

SCCH 347542

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Redden v. Telcap Communications Inc., 2012 NSSM 37

BETWEEN

Daniel Redden

CLAIMANT

-and-

Telcap Communications Incorporated and/or Barrie Croft

DEFENDANT

Heard: June 30, 2011, October 24, 2011 and November 14, 2011

Decision: January 3, 2012

Adjudicator: David TR Parker

Counsel: The Claimant was self-represented
Adam D. Crane represented the Defendant

ORDER

Parker-This action was originally commenced by way of a Notice of Claim filed by the claimant in April of 2011. The claim was for \$16,137.01. The reasons outlined in the pleadings of the claimant for the claim was for "personal taxes resulting from gross negligence and fraudulent business activities during the course of employment, accounting fees. A defence to the claim was filed on May 17, 2011 along with a counterclaim for \$25,000.00 plus general damages, interest and costs.

A subsequent claim is dated August 3, 2011 in which the claimant claims \$18,926.66 plus general damages, interest and costs. An amended defence and counterclaim was filed on August 19, 2011. And amended defence to the counterclaim was filed on August 22, 2011 and an amended defence to the counterclaim was filed on October 23, 2011.

After hearing the evidence of the claimant and upon a motion by the defendant to dismiss the claim I determined that the matters being claimed related to matters within the jurisdiction of the Canada Revenue Agency which had already dealt with the matter and the Labor Relations Board which also dealt with the matter.

With respect to the counterclaim the defendant alleges that the claimant worked as an independent contractor in preparing personal and corporate taxes and payroll services and for the defendant/claimant by way of counterclaim. The evidence before me was that the claimant/defendant by way of counterclaim was not an independent contractor and this has been expressed already by the Labor Standards Tribunal in a decision they rendered. The defendant said the claimant caused losses as a result of the claimant's negligent and/or reckless actions in preparing income tax returns and compiling regular accounting. The defendant also claims that the claimant registered the business name knowing that the business name registered was one being used by the defendant. The total amount of the claim was \$32,077.05 however the defendant/claimant by way of counterclaim reduced the counterclaim to \$25,000.00 to fit within the monetary jurisdiction of the Small Claims Court.

Barrie Croft was the owner of the defendant company. He took on the claimant and it was under his tutelage and direction that the claimant, Mr. Redden did the work. Mr. Redden started work in 2005 while completing his courses with community college. According to Mr. Croft, Mr. Redden had some computer accounting courses when he started but he had never seen a tax return before. Mr. Croft stated that in 2008 he stepped back from the day-to-day involvement and he gave Mr. Redden an increase in pay and called him manager. At that time Mr. Croft had health issues and he was not around for four or five months. Mr. Croft acknowledged that he had trained Mr. Redden on a number of items but that Mr. Redden claimed he was a payroll specialist. It was clear either through health issues or for other reasons Mr. Croft did not oversee the work of Mr. Redden, certainly as he did in the beginning. Mr. Croft said that he had to deal with errors that Mr. Redden made and he gave estimates of time incurred and the hourly rate for those estimates. These were all estimates based on what Mr. Croft said was his experience. There was no supporting documentation to show the hours worked, that Mr. Redden had worked on the files previously or invoices to the files themselves. There was also evidence from clients of the corporate defendant and they added little to support the damages being claimed by the defendant/claimant by way of counterclaim. In addition to this problem for the defendant it would appear that Canada Revenue Agency was also involved in aspects of these files. I do not know whether Canada Revenue Agency was correct in its assessment of the files being complained of by the defendant. I do not know whether the matters being appealed by the defendant's clients in this would also take it outside the jurisdiction of this court. Possibly if and when all appeal procedures have been completed with respect to Revenue Canada Agency and the defendant was able to show that Mr. Redden

caused the problem which resulted in damages to the corporate defendant then there may be a claim. However it is simply not clear enough on the balance of probabilities to go forward with a judgment against Mr. Redden on the counterclaim. As well Mr. Redden was not an independent contractor and it would be necessary for any claim to be framed within the context of Mr. Redden being an employee.

It Is Therefore Ordered the Claim and the Counterclaim be dismissed with no Order as to costs.

Dated at Halifax this 3rd day of January 2012