

TC CV 99 001

CV 6583

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

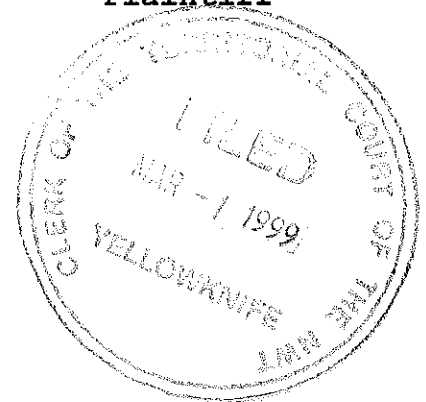
IN THE MATTER OF:

LUMEN CHRISTI MARIANAYAGAM

Plaintiff



- v -



THE BANK OF MONTREAL

Defendant

Transcript of the Reasons for Judgement of The Honourable
Judge R.M. Bourassa, sitting in Yellowknife, in the
Northwest Territories, on the 24th day of February, A.D.
1999.

APPEARANCES:

No Counsel:

For the Plaintiff

Mr. J. Brydon:

Counsel for the Defendant

1 THE COURT: I understand your arguments and I'm
2 going to deal with them as follows; you can sit down
3 now.

4 First of all I'll deal with the claim. The
5 claim is for \$440.12 against the Bank of Montreal.
6 The claim is based on the Bank of Montreal, without
7 notice to the Plaintiff, withdrawing the total amount
8 in the Plaintiff's bank account and applying that
9 amount to a debt that he had with the Bank of
10 Montreal through Mastercard. It's clear that Mr.
11 Marianayagam owed the Bank of Montreal in excess of
12 \$6,000. The \$440.12 that was taken was applied to
13 that debt. It's not as though the money was used by
14 the Bank improperly; for penalties or for special
15 charges. The money was credited to Mr. Marianayagam
16 and he received the benefit of that \$440.

17 The Plaintiff claims that the Bank had no
18 authority to do so. The Plaintiff claims that as a
19 result of changing from his Mastercard Gold to
20 Mastercard low interest, that there was no agreement
21 between the Bank.

22 As a result of his dealings with the Bank and
23 his indebtedness with respect to the Mastercard, when
24 he attempted to use the card at Wal-Mart, it wasn't
25 honored. Now he's claiming damages. He's claiming
26 damages for \$1000 for loss of income.

27 It's incumbent upon a Plaintiff to prove

1 damages. Mr. Marianayagam first stated he was worth
2 \$60 an hour and then admitted that that was
3 arbitrary. He then picked another figure of \$150 an
4 hour.

5 My first obligation is to assess damages and
6 then my second obligation is to determine whether or
7 not there is liability.

8 Mr. Marianayagam spent a number of hours at the
9 Bank trying to sort out his problems and that is what
10 he says fits under his loss of income.

11 In my respectful view, there have been no
12 damages proven. The time he spent to solve his
13 financial problems have no relationship to any money
14 lost and there is no proof before me of money lost.
15 A mishmash of jobs and possible jobs and work that he
16 did in 1999 and his arbitrary figures do not amount
17 to proof. I can find no damages proven.

18 He's asking for costs of the action on a
19 solicitor-client basis. There is no counsel and that
20 head of cost is unavailable.

21 Now, with respect to his claim against the Bank.
22 The Bank of Montreal and Mastercard are one and the
23 same. That's clear on the application and it's
24 stated on the pleadings. The fact that Marianayagam
25 went from the gold card to a low-interest card has no
26 bearing. The agreement that he signed in his
27 application stated,

1 I request the services and understand that
2 the services may be terminated from time to
3 time and that some services or benefits may
4 only be available to me if I enter into
5 separate agreements or obtain separate
6 applications.

7 The fact is that Marianayagam was, at the material
8 time, insolvent. He was spending more money than he
9 had. He was living on the Banks' money, a simple
10 reference to the last exhibit shows that. There are
11 debit charges to Foster Parents of Canada, Domino's
12 Pizza, Shopper's Drug Mart, Portrait Experience and
13 other personal charges. On his own evidence he was
14 living on the Mastercard. He was living on the
15 Bank's money and now he doesn't want to pay them
16 back.

17 In my view, the defence is clearly established
18 that in law there is a right of setoff. In law,
19 Marianayagam is responsible and liable for the amount
20 he owes on the Mastercard which was in excess of over
21 \$6,000 less the amount the Bank took by way of
22 setoff, which is the amount set out in the
23 Plaintiff's claim with the amount over \$5,000
24 abandoned.

25 Mr. Marianayagam, with respect, is bound and
26 wrapped up in the minutia of dates and his own legal
27 theories. He has built this into a claim, a defence,
and a martyrdom which, in my respectful view, is not
there. This is a straightforward matter.

1 Marianayagam owes the bank a lot of money, over
2 \$5,000. The Bank used its authority in law and
3 credited his debt with some money that he had. They
4 were entitled to do so. Marianayagam has proven no
5 damages related to that. The fact that he didn't
6 have money after the card was seized is not the
7 Bank's responsibility. It's Mr. Marianayagam who is
8 living beyond his means and who is living on the
9 Bank's money. He can't fault the Bank for putting an
10 end to it.

11 The claim is dismissed. I find no damages
12 proven. The counterclaim in the amount of \$5,000 is
13 granted together with costs in the amount of \$400,
14 which I think is the maximum Mr. Brydon?

15 MR. BRYDON: 300 the last time I checked, Your
16 Honour.

17 THE COURT: 300? Costs in the amount of \$300.

18 MR. MARIANAYAGAM: Excuse me, Your Honour. It was
19 actually \$300 plus the fact that the ceiling limit in
20 the Territorial Court is supposed to be \$5000.

21 THE COURT: I've given judgment for \$5000.

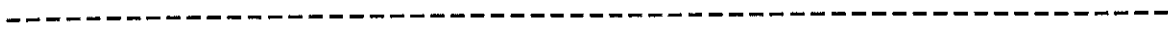
22 MR. MARIANAYAGAM: But they have taken \$440, Your Honour.
23 It's 5000 minus the 440.

24 THE COURT: Mr. Marianayagam, you owed the Bank
25 over 6000. You got credit for the \$440, it shows
26 right on the documents. You got credit for the 440.
27 The Bank didn't run away with it, you got credit for

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it. And you're even getting off better now because the Bank has to forget \$900 because they're in this court, so I wouldn't complain too much. That's my judgment, together with costs and whatever disbursements you have.

MR. BRYDON: Yes, Sir.



Certified pursuant to Practice Direction #20 dated December 28, 1987.

A handwritten signature in cursive script that reads "Sandra Burns".

Sandra Burns C.S.R. (A)
Court Reporter