**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**
**Citation: *Location Accès Crédit Inc./ Acces Credit Leasing Inc. v. Kiley*, 2020 NSSM 26**

**Claim**: SCY No. 499756
**Registry**: Yarmouth

**Between:**

LOCATION ACCÈS CRÉDIT INC/ ACCES CREDIT LEASING INC
CLAIMANT

-and-

ROBERT ANDREW KILEY

DEFENDANT

Adjudicator: Andrew S. Nickerson, Q.C.

**Decision on Quick Judgement:** December 14, 2020

**Appearances:** The Claimant, Laurance Dugal
The Defendant, unrepresented

DECISION

**Facts**

[1] This is an application for Quick Judgement. I am providing written reasons to provide the claimant with an explanation of why I have dismissed this claim. I also note that I am releasing on the same date my decision in **Location Accès Crédit Inc./ Acces Credit Leasing Inc. v. Francis SCD 500419** which has similar issues.

[2] I have been unable to find a published precedent (although I acknowledge there may be one which I have not found) which provides a ruling on

the issues which I will raise in this decision, but I have considered the unpublished decision of Adjudicator Lederman cited below. Recognizing this fact, I am providing written reasons to afford the Claimant a full understanding of my reasoning.

[3] A review of the material filed reveals that the Defendant entered into an agreement with the Claimant on January 1, 2018. On June 6, 2018, he signed and acknowledgment of default and voluntary returned the vehicle. The vehicle was sold on August 1, 2018. The vehicle was severely damaged which resulted in a very low recovery upon sale of the vehicle. On August 6, 2018 the Claimant issued an invoice for $12,704.46, the amount claimed as the principal debt in this claim.

[4] The Claimant issued a demand letter to the Defendant on August 13, 2018 and the second demand letter on September 3, 2018. I have before me no evidence of any contact with the Claimant since June of 2018.

[5] This claim was Claim filed in the Small Claims Court on August 7, 2020.

**Analysis**

[6] The *Small Claims Court Act* says:

> 23 (1) Where a defendant has not filed a defence to a claim within the time required by the regulations and the adjudicator is satisfied that
>
> (a) each defendant was served with the claim and the form of defence and with notice of the time and place of adjudication; and
>
> (b) based on the adjudicator's assessment of the documentary evidence accompanying the claim, the merits of the claim would result in judgment for the claimant, the adjudicator may, without a hearing, make an order against the defendant.
>
> *[underlining is my emphasis]*

[7] The *Limitation of Actions Act* 2014, c. 35 provides:

8 (I) Unless otherwise provided in this Act, a claim may not be brought after the earlier of

(a) two years from the day on which the claim is discovered; and

(b) fifteen years from the day on which the act or omission on which the claim is based occurred .

(2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known

(a) that the injury, loss or damage had occurred;

(b) that the injury, loss or damage was caused by or contributed to by an act or omission ;

(c) that the act or omission was that of the defendant; and

(d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.

[8] My interpretation of the *Limitation of Actions Act* is that this claim was "discovered" within the meaning of that statute by at least the 6th day of August 2018. The claim was filed two years and one day after that date. It seems clear to me that the first three provisions of section 8 (2) are clear on the face of the documentation. The fourth criteria set out in subsection (d) of that section I interpreted to mean that the matter was not trivial. It seems to me that provision was enacted primarily to provide some relief in matters involving personal injury, where non trivial matters can arise long after the cause of action. In my view, the Claimant reasonably ought to have known that they had the legal right to pursue this debt and that the debt was substantial at all times. The only question was the precise amount. I do not think that section 8 means that a claimant can wait and see whether or not a defendant intends to pay, or that a defendant has shown the inability to pay or expressed some intent not to pay.

[9] Then I must consider the phrase “the merits of the claim would result in judgment for the claimant”. I do not believe that the “merits” exclude the

application of the *Limitation of Actions Act*. Were I to interpret it otherwise, any time a Claimant brought forward a claim that was outside of the limitation period and the Defendant did not defend and raise the limitation period, that the Claimant could acquire judgement. It seems to me that the "merits" must include a consideration of whether the claim was brought within the appropriate limitation period.

[10] If I am correct in my reasoning, I cannot conclude that the "merits of the claim" would necessarily result in a judgement for the Claimant.

[11] I find support for this approach in an unreported decision of Adjudicator Lederman in **Location Accès Crédit Inc./ Acces Credit Leasing Inc. v. Shay SCAM 487267** where that adjudicator said:

> In my view, the only live issue here is the application of the limitation period. When did it start to run? I agree with the Claimant that the date of surrender of the car is not the appropriate starting point. Before sale at auction, the final amount owing by the Defendant was not known. However, the car was sold and a cheque generated to the Claimant by the auction company with a date of April 12, 2017. That is the correct starting date for the limitation period. This claim was filed on April 17, 2019, and accordingly it is statute barred, ....

[12] The Claimant unquestionably knew on August 6, 2018, the date the claimant issued an invoice for $12,704.46, the amount owing and claimable. When the Claimant filed the claim on August 7, 2020 it was past the limitation period, albeit by one day, but the limitation is the limitation and I cannot extend it.

[13] There is one other matter, that I wish to comment on. That is the matter of the 24% interest rate claimed by the claimant.

[14] Had I granted a judgment, I would have ruled as I did in **Location**

**Acces Credit Inc./ Acces Credit Leasing Inc. v. Francis SCD 500419,** a decision I am filing at the same date as this decision, and would have reduced the interest payable.

[15] In the result, I deny the quick judgement application and dismiss the claim.

Dated at Yarmouth this 14th day of December, 2020.

Andrew S. Nickerson Q.C., Adjudicator