

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Finley Brophy Trucking Limited v. Kelly*, 2025 NSSM 81

Date: 20251224

Claim: No. 544962

Registry: Antigonish

Between:

Finley Brophy Trucking Limited

Claimant

and

Ralph Kelly

Defendant

DECISION

Adjudicator: Douglas J. Lloy, K.C., Adjudicator

Heard: November 12, 2025 via telephone in Antigonish, Nova Scotia

Counsel: Finley Brophy Trucking Limited was self-represented by Randy Brophy
Ralph Kelly was self-represented

By the Court:

[1] This is a debt collection case. It is also a case where the operation of two versions of the *Limitations of Acts Act*, the 1989 and 2014 versions (the “*Act*” or “*Acts*”), have to be applied to both the Claimant’s claim and the Defendant’s counter-claim. In this context, the Defendant on the counter-claim occupies the role of a claimant for the purposes of the *Act*.

[2] The Claimant, through its president, Mr. Randy Brophy, claims \$2,000 from the Defendant, Mr. Ralph Kelly. The \$2,000 is the remaining amount owing from a bill generated by the Claimant for moving the Defendant’s mini-home back in January 2023.

[3] Mr. Brophy for the Claimant testified that the original bill (which was not tendered into evidence) was for \$4,850. This amount is cited in the Claimant’s Notice of Claim. However, the Defendant was able to reduce the bill in March – April 2024 by working for the Claimant for around 45 hours, acting as a truck driver. This left a balance owing as of March – April 2024 of \$2,000.

[4] After working for the Claimant for these 45 hours, the Defendant did not work for him further. He did not pay anything towards the outstanding \$2,000.

[5] The Claimant is therefore seeking \$2,000 plus court costs of \$99.70 for a total of \$2,099.70 from the Defendant.

[6] The Defendant does not dispute that \$2,000 remains outstanding on the invoice. He found no fault with the Claimant's work in moving his mini-home.

[7] Instead, the Defendant claims that in 2014, the Claimant removed gravel and swamp sand from the Defendant's property in James River, Antigonish County. The Claimant never compensated him for it.

[8] The value of the gravel and sand would come to \$2,000, according to the Defendant's testimony. The Defendant claims that the two debts cancel each other.

[9] The Claimant asked the Defendant during the trial to produce an invoice showing that the Claimant owed the Defendant \$2,000. The Defendant was unable to do so. All of his paperwork from 2014 was gone.

[10] Despite the lack of paperwork showing that the Claimant owed the Defendant a debt, the Defendant testified that Mr. Randy Brophy and his father were personally present when the gravel and swamp sand were removed from the Defendant's property by the Claimant's trucks. The Defendant asserted that they knew what they took from his property. They also knew that nothing was paid by the Claimant to the Defendant for the removal of his gravel and sand.

[11] Mr. Brophy's only response to this allegation was for the Defendant to produce an invoice to verify that the Claimant owed him \$2,000. No outright denial was actually made by Mr. Brophy that the Claimant owed the Defendant money. Also, no acknowledgement of liability was made either by Mr. Brophy.

[12] The Defendant had not asked the Claimant, before filing his paperwork in response to the Claimant's litigation, to compensate him for his gravel and sand.

[13] The Defendant said that he did not pay the Claimant's bill for two reasons: (1) he thought the Brophy company was going through a hard time financially and he did not want to add to their troubles, and (2) he wanted to teach the Claimant a lesson. The lesson was one that can be best described as, "what goes around, comes around." Goodwill and forbearance displayed by one party should be observed by the other party in return.

[14] A common issue for both parties is whether each party's claim is statute-barred from being litigated. The operation of the *Limitation of Actions Act* (the "Act") requires a litigant to advance a claim for a debt within a certain time period.

[15] James C. Morton in his text, *Limitation of Civil Actions* (Toronto: Carswell, 1988), at p. 1, provides the reason for such a law which statute-bars litigation after the passage of a defined period of time:

Limitation statutes are enactments which forbid the commencement of legal actions after the expiry of a stated period of time. The policy behind these statutes is straightforward. At some point individuals should be able to assume that past misconduct is behind them and that they can order their lives accordingly. Statutes of limitation encourage litigants to settle their disputes promptly, when evidence is fresh and accurate and fact finding still possible.

[16] The current *Act* came into force on September 1, 2015 (S.N.S. 2014, c. 35).

Mr. Brophy testified that an invoice was issued to the Defendant in January 2023.

[17] Section 8(1)(a) of the 2014 *Act* mandates that litigation for debts must be made in two years from when the claim arose. The section reads as follows:

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...

[18] The Claimant filed its Notice of Claim in July 2025. The claim would, on its face, be outside of the two-year limitation period by six months.

[19] The claim is, in my opinion, saved by the operation of s. 20(1). This section allows for the extension of the limitation period when there is an acknowledgement of the debt by a defendant. It essentially allows the time period to begin anew when such an acknowledgement is made by a defendant. Section 20(1) reads as follows:

20 (1) Where, before the expiry of the relevant limitation period established by this Act, a person acknowledges liability in respect of a claim for

(a) payment of a liquidated sum;

(b) the recovery of personal property;

(c) the enforcement of a charge on personal property; or

(d) relief from enforcement of a charge on personal property, the limitation period begins again at the time of the acknowledgment.

[20] The uncontested evidence is that the Defendant worked off some of his debt to the Claimant in March - April 2024.

[21] Section 20(10) requires that a defendant's acknowledgement of liability also be in writing. Section 20(11) provides an exception to this requirement. These sections read as follows:

s. 20(10) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or the person's agent.

s. 20(11) In the case of a claim for payment of a liquidated sum, part payment of the sum by the defendant or the defendant's agent has the same effect as an acknowledgment referred to in subsection (10).

[22] Working off some of the debt would, in my opinion, constitute a form of partial payment as contemplated by s. 20(11). The Defendant's labour would constitute payment. The Claimant would be relieved of requiring the Defendant to make a written acknowledgement of liability during the limitation period.

[23] This would make the Claimant's claim fall within the time limit set by the *Act*. The Claimant's case is not defeated by the 2014 iteration of the *Act*.

[24] Similar considerations have to be applied to the Defendant's counter-claim which allegedly arose in 2014. There is a difference in how the legislation is applied, however. In 2014, the 2014 *Limitation of Actions Act* was not yet in force. It came into force on September 1, 2025. Instead, the old *Limitation of Actions Act*, R.S.N.S. 1989, c. 258 would apply. The old *Act* contained different time periods and exceptions that the new *Act* does not have.

[25] Section 2(1)(e) of the 1989 *Act* is the specific section that would apply to an alleged debt arising in 2014. This section creates a six-year limitation period for the enforcement of debts (contracts). This section reads as follows:

2 (1) The actions mentioned in this Section shall be commenced within and not after the times respectively mentioned in such Section, that is to say:

...

(e) all actions grounded upon any lending, or contract, expressed or implied, without specialty, or upon any award where the submission is not by specialty, or for money levied by execution, all actions for direct injuries to real or personal property, actions for the taking away or conversion of property, goods and chattels, actions for libel, malicious prosecution and arrest, seduction and criminal conversation and actions for all other causes which would formerly have been brought in the form of action called trespass on the case, except as herein excepted, within six years after the cause of any such action arose;

[26] The old *Act* in s. 3(2) provided a way for actions commenced after the expiry of the limitation period to survive. It set out factors in s. 3(4) for courts to consider to allow a claim to continue despite the limitation period.

[27] Unfortunately for the Defendant, the old *Act* also provided that the court cannot exercise its jurisdiction under s. 3(4) when an action is commenced more than four years after the limitation period expired. Section 3(6) reads as follows:

s. 3(6) A court shall not exercise the jurisdiction conferred by this Section where the action is commenced or notice given more than four years after the time limitation therefor expired.

[28] This would put a hard litigation expiry-limit on the Defendant's counter-claim to January 2024 (January 2014 debt + six-year limitation period + four-year hard cap on litigation= January 2024).

[29] As the Defendant's counter-claim was filed on August 27, 2025, the counter-claim exceeds the time limit for filing a claim by more than a year and a half.

[30] As a result, the Defendant's counter-claim is statute-barred by operation of ss. 2(1)(e) and 3(6) of the old *Act*.

[31] I therefore order judgment in favour of the Claimant in the amount of \$2,099.70. Order accordingly.

Lloy, D. Small Claims Court Adjudicator