

SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Galllott v. MacDonald, 2014 NSSM 46

BETWEEN

DEREK GALLIOTT

CLAIMANT

-and-

RYAN MACDONALD

FIRST DEFENDANT

-and-

CONCRETE ONLY INCORPORATED

SECOND DEFENDANT

Adjudicator: David TR Parker QC

Heard: September 11, 2014

-this case involves an application by a defendant to set aside an order by the Small Claims Court when the defendant has failed to defend an action and the claimant has proceeded against the defendant and obtained an Order against the defendant-

ORDER

This was an application that was brought before the court by the defendants, on September 11, 2014 as an Application to set aside an Order of this court dated the 21st day of August 2014 and issued by the court on August 22, 2014.

The defendants Ryan MacDonald/Concrete Only Incorporated claims there never was service of the notice of claim upon Mr. MacDonald or his company by the claimant. The application of this type is provided for under section 23 subsection of the Small Claims Court Act:

Default of defence or appearance

23 (1) Where a defendant has not filed a defence to a claim within the time required by the regulations and the adjudicator is satisfied that

(a) each defendant was served with the claim and the form of defence and with notice of the time and place of adjudication; and

(b) based on the adjudicator's assessment of the documentary evidence accompanying the claim, the merits of the claim would result in judgment for the claimant,

the adjudicator may, without a hearing, make an order against the defendant.

(2) Where a defendant against whom an order has been made pursuant to subsection (1) appears, upon notice to the claimant, before the adjudicator who made the order and the adjudicator is satisfied that

(a) the defendant has a reasonable excuse for failing to file a defence within the time required; and

(b) the defendant appeared before the adjudicator without unreasonable delay after learning of the order,

the adjudicator may set aside the order and set the claim down for hearing.

This is a situation where an Order could be set aside based on the information in the Application and the information provided to this court by the defendants. The defendants however did not notify the claimant of this Application and that is required by the legislation.

I will set down a date for a hearing of this matter, that is a hearing of the Application to set aside the original Order itself and if that is appropriate to be followed by a hearing. The hearing will be held on that date if the Order is set aside or at a date convenient to the court and the parties. It will be necessary however for the defendants to also file a defence to the claim with the court and then serve that defence on the claimant along with this Order.

It Is Hereby Ordered that the defendants file a defence with the court within 5 days of the issuing of this Order and the defendants serve their defence and this Order by way of Personal Service on the claimant Derick Galllott at least 10 days before the hearing of the Application to Set Aside the Order which hearing shall take place at 6 PM Thursday, October 30, 2014 at the courthouse 5250 Spring Garden Rd., Halifax Nova Scotia.

Dated at Halifax this 23rd day of September 2014

David TR Parker QC

Adjudicator Small Claims Court of Nova Scotia