

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Finley Brophy Trucking Limited v. MacDonald*, 2025 NSSM 82

Date: 20251224

Claim: No. 544977

Registry: Antigonish

Between:

Finley Brophy Trucking Limited

Claimant

and

Donald Bertram MacDonald

Defendant

DECISION

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

Heard: November 14, 2025 via telephone in Antigonish, Nova Scotia

Counsel: Finley Brophy Trucking Limited was self-represented by Randy Brophy, president of the Claimant company
Donald Bertram MacDonald was self-represented

By the Court:

[1] This is a debt collection case with an added complication of a *Limitation of Actions Act* issue. The Claimant seeks to recover \$8,219.17, plus court costs of \$199.35, for a total of \$8,418.52 from the Defendant. This debt arose from the Claimant being hired in 2022 to move the Defendant's mini-home from one location to another.

[2] The Defendant resists this claim. He says that the Claimant damaged his mini-home during transport. He also indicates that the Claimant delayed in moving his home. Instead of taking one day to move his mini-home, it took them three days to do so. The Defendant says that this added to his cost and should not be borne by him. He claims \$2,500 from the Claimant plus \$66.00 court costs for a total of \$2,566.00.

[3] The court heard detailed testimony from Mr. Brophy for the Claimant. He testified that moving Mr. MacDonald's mini-home was very difficult. The mini-home was situated upon a steep hill, requiring metre-by-metre care in transporting it down the hill to avoid undue damage. The home would have to be stopped on its journey every few metres, blocked up on its frame to account for changes in the terrain, and set off again in limited motion before the process repeated itself.

[4] Mr. Brophy insisted in his evidence that Mr. Alain Pelletier, the owner of the property upon which the mini-home was being relocated from, was the vocal decision-maker on site for the Defendant during the move. Apparently, Mr. MacDonald and his friend Ms. Abbey LaQuerre were present during the move as well, except when Mr. MacDonald had to go fishing on the third day of the move.

[5] Mr. Brophy was supported in his evidence by his employee, Mr. Eugene Warford. Mr. Warford testified that he recommended to Mr. MacDonald, before the move, taking the steel frame off his mini-home and replacing it with wooden blocks. This was refused by Mr. MacDonald. Mr. MacDonald claimed that would make the move too expensive for him.

[6] Further, the steel frame that encased the mini-home was rusted through and rotten. It broke as it reached the bottom of the hill, right in the middle of a street. It required the services of a welder, Mr. Adam MacNeil, to spot weld a patch on the frame to get it in movable condition again.

[7] Mr. MacNeil was called as a witness for the Claimant. He testified that the steel frame supporting the mini-home was in poor shape. Despite this, when the home was delivered to its location, he testified that the home was fit for occupancy despite the same steel frame supporting the house.

[8] Mr. Brophy also testified that the damage caused to the drywall and floor of the mini-home during its transit, as exemplified in a series of 19 photos provided by the Defendant (collectively, Exhibit Six), were caused by the move. He had no problem in admitting that. Common cracks and shifts occur with mini-homes in transit. It is to be expected.

[9] The Claimant's two retainer documents, the Appendix to Move Agreement (Exhibit One) signed by the parties and specifically the attached Mini Modular Home Secondary Move Agreement (Exhibit Two) cover this occurrence. The Secondary Move Agreement specifically exonerates the Claimant for any damage done to Gyproc and cracking that may occur during the move of a home.

[10] Mr. Brophy testified that he received \$3,450.00 as a downpayment for the move from the Defendant in August 2022 as seen in Exhibit Seven.

[11] The Claimant issued its first invoice after receiving the downpayment from the Defendant on November 10, 2022 (Exhibit Three) for \$1,779.17. He knew that Mr. MacDonald had limited means and wanted to make his bill very reasonable, so he discounted many material purchases and labour.

[12] When Mr. MacDonald flatly refused to pay this bill due to damage to his house and delays in moving his mini-home, the Claimant issued a second bill.

[13] This second invoice (Exhibit Four) was for another \$6,440.00 and was dated March 21, 2023. It was for the full amount of the previously-discounted materials and labour, and came as a direct result of Mr. MacDonald not wanting to pay the discounted bill.

[14] Mr. MacDonald unsurprisingly refused to pay that bill as well, citing the same reasons. He testified to that effect.

[15] Mr. Brophy consolidated the two bills into one combined bill for the \$8,219.17 on March 31, 2025 (Exhibit Five).

[16] Ms. LaQuerre testified. She was present on all three days when the mini-home was moved. She said the job performed by the Claimant was of low quality, going so far as to call it a “joke”.

[17] She testified that much move time would have been eliminated if the Claimant’s employees, who arrived to inspect the home a day before it was to be moved, did their job right and accounted for the strain generated by the slope of the hill and the condition of the steel frame.

[18] Instead, they allowed the move to go ahead, with the result that the frame broke in the middle of the street, blocking traffic until Mr. MacNeil arrived to patch the frame and get it moving to its destination again.

[19] The Defendant refuses to pay the outstanding amount of the Claimant's bill and asks for \$2,500 plus court costs for damage done to his mini-home.

[20] The merits of this case can only be considered if the claims before the court- the Notice of Claim by the Claimant and the Defendant's counter-claim- can survive a timeliness analysis under the *Limitation of Acts Act*, S.N.S. 2014, c. 35 (henceforth, the "*Act*").

[21] If claims (including counter-claims) are not commenced within a certain time frame, then the *Act* causes them to be statute-barred from being litigated.

[22] 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.

[23] 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:

s. 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...

[24] The Claimant's Notice of Claim was filed on July 9, 2025. The Defendant filed his counter-claim on August 19, 2025. These claims would, on their face, be outside of the two-year limitation period.

[25] The Claimant's cause of action, if calculated from the Claimant's second invoice of March 21, 2023, expired on March 21, 2025. His Notice of Claim filed on July 9, 2025 would exceed the two-year limitation period by three months and 18 days.

[26] The court views the consolidated bill of March 31, 2025 as not a relevant event for the purposes of the *Act's* calculation of timeliness. It was merely a housekeeping step taken by the Claimant in combining the two bills, preparatory for his efforts to try to get the Defendant to pay the bill, which he did off and on for the next few months. Mr. Brophy testified that he travelled to the Defendant's house in an effort to persuade him to pay the combined bill. He could never get the Defendant to answer the door, despite cars in the yard and other signs of occupancy.

[27] As mentioned, the Defendant had been contacted earlier in 2022 – 2023, and perhaps in 2024, by Mr. Brophy via telephone to persuade him to pay his bill. The Defendant consistently refused to pay the bill.

[28] Section 20(1) of the *Act* allows for the extension of the limitation period when there is an acknowledgement of liability by a defendant (or a defendant by counter-claim). It essentially allows the time period to begin anew when such an acknowledgement is made by a defendant during this critical time period.

[29] The section goes on to state that such an acknowledgement of liability must be in writing (s. 20(10)) except where partial payment of a liquidated sum is made (s. 20(11)).

[30] 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.

[31] The uncontested evidence is that Mr. Brophy did not receive an acknowledgment of liability as defined in the Act in s. 20(1) from the Defendant

that he owed the Claimant anything more than his initial payment. There was no partial payment after that, or work in lieu of payment, that could constitute an acknowledgement of his liability for the debt.

[32] The efforts of the Mr. Brophy to try to get the Defendant to pay always met with one of two results: a flat refusal or the Defendant or the Defendant refusing to engage or speak with Mr. Brophy.

[33] The Defendant potentially “ducking” the Claimant in his attempts to collect on his invoice is not an acknowledgement of liability by the Defendant.

[34] The court finds that the Claimant is statute-barred from collecting against the Defendant. His Notice of Claim is out of time.

[35] The same analysis applies to the Defendant. His counter-claim against the Claimant is also statute-bared.

[36] The first that Mr. Brophy heard that the Defendant was making a claim against his company was when he received the Defendant’s counter-claim via registered mail sometime in July 2025.

[37] The Defendant’s cause of action arose in November 2022. The two-year limitation period expired on November 2024.

[38] As before, there was no acknowledgement of liability during the limitation period of liability by the Claimant. The Defendant is some eight months over the limitation period.

[39] As a result, both the Claimant's claim and the Defendant's counter-claim are statute-barred by operation of s. 8(1)(a) of the *Act* as being commenced outside of the two-year limitation period.

[40] The court therefore dismisses both the Claimant's claim and the Defendant's counter-claim in their entirety. Parties shall bear their own costs. Order accordingly.

Lloy, D. Small Claims Court Adjudicator