

Citation: *Martens v. Peterson*, 2014 YKSM 8

Date: 20140929
Docket: 13-S0089
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Judge Hinds

PAUL ROBERT MARTENS

Plaintiff/Defendant
by Counterclaim

v.

CHRISTOPHER JOHN RICHARD PETERSON

Defendant/Plaintiff
by Counterclaim

Appearances:

Paul Robert Martens

Christopher John Richard Peterson

Appearing on own behalf

Appearing on own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] The Plaintiff (Defendant by Counterclaim), Paul Martens, is a contractor from Chilliwack, British Columbia. He and his wife, Kim Martens, were friends with the Defendant (Plaintiff by Counterclaim), John Peterson, who lives and works in Dawson City, Yukon.

[2] For ease of reference, I will refer to the parties by their names or simply as “the Plaintiff” and “the Defendant”.

[3] Mr. Peterson lent \$10,700.00 to the Martens in the fall of 2011. Mr. Martens came to Dawson City in the summer of 2012 and did some construction work on Mr. Peterson's properties. Mr. Martens worked off a good portion of the debt he owed to Mr. Peterson. The parties agreed that Mr. Martens would return to Dawson City in 2013 to renovate one of Mr. Peterson's homes. Mr. Martens worked for Mr. Peterson during the months of June, July, August and part of September 2013. On August 25, 2013, Mr. Martens advised Mr. Peterson that he could not complete the renovation in 2013, but was willing to "seal up" the renovation project for winter and complete it in 2014. Mr. Peterson subsequently fired Mr. Martens on September 5, 2013. Mr. Peterson hired another person to seal up the renovation project in the fall of 2013.

[4] Mr. Martens filed a lien on Mr. Peterson's property on September 9, 2013 and filed a claim before this Court on November 3, 2013 in the sum of \$17,578.64. Mr. Peterson filed a Statement of Defence and advanced a Counterclaim against Mr. Martens in the sum of \$11,658.78.

[5] For the reasons which follow, I find the Plaintiff's total damages to be the sum of \$4,453.58. I also find the Defendant's damages on his Counterclaim to be in the sum of \$1,259.87. When I offset (subtract) the Defendant's damages from the Plaintiff's damages, I find judgment in favour of the Plaintiff as against the Defendant in the sum of \$3,193.71. Upon payment of the judgment, the Plaintiff would be well advised, at his own expense, to discharge the Builder's Lien (Registration #212957) he registered against the Defendant's home in Dawson City, Yukon (Lot 7, Block X, Plan 8338A).

ISSUES

[6] The following issues are to be determined:

- (I) What were the terms of the oral contract between the parties for the summer of 2013?
 - (a) What was the small house project in 2013?
 - (b) What was the legal consideration for Mr. Marten's work on the small house project?
 - (c) When was the small house project to begin and end?
 - (d) Did Mr. Peterson agree to provide Mr. Marten with additional workmen for the small house project? If so, did he?
 - (e) Did Mr. Peterson agree to provide the building permit to Mr. Martens? If so, when did he provide the building permit to Mr. Marten?
 - (f) What, if any, agreement did the parties come to regarding building materials, gas, accommodation and groceries expenses?
- (II) If the Defendant breached the terms of the oral agreement of 2013, what, if any, are the Plaintiff's damages?
- (III) If the Plaintiff breached the terms of the oral agreement for 2013, what, if any, are the Defendant's damages?

FACTS

[7] In the fall of 2011, the Defendant, John Peterson, lent Paul and Kim Martens the sum of \$10,700.00. Originally it was agreed that the Martens would make \$500.00 per month payments until the principal sum of the loan was repaid. No interest was to be charged on the loan. The Martens did not commence making the \$500.00 per month payments.

[8] John Peterson owns a property located at 1266 5th Avenue in Dawson City, Yukon on which his own residence (herein after referred to as the “small house”), a garage and another residence (hereinafter referred to as the “big house”) are situated. Until July 2013, Mr. Peterson rented the big house for the sum of \$825.00 per month. On July 2, 2013, Mr. Peterson’s tenant, Lisa McKenna, died.

[9] In the spring of 2012, the Defendant and the Plaintiff agreed that Mr. Martens would come up to Dawson City, Yukon from Chilliwack, B.C. and work off the debt owing to Mr. Peterson by doing some renovation work on the small house. Mr. Martens was accompanied by his wife, Kim, their daughter, Mia, and Mia’s boyfriend, Adam. The parties also agreed that Mr. Martens would drive a truck owned by Mr. Peterson containing a Triumph motorcycle, also owned by Mr. Peterson, from Chilliwack, B.C. to Dawson City, Yukon. In 2012, Mr. Peterson also agreed to pay Mr. Martens for the following:

- (1) all the gas bills incurred by Mr. Martens and his family for the 2012 return trip to Dawson City from Chilliwack;
- (2) all accommodation expenses incurred by Mr. Martens and his family for the 2012 return trip to Dawson City from Chilliwack;
- (3) all grocery expenses incurred by Mr. Martens and his family while in Dawson City.

[10] In 2012, Mr. Martens and his family came to Dawson City. Mr. Peterson moved out of the small house and into a garage situated on his property. Mr. Martens and his family lived in the small house during the summer months of 2012 while he worked for Mr. Peterson.

[11] During the summer of 2012, Mr. Martens did the following work for Mr. Peterson:

- (1) renovation of the bathroom in the big house;
- (2) installation of a range hood over the stove in the big house; and
- (3) some repair work to the garage door.

FINDINGS

(I) Oral Agreement for 2013

[12] Mr. Martens considered renovating Mr. Peterson's small house in 2012, however, he concluded he did not have the time to do so. Mr. Martens left Dawson City around Labour Day, 2012. Before Mr. Martens left Dawson City, the parties made an oral agreement that Mr. Martens would return to work for Mr. Peterson in 2013.

Specifically, the parties agreed that Mr. Martens would work off all of the remaining debt owed to Mr. Peterson by renovating the small house.

(a) What was the small house project?

[13] The parties agreed that the small house project involved adding a new floor and a vaulted ceiling to the structure. The project also involved relocating the bedroom, kitchen and bathroom. After Mr. Martens removed the drywall and insulation from the small house, the scope of the work expanded as a portion of the exterior walls had to be changed from 2 x 4 studs to 2 x 6 studs, in order to comply with the local building code. The work also entailed insulating, siding, roofing, rewiring and finishing work.

(b) What was the legal consideration for Mr. Martens' work on the small house project?

[14] In the fall of 2012 the parties verbally agreed that in 2013 Mr. Peterson would pay Mr. Martens \$25.00 per hour and Mr. Martens' helper, Chad Hutching \$15.00 per hour. Half of Mr. Martens' hours of work were to be paid to him in cash and the other half were to go towards repaying the outstanding loan.

[15] Mr. Martens and Mr. Peterson came to an agreement on March 15, 2013 [Exhibit P13] that Mr. Martens owed Mr. Peterson the total sum of \$3,307.92. Mr. Peterson also loaned the Martens an additional sum of \$1,000.00 on or about June 10, 2013 bringing his outstanding indebtedness to Mr. Peterson to a total of \$4,307.92.

[16] On page 3 of Mr. Martens' Reply to Counterclaim under the heading "Additional Comments", Mr. Martens states, "I acknowledge the personal loan owed to him (Mr. Peterson): however, he was given \$1,200.00 in cash by my wife in August 2013." During the three days of trial there was no evidence provided to the Court to substantiate this claim. Accordingly, I am unable to conclude that Kim Martens paid \$1,200.00 to Mr. Peterson in August of 2013.

(c) When was the small house project to begin and end?

[17] The parties did not come to an agreement as to exactly when the small house project was to begin or when the project was to be completed. I do find that the parties each reasonably expected that the small house project would be started in the spring of 2013 and completed sometime in the fall of 2013. I am unable to conclude that Mr. Peterson agreed to work any particular schedule of hours on the project.

(d) Did Mr. Peterson agree to provide Mr. Marten with additional workmen for the small house project? If so, did he?

[18] In the fall of 2012, Mr. Peterson agreed he and another person would make themselves available to work on the small house project with Mr. Martens and Chad Hutchings when required during 2013. Mr. Peterson did not help with the small house project, nor did he secure a fourth workman.

(e) Did Mr. Peterson agree to provide the building permit to Mr. Martens? If so, when did he provide the building permit to Mr. Martens?

[19] Mr. Peterson advised Mr. Martens that he would have all building and electrical permits in place when Mr. Martens arrived in Dawson City in 2013.

[20] Mr. Martens returned to Dawson City on June 12, 2013. He was accompanied by his wife Kim, their daughter, Kyla Raven, and Chad Hutchings. Mr. Martens drove his truck and a solid wall camping trailer which contained some doors for the small house, Kim Martens' Farmer's Market Goods and the Martens' two dogs to Dawson City. The original plan had been for the Martens to live in the solid wall trailer on Mr. Peterson's property during the summer of 2013.

[21] Mr. Peterson was not ready for the arrival of Mr. Martens and Chad Hutchings. Mr. Peterson's small house remained full of his belongings. Despite numerous prior reminders by Mr. Martens, Mr. Peterson had not obtained a building permit for the small house project when Mr. Martens arrived in Dawson City. Mr. Peterson applied for a building permit on June 20, 2013 [Exhibit D-1]. Mr. Peterson never obtained an electrical permit for the small house project in 2013.

[22] Mr. Peterson takes the position that he obtained the building permit and gave it to Mr. Martens the same day that he applied for it on June 20, 2013. The building permit indicates it was approved for issuance by an inspector on June 20, 2013.

[23] Mr. Martens takes the position that Mr. Peterson did not provide him with the building permit on the small house until July 18, 2013. As a result, he was unable to begin demolition and construction on the project until after July 18, 2013. Kim Martens testified that Mr. Peterson did not provide the building permit to her husband until July 18, 2013. Chad Hutchings testified that he believed that Mr. Martens received the building permit on July 18, 2013.

[24] I am satisfied on a balance of probabilities that Mr. Peterson provided the building work permit to Mr. Martens on or about July 18, 2013 and that this delayed the small house project. The project was also delayed by the death of Lisa McKenna on July 2, 2013 and the lack of space on the project site to store building materials. Ms. McKenna was the tenant of big house. Following her death, Mr. Martens and his family helped clean up the big house and moved Ms. McKenna's belongings out. The evidence also reveals that there was little space on Mr. Peterson's property for building materials. As a result Mr. Martens and his helper were often going off-site and picking up materials for the project. Mr. Martens did not charge Mr. Peterson for the time he spent picking up materials for the project.

[25] I find that the pace of construction on the small house project was also slowed by the lack of the two promised workmen and Mr. Peterson's initial (June and part of July 2013) intrusive oversight and criticism of Mr. Martens' work.

(f) What, if any, agreement did the parties come to regarding building materials, gas, grocery, accommodation and restaurant expenses?

[26] During the trial it became clear that the parties differed on their understanding of their 2013 agreement regarding gas, accommodation and grocery expenses. Mr. Martens maintains that the parties came to the same agreement as they had in 2012 and that Mr. Peterson agreed to pay for:

- (1) all building materials;
- (2) all the gas bills incurred by Mr. Martens and his family for the 2013 return trip to Dawson City from Chilliwack;
- (3) all accommodation and restaurant expenses incurred by Mr. Martens and his family for the 2013 return trip to Dawson City from Chilliwack;
- (4) all grocery expenses incurred by Mr. Martens and his family while in Dawson City.

[27] Mr. Peterson agrees that he was responsible for paying for all building materials purchased by Mr. Martens. Mr. Peterson testified that in November 2013 the parties agreed that he would pay for one half of the actual gas expenses incurred by Mr. Martens travelling to and from Dawson City. Mr. Peterson also testified that there was no discussion and hence no agreement regarding the Martens hotel and restaurant expenses during their travel to and from Dawson City. Mr. Peterson understood the Martens had purchased a trailer and would be staying in their trailer and cooking their own meals. Lastly, Mr. Peterson testified that shortly before Labour Day 2012, the parties agreed that 2013 food (grocery) costs would be divided evenly amongst those who came up to Dawson City (including himself).

[28] Having considered all of the evidence, I am of the view that the parties agreed that Mr. Peterson would pay for:

- (1) the cost of all building materials;
- (2) one half of the cost of gas bills incurred by Mr. Martens; and
- (3) grocery expenses incurred on Mr. Peterson's credit card by Mr. Martens' family while in Dawson City.

[29] Mr. Peterson quite rightly conceded that he was responsible for paying the cost of all building materials. Mr. Peterson allowed Mr. Martens to use his credit card to purchase most of the building materials on the small house. Mr. Martens spent some of his own money on building materials. I find that Mr. Martens spent \$487.46 of his own money for building materials for the small house. I also find that Mr. Martens spent \$63.79 of his own money for motorcycle parts for Mr. Peterson. Hence, I find that Mr. Peterson is responsible to pay Mr. Martens the sum of \$487.46 for building material expenses and \$63.79 for motorcycle expenses.

[30] I prefer the evidence of Mr. Peterson over the Martens with respect to the issue of gas bills. Mr. Martens and his helper, Chad Hutchings, were each to be paid wages for their work. In my view, it makes sense that Mr. Peterson was prepared to offset some, but not all expenses, incurred by Mr. Martens and his helper in coming to Dawson City in 2013. This is reasonable in light of the fact that Mrs. Martens sold Epicure spices at the Dawson City Farmer's Market in 2013 and her daughter, Kyla Raven, also worked in Dawson City in 2013. I find that Mr. Peterson is responsible to pay Mr. Martens one half the gas costs of \$2,169.25, which equates to \$1,084.62.

[31] I prefer some of the evidence of the Martens' over that of Mr. Peterson with respect to the issue of groceries. Mrs. Martens also had the use of Mr. Peterson's credit card. Most of her purchases on Mr. Peterson's credit card were for groceries. On two occasions in July and August, after receiving his credit card statements, Mr. Peterson could have confronted Mrs. Martens on her use of the credit card for groceries. But, he did not. This is not the behavior I would expect of someone who was expecting to divide the grocery costs five ways. I believe Mrs. Martens when she testified that Mr. Peterson told her there was no need to save the credit card receipts for groceries as he could simply look at his credit card statement. Hence, I find that Mr. Peterson agreed to pay for all groceries (\$1,160.14) charged to his credit card in the summer of 2013.

[32] Mr. Martens claims that he is entitled to the sum of \$958.13, the total amount that he and his wife spent on groceries out of their own pockets. I find that Mr. Peterson did not agree to repay the Martens for groceries which they bought with their own money. In my view, it makes sense that Mr. Peterson was prepared to offset some, but not all, expenses incurred by Mr. Martens and his helper to come to Dawson City in 2013. Moreover, Mrs. Martens testified on cross examination that prior to the legal action, she was not going to charge Mr. Peterson for groceries which she purchased herself as the grocery bills were getting high. Hence, I disallow this claim.

[33] Mr. Martens claims he is also entitled to the sum of \$710.60 for accommodations and \$91.02 for food while travelling to Dawson City. The Martens told Mr. Peterson they were bringing a trailer which they would live in while working in Dawson City. I find that

Mr. Peterson did not agree to repay the Martens for accommodations, food and expenses while travelling.

[34] Mr. Martens finally claims he is entitled to be compensated by Mr. Peterson for four items that Mr. Martens left behind at Mr. Peterson's home. These include: a power management system for his trailer worth \$300.00, a tile saw worth \$150.00, a dingy worth \$150.00 and a juice container worth \$22.50 [See Exhibit P-12]. I am not satisfied on a balance of probabilities that Mr. Peterson took possession of these four items or converted these items for his own use. These items appear to have been either misplaced or abandoned by Mr. Martens. Hence I disallow this claim.

(II) If the Defendant breached the terms of the oral agreement for 2013, what, if any, are the Plaintiff's damages?

(a) Mr. Martens' Work

[35] I find that Mr. Martens worked a total of 354.5 hours for Mr. Peterson during the summer of 2013. I find that the work done by Mr. Martens was done in a workmanlike manner and was of an acceptable quality.

[36] I therefore find that Mr. Martens should have been paid \$25.00 per hour for each of the 354.5 hours that he worked for Mr. Peterson in the summer of 2013. This equates to the sum of \$8,862.50. Five percent GST should be added to this figure ($\$8,862.50 \times 5\% = \443.13). From this sum, certain additions and deductions must be made.

(b) Mr. Martens' Expenditures on Building Materials and Motorcycle Parts

[37] I have previously found that Mr. Martens expended the total sum of \$ \$487.46 for building material expenses and \$63.79 for Harley motorcycle parts for Mr. Peterson.

(c) Deductions from Amount Owing to Mr. Martens

[38] The evidence reveals that Mr. Peterson paid Mr. Martens the sum of \$1,500.00 on or about July 31, 2013. The evidence also reveals that in the summer of 2013, Mr. Martens agreed to repay Mr. Peterson the sums of \$360.00 and \$320.00 for Epicure spices and tables and a business license which Mr. Peterson purchased for Mrs. Martens' business.

(d) Mrs. Martens' Work

[39] Mr. Martens claims that his wife, Kim, worked 32 hours at the hourly rate of \$20.00 on cleaning the large house, garage sales in connection with the large house and accounting and paper work in relation to Mr. Martens claim. I find that Mr. Peterson did not agree to pay Kim Martens for any of this work. There is no merit to this claim.

(e) Costs in Relation to Filing Small Claims Proceeding

[40] Mr. Martens also claims the sum of \$837.18 [Exhibit P-9a] for the cost of airfare for his wife Kim and him to fly from Vancouver to Whitehorse, return, on November 4 and 5, 2013, in order to file this claim with the Court. He also claims the sums of \$400.00 [Exhibit P-10] and \$113. 84 [Exhibit P-9b] for the costs of leaving his car at an

airport car park, accommodations, meals and rental while in Whitehorse to file his claim with the Court from November 4 and 5, 2013. I do not find these to be reasonable costs incurred by Mr. Martens in relation to filing this claim.

(f) Summary of Plaintiff's Damages

[41] After reviewing all the evidence I find the Plaintiff, Paul Martens has established the following damages:

Compensation for Hourly Wages	\$8,862.50
GST payable on Hourly Wages (\$8,862.50 x 5%)	443.13
Compensation for Expenditure on Gas (\$2,169.25 x.5)	1,084.62
Compensation for Expenditure on Building Materials	487.46
Compensation for Expenditure on Motorcycle Parts	<u>63.79</u>
Total:	\$10, 941.50

[42] I also find that from the sum of \$10,941.51 the following deductions should be made:

Partial Payment to Mr. Martens for Wages (July 31, 2013)	1,500.00
Outstanding Debt owed by Mr. Martens to Mr. Peterson	4,307.92
Outstanding Debt owed by Martens to Peterson for Business License and Tables	320.00
Outstanding Debt of Mr. Peterson to Martens for spices	<u>360.00</u>
	\$6,487.92
Plaintiff's total damages:	<u>\$4,453.58</u>

[43] I find the Plaintiff's total damages equate to the sum of \$4,453.58.

(III) If the Plaintiff breached the terms of the oral agreement for 2013, what, if any, are the Defendant's damages?

(a) Improper Use of Defendant's Credit Card

[44] While I previously found that Mr. Peterson provided Paul and Kim Martens with his credit card for the purpose of purchasing building materials and some groceries, I find that the Martens improperly charged the following items to Mr. Peterson's credit card:

1. Table Saw (see Exhibit D-4)	\$231.41
2. Printer (Exhibit P-6)	\$ 39.97
3. Printer Ink (Exhibit D-8)	\$ 12.59
4. Worklite (Exhibit D-5)	\$ 22.95
5. Dog Collar (Exhibit P-3)	\$ 16.79
6. Gas for Kim's Birthday celebration July 31/13 (Exhibit D-2)	<u>\$124.16</u>
Total Improper Credit Card Charges	<u>\$447.87</u>

[45] Mr. Peterson also takes the position that on September 7, 2013, Mr. Martens improperly obtained two cash advances on Mr. Peterson's credit card. Mr. Peterson points to his credit card statement dated October 6, 2013 [Exhibit D-2] which shows two cash advances were obtained from CIBC in Dawson City, each in the sum of \$402.00 plus two cash advance fees each in the sum of \$4.00. Mr. Peterson maintains that after he fired Mr. Martens on September 5, 2013, he asked Mr. Martens to return his things. Mr. Peterson did not specifically ask for the credit card. Mr. Peterson testified he never received his credit card back from the Martens. Mr. Peterson added that he did not authorize the Martens to receive cash advances from his credit card.

[46] Mr. Martens denied using Mr. Peterson's credit card for cash advances.

[47] A review of Mr. Peterson's credit card statements dated July 6, August 6, September 6, and October 6, 2013 reveal that the only cash advances taken on Mr. Peterson's credit card occurred on September 7, 2013. The evidence reveals the Martens left Dawson City on September 7, 2013. Mr. and Mrs. Martens testified of their lack of finances after Mr. Martens was fired on September 4, 2013.

[48] On this point, I prefer the evidence of Mr. Peterson over the Martens. I am of the view that the Martens improperly used Mr. Peterson's credit card for two cash advances totalling \$804.00 and incurred cash advance fees of \$8.00.

(b) Summary of Improper use of Mr. Peterson's Credit Card

[49] I find that Paul Martens breached the terms of the oral agreement for 2013 by making unauthorized credit card purchases and advances totalling the sum of \$1,259.87.

(c) Counterclaim for Loss of Rental Income from Big House

[50] The largest component of Mr. Peterson's counterclaim is comprised of damages for the loss of rental income from the large house. Mr. Peterson had previously rented the big house to a tenant for \$825.00 per month up to and including the month of July 2013. Mr. Peterson subsequently permitted the Martens to use the big house until he fired Mr. Martens on or about September 5, 2013. Thereafter Mr. Peterson moved from his garage into the big house. He continued to live in the big house at the time of trial (July 28- 30, 2014).

[51] Mr. Peterson claims damages in the sum of \$825.00 per month for nine months from September 2013 to the end May 2014. This claim equates to the sum of \$7,425.00.

[52] Mr. Peterson hired Nick Sawrenko to finish the small house project. Mr. Sawrenko worked on “buttoning up” the small house from October 2013 until the first week in November 2013. Mr. Sawrenko was not prepared to work on the small house during the cold and snowy winter months. Mr. Sawrenko began working on the small house again in June 2014 and had worked 27 hours up to July 30, 2014. Mr. Sawrenko testified that he plans on finishing the small house project in the summer of 2014 with the assistance of a skilled labourer.

[53] I am of the view that Mr. Peterson’s Counterclaim for loss of rental income must fail for several reasons. Had the small project proceeded as initially planned, I am satisfied it would have taken approximately three to four months to complete. This would have required a building permit to have been in place when Mr. Martens and his helper arrived on June 12, 2013 rather than on July 18, 2013. In addition, I am satisfied that Mr. Martens’ work on the small house was delayed due to the death of Mr. Peterson’s tenant in the big house, the lack of two additional workmen on-site, and the inability of Mr. Martens to store any significant quantity of work materials on-site requiring him to make frequent off-site trips for materials. Most of the project delays are attributable to Mr. Peterson.

[54] All of these factors delayed the small house project and lead me to conclude that had Mr. Martens been allowed to continue to work on the small house project following September 5, 2013 he would have completed the building envelope and covered (“buttoned”) it up by the end of September 2013. More work would have been required to make the small house suitable for Mr. Peterson to live in during the winter months. I am satisfied that owing to the project delays which I have set out above, Mr. Martens could not have completed the additional work before winter came to Dawson City. For these reasons, I am unable to conclude that Mr. Martens breached his oral agreement to Mr. Peterson to complete the small house project by the fall of 2013. I find that Mr. Martens is not liable for Mr. Peterson’s loss of rent on the large house from September 2013 until May 2014.

SUMMARY

[55] I have previously found the Plaintiff’s total damages to be the sum of \$4,453.58. I also found the Defendant’s damages on his Counterclaim to be in the sum of \$1,259.87. When I offset (subtract) the Defendant’s damages from the Plaintiff’s damages I find judgment in favour of the Plaintiff as against the Defendant in the sum of \$3,193.71 . Upon payment of the judgment, the Plaintiff would be well advised to, at his own expense, immediately discharge the Builder’s Lien (Registration #212957) which he registered against the Defendant’s home in Dawson City, Yukon (Lot 7, Block X, Plan 8338A) on September 9, 2013. In the event that Mr. Martens does not discharge the Builder’s Lien as set out above, I would anticipate proceedings would be commenced in the Supreme Court of Yukon by Mr. Peterson, which could result in considerable expense to Mr. Martens.

[56] As the parties have had mixed success in their claims, I decline to make an order as to costs.

HINDS T.C.J.