the last one which was never paid, is that Ms. O'Donovan had extensive dealings with Ms. Colwell. A lot of time was spent on conference calls where both Ms. Colwell and Mr. Bennett participated. Ms. O'Donovan understood that Ms. Colwell was an enthusiastic partner in this venture. She also understood that Ms. Colwell was involved financially, though I am not sure she knew the full details. Ms. O'Donovan gave instructions to Ms. Colwell to make calls and arrange meetings with banks, accountants, lawyers, engineers and other professionals.

[14] Ms. Colwell maintains that she had no experience in development and was just trying to help her then-boyfriend, which is true as far as it goes, but I am satisfied that while the relationship was still going well she was eager to learn and help out in any way she could. I believe she was at least intrigued, if not seduced, by the prospect of financial gain from the project or projects that they might engage in, and acted accordingly. I have no doubt that Ms. Colwell expected to profit from any development that might result from Ms. O'Donovan's efforts.

[15] In December 2021 a parcel of land was placed under contract, and Ms. O'Donovan was instructed to incorporate a limited company, West Lake Estates Limited, to take title to the land. The agreement of purchase and sale had been signed on behalf of Karyn Colwell or assignee, which would have allowed Ms. Colwell to direct title into the company.

[16] When it came time to bill for her work for November 2021, December 2021 and January 2022, Ms. O'Donovan directed her bill initially to West Lake Estates Limited, a company which had no assets nor even likely a bank account. This final bill was for \$8,973.15, and covered some 58 hours of Ms. O'Donovan's time

during those months.

[17] This particular sale did not go through. In early January Mr. Bennett and Ms. Colwell ended their romantic relationship and their business relationship, as well. Mr. Bennett moved out of Ms. Colwell's home. They retained lawyers and quickly negotiated a separation agreement which was signed on April 13, 2022.

[18] That agreement contained the following provision:

8.(c) Troy shall pay and retire the outstanding invoice owed to Kathleen O'Donovan in the approximate amount of \$9,000.00 and save Karyn harmless therefrom.

[19] Ms. O'Donovan continued to seek payment from Mr. Bennett, as she was being encouraged to do by Ms. Colwell, but lost patience when no payment was made. She eventually re-issued the bill - originally directed to West Lake Estates - to Troy Bennett and Karyn Colwell. She argues that they were her true clients who were jointly responsible to pay for her services.

### **Defences**

[20] Ms. Colwell disputes her personal liability on several bases, which I will consider in turn:

- a. She says the terms of the alleged contract are too uncertain;
- b. She says that Ms. O'Donovan is attempting to pierce a corporate veil;
- c. She says that Ms. O'Donovan waived the debt from Ms. Colwell, and
- d. She says that she never had an intention to be legally bound.

### **Too uncertain**

[21] As with many verbal contracts, very few of the terms are explicitly expressed. But they can be inferred from conduct and from the surrounding circumstances.

[22] The evidence is clear that Ms. O'Donovan offered to provide wide-ranging development services initially to Mr. Bennett, as he was her original contact. The terms of the agreement were that she would provide services at her hourly rate and be paid for it. Not long after, Ms. Colwell showed up as an equal participant. To

all appearances, Mr. Bennett and Ms. Colwell were in a partnership or joint venture, and I find that they were both contracting for Ms. O'Donovan's services.

[23] I do not read too much into the fact that Ms. O'Donovan issued bills directed to Mr. Bennett. The practice was for him to pay her bills, and that was what she had come to expect. But that does not answer the question of who was the beneficiary of the services, and who bore legal responsibility to pay for them. Even though none of the projects ultimately bore fruit, there is no doubt that Ms. Colwell was one of the two beneficiaries of the services that Ms. O'Donovan provided.

[24] Based on the parties' conduct, I do not believe that there was any uncertainty about the nature of the services to be provided, or how they would be charged. There may have been talk about further opportunities that might come Ms. O'Donovan's way, such as by earning commissions on sales of houses, but this never reached the point of becoming part of the contract for services which were tracked and billed at an hourly rate.

### **The corporate veil**

[25] The argument is made that Ms. O'Donovan is attempting to pierce the corporate veil by suing the shareholders of West Lake Estates Limited.

[26] The problem with this argument is that Ms. O'Donovan never regarded that company as her client. This was a company that she created at the behest of the Defendants, in pursuance of their project. She issued the bill to the company because she expected that it would be proceeding with the development and would become a working entity. She knew at the time she issued the bill that it was a company with no assets, probably not even a bank account. She would not have been naive enough to regard that company as the entity solely responsible for payment of her bill.

[27] This is not a case of piercing the corporate veil, but rather of looking to see who the contract was really with.

### **Waiver**

[28] The argument is made that Ms. O'Donovan essentially released Ms. Colwell of responsibility by continuing to pursue Mr. Bennett, in the hope also of obtaining commissions through a possible sale of Ms. Colwell's home.

[29] The evidence does not support this theory.

[30] Ms. O'Donovan indeed continued to pursue Mr. Bennett for payment, because he had been the one arranging for the previous payments. But Ms. Colwell was also on the receiving end of Ms. O'Donovan's payment demands. It was Ms. Colwell often reassuring Ms. O'Donovan that Mr. Bennett would make the payment. This does not amount to a waiver.

[31] In order for there to be a waiver there would have to be some consideration flowing to Ms. O'Donovan, which there was not. There would also have to be some detrimental reliance on the supposed waiver, of which there was no evidence.

[32] I am also mindful of the fact that Ms. O'Donovan was kept somewhat in the dark about Mr. Bennett's bankruptcy status. Ms. Colwell knew the facts and kept them to herself. It would be grossly unfair to allow Ms. Colwell to evade responsibility when she knew that Ms. O'Donovan did not know all the facts.

### **No intention to be personally bound**

[33] Ms. Colwell pleads that she never intended to be personally bound to pay for Ms. O'Donovan's services. She says that she was only helping Mr. Bennett.

[34] The totality of the evidence satisfies me that Ms. Colwell's involvement was much greater than she would now have us believe. I accept Ms. O'Donovan's evidence that she spent many hours in meetings and calls with Ms. Colwell, and that she directed Ms. Colwell to set up meetings and perform other tasks in pursuance of the project.

[35] Whatever may have been in her own mind, objectively Ms. Colwell appeared to be a full partner in this project. That she was inexperienced is a given; that is partly why Ms. O'Donovan was needed.

[36] I find that the joint venture of Mr. Bennett and Ms. Colwell hired, or continued to hire, Ms. O'Donovan's services and are jointly responsible to pay for those services.

[37] The fact that this debt is mentioned in the separation agreement corroborates my view. Ms. Colwell negotiated an indemnity because she anticipated that she might face liability for the debt. But that is between Ms. Colwell and Mr. Bennett. Ms. Colwell attempted to convince Ms. O'Donovan that the debt had been assigned to Mr. Bennett, which Ms. O'Donovan believed until she received legal advice to the effect that a debt cannot be assigned without the consent of the

creditor.

### Conclusions

[38] I am satisfied that both Mr. Bennett and Ms. Colwell are legally responsible for this last account issued by the Claimant, and an order will follow accordingly.

[39] Ms. O'Donovan argued that she should be entitled to interest at the rate of 2% per month, as that is stated on her invoices. I am not satisfied, however, that there was ever an agreement to pay interest at that rate. Such a provision is also unenforceable under s.4 of the federal *Interest Act* because it is not expressed as an annual rate<sup>1</sup>. She is entitled, however, to interest at the rate of 4%, simple interest, pursuant to s.16 of the *Small Claims Court Forms and Procedures Regulations*.

[40] The Claimant shall also be entitled to her costs consisting of \$199.35 to issue the claim and \$100.00 to serve same.

### ORDER

[41] The Claimant shall have judgment against both Defendants, jointly and severally, in the following amounts:

Debt	\$8,973.15
Prejudgment interest at 4% from January 20, 2022 to November 30, 2022 (314 days)	\$308.77
Costs	\$299.35
<b>Total</b>	<b>\$9,581.27</b>

**Eric K. Slone, Adjudicator**

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<sup>1</sup>4 Except as to mortgages on real property or hypothecs on immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.