

Claim No. SCT 245892  
Date:20050831

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
Cite as: Wilson Equipment Ltd. v. Hurlburt Construction Ltd., 2005 NSSM 24

BETWEEN:

**WILSON EQUIPMENT LIMITED**

CLAIMANT

- and -

**HURLBURT CONSTRUCTION LIMITED**

DEFENDANT

Adjudicator David TR Parker  
Heard: July 18, 2005  
Decision: August 31, 2005

**DECISION and ORDER**

This matter came before the Small Claims Court at Truro and Province of Nova Scotia, on the 18th day of July, A.D. 2005.

This matter involved the repair of a machine owned by the Defendant which repairs were being paid for through an insurance claim. The Claimant was hired to do the repairs.

There are two main aspects of this case. One aspect revolves around a starter that had to be replaced in the machine after repairs were made. A second issue involves a payment of interest accruing on unpaid invoices.

With respect to the first issue, the Defendant stated in his summation to the Court that the only issue tonight is interest. However, I am going to address both issues, the first being whether or not Claimant should be responsible for payment of the replacement starter. The starter, or at least a part of the machine, had to be replaced after it was delivered and that was done by the Claimant and the Defendant was charged for items not included under a warranty, otherwise the item was replaced by the Claimant. The same part was replaced again, not by the Claimant and outside the warranty period. The question is should that part be covered under any consumer legislation or through some express or implied warranty. There was no evidence of any expressed warranty and there is no substantive evidence before this Court that allows the Court

to determine the durability of that particular part. Consequently, the Defendant has not been able to show there was either an expressed or implied warranty that the particular part should have lasted longer than it did.

The next issue involves interest on the bill that had accrued as a result of non-payment by the Defendant. Based on the testimony, and particularly on the e-mail evidence, I have been presented with by the Claimant and which was not objected to as confidential I was able to determine the following:

The Defendant received the proceeds from the insurance company via cheques made payable to both the Defendant and Claimant. However, the Defendant would not release those cheques to the Claimant until it made suitable arrangements with the Claimant to deal with monies already due the Claimant regarding earlier supplies provided to the Defendant by the Claimant and until the repaired machine was delivered to the Defendant. The Defendant however was not clear where the repaired machine was to be delivered. Ultimately, the outstanding amount excluding interest was paid to the Claimant through the Defendant's solicitor. This was done well after the machine was delivered to the Defendant. I do agree with the Defendant that the only real issue tonight involves whether or not interest on the outstanding account is due and payable to the Claimant by the Defendant. The amount outstanding is \$10,635.08. Bills sent to the Defendant clearly show that interest was applied to outstanding accounts and all the invoices that went to the Claimant on a regular basis outlined the interest that was being charged to the account. In addition to the Defendant being advised on an ongoing basis what the interest charges were, the past history between these two companies showed that interest was always charged on overdue accounts and was paid for by the Defendant. Further, in July of 2004, the Defendant in an e-mail to the Claimant acknowledges that payment was going to be made including payment of interest when a couple of projects were completed that the Defendant happened to be working on.

IT IS THEREFORE ORDERED that the Defendant pay the Claimant the following sums:  
\$10,635.08  
350.00 court costs and service costs  
\$10,985.08 total

DATED at Truro, this 31 day of August, 2005.

---

David T.R. Parker  
Adjudicator of the Small Claims Court