

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
cite: *Location Access Credit v. Adam*, 2021 NSSM 14

SCCH 491715

Between:

Location Access Credit Inc/Access Credit Leasing Inc

Claimant

— and —

Heather Lynn Adams

Defendant

Adjudicator: Augustus M. Richardson, QC

For the Claimant: Carine Martell, counsel

For the Defendant: No one appearing

Heard: June 8th, 2021 (by teleconference)

Decision: June 9th, 2021

DECISION and ORDER

[1] This matter came on before me by way of a motion for substituted service. Having considered the claim and the file, and after hearing from counsel for the claimant, I have concluded for the following reasons that the claim is statute barred. Had I not come to this decision I would have granted the order for substituted service.

[2] The defendant Heather Lynn Adams, and Erich Kevin Charles Martin, signed a lease to purchase a Mazda GT on January 24, 2017. The agreement was assigned to the claimant. The defendant and Mr Martin were required under the terms of the agreement to make weekly payments of \$103.68 beginning on February 3, 2017.

[3] The last payment made was on June 23, 2017. The claimant issued instructions on August 30, 2017 to a bailiff to repossess the car. It was repossessed. It was sold at auction on October 14, 2017 for \$1,100.00 plus HST. The claimant calculated its loss (the difference between the payments due under the agreement and the sale proceeds) at \$11,906.80.

[4] On September 6, 2019 the claimant filed the within claim in the Halifax Small Claims Court. It seeks payment of \$12,544.78 plus interest. The claim includes the claimant's loss on the repossession and

sale of the Mazda together with the various costs associated with tracking the defendant down and commencing this action.

[5] I am satisfied on the evidence before me that the claimant's claim was discovered within the meaning of s.8 of the *Limitation of Actions Act* of Nova Scotia sometime between June 23, 2017 (when the defendant made her last payment) and August 30, 2017 (when the claimant mandated bailiffs to repossess the car). The two-limitation period for claims accordingly started at the latest on August 30, 2017 and expired at the latest on August 30, 2019.

[6] This claim was filed on September 9, 2019, after the expiry of the two-limitation period at the latest on August 30, 2019. This claim is accordingly statute barred for the same reasons set out in *Location Access Credit Inc v. Eisonor* 2021 NSSM 4.

[7] I note in passing that this file has come before this court a number of times on motions regarding service and amendments. It is unfortunate that this issue was not raised before now since the Notice of Claim itself contained the allegations necessary to give rise to it. It may be, as suggested by counsel for the claimant, that there have been a number of conflicting decisions emanating from the Small Claims Court on the issue. Be that as it may, I believe I am constrained by the reasoning in the *Eisonor* case.

[8] On these facts and for these reasons I make the following order:

IT IS ORDERED that the claim be and the same is hereby dismissed.

DATED at Halifax, NS
this 9th day of June, 2021

Augustus Richardson, QC
Adjudicator