# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

**Citation:** *McKay Fuels 2010 Limited v. Hull*, 2019 NSSM 47

**Date:** 20190925
**Claim:** No. SCP 490916
**Registry:** Pictou

Between:

McKay Fuels 2010 Ltd.

CLAIMANT

And

Jennifer Hull

DEFENDANT

**Adjudicator:** Raffi A. Balmanoukian, Adjudicator

**Heard:** September 25, 2019, in Pictou, Nova Scotia

**Counsel:** John R. Douglas, agent (written application only), for the Plaintiff

**Balmanoukian, Adjudicator:**

[1] This is one of two applications for quick judgment which came before me on September 25, 2019. Both were undefended and include claims for interest and, in the second file, NSF charges.

[2] Mr. Douglas, agent for the plaintiff in both files, was asked for any documentation or submissions with respect to the interest and NSF claims. He declined to produce any, or to appear.

[3] The law in this respect is clear: simply putting an interest charge on an invoice or statement does not constitute a valid and enforceable claim for it in law. There must be something more – an agreement by contract or conduct.

[4] In *K.W. Robb & Associates Ltd. v. Wilson* (1998), 169 NSR (2d) 101 (CA), Hallett, J.A. stated, for the court:

> The implication of a term that would require the appellant to pay 24% interest on the outstanding account is not needed to give purpose and effect to the contract the parties entered into; it is not reasonably necessary nor is it capable of exact formulation. I reach this conclusion because the evidence simply does not warrant the implication of such a term given the inconsistency of the rates of interest being claimed on the invoices.
>
> I agree with Justice Goodfellow's remarks in Tannous v. Halifax (City) (1995), 45 N.S.R. (2d) 13 at p. 32:
>
> > ..... however, modern practice is for almost all commercial accounts to have some reference to interest on overdue balances stated on invoices. The mere statement

> of an interest term on an invoice by itself raises no legal obligation for payment of such interest, and the Taxing Master was correct in declining any award of invoice interest.

In short, the mere presence of a statement on an invoice that interest is claimed at a particular rate, standing alone, is an insufficient basis to warrant a finding that the debtor is obliged to pay interest; there must be something more in the course of dealings between the parties. If a debtor, for instance, has paid interest on prior accounts this could indicate an agreement to the payment of interest on overdue accounts. As a general rule, a court should be slow to imply a term in a contract and this is recognized by the general principle of law that I have set out. As a result of the provisions of s. 41(i) of the Judicature Act there is even more reason for the court to be slow to imply a term to pay interest as the courts are now mandated by the Legislature to award interest on all claims for debt. Absent this legislative directive, the reality of how business is conducted in the 1990s might very well warrant the courts implying such a term simply on the basis of accounts being rendered to the debtor containing a claim for interest on overdue accounts as cash flow into a business on a consistent basis is critical in today's business world. This was done in Irving Oil Ltd. v. Whynot (1978), 33 N.S.R. (2d) 92. In that case interest was clearly shown on the invoice as 1 % per month or 12% per annum and there had been a long course of dealings between the parties. Cowan, C.J. concluded that there was an implied agreement to pay interest on overdue accounts at the rate stated in the statement sent out by the creditor as the customer had not objected. I would note that this decision was rendered prior to the enactment of s. 41(i) and (k) of the Judicature Act.

In Bluenose Electric Ltd., D. 8: E. Industries Limited and Dartmouth Building Supply Limited v. Canadian Surety Company and All Wall Construction Limited (1985), 68 N.S.R. (2d) 385 (N.S.C.A.) this Court in an action over a labour and materials bond affirmed the trial judge's decision to award interest on the account outstanding at 30% per annum on the basis that invoices delivered to the subcontractor by the supplier contained statements to the effect that interest would be charged at that rate on overdue accounts. There was no particular analysis other than a statement that as the subcontractor had not objected to the invoices when received, and that the surety could have avoided paying interest at the impliedly agreed rate if it had paid the claims when presented, that the trial judge's decision ought to be upheld. In **Bluenose** the implied obligation to pay interest was capable of exact formulation. In this case the rate of interest claimed on the invoices is not at all clear.

It will be a question of fact in any particular case whether or not, considering the dealings between the parties, a court will imply an agreement to pay interest at a particular rate based on the presence of such a statement in invoices rendered.

> I tend to the view that without more than the statement on an invoice a court should not imply such a term, in circumstances where there is only one contract between the parties as opposed to a lengthy course of dealings as in **Irving Oil v. Whynot.**

[emphases added]

[5] Here, despite a "heads up" and invitation to submit evidence or appear, the plaintiff's agent did not do so.

[6] All I have in this case is an invoice – without even a notation of a claimed rate of interest – with a line item of "May interest 24.66." This is the only statement before me; no subsequent ones were tendered.

[7] In the second case before me tonight, there is a notation that "2% interest will be charged monthly on all accounts over 30 days," but there is no indication that the defendant had either paid this in the past, or agreed to do so.

[8] I therefore deny the claims of interest and award the 4% interest provided for in Section 16 of the *Small Claims Court Forms and Procedures Regulations*, NS Reg 17/93, as amended. I do so simply, based on Civil Procedure Rule 4.03(2).

[9] I draw a slightly different conclusion with respect to NSF charges. A person writing a "rubber" cheque knows or should know that they will incur a charge both from their own institution (in accordance with their own banking plan) and from the payee. I say this in reference to the second application before me, and out of

clarity going forward. I believe the amount claimed in that second case, $35 for each of two such NSF items, is reasonable.

**Conclusion**

[10] I issue judgment in the amount of $1133.14, prejudgment interest of $22.66 representing simple interest at 4% for six months, costs of filing of $99.70, and costs of service of $97.75 for a total of $1353.55.

Balmanoukian, Adj.