Citation: *Pettifor v. Richardson*, 2009 YKSM 8 Date: 20090713
Docket: 08-S0104
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: His Honour Judge Barnett

Diane Pettifor and Gary Pettifor
Plaintiffs

v.

Joanne (Jodi) Richardson and Mark Richardson and Wharf on Fourth Inc.
Defendants

Appearances:

Diane Pettifor and Gary Pettifor	Appearing on own behalf
Mark Richardson	Appearing on own behalf
Joanne (Jodi) Richardson	Appearing for the Wharf on Fourth Inc.

DECISION

[1] The Plaintiffs' claim in this matter arose when the corporate defendant terminated a lease (Exhibit #1) in October 2008 – three years early. The corporate defendant is now inactive and without assets. The plaintiffs' essential claim is against the Richardsons who signed the lease as guarantors.

[2] The plaintiffs' claim was for $12,685.26 when it was filed January 26, 2009. At the commencement of trial on July 6, 2009 the parties agreed that the claim should be increased to $19,571.62 (see Exhibits #31 & #33) and that no further claims will be made by the plaintiffs against any of the defendants arising from the lease or its termination.

[3] In 2002, the plaintiffs sold the business known as “The Wharf on Fourth”. The Richardsons became the principals of the corporate defendant then. The business was a successful fish store. The defendants rented the store premises from the plaintiffs.

[4] In 2008, the rent payable to the plaintiffs was $2,290.50 monthly.

[5] The Richardsons ran a good business but market factors beyond their control forced them to make the sad decision to close the fish store and vacate the premises in October 2008. On August 26, 2008, they wrote to the Pettifors to advise them of this decision (Exhibit #2). That letter does not reveal that the Richardsons then realized that terminating their financial obligations would, at the very least, require some negotiations with the Pettifors.

[6] The Pettifors were advised by their lawyer and clearly did understand the basic legal positions of themselves and the Richardsons. This is apparent from their letters to the Richardsons dated September 7, 2008 (Exhibit #3) and September 10, 2008 (Exhibit #5).

[7] The Richardsons and the Pettifors met on September 12, 2008. At that time, the Pettifors were aware that acquaintances of the Richardsons, Jonathan Peterson (Peterson) and Matthias Lexow (Lexow), were interested in purchasing the property or renting the building. The Richardsons say that the Pettifors therefore unequivocally agreed to release them from their continuing obligations. The Pettifors say that they agreed to release the Richardsons if a satisfactory agreement was completed with Peterson and Lexow. Nothing was put in writing.

[8] The Pettifors did reach an agreement with Peterson and Lexow on September 14, 2008 (Exhibit #17). The terms of the agreement were outlined in a “letter of intent” given by the Pettifors to Peterson and Lexow (Exhibit #12) and a corresponding acknowledgement given by Peterson and Lexow to the Pettifors

(Exhibit #10). In legal terms, these parties “agreed to agree” with “all binding and legal documents must be done and approved by lawyers on both sides” in the words of the Pettifors and “we really hope that we can work this out in a manner that suits both parties” in the words of Peterson and Lexow.

[9] Unhappily, the Pettifors/Peterson & Lexow deal did not complete. It seems that some persons are blaming the lawyers involved and they in turn have suggested that others were perhaps not acting in good faith. Some unpleasant and inappropriate e-mails were sent (these accompany the defendants’ reply and are among the plaintiffs’ exhibits). I believe that really, the truth of the matter is pretty simple: the agreement between the Pettifors and Peterson & Lexow was not an entire agreement and it was not completed because they were unable to reach a final agreement concerning some real – not fanciful – conditions.

[10] In these circumstances, it is entirely clear to me that the Richardsons’ obligations were not released or discharged but continued after the meeting on September 12, 2008. The plaintiffs’ claim is well-founded.

[11] The defendants filed a counterclaim for $25,000.00 (reduced from $30,600). This was not discussed by any of the witnesses who testified on July 6, 2009 but is based upon documents and argument accompanying the reply and supplemented by a “rebuttal” filed June 23, 2009. The counterclaim cannot succeed and is dismissed.

[12] The plaintiffs agree that the claim of $73.50 for garbage disposal is to be deleted.

[13] The plaintiffs’ claim includes $1,418.34 paid to their solicitors. There is no specific clause in Exhibit #1 that might require the defendants to reimburse them for this expense and in the circumstances I can see no compelling reason that they should.

[14] There will be judgment for the plaintiffs against all defendants in the amount of $18,079.78. The plaintiffs are also entitled to court costs: they will include $100.00 for the preparation and filing of pleadings and $150.00 compensation for inconvenience and expense. The plaintiffs are further entitled to pre-judgment and post-judgment interested under the *Judicature Act* (as to costs and interest, see sections 57, 59 and 60 of the *Small Claims Court Regulations*).

Barnett T.C.J.