**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Cambridge Financial Services v. Chen*, 2024 NSSM 23

**Date:** 20240328
**Docket:** 527649
**Registry:** Halifax

Between:

Cambridge Financial Services

*Claimant*

-and-

Qiao Jing Chen (Jane Chen)

*Defendant*

| | |
|---|---|
| **Adjudicator:** | Eric K. Slone |
| **Heard:** | February 9, February 22, and March 1, 2024, via zoom |
| **Counsel:** | Claimant, self-represented<br>Defendant, self-represented |

**By the Court**:

[1] These are two related claims being heard together.

[2] The Claimant, Cambridge Financial Services, is an accounting firm in Halifax.

[3] The Defendant, Qiao Jing Chen (Jane Chen) owns and operates a restaurant in Halifax, through her limited company, the other Defendant China Palace Restaurant Limited ("China Palace").

[4] These two claims concern unpaid accounts for tax accounting work, specifically the conduct by the Claimant of appeals from unfavourable tax assessments by Revenue Canada levied against Ms. Chen personally and against China Palace.

[5] The amount claimed against Ms. Chen personally in claim SCCH 527649 is $9,675.00. The amount claimed against China Palace is $6,712.50 in claim SCCH 527650.

[6] Ms. Chen has counterclaimed for $11,000.00, though it appears to me that she has misconceived the purpose of a counterclaim and should simply have pleaded a defence. She has not claimed that the Claimant has caused her any losses; she simply disputes what they have charged her.

[7] Both claims were filed on October 20, 2023.

[8] The matter was heard over three zoom sessions on February 9, February 22 and March 1, 2024. Ms. Chen's daughter Maisie Wong provided translation from English to Cantonese and vice versa on behalf of her mother, whose English is weak. I was satisfied that Ms. Chen fully understood what occurred in the hearing and that her evidence was articulated reasonably well.

[9] To cut to the chase, Ms. Chen disputes her obligation to pay these accounts, on the claimed basis that she did not agree to pay the amounts charged on a fixed fee basis. She says that she was misled into believing that she was agreeing to pay fees on a contingency basis. She also believes that the results achieved were underwhelming and that on any basis she was overcharged.

[10] On the evidence of Lu Feng, the accountant who did most of the work on the files, Ms. Chen fully understood the nature of the agreement that she was entering into, as she personally conversed with and explained it to Ms. Chen in Cantonese. On July 19, 2018, Ms. Chen signed a 2-page written agreement with

the Claimant on behalf of China Palace agreeing to pay the fixed sum of $9,750.00 (plus HST) for the Claimant's services in advocating for the company with CRA in relation to a corporate tax reassessment that had brought her to seek the Claimant's services. Ms. Chen provided a $2,500.00 deposit.

[11] Some months later on February 15, 2019, Ms. Chen signed a similar fixed-fee agreement with the Claimant agreeing to pay $14,500.00 (plus HST) for the Claimant's services in connection with a personal income tax reassessment.

[12] Somewhere in the same period of time there was also an HST reassessment to contest.

[13] The common theme with CRA was (alleged) unreported income. Much of the controversy with CRA concerned unexplained large deposits into Ms. Chen's bank accounts during the relevant period in 2013 and 2014. This had both personal and corporate implications, as CRA concluded that Ms. Chen was taking cash from her business, and also that the business was not reporting all of its income. Ms. Chen explained to Ms. Feng, who passed this information on to CRA, that she had been allowing visiting Chinese students to make large expenditures on her credit card, because they often did not have their own credit cards. She says that they paid her back in cash. The effort to try to get independent verification of these transactions was only partly successful.

[14] The efforts of the Claimant produced some benefit to Ms. Chen and China Palace, but obviously not as much as Ms. Chen had hoped for. According to the available evidence, the Claimant's efforts saved Ms. Chen and China Palace in excess of $43,000.00 in taxes and penalties. Ms. Chen did not dispute that fact.

[15] Ms. Chen contends that Ms. Feng guaranteed her a positive result. She also contends that the actual agreement was based on a contingency and not on a fixed fee. I do not believe either assertion. First of all, professionals almost never guarantee success. They may express a positive prognosis, but usually hedge their bets. This is most probably the case here. Secondly, I found Ms. Feng to be credible and I accept her evidence that she gave no such guarantee. I found Ms. Chen to be less credible on these issues.

[16] On the question of contingency, Ms. Feng admitted that this was discussed as a possibility but never agreed to.

[17] Ms. Chen's evidence on the contingency was vague and unconvincing. She could not say what the percentage would have been, though she mentioned that the range of 10 to 15% was discussed.

[18] Overall, I find that Ms. Chen agreed to the fixed fees quoted by the Claimant, and I reject the assertion that this was not properly explained to her.

[19] On the evidence presented, I can find no fault with the quality of the services offered. Ms. Chen attempted to second guess the Claimant's approach to the case by calling as a witness a family friend, Gordon Chu, who is a tax lawyer in Toronto. Although Mr. Chu is clearly knowledgeable, I got the impression that he was in an awkward position trying walk the fine balance of helping a family friend and respecting a fellow professional. Even if he would have approached the case differently, there is no proof that the Claimant's approach was unreasonable or unprofessional, or that it negatively influenced the result.

[20] In the result, I find that the accounts rendered pursuant to these two written contracts were proper.

[21] It should be noted that the amounts claimed are balances owing under these two contracts, as there were invoices sent and interim payments made along the way. I will examine the history more closely below, as it is relevant to whether or not the claims are timely.

**Limitations?**

[22] While I do not find any merit in the defences explicitly raised, I am obligated to consider whether the claims were brought within the applicable limitation period. This was not a defence that the Defendants raised at the hearing, but I am obliged - particularly in the case of self-represented parties - to consider any causes of action or defences that present themselves, on the evidence.

[23] After the hearing I allowed both parties to address the limitation question in email communication. As expected, the Defendants have embraced the defence while the Claimant has made arguments as to why it does not apply here.

[24] The work on the appeals was performed in 2018, 2019 and 2020. On the surface, there is a limitation question raised.

[25] The *Limitation of Actions Act* provides:

> **General rules**
>
> 8 (1) 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
>
> .....

> (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.
>
> **Burden of proof**
>
> 9 (1) A claimant has the burden of proving that a claim was brought within the limitation period established by clause 8(1)(a).

[26] The invoices on their face state that they are due upon receipt. It is generally understood that the limitation clock begins to tick upon a debt becoming due.Steve Cummings, the owner of the Claimant accounting firm, offered some reasons why the claims were not brought earlier.

[27] One of his arguments concerns discoverability. He says that he did not know that the Defendants were disputing the accounts until about 2022 after attempts to negotiate a compromise failed. Only then, he says, was it appropriate to take legal action.

[28] The other main reason that he raises is that he delayed taking any action because of the impact Covid had on the Defendants' business.

[29] I will quote some of his words directed in correspondence with the court:

> As for extenuating circumstances, where the final results of the case were not known until just prior to the outbreak of COVID 19. With businesses shut down and uncertainty as to whether any company, especially a restaurant would survive the pandemic it would have been unconscionable to demand payment in these dire times. When CRA stopped taking collection measures as a result of COVID we followed suit in the interests of doing whatever we could to support our clients. As a service provider, should we be precluded from being able to collect for services rendered because we showed compassion to someone who was at a very high risk of losing their business?

[30] There are many reasons why people delay in commencing a claim or action to collect a debt. Some of them are good, charitable even. Others are simply a

result of laziness or forgetfulness.

[31] As Mr. Cummings explained, his concern was that businesses such as the Defendants' restaurant were in jeopardy of going under because of the pandemic.

[32] The history of accounts and payments is convoluted. Part of the complexity derives from the fact that all of the accounts were issued to the company, including accounts for work on Ms. Chen's personal account. As such, based on the invoices and cancelled cheques that have been placed into evidence, I will consolidate what I find to be the state of account in the chart below:

| **Date** | **Billed/credited** | **notes** |
|---|---|---|
| August 1, 2018 | ($2,500.00) | Retainer/deposit |
| August 24, 2020 | $16,675.00 | Inv. 24904 "net worth audit" |
| August 31, 2020 | $862.50 | Inv. 24928 "corp tax return" |
| September 20, 2020 | ($2,000.00) | references inv. 24904 |
| November 1, 2020 | ($2,000.00) | not attributed |
| February 23, 2021 | ($5,000.00) | not attributed |
| May 19, 2021 | $5,685.32 | Inv. 26210 "corp. tax audit" |
| January 11, 2024 | $5,527.19 | Inv. 6710 - corp tax appeal (note - issued after claims commenced) |
| | $17,250.01 | Balance |

[33] I note that this $17,250.01 does not equal the total of the two claims, namely $6,712.50 in claim 527650 and $9,675.00 in claim 527649, which together total $16,387.50.The difference is $862.50 - the precise amount of the August 31, 2020 account for a corporate tax return. This is immaterial, under the circumstances.

[34] On the face of it, the account was at a standstill after May 19, 2021. No further work was being done on the files, though the full amount for the corporate tax appeal had not yet been billed. It was not until November 2023 that the Tax Court of Canada issued a final decision in the case before it, after which the Claimant issued Invoice 6710 claiming the balance owing under the contracts.

[35] The fact that the parties were negotiating toward a settlement in 2021 and 2022 does not change anything. In *Smith v. Parkland Developments Limited*, 2019 NSSC 74, the discoverability of a claim was defined in the following way at para.

64:

> 64. Discoverability means the knowledge of the facts that may give rise to the action. The knowledge required to start the limitation period running is more than a mere suspicion but less than exacting knowledge. The discovery of the claim does not require that Dr. Smith knew her claim against the Town was likely to succeed. The limitation period runs fromwhen Dr. Smith had or ought to have knowledge of a potential claim. The discovery of additional facts at a later date does not postpone the discovery of the claim.

[36] The claim here was discoverable when the Claimant knew that the account was unpaid, not when it knew that no compromise would be forthcoming.

[37] I find it inescapable that the balance owing as at May 19, 2021 is statute barred. The $5,527.19 invoice, however, is not statute barred.

[38] The Claimant's desire to forbear collection efforts, or otherwise compromise because of the pandemic and its effect on businesses was commendable, but fraught with risk. The prudent thing to do would have been to enter into a simple forbearance agreement or obtain a waiver from the client, which would have had the effect of suspending the limitation period and preserving the debt. Alternatively, a claim could have been commenced but not served immediately. The mere issuing of a claim stops all limitation periods.

[39] As a matter of interest, in the very early days of Covid, Ontario took the step of legislating a six-month extension to all limitation periods that might have come due after March 16, 2020. Nova Scotia did no such thing.

[40] I have also considered whether the account between the parties might have been considered to be a "running account." That possibility might have saved the Claimant had Ms. Chen made a payment after October 20, 2021. There is authority in other provinces for the proposition that a payment on a running account may reset the limitation period: see *Ryu Electric v. Sam Bung Hong*, 2017 ONSC 5109 (CanLII):

> [50] The starting point for determining this issue is my finding that the periodic payments made by Intaglio Design were generally made "on account", as opposed to specifically related to a particular invoice. In cases where a debtor makes periodic payments on a running account, the court will treat the balance as a single debt and the periodic payment as being made in respect of the entire balance, see Justice Graeme Mew et al., *The Law of Limitations,* 3d ed. (Toronto: LexisNexis, 2016) at p. 226-227. As such, a periodic payment in relation to the entire balance owing on account has the effect of an acknowledgment of the debt and serves to re-set the limitation period.

[41] This was not a running account in the sense that there were no timely periodic payments that could be interpreted as being made in respect of the entire balance. There are also differences between the Nova Scotia and Ontario legislation to consider.

[42] It follows that the claim is limited to $5,527.19, and judgment will issue against China Palace for that amount in claim SCCH 527650. The Claimant will also be entitled to $199.35 in costs.

[43] The claim in SCCH 527649 will be dismissed, as will the counterclaims in both claims, all without costs.

Eric K. Slone, Small Claims Court Adjudicator