

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Dimov v. Equifax Canada Co.*, 2017 NSSM 1

Claim: SCCH 457195

Registry: Halifax

Between:

Dimcho Dimov

Claimant

v.

Equifax Canada Co.

Defendant

Adjudicator: Augustus Richardson, QC
Heard: December 8, 2016
Appearances: Dimcho Dimov, claimant, for himself
Sara D. Nicholson, counsel, for the defendant
Date of Decision: January 4, 2017

Decision

[1] Mr. Dimov claims \$25,000.00 in damages against the defendant Equifax Canada Co (“Equifax”). He says that Equifax kept incorrect information containing his credit worthiness in its files. He says that he had been declined credit card applications on three occasions because of this error, as well as a car loan and a rental application. He claims as well for emotional distress and embarrassment; lost working time; and punitive damages.

[2] I heard the evidence of Mr. Dimov. I also reviewed his documents. Equifax called no witnesses.

[3] Based on this evidence I am satisfied as to the following facts on a balance of probabilities.

[4] In April 2015 Mr. Dimov noticed that his Equifax credit report stated that he owed \$482.00 to the Bank of Nova Scotia. The account had been reported delinquent in January 2010, and had been reported delinquent subsequently 54 times. The difficulty was that Mr. Dimov had never opened such an account. He wrote to Equifax to complain about the error.

[5] On May 5, 2016 Mr Dimov filed a request with Equifax to dispute what he said was inaccurate information: Ex. D9, Tab 2. Equifax then contacted the Bank of Nova Scotia on May 15, 2015 at a 416-area code fax number to request confirmation of the information: Ex. D9, Tab 3. In that request it sought confirmation of the following disputed account: “Scotia Bank - (905) 824-0622 ... Account Number [redacted].” The bank replied on June 3rd to the effect that the account was attached to one Dimcho Dimov living at a Brampton, Ontario address.

[6] On June 8, 2015 Equifax responded. It said that it had contacted the Bank of Nova Scotia, and that it had reported to Equifax that the information “reported to Equifax [by the bank] is accurate and factual.” It added accordingly that “no amendment will be made to your credit file.”

[7] Mr. Dimov wrote back. He pointed to the logical inconsistencies in the report. For example, an account said by the bank to have been opened in 2010 was reported to have first been delinquent in 2009.

[8] Equifax responded on July 6, 2015. It advised that the information had been “investigated with Scotia Bank and was confirmed to be factual and accurate.” It went on to note that if Mr. Dimov remained adamant that the information was wrong he should himself contact the bank at “(905) 824-0622 to request a written confirmation stating the above account is not in your name.” It added that it was under no obligation to furnish proof of what creditors were telling it—and that it was his responsibility to contact the creditor directly with respect to the basis for the information the creditor had reported to Equifax.

[9] Mr. Dimov tried to contact the bank at the number provided by Equifax. It turned out not to be a phone number. Nor was it to any branch of the bank. It was rather the fax number of a hair salon in Mississauga, Ontario. Mr. Dimov again corresponded with Equifax.

[10] On November 5, 2015 Equifax responded. It advised that it was looking into the matter and would get back to him. On January 13, 2016 Equifax advised that it had amended its files to remove the information regarding the bank account.

[11] Mr. Dimov could not point to any actual loss he had suffered as a result of the inaccurate information contained in Equifax's credit report. Accepting without finding that any credit card application had been rejected because of the resulting bad credit score does not in itself establish any loss.

[12] In making his claim Mr. Dimov relied upon two decisions involving similar fact scenarios: *Neil v. Equifax Canada Inc* 2005 SKPC 105, and *Nammo v. Transunion of Canada Inc* 2010 FC 1284. In *Neil* damages of \$4,500.00 were awarded to a lawyer for the lost time, damage to reputation and distress associated with his efforts to fix the erroneous credit score. With great respect to O'Hanlon, PCJ (the judge in that case) I was not persuaded by the reasoning that led to that result. However, and in any event, the limit for general damages (that is, damage and loss not related to a specific and identified loss) in this court is only \$100.00. I drew this to Mr. Dimov's attention at the close of his case. At that point he wanted to withdraw his claim in order to advance it in the Supreme Court. Ms. Nicholson objected on the grounds that having come so far it was too late for Mr. Dimov to change direction. I agreed.

[13] In *Nammo* the claimant was awarded \$5,000.00 general damages because the defendant had collected inaccurate personal information pursuant to the federal *Personal Information Protection and Electronic Documents Act*, disseminating that information and then failing to correct it promptly upon being advised of the error. The difficulty here is that *Nammo* involved a claim pursuant to federal legislation; and, in any event, resulted in an award well in excess of the jurisdiction of this court.

[14] Counsel for Equifax relied in part on various provisions of the *Consumer Reporting Act*, RSNS 1989, c.93. The relevant portions of sections 10 and 13 of that Act provide as follows:

- 10 (1) Every consumer reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its consumer reports.

- (2) A consumer reporting agency shall not report
 - (a) any information that is not stored in a form capable of being produced under Section 12;
 - (b) any information that is not extracted from information appearing in files stored or collected in a repository located in Canada.

- (3) A consumer reporting agency shall not include in a consumer report
 - (a) any information unless the name and address of the source of the information is recorded or retained in its files or can be readily ascertained by the consumer;
 - (b) any information concerning the consumer unless it has made reasonable efforts to verify the information and unless it has recorded in its files the efforts taken to verify the information;
 - (c) information regarding any actions, judgments, accounts or debts that are on their face statute barred unless it is accompanied by evidence appearing in the file that recovery is not statute barred;

- (d) information as to any judgment against the consumer unless mention is made of the name and, where available, the address of the judgment creditor as given at the date of entry of the judgment and the amount or, where the judgment is known to have been assigned, where available, the name and address of the assignee and the amount or, in the case where a judgment has been fully paid or satisfied as appears from the records on file at the office of the clerk of the court or the prothonotary of the court and six years has expired since the date of the satisfaction of the judgment, information concerning the judgment unless the consumer has had more than one judgment recorded against him;
- (e) information as to the bankruptcy of a consumer after six years from the date of the discharge of the consumer unless he has been bankrupt more than once;
- (f) information regarding any criminal or summary conviction charges against the consumer where the charges have been dismissed, set aside, withdrawn or in respect of

which a stay of proceedings has been entered;

- (g) information as to convictions for crimes or summary offences after seven years from the date of conviction or, where the conviction resulted in imprisonment, from the date of the termination of the sentence, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted;
- (h) any information given orally unless the content of the oral report is noted in writing in the file; or
- (i) any other information prescribed by the regulations. R.S., c. 93, s. 10.

- 13 (1) Where a consumer disputes the accuracy of any information relating to him in the files of a consumer reporting agency he may file a statement of protest with the consumer reporting agency or the user or both.
- (2) Where a statement of protest is filed in accordance with subsection (1), the consumer reporting agency or the user shall immediately
 - (a) attempt to verify the information and, where the information cannot be

verified, expunge the information from the consumer's file; or

- (b) where the veracity of the information is sustained, record the protest in the consumer's file,

and report the action taken

- (c) to the consumer; and
- (d) to any person to whom it furnished a consumer report within the preceding sixty days.

- (3) Where a consumer report is made by a consumer reporting agency to a user in the Province and the office of the consumer reporting agency is not located in the Province, the user is responsible for complying with subsection (2).
- (4) Where a consumer reporting agency makes a report to a user whose office is located outside the Province, the consumer reporting agency is responsible for complying with subsection (2).
- (5) Where a consumer is dissatisfied by the action taken by the consumer reporting agency or the user under this Section he may appeal to the Director who shall investigate the matter

[15] Counsel relied upon the decision in *Spencer v. Equifax Canada Inc.*, 2011 ONSC 7284. There erroneous information had been recorded in the files of Equifax. Once the plaintiff complained about the information Equifax queried the creditor who had provided the disputed

information. The creditor confirmed the information. The court held that Equifax was not required to examine the underlying credit documents or information supplied by the creditor; nor was it required to adjudicate the dispute between a creditor and a debtor. Equifax's only duty was to respond to a complaint and seek confirmation from the creditor. Once it had received that confirmation its duty was at an end: see *Matutschovsky v. Equifax Canada Inc* [2009] OJ No. 1266 to similar effect.

[16] Counsel relied too on *Haskett v. Equifax Canada Inc* [2003] OJ No. 771 (CA). That case dealt with certification of a proposed class action. While the court struck out portions of the claim as framed, it did not rule out the possibility of a negligence claim by a consumer against a credit reporting agency such as Equifax: see paras.56-58.

[17] While *Spencer* and *Matuschovsky* are Ontario decisions, I find persuasive the observation in the latter decision (at para.8) that “the applicable standard of care requires credit reporting agencies to carry out their functions honestly, accurately, with skill and diligence, and in accordance with their statutory obligations.” The difficulty here is that Equifax did not carry out its statutory obligations under the law in Nova Scotia.

[18] It is to be recalled that pursuant to s.10(3)(a) of the *Consumer Reporting Act* Equifax was forbidden from including in a consumer report “any information *unless* the name *and* address of the source of information is recorded *or* retained in its files *or can be readily ascertained by the consumer*” (emphasis added). The point of such a requirement is obvious. It is to provide a consumer with the information necessary to enable him or her to identify and contact the entity that has supplied the disputed information to Equifax. Yet Equifax did not list the bank's address in Mr. Dimov's consumer report (being Ex. C3). I think I can take notice of the fact that the Bank of Nova Scotia has thousands of branches in Canada, any one of which could generate inaccurate credit information. Equifax's failure to record the address meant that Mr. Dimov could not locate for himself the bank branch (or office) which had generated the information recorded in Equifax's files. The fact that the only information recorded by Equifax in its consumer report was a fax number of a hair salon in Mississauga, Ontario simply highlights Equifax's failure to comply with its obligation pursuant to s.10(3)(a).

[19] Equifax's difficulty in this regard is compounded by s.13(2)(a) of the Act. That section required Equifax to immediately expunge information from Mr. Dimov's consumer file where it

could not verify the disputed information. Counsel argues that Equifax's correspondence of May 15th to the bank, and its subsequent correspondence of July 6th to Mr. Dimov, establish that it did attempt to confirm the information it had. It says that it cannot be faulted because the bank provided it with the wrong information, or erroneously confirmed it.

[20] On this point I agree with counsel that Equifax did attempt to verify the disputed information and, to that extent, satisfied its obligation under s.13(2)(a). However, the information Equifax asked the bank to confirm was itself erroneous. It contained what appeared to be a phone number for a bank branch that was in fact a fax number to a hair salon in Ontario. In the absence of any direct evidence from the bank, or from Equifax (other than its correspondence), we cannot know what—if any—impact that erroneous information had on the bank's decision to confirm the confirmation requested by Equifax. It seems clear, however, that when Equifax attempted to confirm the disputed information it did not itself contact the bank at the number in its own records. Had it done so it would have discovered that there was an error (since the number it had was a fax number to a hair salon), and hence would have been alerted to the existence of some problem with its records. That in turn would have raised a red flag that required more than a fax to a different office of the bank to resolve. With those observations in mind I was not satisfied that Equifax had established on a balance of probabilities that it carried out its duties "with skill and diligence" as required by the authorities above noted.

[21] For these reasons I am satisfied that Equifax is liable to the claimant for a breach of its obligations under the *Consumer Reporting Act*. However, Mr. Dimov failed to establish any out-of-pocket damage or loss as a result of the breach. His claim accordingly sounds only in general damages, which in this court are limited to \$100.00. I am satisfied that he has suffered general damages to that extent, plus costs of \$100.00, and will make an order to that effect.

DATED at Halifax, NS
this 4th day of January, 2017

Augustus Richardson, QC
Adjudicator