SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Khoderian v. Fleur De Lis Motel Limited*, 2021 NSSM 66

Date: 20211129
Docket: Sydney, No. 478939
Registry: Halifax

Between:

Ali Khan and Pauline Khoderian

Claimants

Fleur De Lis Motel Limited and Michael L. MacDonald

Defendants

Adjudicator:	**Patricia Fricker-Bates**
Heard:	**March 10th, August 18th and September 29th, 2021**
Decision:	**November 29th, 2021**
Appearances:	**The Claimants Ali Khan and Pauline Khoderian were represented by Tyler MacLennan of Sampson McPhee;**
	James MacPherson assisted the Defendant Fleur De Lis Motel Limited and Michael L. MacDonald.

BY THE COURT:

1. On August 31, 2020, the Honourable Justice John A. Keith heard the appeal of the Defendants Fleur De Lis Motel Ltd. and Michael L. MacDonald from the Order of Adjudicator Demetri Kachafanas dated October 22, 2019. Adjudicator Kachafanas' Order stated:

> With respect to the breach of the settlement agreement, the Defendants Fleur De Lis Motel Limited and Michael L. MacDonald shall pay to the Claimants the following:
>
> | | | |
> |---|---|---|
> | Breach of Settlement Agreement | $10,000.00 | |
> | General Damages | $100.00 | |
> | Prejudgment Interest | $358.36 | |
> | Costs | $346.35 | |
> | **Total Award re: Breach of Settlement Agreement** | | **$10, 804.71** |
>
> With respect to the reimbursement of the Nova Scotia utility bills, the Defendant Fleur De Lis Motel Limited shall pay to the Claimant the following:
>
> | | |
> |---|---|
> | Reimbursement of Utility Bills | $8,022.66 |
> | Prejudgment Interest | $286.78 |
> | **Total Award Re: Utility Bills** | **$8,309.44** |

Having heard the parties to the Appeal via telephone hearing on August 31, 2020, Justice Keith rendered an oral decision on September 1, 2020.

2. On December 4, 2020, Justice Keith rendered an Order which states:

> **UPON** this Small Claims Court appeal hearing being held on August 31, 2020, via video teleconference and an oral decision being rendered on September 1, 2020;
>
> **AND UPON** the Appellants principally advancing two grounds of appeal of the decision of Adjudicator Demetri Kachafanas dated October 22, 2019, being whether a settlement agreement had been reached between the parties and whether the adjudicator erred in law by finding that the Appellants had been unjustly enriched by the

Respondents paying certain utility bills related to the Appellants property;

NOW UPON MOTION:

IT IS HEREBY ORDERED that ground one of the appeals dealing with the issue of whether the parties entered into a binding settlement agreement and whether said agreement was breached by the appellants is dismissed in its entirety.

IT IS FURTHER ORDERED that a new trial is to be held by a different adjudicator on the second ground of appeal raised by the appellant in relation to the finding of unjust enrichment by Adjudicator Demetri Kachafanas. Specifically, the Court directs that the following questions be answered by a new adjudicator:

1. Did the Appellant(s) and the Respondent(s) enter into a binding contract for the reimbursement of the Nova Scotia Power electrical bills by the Appellant(s)?

2. If the answer is yes:
   a. What were the terms of the contract?

      i. Were the terms of the contract breached?

      ii. If the terms of the contract were breached, what damages are the Respondent(s) entitled to?

3. If there is no contract requiring the Appellant(s) to reimburse the Respondent(s) for the cost of the Nova Scotia Power bills or if the terms of the contract have not been breached, can the Respondents establish a claim for unjust enrichment on the issue of the payment of the Nova Scotia Power electrical bills?

This Adjudicator, therefore, is directed to answer the questions posed by Justice Keith as set out in his Order of December 4, 2020, and reproduced above.

3. On March 10, 2021, the matter came before this Adjudicator for a preliminary hearing via teleconference. James MacEachern, a retired member of the Barristers' Society of British Columbia, appeared with the Defendant Michael L. MacDonald to assist Mr. MacDonald, at no expense, in presenting his case. Tyler MacLennan

of Sampson McPhee appeared on behalf of the Claimants Ali Khan and Pauline Khoderian. Neither Ali Khan nor Pauline Khoderian was present.

4. After hearing submissions by James MacEachern and Tyler MacLennan, this Adjudicator summarized the outstanding issue as follows:

> Is there a contract, independent of or inclusive of the settlement agreement, concerning the power bills? If not, have the elements of unjust enrichment been established?

Both Mr. MacEachern and Mr. MacLennan agreed that this was the main issue. A trial date was scheduled for August 18, 2021 at 5:00 p.m.

5. In advance of the hearing scheduled for August 18, 2021, the parties agreed that the Claimants' Book of Exhibits filed in the original Small Claims Court proceeding on June 26, 2019, would again be filed as an exhibit in the current proceeding and be utilized by both the Claimants and the Defendants. The Defendants did not file additional exhibits.

6. On August 18, 2021, the court held a hearing via teleconference and heard from Claimant Ali Khan. The Claimant Pauline Khoderian was not present. The court also heard from Defendant Michael L. MacDonald. On September 29, 2021, the parties again appeared before the court via teleconference to make final submissions.

Questions to be Answered as Directed by Appellate Court

7. In reviewing the evidence, I am mindful of the Order of Justice Keith dated December 4, 2020, wherein he directs a new adjudicator to address the questions he has set out in the body of his Order.

Question No. 1: Did the Appellant(s) and the Respondent(s) enter into a binding contract for the reimbursement of the Nova Scotia Power electrical bills by the Appellant(s)?

Analysis

8. In answering this question, I am mindful of Justice Keith's finding, as set out in his Order of December 4, 2020, that "the issue of whether the parties entered into a binding settlement agreement and whether said agreement was breached by the appellants is dismissed in its entirety." The findings of Adjudicator Kachafanas relative to that settlement agreement concerning the chattels/leasehold improvements, therefore, have been affirmed.

9. Based on the original pleadings before Adjudicator Kachafanas on June 26, 2019, the following facts are not in dispute:

1. The Defendant, Fleur De Lis Motel, is a Nova Scotia Limited company with a registered office at 3 Wedgewood Court, Dartmouth, Nova Scotia, and is the previous owner of the Fortress Inn Motel in Louisbourg, Nova Scotia.

2. On March 3, 2016, the Claimant Ali Khan entered into a Lease Agreement for a term of one (1) year with the Defendant Fleur De Lis Motel Limited for use and occupation of the motel/restaurant business owned by the Defendant Fleur De Lis Motel Limited located at 7464 Main Street, Louisbourg, Nova Scotia, known as the Fortress Inn Motel.

3. The term of the lease began on April 1, 2016, and was set to expire on March 31, 2017.

These facts also were affirmed by the evidence before me at hearing on August 18, 2021.

10. The parties had reached a settlement agreement covering chattels and capital improvements carried out by the Claimants at the Fortress Inn Motel during the period of the lease prior to January 20, 2017, when a broken water pipe caused serious damage at the motel. The existence of that settlement agreement is not in issue before this court.

11. A series of emails comprised the content of the settlement agreement concerning chattels/leasehold improvements. For the purposes of this decision, only those sections of the emails relating to the utility bills will be reproduced (Exhibit No. 1, Tabs 11, 4 and 5, respectively):

From: **Michael MacDonald**
Sent: **May-23-17 11:23 AM**
To: **Tyler MacLennan**
Subject: **A couple of things – Fortress Inn chattels and insurance**

Hello Tyler.

You mentioned three items that are leased that had to be retrieved – could you list them again please, so I can get this done – I didn't write it down.

Also, can get get [sic] the power bill from Ali and Pauline for the past few months, so I can go after the insurance company for compensation. Let them know that I completely agree that the insurance company should pay this bill, and I will push them to do so.
…

From: Tyler MacLennan …
Sent: Wednesday, June 28, 2017 7:48 PM
To: Blair MacKinnon
Cc: Ali Khan
Subject: Khan/Fleur de Lis – Chattels/Leaseholds

Blair,
Further to our phone conversation form a week or so ago, I write to confirm that my clients are willing to accept your clients offer of $20,000.00 for a full and final settlement of the chattels/leasehold improvements, subject to the following terms and conditions:

1) This settlement does not cover any insurance proceeds paid out on account of the utility bills. These funds are to be paid to my clients as they paid the expenses directly to the suppliers. Can you speak with your client and provide us with an update on status of these payments. Further, I ask that you keep us informed as to developments on these insurance payouts as the information becomes available.
…

From: Blair MacKinnon …
Sent: June-29-2017 7:46 AM
To: Tyler MacLennan
Cc: Michael MacDonald
Subject: Khan/Fleur De Lis – Chattels/Leaseholds

Hi, Tyler. I am sending your email to Michael for review. regards [sic], Blair
…

From: Blair MacKinnon
Sent: July-08-17 9:45 AM
To: Tyler MacLennan
Cc: Mark Charles
Subject: Louisbourg motel

Hi, Tyler: I believe all issues are settled. ...
Hi, Tyler: I believe we are good to go. I need to clarify item one with our client. We need to do two payments as the buyer is purchasing in installments. Cheers, Blair
…
From: Tyler MacLennan…
Sent: Wednesday, August 16, 2017 3:12 PM
To: Mark Charles
Cc: Ali Khan
Subject: RE: Louisbourg motel

Mark:

Following up on our telephone conversation from last week, do you have any updates on status of this matter? As you can appreciate, my clients are growing quite concerned with this matter as they have been waiting a considerable amount of time for an update.

In addition to not receiving any portion of the chattel agreement or even information of when it is coming, we have received no update on the status of any insurance payments in relation to utility expenses or an undertaking from your office in relation to the chattel payments.
…
From: Mark Charles <mark@heritagelaw.ca>
Date: Friday, August 18, 2017 at 2:11 PM
To: Tyler MacLennan …
Subject: MACDONALD – Fleur De Lis Motel – Settlement Conditions with Mr. Ali Khan

Tyler,
…
We can now advise that the tentative Closing Date for the sale of the Fleur De Lis Motel will be August 30, 2017.

Our client has offered to increase the initial installment of the settlement payment to $10,000 as of August 30, 2017. We can provide a Solicitor's Undertaking to provide these funds to you from the proceeds of the sale.

The following payment of $10,000 will be on October 30, 2017.

Our client is in agreement with providing an [sic] insurance funds received to yours. We do not have any update to provide on this matter. Our client is waiting for a response from the Insurance Company.

…

From: **Mark Charles …**
Sent: **August-31-17 8:22 AM**
To: **Tyler MacLellan**
Subject: **RE: MACDONALD – Fleur De Lis Motel – Settlement Conditions with Mr. Ali Khan**

Tyler,

Thanks for the follow-up.

…

Our client is in agreement with the return of the ice machine and popcorn maker in working order. They will waive the return of the steam table.

…

Our client is continuing to follow-up with the Insurance Company concerning the power bills, but has had no success thus far.

…

Letter from Mark Charles [legal counsel for the Defendants] **to Tyler MacLennan** [legal counsel for the Claimants] **dated September 17, 2017**

Dear Mr. MacLennan:

RE: Fortress Inn Louisbourg

Please find enclosed our firm's trust cheque in the amount of Ten Thousand Dollars ($10,000) payable to your firm in trust. The enclosed amount represents partial payment of the settlement with respect to the above.

…

Yours very truly,
HERITAGE HOUSE LAW OFFICE

Mark J. Charles

…

Based on the above review of the exchanges between the parties and/or their legal representatives, the utility bills were not an express part of the settlement agreement respecting chattels/leasehold improvements.

12. Nor do I find that the payment of the utility bills was an implied term of that settlement agreement. On May 23, 2017, Defendant MacDonald wrote to Tyler MacLennan, legal counsel for the Claimants, the following: "Let them [Ali and Pauline] know that I completely agree that the insurance company should pay this bill, and I will push them to do so." Based on this exchange and subsequent exchanges as outlined above bearing on the issue of the outstanding utility bills, all parties were proceeding on the basis that the insurance company was responsible for payment of the utility bills. Further, all parties recognized that the Claimants were paying those utility bills in anticipation of an insurance claim covering same. All parties also were aware as early as May 23, 2017, that the utility bills were an outstanding issue. There was ample time between that date and August 18, 2017, when the parties reached the settlement agreement concerning chattels and leasehold improvements, to have expressly dealt with the utility bills as part of that settlement agreement.

Answer to Question No. 1

13. The answer to Question No. 1 is as follows: The Claimants and the Defendants did not enter into a binding contract for the reimbursement of the Nova Scotia Power electrical bills by the Defendants.

Question No. 2

14. Based on this finding, it is not necessary to answer Question No. 2, as I have found that the parties had not entered into a binding contract for the reimbursement of the Nova Scotia electrical bills by the Defendants.

Question No. 3

15. If there is no contract requiring the Appellant(s) [the Defendants herein] to reimburse the Respondent(s) [the Claimants herein] for the cost of the Nova Scotia Power bills or if the terms of the contract have not been breached, can the Respondents [the Claimants herein] establish a claim for unjust enrichment on the issue of the payment of the Nova Scotia Power electrical bills?

16. **"**Broadly speaking, the doctrine of unjust enrichment applies when a defendant receives a benefit from a plaintiff in circumstances where it would be "against all conscience" for him or her to retain that benefit. Where this is found to

be the case, the defendant will be obliged to restore that benefit to the plaintiff": *Moore* v. *Sweet*, 2018 SCC 52 at para. 35 (CanLII)

17. According to the Supreme Court of Canada in *Moore*, *supra*, to establish unjust enrichment, the plaintiff must prove three elements:

> (a) that the defendant was enriched;
>
> (b) that the plaintiff suffered a corresponding deprivation; and
>
> (c) that the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason.

18. Relying on *Moore*, supra, Justice McDougall in *Full Throttle Power Sports Limited v. MacIntosh*, 2021 NSSC 206 reviewed the analysis for determining the absence of a juristic reason (at para. 27):

> [27] In *Moore v. Sweet*, 2018 SCC 52, Côté J., writing for the majority, reviewed the two-stage juristic reason analysis first articulated in *Garland v. Consumers' Gas Co.*, 2004 SCC 25:
>
> > [55] This understanding of juristic reason is crucial for the purposes of the present appeal. The third element of the cause of action in unjust enrichment is essentially concerned with the justification for the defendant's retention of the benefit conferred on him or her at the plaintiff's expense - or, to put it differently, with whether there is a juristic reason for the transaction that resulted in both the defendant's enrichment and the plaintiff's corresponding deprivation. If there is, then the defendant will be justified in keeping or retaining the benefit received at the plaintiff's expense, and the plaintiff's claim will fail accordingly. <u>At its core, the doctrine of unjust enrichment is fundamentally concerned with reversing transfers of benefits that occur without any legal or equitable basis. As McLachlin J. stated in *Peter* (at p. 990), "It is at this stage that the court must consider whether the enrichment and detriment, morally neutral in themselves, are 'unjust'."</u>
> >
> > [56] In *Garland*, this Court shed light on exactly what must be shown under the juristic reason element of the unjust enrichment analysis - and in particular, on whether this third element requires that cases be decided by "finding a 'juristic reason' for a defendant's enrichment" or instead by "asking

whether the plaintiff has a positive reason for demanding restitution" (para. 41, citing *Garland v. Consumers' Gas Co.* (2001), 2001 CanLII 8619 (ON CA), 57 O.R. (3d) 127 (C.A.), at para. 105). In an effort to eliminate the uncertainty between these competing approaches, Iacobucci J. formulated a juristic reason analysis that proceeds in two stages.

[57] The first stage requires the plaintiff to demonstrate that the defendant's retention of the benefit at the plaintiff's expense cannot be justified on the basis of any of the "established" categories of juristic reasons: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations (*Garland*, at para. 44; *Kerr*, at para. 41). If any of these categories applies, the analysis ends; the plaintiff's claim must fail because the defendant will be justified in retaining the disputed benefit. For example, a plaintiff will be denied recovery in circumstances where he or she conferred a benefit on a defendant by way of gift, since there is nothing unjust about a defendant retaining a gift of money that was made to him or her by (and that resulted in the corresponding deprivation of) the plaintiff. In this way, these established categories limit the subjectivity and discretion inherent in the unjust enrichment analysis and help to delineate the boundaries of this cause of action (*Garland*, at para. 43).

[58] If the plaintiff successfully demonstrates that none of the established categories of juristic reasons applies, then he or she has established a *prima facie* case and the analysis proceeds to the second stage. At this stage, the defendant has an opportunity to rebut the plaintiff's *prima facie* case by showing that there is some residual reason to deny recovery (*Garland*, at para. 45). The *de facto* burden of proof falls on the defendant to show why the enrichment should be retained. In determining whether this may be the case, the court should have regard to two considerations: the parties' reasonable expectations and public policy (*Garland*, at para. 46; *Kerr*, at para. 43).

[59] This two-stage approach to juristic reason was designed to strike a balance between the need for predictability and stability on the one hand, and the importance of applying the doctrine of unjust enrichment flexibly, and in a manner that reflects our evolving perception of justice, on the other.

[Em

phasis added]

In summary, unjust enrichment occurs where the defendant is enriched and the plaintiff suffers a corresponding deprivation in the absence of juristic reason: see also *B2B Bank* v. *Shane*, 2020 NSCA 15 at para. 32 (CanLII).

19. As noted in paragraph 10 herein, on January 20, 2017, a water pipe broke in the Fortress Inn. Based on the evidence before me, shortly thereafter that portion of the Fortress Inn damaged by the flood came under the control of the insurance company and contractors: Claimant Khan could no longer operate the business given the structural damage arising from the flood. Defendant MacDonald, for instance, testified that he collected no lease payments from the Claimants between January 20, 2017, and the termination of the lease on March 31, 2017, as he was being paid an equivalent amount through business interruption insurance. However, to effect repairs and renovations after January 20, 2017, when the water pipe burst, someone had to let the contractors on site as Defendant MacDonald, himself, was not on site. Claimant Khan testified that Defendant MacDonald gave his, Khan's, name as the contact person for the contractors. Accordingly, Claimant Khan let the contractors on site. According to Claimant Khan, "somebody" asked him to turn up the heat so that the drywall would dry. Further, somebody had hooked up drying equipment, i.e., a fan, and the power bill increased accordingly.

20. The utility bills relative to the Fortress Inn Motel were made out to Claimant Pauline Khoderian, and the service address identified as 7464 Main St., Louisbourg, NS—the same address as the Fortress Inn. Claimant Khan testified that Claimant Khoderian was working for him and doing the books for the Fortress Inn Motel. He agreed that after the January 2017 incident of the burst pipe and resulting flood, he continued to pay the utility bills because he expected to sign a new lease. He also had the right of first refusal on the Fortress Inn as per s. 20.01 of the lease, a right recognized by Defendant MacDonald in his note to Claimant Khan dated April 20, 2017, wherein he states:

> Dear Mr. Khan, Ali
>
> Under Clause 20.01 of the lease, you have 30 days to match any offer to purchase the assets of the motel.
>
> I am in receipt of such an offer, and it is attached for your perusal. Although the lease expired on March 31, 2017, I will honour the spirit of the lease as if it was to be renewed,
>
> The closing date for the sale of the facility May 22, 2017.

Sincerely,

(for the Fleur de Lis Motel Ltd.)

Michael L. MacDonald

Michael L. MacDonald, President

21. Defendant MacDonald, who prefaced his evidence by stating that he was authorized to give evidence for the Defendants, agreed that, "to a certain extent", Claimant Khan's role was to coordinate renovation activities with the contractors. Defendant MacDonald testified that he did not pay Claimant Khan for taking on that role. He acknowledged that Claimant Khan was present during most of the period when the insurance adjusters and contractors were on site following the flood caused by the broken pipe.

22. On May 20, 2017, the Claimants were locked out of the Fortress Inn Motel and the locks changed (See Exhibit No. 1, Tab 8). Defendant MacDonald wanted to sell the hotel, the Claimants were not going to make an offer, and the lease had expired on March 31, 2017 (See Exhibit No. 1, Tab 8).

23. In the case-at-bar, the Defendants received a benefit—payment of the electrical bills at the Fortress Inn Motel—and were enriched: if the Claimants hadn't paid the electrical bills, power would have been cut off and the renovations following the flood would not have been able to go ahead; and the Defendants would not have had a facility in fit condition to sell. The Claimants suffered a corresponding deprivation—they paid the electrical bills and are out of pocket for that amount even though for the period January 20, 2017 to May 20, 2017, they did not occupy the premises.

24. Defendant MacDonald testified that he brought the utility bills in question to the attention of his insurer. He confirmed the contents of his email to Tyler MacLennan, legal counsel for the Claimants, dated May 23, 2017:

> Also, can get get [sic] the power bill from Ali and Pauline for the past few months, so I can go after the insurance company for compensation. Let them know that I completely agree that the insurance company should pay this bill, and I will push them to do so.

Defendant MacDonald testified that he did not submit a formal claim for the utility bills to the insurance company, that he forwarded the bills via email, that the claim was never expressly denied but that the insurance adjuster wanted more information from the previous year. Defendant MacDonald stated: "I wasn't in the mood to

fight." Based on the evidence before me, Defendant MacDonald did not make a completed claim to the insurance company for coverage of the utility bills.

25. Was there a juristic reason—such as a contract—justifying the Claimants' deprivation and the Defendants' enrichment? Based on the evidence before me, no such juristic reason has been established. Defendant MacDonald testified that, from his perspective, after the January 20, 2017 flood at the Fortress Inn, because of the lease, Claimant Khan was responsible for the utility bills; and that the lease did not expire until March 31, 2017. Although the lease between Claimant Khan and the Defendant Fleur De Lis Motel Limited states (somewhat ambiguously) at s. 3.01 that "[t]he tenant shall pay for all utilities supplied to the Demised Premises [Motel/Restaurant of 7464 Main Street, Louisbourg, NS], excepting which will be paid by the Landlord", Claimant Khan could neither use nor occupy the premises as stipulated in s. 2.01 of the lease, after January 20, 2017, when the pipe burst and the contractors and insurance company took over. Further, in his email to legal counsel for the Claimants on May 23, 2017, Defendant MacDonald wrote:

> Also, can get get [sic] the power bill from Ali and Pauline for the past few months, so I can go after the insurance company for compensation. Let them know that I completely agree that the insurance company should pay this bill, and I will push them to do so.

It was, therefore, incumbent upon Defendant MacDonald to make a claim for reimbursement of the utility bills to his insurance company—that claim could not be made by the Claimants. The evidence establishes that the Defendants either did not make or did not follow through with the claim for reimbursement. Nor have the Defendants established that a residual reason exists for denying recovery of the sums paid in utility bills—the Defendants have not shown why the enrichment should be retained.

26. Defendant MacDonald argued that the heavy industrial equipment brought on site after the January 20, 2017 flood could have run off of diesel fuel and that generators could have been brought in to facilitate repairs to the drywall and other damaged areas of the motel. The reality is that Defendant MacDonald was not on site and his argument is based on hindsight rather than on the needs that existed at the time in the midst of winter.

Answer to Question No. 3

27. Applying the law of unjust enrichment to the facts before me, I find that the Defendant Fleur De Lis Motel Limited was unjustly enriched by the amount of the power bills paid by the Claimants. The lease was between the Defendant Fleur De Lis Motel Limited and the Claimant Ali Khan. Accordingly, it was the Defendant Fleur de Lis Motel Limited that was unjustly enriched as opposed to Defendant MacDonald in his personal capacity.

28. There was some dispute as to the actual amount owing under the utility bills submitted to the court (see Exhibit 1, Tab 3). Mr. MacEachern, speaking to the issue, also raised the issue of proof of payment of the bills by the Claimants. In response, Tyler MacLennan for the Claimants maintained that the utility bills had been authenticated during the original hearing with no objection. He was unaware that the authenticity of the utility bills was an issue. He maintained that the contents of the utility bills were not disputed on appeal. In the end result, someone paid the utility bills because the bills kept coming, that someone was not Defendant MacDonald who testified that Claimant Khan's role "to a certain extent" was to coordinate renovation activities with the contractors as he, Defendant MacDonald, was not on site. Claimant Khan testified that he directed Claimant Khoderian to pay the utility bills through the company account and she did so. I am not persuaded by the evidence that the question of whether the bills were paid or by whom is a live issue.

29. During the hearing, the utility bills were scrutinized by the parties. It became clear that not all the bills had the same account number for, it came out in evidence, the Fortress Inn Motel has several meters. Nothing turns on that fact for the bills all were labeled "Commercial" and directed to Claimant Pauline Khoderian at the Fortress Inn civic address, the same civic address found in the lease at paragraph 2.01.

30. In the end result, legal counsel for the Claimants acknowledged that there was an error in the quantification in both the original Notice of Claim and, consequently, in the decision of Adjudicator Kachafanas. The confusion arises out of the utility bill for May 2 to May 10, 2017 in that it included the amount of $1,302.68 from the utility bill for the period April 4, 2017 to May 2, 2017 (see Exhibit No. 1, Tab 3). Further, the utility bill owing for the period April 6 to May 30, 2018 of $207.42 will not be included in my calculations as, based on the evidence before me, the Claimants and the Defendants had parted company in May 2017. With those adjustments in mind, the following amounts owing are allowed:

For the period February 2 to March 2, 2017 - $144.94

For the period April 4 to May 2, 2017 - $1,302.68
For the period May 2 to May 10, 2017 –
$3,624.23 + $543.64 HST = $4,167.87
For the period October 5 to May 10, 2017 - $868.48

The amount under the utility bills owing by the Defendant Fleur De Lis Motel Limited to the Claimants is $6,483.97. In addition, I order pre-judgement interest at the rate of 4% per annum, as provided by the *Small Claims Court* Forms and Procedures Regulations, for an additional $629.77 calculated from June 27, 2019 to November 29, 2021. The total amount to be paid by the Defendant Fleur De Lis Motel Limited to the Claimants is $7,113.74.

31. There will be no costs awarded in this action.

Patricia Fricker-Bates
Adjudicator
Small Claims Court of Nova Scotia