

Citation: *Fisk v. Yukon Housing Corporation*,
2025 YKSM 6

Date: 20251218
Docket: 25-S0010
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Judge Ruddy

DARREN FISK

Plaintiff

v.

YUKON HOUSING CORPORATION

Defendant

Appearances:
Darren Fisk
Stuart Leary

Appearing on his own behalf
Counsel for the Defendant

REASONS FOR JUDGMENT

[1] The Plaintiff, Darren Fisk, seeks the return of \$12,000 he paid to the Defendant, Yukon Housing Corporation (“YHC”), in order to secure the removal of an encumbrance on his property, on the basis no such funds were owing.

Overview

[2] The Claim relates to YHC’s Home Repair Program (the “Program”), which offered forgivable loans to assist lower to middle income homeowners in the Yukon in making general home repairs, including accessibility modifications. Under the Program, so long as the homeowner complied with certain conditions, including retaining ownership and using the property as their primary residence, 20% of the total loan amount would be

forgiven each year on the anniversary of completion, with the entirety of the loan being forgiven five years from project completion. Loans offered under the Program were secured by YHC registering a charge against the homeowner's property, until such time as the loan was fully forgiven or repaid.

[3] Mr. Fisk applied to participate in the Program in 2018, intending to use the funds received to upgrade the doors and windows in his home in Faro, Yukon. Mr. Fisk's application received pre-approval by way of a letter dated January 23, 2018, which included a list of required steps to secure full approval. Full approval was granted on March 8, 2018, for a loan of \$30,000 (the "Loan"). The Loan was secured by way of a mortgage to YHC dated March 27, 2018, and registered against Mr. Fisk's property on April 3, 2018.

[4] Once the repairs were completed, Mr. Fisk requested a letter from his Program Officer, Heather Doucet, in relation to the maturity date of the Loan. She subsequently provided a letter dated March 5, 2020, (the "Doucet Letter"), which is filed as Exhibit 1 in these proceedings. Based on the Doucet Letter, Mr. Fisk believed the maturity date of the Loan to be March 18, 2023.

[5] In the fall of 2023, Mr. Fisk entered into an agreement to purchase property with a trap line, with the intention of mortgaging his primary residence in order to complete the sale. While he was pre-approved for a mortgage, he was advised by his bank that they were not prepared to lend him the funds as a title search had indicated there was an existing mortgage registered against the property by YHC.

[6] Mr. Fisk contacted YHC beginning in October 2023, in an effort to have the encumbrance removed. He was ultimately advised that the Doucet Letter included an error in relation to the maturity date, as the actual maturity date of the Loan was January 31, 2025, not March 18, 2023. On this basis, YHC took the position that they would only remove the encumbrance on Mr. Fisk's property if he repaid any amount not yet forgiven, which they calculated as \$12,000.

[7] As Mr. Fisk was at risk of losing his deposit and the purchase of the trapline property, he felt he had no choice but to pay out the funds to secure the discharge of the mortgage on his property. He sold his truck to obtain the necessary funds and provided a bank draft to YHC in the amount of \$12,000 on November 7, 2023. In return, YHC discharged the mortgage on Mr. Fisk's property.

[8] As noted, Mr. Fisk now seeks the return of the \$12,000 payment. As it is his Claim, Mr. Fisk bears the burden of proof in this case. The standard of proof is on a balance of probabilities. The balance of probabilities is the civil standard of proof and is often described as meaning that something is more likely true than not, as opposed to the much higher criminal standard of proof beyond a reasonable doubt.

[9] Evidence at trial consisted of Mr. Fisk testifying on his own behalf, and Christine Richardson, YHC's current Manager of Loans and Grants, on behalf of the Defendant. In addition, Mr. Fisk filed five documents in support of his Claim and YHC filed a Book of Documents, which included 15 documents in total, with some overlap to those filed by Mr. Fisk.

Positions of the Parties

[10] In advancing his Claim, Mr. Fisk relies on the Doucet Letter in arguing that the maturity date of the Loan was March 18, 2023; therefore, the entirety of the Loan would have been forgiven as of that date, such that no monies were owing as of November 2023. He further questions the validity of various documents filed by YHC on the basis of errors and omissions in the documents, and the failure of YHC to follow its own processes. In particular, he argues that the Forgivable Loan Agreement (the “Agreement”) included at Tab C of the Defendant’s Book of Documents, filed as Exhibit 6, is invalid as it is undated and is not signed by him.

[11] YHC takes the position that this is a contractual dispute, and that the terms of the Agreement must prevail over the Doucet Letter as it relates to determining the maturity date of the Loan. They further argue the terms of the Agreement support YHC’s interpretation of the maturity date in this case.

Preliminary Issues

[12] This case, in my view, turns entirely on the question of the maturity date of the Loan. However, Mr. Fisk made arguments that did not, strictly speaking, relate to this central issue. In fairness to Mr. Fisk, I feel it is important to state my findings with respect to these arguments before addressing the central issue.

[13] The arguments include what Mr. Fisk described as “mistakes” in the documents, failure of YHC to follow their own processes, and the validity of the Agreement.

[14] Turning first to mistakes in the documentation, as Mr. Fisk did not specify what he was referring to when making his argument, I am not entirely clear what he viewed as “mistakes”. There is the question of whether the maturity date specified in the Doucet Letter is erroneous; however, as Mr. Fisk seeks to rely on that date, it makes little sense that he would argue that it is a mistake.

[15] The only other possible “mistake” he could be referring to is in relation to the day the Agreement was signed. Next to the signatures, the date is entered as March 2018, without specifying which day in March. In considering this omission, I would note that the lack of a specific date, while unusual, would not, in and of itself, invalidate the Agreement. Furthermore, as the crux of this case relates to the determination of the maturity date, a date that is not in any way dependent on the specific day in March 2018 when the Agreement was signed, this minor omission has absolutely no bearing on the decision I need to make in relation to Mr. Fisk’s Claim.

[16] With respect to the assertion that YHC did not follow its own processes, again, Mr. Fisk did not elaborate on what he was referring to in his final argument. From his cross-examination of the Defendant’s witness, Christine Richardson, I infer that he meant the number and timing of payments and the lack of evidence of inspections.

[17] As to the first of these, two other documents authored by Ms. Doucet, included at Tabs A and B of Exhibit 6, reference payment of the loan as being in three installments up to certain percentages as outlined in the letters. However, there is no payment schedule specified in the Agreement itself, so YHC would not be contractually obligated to provide payments in the number and percentages outlined in the letters. The fact

that Mr. Fisk received the Loan in seven rather than three installments is not of concern to me, beyond the question of how the timing of those draws may affect determination of the maturity date, an issue that will be addressed later in this decision.

[18] With respect to the question of inspections, Mr. Fisk seemed to make much of the fact that Ms. Richardson could not say whether there had been inspections of the repairs to Mr. Fisk's property, as a letter from Ms. Doucet found at Tab A of Exhibit 6 references the need for inspections where the anticipated repairs require a permit. In fairness to Ms. Richardson, her response was that she did not know whether inspections had been conducted as she had only reviewed the Program Officer's file and not the Technical Officer's file where copies of any inspections would have been kept.

[19] I fail to see how the lack of evidence about whether or not inspections were required, let alone completed, could amount to evidence of a failure of YHC to follow its own processes, particularly as the letter at Tab A specifies that the onus to submit inspection reports would be on Mr. Fisk, not YHC.

[20] The existence of a final inspection report, had there been one, would certainly have been relevant in determining the maturity date, as it is a determination that is related to the date of completion of the repairs. However, YHC was under no obligation to call such evidence. They provided the evidence upon which they based their calculation of the maturity date, namely the timing of the final draw or payment made to Mr. Fisk. Mr. Fisk bears the onus of proving his own Claim. If evidence of the date of

any final inspection would have assisted Mr. Fisk in advancing his claim, it was open to him to provide that evidence to the Court.

[21] With respect to the final preliminary issue, the validity of the Agreement itself, Mr. Fisk seems to advance two arguments in support of his contention that the Agreement is not valid: he was not given an opportunity to speak to a lawyer, and it is not his signature on the document.

[22] In terms of legal advice, there is no legal requirement that a person speak to a lawyer before entering into a contract, and there is certainly no obligation on the other party, even where that party is a government department, to ensure the person has an opportunity to speak to counsel before entering into the contract. If Mr. Fisk had wanted legal advice before signing, he would have had to pursue that opportunity himself.

[23] In terms of his assertion that it is not his signature on the Agreement; I simply do not find this assertion to be credible.

[24] In terms of evidence in this regard, Mr. Fisk relies on the fact that Ms. Richardson agreed, on cross-examination, that the signatures on the Agreement and the Mortgage looked different. There are three separate signatures purporting to be Mr. Fisk's as between the Agreement and the Mortgage. Having looked at them, I can say there are similarities and differences between all three of them. Absent an expert opinion, this evidence falls well short of persuading me that the documents were signed by different individuals.

[25] Furthermore, even though Mr. Fisk was cautioned, more than once, to call any evidence he intended to rely on during argument as he could not provide further evidence in his submissions, he never testified that he did not sign the Agreement. He made this assertion for the first time in his final argument, an assertion that is contradicted by his own evidence. In cross-examination, Mr. Fisk was asked about his understanding of s. 4.7 of the Agreement; Mr. Fisk's response began with the words, "When I signed the agreement". I am satisfied that this would constitute an admission that he had indeed signed the Agreement.

[26] Accordingly, I am satisfied that the Agreement was duly executed and, therefore, a valid and binding agreement between the parties.

[27] In so concluding, it is important that Mr. Fisk recognize that this particular argument was not just misguided but was potentially fatal to his case. Had I found that the Agreement was not valid, it would have been invalidated in its entirety. Meaning it would not just impact the validity of the terms relating to the determination of the maturity date; it would also invalidate the terms of the Agreement in relation to loan forgiveness, pursuant to which YHC forgave the first \$18,000 of the Loan. Absent loan forgiveness, there would simply be no basis upon which to conclude that Mr. Fisk should not have had to repay the \$12,000 to secure removal of the encumbrance on his property.

Issues

[28] This brings me to the central issue, in this case, the maturity date of the Loan. A determination of the maturity date turns on two questions:

1. How does the Doucet Letter impact the maturity date of the Loan; and
2. If the Doucet Letter does not impact the maturity date of the Loan, what is the maturity date of the loan under the terms of the Agreement as applied to the evidence?

Analysis

Impact of the Doucet Letter

[29] As noted, Mr. Fisk takes the position that the maturity date should be March 18, 2023, as set out in the Doucet Letter. There is no dispute that the Doucet Letter is the only communication sent to Mr. Fisk which included a maturity date. As such, Mr. Fisk's position that he relied on that letter is certainly a sympathetic one. However, it must be remembered that this case involves a binding contract, and contractual disputes are resolved through consideration and interpretation of the terms of the contract itself rather than external documents, as was argued by the Defendant. The mere existence of the Doucet Letter cannot, in and of itself, override the terms of the Agreement. Rather Mr. Fisk requires a legal basis for his Claim to be successful on the basis of the Doucet Letter. Given that Mr. Fisk was self-represented, and has no legal training, I felt it important to turn my mind, on his behalf, to any legal options that could possibly support his argument. In my view, there are two potential avenues that must be considered in this regard:

1. Whether there is a basis upon which to conclude the Doucet Letter forms part of the Agreement itself; or

2. Whether Mr. Fisk has a Claim outside of the Agreement and the law of contract, on the basis the Doucet Letter might constitute a negligent misrepresentation.

[30] Turning to the first argument, whether the Doucet Letter can be said to form part of the Agreement, as a starting point, it must be acknowledged that the maturity date set out in the Doucet Letter is clearly inconsistent with the terms of the Agreement.

[31] The Agreement provides for a five-year term over which the Loan will be forgiven at a rate of 20% of the total Loan per year on the anniversary date of the commencement of the term. Accordingly, the maturity date upon which full forgiveness is reached cannot be determined without first determining the date of commencement of the term. This, in turn, is defined under s. 4.7 of the Agreement which reads:

“Commencement of the term is upon completion of the project and within one year of the approval date”. The approval date as set out in the Agreement is March 8, 2018. The Doucet Letter sets out the “start of forgiveness date”, which would seem to be the commencement of the term, as March 18, 2018, a mere eight days after the approval date. Not only would completion of the project or repairs be virtually impossible within such a short time frame; none of the evidence, including that of Mr. Fisk, suggests that the project was completed in 2018, let alone by March 18, 2018. If the commencement date set out in the Doucet Letter is contrary to the terms of the Agreement, by logical extension, so too is the maturity date.

[32] Upon reviewing the terms of the Agreement, I can find only two ways the Doucet Letter could potentially form part of the Agreement: if it constitutes either an amendment or a waiver of the Agreement.

[33] The first of these can be dealt with in a summary fashion. Section 16.1 of the Agreement does allow for amendments to be made; however, the section reads: “This agreement may only be amended on the written consent of both the Lender and the Borrower”. While there is little doubt Mr. Fisk would have agreed to such an amendment of both the commencement and maturity dates had it been proposed, there is no evidence that Mr. Fisk and Ms. Doucet actually discussed such an amendment, and, even if they had, the Doucet Letter cannot be said to constitute a valid amendment under the Agreement as it does not include the required signature denoting the agreement of the Borrower, Mr. Fisk.

[34] With respect to the question of waiver, s. 17.1 of the Agreement indicates: “The Lender may, in its sole discretion, waive in writing any of the Borrower’s obligations under this agreement”. Setting aside the question of whether the commencement and maturity dates can even be characterized as a “Borrower obligation”, in assessing whether the Doucet Letter could be said to constitute a waiver, upon closer review, I find its contents to be problematic in this regard. While the Doucet Letter does set out the “start of forgiveness date” as March 18, 2018, and the “Maturity date (five years from the start of forgiveness)” as March 18, 2023, the first paragraph of the Doucet Letter reads: “Yukon Housing Corporation (YHC) is pleased that your Forgivable Home Repair Program Loan project is now complete and the forgivable period of your loan can now begin” (emphasis added). This sentence certainly reads as suggesting the forgivable

period is commencing at a time proximate to the writing of the Doucet Letter. As the Doucet Letter is dated March 5, 2020, almost two full years after the “start of forgiveness date” set out in the letter, I must conclude that the Doucet Letter is internally inconsistent in relation to commencement of the term, such that the Doucet Letter cannot be said to be a clear and unequivocal waiver of any of the terms of the Agreement. This conclusion is reinforced by Ms. Doucet’s final sentence which includes a reminder to Mr. Fisk, to “adhere to the conditions of the Forgivable Loan Agreement”.

[35] Accordingly, I am simply unable to find any legal basis upon which to conclude that the Doucet Letter forms part of the Agreement between the parties.

[36] Turning to the question of whether Mr. Fisk may have a claim outside of contract law, specifically on the basis of negligent misrepresentation, I acknowledge the submission of counsel for the Defendant that Mr. Fisk’s Claim appears to be particularized as a contract issue, as he is seeking the return of funds he believes he was not required to pay under the Agreement, rather than seeking damages in relation to non-contractual losses he may have suffered because of his reliance on the Doucet Letter, for example additional costs in relation to the purchase of the trapline property or losses in relation to the sale of his truck. At the same time, I am, again, cognizant of Mr. Fisk’s lack of legal knowledge. Accordingly, in fairness to him, I felt it important to turn my mind to whether his Claim could nonetheless be founded on the basis of negligent misrepresentation.

[37] To prove a claim for negligent misrepresentation, the law requires a plaintiff to establish that any loss suffered was a reasonably foreseeable consequence of the

defendant's negligence. In *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, the Supreme Court of Canada made the following comments about the reasonable foreseeability assessment at para. 35:

As a matter of first principles, it must be borne in mind that an injury to the plaintiff in this sort of case flows from the fact that he or she detrimentally relied on the defendant's undertaking, whether it take the form of a representation or the performance of a service. It follows that an injury to the plaintiff will be reasonably foreseeable if (1) the defendant should have reasonably foreseen that the plaintiff would rely on his or her representation; and (2) such reliance would, in the particular circumstances of the case, be reasonable (*Hercules*, at para. 27). ...

[38] In applying the law to the circumstances of this case, I ultimately must conclude that both the reasonableness and reasonable foreseeability of Mr. Fisk's reliance on the Doucet Letter are undermined by the issues already identified with respect to its contents. I simply cannot be satisfied that it was either reasonable or reasonably foreseeable that Mr. Fisk would rely on the Doucet Letter given the clear and obvious error with respect to the "start of forgiveness date" and the clearly contradictory information in relation to the commencement of the forgivable period implicit in the first paragraph of the letter.

[39] Accordingly, while I find Mr. Fisk's situation to be highly sympathetic, I am simply unable to find any legal basis upon which I could conclude that the maturity date can or should be determined based on the Doucet Letter.

Maturity Date based on the Terms of the Agreement

[40] While I have determined that the Doucet Letter is not determinative on the question of maturity date, as argued by Mr. Fisk, this does not end the matter. I must still determine the maturity date pursuant to the terms of the Agreement.

[41] As previously noted, the maturity date, in practical terms, is the fifth anniversary of the commencement of the term of the loan at which time the Loan would be forgiven in its entirety. Section 4.7 of the Agreement says “commencement of the term is upon completion of the project and within one year of the approval date” of March 8, 2018.

[42] Mr. Fisk argued, and had Ms. Richardson agree, in cross-examination, that this section is confusing as commencement could be interpreted in two different ways, which I understood him to mean as either one year from the approval date or upon completion of the project. As a matter of interpretation, Mr. Fisk’s assertion that the section can be taken two different ways would only be the case if the section was framed in the disjunctive, using “or” rather than “and”. The use of “and” makes the section conjunctive rather than disjunctive, meaning the commencement of the term is based on both the completion date of the project and that completion being within one year of the approval date; not one or the other.

[43] YHC’s interpretation of both requirements is based entirely on their record of payments to Mr. Fisk, referred to by Ms. Richardson as draws, and located at Tab H of Exhibit 6. YHC records show that there were seven draws to Mr. Fisk as follows:

1. \$7,500 on April 13, 2018;
2. \$3,755.11 on November 16, 2018;
3. \$4,958.11 on March 15, 2019;
4. \$4,212.50 on May 24, 2019;
5. \$4,633.75 on June 20, 2019;
6. \$4,323.86 on November 8, 2019; and
7. \$616.67 on January 31, 2020.

[44] With respect to the first requirement under s. 4.7, Ms. Richardson testified that YHC defines the completion date of the project as the date of the last draw; January 31, 2020, in this case.

[45] With respect to the one-year requirement, one year from the approval date would be March 8, 2019. Ms. Richardson says that Mr. Fisk must have been granted an extension beyond the one year as he continued to receive draws after that date, which would not have happened had the project been completed within the one-year time frame. The Agreement does appear to contemplate the possibility of extensions in s. 17.4, which reads: "No extension of time given by the Lender to the Borrower, or anyone claiming under them, shall in any way affect or prejudice the rights of the Lender against the Borrower, or any other person liable for payment of the Loan, except to the extent of such extension".

[46] For his part, Mr. Fisk says that, while he found s. 4.7 to be confusing, he understood commencement to be one year from the approval date. He further argues that there was no physical proof offered by the Defendant to indicate that he was ever granted any extensions. However, Mr. Fisk, on cross-examination, was asked when the project was actually completed and he said it was completed in 2019. When pressed for a more specific date, he said that the project was completed before his son returned to school, which he knew because his son helped him with the renovations. As return to school in the Yukon is generally late August/early September, on Mr. Fisk's own evidence, the project was not completed before the one-year deadline. Accordingly, I find that he must have been granted an extension beyond the one year. I am further satisfied that the granting of an extension addresses the s. 4.7 requirement with respect to the temporal deadline.

[47] This leaves the question of the second requirement in s. 4.7, the date of completion of the project. As noted, YHC defines completion date as the date of the last draw. Mr. Fisk argues that nowhere does the Agreement, or any of the other documents, indicate that the date of completion of the project will be determined as the date of the last draw.

[48] In this regard, I must agree with Mr. Fisk. While I understand that YHC's use of the last draw offers them a practical way to determine completion based on their own records, I am not satisfied that anyone, who is not an employee of YHC and familiar

with their internal processes, would interpret date of completion of the project to mean the final draw issued by YHC. YHC's interpretation is simply not supported by the wording of the terms of the Agreement.

[49] Absent an express provision defining completion date as the date of the last draw, the words "upon completion of the project" must be interpreted based on common usage. In my view, the phrase must be interpreted to mean when the actual repair or renovation work is done.

[50] Applying this interpretation, I must now determine, based on the evidence presented, the date that work was completed on Mr. Fisk's project. This determination is somewhat challenging in this case as there was no definitive date advanced by either party with respect to when the actual work was finished.

[51] Ms. Richardson was only able to speak to the dates of the various draws as she only reviewed the Program Officer's file and not the Technical Officer's file, which may have included additional information in relation to dates such receipts or invoices, and possibly final inspection dates.

[52] With respect to Mr. Fisk, he was the unfortunate victim of a gunshot wound to the head in 2016, which has significantly affected his memory of many specific details. This was most notable in his inability to recall whether he had received various documents. However, it should be noted that Mr. Fisk freely acknowledged the limitations of his memory and there were no indicators that he was, at any time, being deliberately untruthful.

[53] The evidence Mr. Fisk was able to provide with respect to completion was that the project was finished before his son returned to school in 2019, which would place completion sometime around September 2019. While he was not able to give the exact date, I am satisfied that his memory of the general timeframe of completion is sufficiently credible and reliable as he and his son completed the project together.

[54] This finding is further supported, in my view, by the fact that the last draw of significance was issued on November 8, 2019, as opposed to the nominal amount paid out in January 2020, which further persuades me that the work had been completed before November 8, 2019. As Ms. Richardson testified that draws can take up to 15 days to process, I am satisfied, on a balance of probabilities, that the work would have been completed between September 1 and October 15, 2019; therefore, commencement of the term would also have been within that timeframe.

[55] While this finding with respect to the completion date is far from precise, it is nonetheless a sufficient basis upon which I can conclude that Mr. Fisk's maturity date would have been no later than October 15, 2024. Based on this conclusion, it follows that Mr. Fisk's earned forgiveness as at November 7, 2023, when he paid YHC the \$12,000, would have been four years rather than the three he was credited by YHC. This means the unforgiven amount would be one year or 20% of the total Loan amount of \$30,000. Based on this calculation, the outstanding amount as at November 7, 2023, would be \$6,000, rather than the \$12,000 he paid.

Conclusion

[56] Accordingly, there will be judgment in favour of the Plaintiff in the amount of \$6,000 plus costs as determined by the Small Claims Clerk and post-judgment interest calculated pursuant to the *Judicature Act*, RSY 2002, c. 128.

RUDDY T.C.J.