

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Dommer v. Barr*, 2017 NSSM 103

Date: 2017-11-02

Docket: 461305

Registry: Halifax

Between:

Denis Dommer

Claimant

v.

Greg Barr

Defendant

Adjudicator: J. Walter Thompson, Q.C.

Heard: September 11, 2017, in Halifax, Nova Scotia

DECISION

[1] After a hearing on April 27th, 2017, an adjudicator of the Small Claims Court granted the claimant, Denis Dommer, an order that the defendant, Greg Barr, pay him the sum of \$2,302.68. Mr. Dommer, through counsel, now comes before me *ex parte* to request that I grant an execution order in a form which will permit a bailiff, rather than a sheriff, to act under an execution order in the collection of the amount due him.

[2] Counsel supplied an affidavit on behalf of Mr. Dommer saying that the Sheriff's Department had been wholly unsuccessful in recovering any funds. Counsel submitted that the *Civil Procedure Rules* permits a private bailiff to act if so authorized, presented a Supreme Court execution order in another proceeding as a precedent and submitted further that an adjudicator may do the same since under section 31(1) of the *Small Claims Court Act*:

31 (1) An order of the Court may be enforced in the same manner as an order of the Supreme Court ...

[3] The Rules say:

Rule 79 - Enforcement by Execution Order

Definitions

79.01 In this Rule,...

“sheriff” includes a person who is not a sheriff but is designated in an execution order granted by a judge to carry out the order.

[4] The Rule seems clear enough. Execution orders have, in my experience, always been issued by the clerks of the Small Claims Court pursuant to the Court’s orders. It has not been necessary for successful parties to have their orders issued through the Prothonotary of the Supreme Court. If the Small Claims Court can issue execution orders, then I can see no reason why it should not be able to also issue variations of an execution order as authorized by law, ie. in this case Rule 79.

[5] I also note Rule 79.05(1):

A judgment creditor may obtain an execution order by delivering to the office of the prothonotary a draft execution order that conforms with this Rule, or a variation permitted by a judge, no more than five years after the date of the judgment. (my emphasis)

[6] Section 19 of the Small Claims Court regulations does provide the following:

An Execution Order shall be in Form 11.

[7] I do not understand, however, that this provision dictates that no one but sheriffs shall enforce a Small Claims Court order. In my view, the provision is simply intended to enable a form for execution. The intention is not, in my view, to handcuff the Small Claims Court process limiting the range of remedies available

to the successful party. The regulation relates to form, not substance and, in my view, is not intended to limit the remedies available to judgment creditors under the *Small Claims Court Act*.

[8] There are other similar provisions in the regulations. Section 17, for example:

An order made by an adjudicator shall be in Form 7(a), (b) or (c).

[9] I suppose the provision dates from the early days of the Court and the provisions were intended to make the work of the adjudicators easier. In any event, having served for over 15 years, I daresay the reality has been that each of us has developed their own practice and their own form of decision. This Court's opinions have come more to conform to the example of the decisions of other courts. We have never felt ourselves obliged to implement any particular form and I know of no objection that has ever been taken to it.

[10] Section 29 of the *Small Claims Court Act* provides as follows:

29 (1) Subject to the provisions of this Act, not later than sixty days after the hearing of the claim of the claimant and any defence or counterclaim of the defendant, the adjudicator may

(a) make an order

(i) dismissing the claim, defence or counterclaim, or

(ii) requiring a party to pay money or deliver specific personal property in a total amount or value not exceeding fifteen thousand

dollars, and any pre-judgment interest as prescribed by the regulations, [or]

(iii) for any remedy authorized or directed by an Act of the Legislature in respect of matters or things that are to be determined pursuant to this Act...

[11] Two points arise. Emphasis has been added to identify them. First of all, the Act directs that adjudicators are to make orders within 60 days of the hearing. The Supreme Court, however, has concluded that this limitation is “directory” rather than “mandatory”. *Towle v. Samad*, 2013 NSSC 260. In my opinion, the same may be said of section 19 of the regulations providing for a form of execution. In other words, in exceptional cases, on application to the Court, the Court may avoid the plain wording of the regulation in issue.

[12] Secondly, 29(a)(iii) provides for a range of remedies. Remedies are not restricted to the form of execution order adopted in the regulations. This reinforces my view that it was not the intention to restrict the ability of a creditor to execute, that is to obtain a remedy. In this case, a varied execution order is a remedy that follows from the above cited provision of the *Small Claims Court Act* that we may grant “any remedy authorized or directed by an Act of the Legislature...” I take the *Civil Procedure Rules* to be authorized by an Act of the Legislature, ie. s. 46 of the *Judicature Act*.

[13] In any event, Form 11 is directed:

TO ANY SHERIFF OR INTERESTED PERSON:

[14] Thus, the execution order is not just directed to the Sheriff. Who an interested person may be is open to interpretation. Form 11 makes no reference to an “interested person”. Form 11 does refer consistently to a “third person” who typically might hold property that could be executed upon, so presumably an interested person is not a “third person”. Without trying to define “interested person” myself, I see no reason why the words should not include a judgment creditor or their agent, duly authorized upon application to this Court. Thus, in my opinion, Form 11 on its face authorizes the appointment of a bailiff.

[15] I am prepared to apply *Rule 79* and grant an execution order under my hand in a form varying Form 11 to authorize a bailiff to pursue execution of Mr. Dommer’s claim.

Dated at Halifax, Nova Scotia
This 2nd day of November 2017

**J. WALTER THOMPSON, Q.C.
ADJUDICATOR**

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