

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Nakhleh v. Garden*, 2023 NSSM 104

Date: 20231129

Docket: 526333

Registry: Halifax

Between:

Majd Mahmoud Rahman Nakhleh

Claimant

v.

Kyle Garden

Defendant

Adjudicator: Eric K. Slone

Heard: November 15, 2023, via telephone conference in Halifax

Decision: November 29, 2023

Counsel: Claimant – self-represented
Defendant – self-represented

By the Court:

[1] This matter was commenced in the Halifax Small Claims Court on August 28, 2023. It was heard via conference telephone on November 15, 2023, after having had a pretrial several weeks earlier, attended only by the Claimant.

[2] The case concerns a disputed invoice for \$10,036.05 for work done on a renovation project.

[3] In the unusual circumstances, I am dismissing the claim on a without prejudice basis, for several reasons:

- (a) It was commenced in the wrong county.
- (b) It was commenced by the wrong party.
- (c) It was commenced against the wrong party.
- (d) A case of this complexity is ill-suited to a telephone hearing.

Wrong county

[4] The claim concerns construction work done on a property in Kentville, Nova Scotia, and claims against an individual who resides in Port Williams, Nova Scotia. Both Kentville and Port Williams are in Kings County.

[5] The Claimant lives in Halifax.

[6] The evidence of the Claimant is that he met the Defendant at his home in Port William where the alleged contract of hire took place.

[7] The Small Claims Court Act provides:

19 (1) A claim before the Court shall be commenced in the county in which

(a) the cause of action arose; or

(b) the defendant or one of several defendants resides or carries on business, by filing a claim in the form prescribed by the regulations, accompanied by the prescribed fee, with the prothonotary of the Supreme Court in the proper county.

[8] I see no connection to Halifax County. The Defendant resides in Kings County and the alleged cause of action arose there.

[9] Section 19 is not optional. It is mandatory. Can it be waived on consent?

Perhaps, but the Defendant did not provide any such waiver.

[10] There is no procedure for transferring a file from one county to another.

[11] The Halifax Small Claims Court has no jurisdiction to consider the claim.

Wrong Claimant and Wrong Defendant

[12] Majd Mahmoud Rahman Nakhleh named himself as the Claimant. The invoice that he relies upon was issued by Taniyn Builders Group Inc. to Dropline

Properties Inc. Taniyn Builders Group Inc. is a federally incorporated company which lists Mr. Nakleh as its director. There was no explanation offered as to why the Claimant brought the claim in his own name rather than in the name of the company through which he apparently operates.

[13] He also named as Defendant Mr. Garden, rather than Dropline Properties Inc., which is a Nova Scotia limited company that lists two individuals as owners and directors, of which Mr. Garden is one.

[14] The Small Claims Court is a court of law that strives to make justice accessible to self-represented litigants, but it does not have a licence to ignore basic legal principles such as the question of who bears legal liability in any given situation. Section 2 of the *Small Claims Court Act* states:

2 It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.

[15] I am mindful of s.6 of the Small Claims Court Forms and Procedures Regulations which provides:

6 A claim may be brought or defended in the name under which the business or partnership carries on its business or the name of one or more persons believed to own or carry on the business.

[16] There is very little jurisprudence considering this provision.

[17] I do not think the provision is intended to do away with distinctions between limited companies and the people who operate them. The most obvious utility of the provision is to ensure that where there is ambiguity or uncertainty, cases are not defeated by technical objections, where at the trial necessary amendments can be made to ensure that the correct party is named. It is especially applicable in cases where a business name is used by an individual.

[18] In some cases, the parties themselves are untroubled by naming errors, but in the case before me the Defendant specifically pleaded that he was not personally liable for any work done by the Claimant.

[19] The corporate veil is not so easily pierced. The Claimant knew enough to issue his invoice to the company. He offered no explanation why Mr. Garden ought to be personally liable.

Telephone Hearing

[20] Telephone hearings are an unfortunate fact of life in the post-Covid world, but not every case is suited to being heard by telephone.

[21] This matter was scheduled by another adjudicator and placed on my docket for hearing via telephone. Between then and the hearing the Defendant filed a thick stack of documents (approximately 150 pages) including extensive exchanges

of text messages and photographs. The Claimant's documents were a more manageable 50 pages or so.

[22] The trial took more than two hours. The Claimant called two witnesses apart from himself. The Defendant was his only witness.

[23] Upon completion of the hearing, I came away with the sense that there had not been a fair trial. Had I not discerned other reasons to dismiss the case, as set out above, I would have been inclined to declare a mistrial and direct that the matter be retried either in person or, at least, via Zoom or Teams, where the evidence could be better developed, and the credibility of witnesses properly scrutinized.

Order

[24] For the reasons stated above, the claim is dismissed without prejudice to a claim being brought in the correct county by a properly named Claimant against a properly named Defendant.

[25] I do not presume to dictate how that trial may proceed, but perhaps my experience with this matter may have some persuasive effect.

Eric K. Slone, Small Claims Court Adjudicator