

Claim No: 286232

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Atlantic Greetings v. Dollar Warehouse Atlantic Inc., 2007 NSSM 78

BETWEEN:

INAXESS MARKETING INC., c.o.b. as Atlantic Greetings

Claimant

- and -

DOLLAR WAREHOUSE ATLANTIC INC.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 13, 2007

Decision rendered on December 10, 2007

APPEARANCES

For the Claimant: James Enman, counsel

For the Defendant: Joe Lisi, owner

BY THE COURT:

- [1] The Claimant is a distributor of greeting cards. The Defendant operated a chain of stores in Nova Scotia and P.E.I., although I believe the Nova Scotia stores have since closed.
- [2] For some years the Claimant supplied cards to the Defendants' stores. Part of the service involved having someone go into the stores to straighten out the racks and make sure all of the product was in good supply and nicely displayed.
- [3] The Claimant's invoices clearly stated the payment terms: a 5% discount if paid within 45 days; full invoice amount (net) thereafter.
- [4] This action seeks \$9,825.59 based on allegedly unpaid (or underpaid) invoices going back about a year. While there are some invoices which the Claimant says were not paid at all, the majority of the claim appears to relate to 5% reductions in payments which the Defendant made, even though those payments were made after 45 days. In other words, the Defendant took it upon itself to apply the early payment discount without making an early payment.
- [5] The Defence filed by the Defendant essentially pleads that the claim does not accord with its own reconciliation, and that most of the discrepancy relates to "so called missed discounts" which are "unjust high rates of interest charged on original product."

- [6] I mention the written Defence because it bears little resemblance to the defence presented at the trial. At trial the Defendant's owner put forward the position that he was justified in paying the discounted amount because the Claimant's representatives were not diligent in attending at the stores, unpacking the boxes, filling the racks, and so on, with the result that merchandise was effectively delayed by several weeks in being available for sale to customers.
- [7] The Defendant's owner also put forth a defence that the stores lost sales as a result of the poor service. He submitted in evidence some sales figures which he says support that hypothesis.
- [8] The Claimant's counsel attended at trial with one witness, the business's bookkeeper/controller, who came prepared to testify to the accounting reconciliation that she had performed and which was the basis of the claim. There was no one brought to the trial with any knowledge about the Defendant's allegations. I accept that counsel could not possibly have known to have someone available to answer those allegations when he had never been alerted to them.
- [9] The Small Claims Court procedure is generally very forgiving. Many claims are filed giving very little detail. Equally, many Defences say very little, and indeed many Defendants show up at trial without having filed any Defence, expecting simply to put forward their position orally. Often this is not a problem since the parties know what the dispute is really about and can address it adequately.

- [10] It is certainly not the policy of this Court to penalize people for their failure to adhere to procedure, which could be a function of poor literacy or any one of a number of other causes. But when reasonably sophisticated commercial parties come before the Court in matters involving significant amounts of money, I believe they should be held to a slightly higher standard. At the very least, if they propose to raise a defence on a factual ground that the Claimant might need to answer in its own evidence, there should be some advance notice given. And where the Claimant is taken entirely by surprise, the Court should discount that defence unless there is some practical way to alleviate the prejudice to the Claimant.
- [11] In the case here, the unpleaded defences only came out late in the trial and it did not appear to me practical or fair to adjourn the matter so that the Claimant could bring further witnesses.
- [12] Having said this, I should also observe that the quality of the accounting evidence supplied by the Defendant was somewhat unsatisfying.
- [13] The Claimant's accounting evidence, presented by the person who actually does the accounting for the Claimant, gives a chronological listing of more than 200 invoices rendered, with the unpaid amount showing: either the 5% or the entire amount, as the case may be. The Defendant's evidence, presented by the owner of the stores and not the person who has the actual knowledge of the accounting, consisted of one page of debits and credits, some 42 in number, corresponding only to some of the same invoices which make up the claim.

- [14] I place more weight on the Claimant's accounting figures than on those of the Defendant. It appears to me that the Claimant's bookkeeper did a credible job of calculating what is owing. The Defendant did not provide any cogent evidence to the contrary.
- [15] The only question, then, is whether or not the Defendant was justified in paying 95% of the invoice price over a considerable period of time.
- [16] I give little credence to the complaint that the Claimant did not properly service the Defendant's stores. There was no correspondence (as far as I am aware) between the parties making such a complaint, which one might expect to see if this had been a real issue. In the absence of such a written record of complaints, I am more inclined to believe that this was an after-the-fact justification, or perhaps just a much more minor issue than it was made out to be at the trial.
- [17] As for the defence that the 5% bump after 45 days was an unjustified interest charge, I do not regard this 5% as an interest charge in any sense. It was a discount available for a particular period of time, offered as an incentive to make a timely payment. Even if it were an interest charge, it would not have been unlawful because it was agreed to and furthermore it does not reach the threshold of a criminal rate of interest under the Criminal Code of 60% per annum.
- [18] In the result, the Claim succeeds and the Claimant is entitled to judgment for the amount claimed, namely \$9,825.59, plus its \$170.88 filing fee. No prejudgment interest was claimed, nor would I have allowed any under all of the circumstances. The total judgment is therefore \$9,996.47.

Eric K. Slone, Adjudicator