Citation: *Bank of Montreal v. Hureau*, 2022 YKSM 1

Date: 20220218
Docket: 20-S0086
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**
Before His Honour Judge Gill

BANK OF MONTREAL

Plaintiff

v.

MARK HUREAU and
PAMELA J. HUREAU

Defendants

Appearances:
Uba Anya — Counsel for the Plaintiff
Mark Hureau — Appearing on behalf of the Defendants

**REASONS FOR JUDGMENT**

[1] The plaintiff, Bank of Montreal (the "bank"), seeks judgment against the defendants, Mark Hureau and Pamela J. Hureau, in the total sum of $23,763.43. This amount is claimed as follows:

a. Principal: $22,271.91;
b. Interest: $1,239.27; and
c. Costs: $252.25.

[2] The plaintiff also seeks costs of the proceedings in the sum of $4,000.

[3] The defendant, Mark Hureau, in the Reply filed by the Defendants, claimed that he had been incorrectly named in the style of cause as having an alias, also known as

Brock Haddon Eliason. This particular defect, having been remedied by way of an amendment to the style of cause well in advance of trial, was therefore no longer actually an issue by the time of trial.

[4] The defendants, also in their Reply, contested the calculation of the amount allegedly owing, querying how a line of credit in the amount of $15,000 under the interest rates contemplated within the agreement, could add up to the currently claimed amount, however this defence, in other words in terms of the amount actually owing, was not further pursued or examined by the defendants at trial.

[5] The defendants contest the claim principally on the basis that the line of credit amount claimed in these proceedings is described by an account number different from that originally assigned to them and unfamiliar to them.

[6] The witness, testifying on behalf of the plaintiff, is currently the bank manager at the Whitehorse branch. When cross-examined by Mr. Hureau about why there would be two different account numbers for the same line of credit, he answered that according to internal bank policy, when the bank resorts to legal proceedings for collection of a delinquent account, it is at that time assigned a new account number and the original account number, and its associated line of credit, is at that time closed. The witness was unambiguous that the two numbers in fact relate to one and the same line of credit, namely that extended to the defendants in 2012 and the subject of this claim.

[7] The plaintiff filed the line of credit agreement on which this claim is based, showing it was signed by each of the defendants on September 19, 2012. The agreement was for credit in the amount of $15,000 but it also provided that this amount

could be increased from time to time. Indeed, according to monthly statements provided by the bank, it would appear that this limit increased to $20,000 as early as October 2014, as indicated on the statement issued for that month.

[8] The agreed rate of interest on the line of credit was the bank's base rate minus 0.700%. Since the bank's base rate varied up or down with the prime rate set by the Bank of Canada from time to time, the total rate of interest charged on the line of credit therefore also changed from time to time.

[9] Account statements sent by the bank to the defendants showed the amount owing on the line of credit on a monthly basis. Each of the monthly statements, covering the period from October 2014 until March 2020 inclusive, were filed in these proceedings. Each statement contains a notice that any discrepancies should be addressed with the bank within 30 days of the statement date. According to the testimony of the bank manager, at no time did Mr. or Ms. Hureau ever bring to the bank's attention any concerns or discrepancies in these statements. Indeed, Mr. Hureau himself at the trial did not question the bank's witness about any such possible discrepancies, or about the amounts shown as owing, nor did he himself give any evidence about that.

[10] Mr. Hureau candidly admitted his and Ms. Hureau's line of credit indebtedness to the bank, but he wondered why his queries to the bank, including the possibility of rolling this amount into his house mortgage, held with the same bank, went unanswered.

[11] The defendants' main point of contention, as earlier noted, was that the claim was being made under a different account number. This defence would be worthy of greater merit were there any evidence at all to suggest, for example, that there might actually be two different lines of credit at play, in differing amounts, or that the amount sought is actually a debt owed to the bank by someone else but mistakenly attributed to these defendants. That is however not the case.

[12] A defence acknowledging a debt owed but disputing it only on the basis that it has been ascribed a different account number than originally assigned, where the plaintiff has explained the new account number assignment, cannot prevail.

[13] For the above reasons, I find the claim advanced by the plaintiff in respect of the line of credit advanced to the defendants has been established. The amount allowed however will not be specifically as claimed in the amount of $23,763.43 but instead in the lesser sum of $21,750.66. This is because the plaintiff has failed to establish how the higher amount was specifically calculated.

[14] According to the bank's manager, the final calculation, as shown on page 156 of the filed exhibit, is not a document prepared by the bank but rather prepared by counsel on the instructions of the bank. There being no specific information as to what those instructions were or how the interest rate and other costs and sums sought in that calculation were made, it cannot be accepted as necessarily accurate.

[15] The lesser amount is the sum reflected on the penultimate statement issued to the defendants on February 22, 2020. The final statement, issued the month after,

shows a zero balance, presumably reflecting the assignment of the debt to the new account number, for collection purposes.

[16] Accordingly, the plaintiff shall have a judgment against the defendants, and each of them, in the sum of $21,750.66.

[17] I will now address the matter of costs. The plaintiff is seeking costs in the range of $4,000. Counsel did not provide any specific break down of this amount, as between costs and disbursements, other than noting there was a $150 filing fee, and further noting the time spent on preparation for the trial as it related to his hourly fee.

[18] Sections 57 and 58 of the Small Claims Court *Regulations*, O.I.C. 1995/152, establish a discretion on the part of the Court to award preparation fees and counsel fees, based on the amount of the judgment awarded.

[19] Section 74 of those regulations entitles the successful party to their disbursements, in the discretion of the Court.

[20] As already noted, counsel for the plaintiff is seeking costs overall that are significantly in excess of those contemplated in the rules and regulations, relying principally on the assertion that this was a case the defendants did not have any hope of winning from the outset.

[21] While I must agree that the claim advanced by the bank is sound, and for which judgment has been awarded, I disagree that this necessarily translates into an award of any costs, much less those in the range sought by the plaintiff. The defendants were, at the very least, puzzled by the existence of a claim for debt under an account number

that they were not familiar with, and it would appear that their request for an explanation of this was never given to them until at this trial. Had they been provided this explanation earlier, it may well have precluded the necessity of these proceedings.

[22] For these reasons, I decline to award any costs or disbursements to the plaintiff other than in the amount of $150 for the filing of the claim and Notice of Trial.

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GILL T.C.J.