

Citation: *Downes v. Trautwein*, 2017 YKSM 5

Date: 20170622
Docket: 16-S0052
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Cozens

LAURIE DOWNES AND DREDGE MASTER GOLD LTD.

v.

ANDREAS TRAUTWEIN

Appearances:
Laurie Downes
Andreas Trautwein

Appearing on her own behalf
No one appearing

REASONS FOR JUDGMENT

[1] The Plaintiff filed her Claim in this matter on September 21, 2016. The Defendant was served with the Claim and a blank Reply on April 22, 2017 at the Defendant's address in Whitehorse, Yukon. The Defendant failed to file a Reply within the 20 days set out in the *Small Claims Court Act* and, as such, the Plaintiff was granted Default Judgment on May 17, 2017.

[2] The matter was set over to June 12, 2017 before me for a hearing to assess damages and costs.

[3] At the hearing, I adjourned the matter over for decision. In particular, I wished to consider whether there was an issue with respect to the granting of the Default

Judgment, insofar as some of the conduct set out in the Claim appeared to be outside of the six-year period set out in the *Limitations of Actions Act*, RSY 2002, c. 139 for the filing of a claim for the recovery of money.

[4] The Plaintiff's Claim was premised on the Defendant having, without prior authorization, purchased fuel on the Plaintiff's fuel account on or about the following dates:

September 25, 2009	in the amount of \$693.66
May 13, 2010	in the amount of \$174.38
May 14, 2010	in the amount of \$414.14
May 26, 2010	in the amount of \$724.18
May 31, 2010	in the amount of \$823.57
June 9, 2010	in the amount of \$809.62
June 22, 2010	in the amount of \$668.33
July 12, 2010	in the amount of \$329.51
July 28, 2010	in the amount of \$350.57
August 18, 2010	in the amount of \$774.40
September 10, 2010	in the amount of \$786.14
September 21, 2010	in the amount of \$621.16.

[5] The total amount of the fuel claimed for is \$7,196.16.

[6] The Plaintiff paid all of these invoices and, despite oral assurances from the Defendant that he would reimburse her, he never in fact did so.

[7] The Plaintiff is also claiming interest on these amounts. I note that although there is mention on one of the purchase transaction sheets that interest is payable on overdue accounts at the rate of 2% per month, there is no indication the Plaintiff was ever charged such interest.

[8] It would appear that each of these fuel purchases is a separate transaction and not one transaction *per se*. There is also no signed written acknowledgment of the debt by the Defendant that would extend the limitation period for the Plaintiff to commence an action.

[9] As such, there could potentially be an argument made that all the fuel transactions, save for the September 21, 2010 fuel transaction, are outside of the six year limitation period for the filing of a claim.

[10] However, after review of the law I am satisfied that a limitation defence is an alternative defence that must be pleaded.

[11] In *Collins v. Cortez*, 2014 ONCA 685, at para. 10, the Court stated:

... [t]he expiry of a limitation period is a defence to an action that must be pleaded in a statement of defence: see *Beardsley v. Ontario*, [2001] O.J. No. 4574 (C.A.), at para. 21 and *S.(W.E.) v. P.(M.M.)* (2000), 50 O.R. (3d) 70 (C.A.), at paras. 37-38.

[12] As the Defendant did not file a Reply to the Plaintiff's Claim, despite having been made aware of the opportunity to do so, and thus has not raised a limitation defence, I am satisfied that the Default Judgment was properly granted and the Plaintiff is entitled to her damages, plus interest and costs.

[13] I award damages in the amount of \$7,196.16.

[14] I award pre-judgment interest pursuant to the *Judicature Act* on each of the amounts claimed from the date assigned to each of the transactions.

[15] I award post-judgment interest pursuant to the *Judicature Act* from the May 17, 2017 date of the Default Judgment.

[16] I award costs in the amount of \$100.00 for the filing of the Claim.

Cozens T.C.J.