

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Preferred Credit Resources Ltd. v. O'Halloran*, 2017 NSSM 45

**Date:** 20170828

**Claim:** 460966

**Registry:** Halifax

Between:

Preferred Credit Resources Limited

Claimant

v.

Brendan Patrick Douglas O'Halloran

Defendant

**Adjudicator:** J. Scott Barnett

**Heard:** June 8, 2017

**Written Decision:** August 28, 2017

**Counsel:** Preferred Credit Resources Limited,  
Self represented

Brendan Patrick Douglas O'Halloran,  
Self represented

**By the Court:**

**INTRODUCTION**

[1] The Claimant, Preferred Credit Resources Limited (“Preferred Credit”), seeks payment of an allegedly outstanding debt under a Canadian Tire Bank Mastercard credit card account that was assigned to Preferred Credit some years ago.

[2] The Defendant, Brendan Patrick Douglas O’Halloran, denies that any debt is owing. Moreover, Mr. O’Halloran says that the Small Claims Court of Nova Scotia does not have jurisdiction to adjudicate the Claim as a result of Section 5(1) of the *Small Claims Court Act*, R.S.N.S. 1989, c. 430.

[3] I have reached the conclusion that this Court does not have jurisdiction to adjudicate the Claim and the matter in this Court will be dismissed.

**FACTUAL BACKGROUND**

[4] Preferred Credit commenced action on the aforementioned debt in the Supreme Court of Nova Scotia on May 6, 2015 by way

of a Notice of Action for Debt. Mr. O'Halloran filed a Notice of Defence on June 5, 2015.

[5] Thereafter, the parties had some discussions about the debt but nothing ultimately came out of those discussions and Preferred Credit decided to proceed with its claim. On February 16, 2017, Preferred Credit filed a Notice of Election to Transfer (Form 4) in order to transfer the proceedings to the Small Claims Court of Nova Scotia pursuant to Section 19(3) of the *Small Claims Court Act*.

[6] The Prothonotary in Halifax then forwarded the court file to the Small Claims Court Clerk in Halifax and a Notice of Adjudication (Form 5) was issued and subsequently sent by registered mail to the parties.

[7] When the hearing took place before me, both parties presented their respective evidence on all aspects of the case on the understanding that, by doing so, Mr. O'Halloran was not conceding that this Court had jurisdiction.

[8] The evidence establishes that the assignment of the alleged debt in question to Preferred Credit was clearly permitted by the

relevant Mastercard Cardmember Agreement. Mr. O'Halloran is contractually bound to all of that Agreement's terms.

[9] On the other hand, Preferred Credit was clearly neither one of the original signatories or parties to that Agreement nor does its name appear anywhere in that Agreement.

[10] In light of my decision concerning this Court's lack of jurisdiction in this case, there is no need to delve into all of the arguments and counterarguments about whether or not Mr. O'Halloran is indebted to Preferred Credit as claimed.

### **ISSUE**

[11] Can this Claim be heard in the Small Claims Court of Nova Scotia in light of Section 5(1) of the *Small Claims Court Act*?

## **DISCUSSION**

[12] The key provision here is Section 5(1) of the *Small Claims Court Act* which states as follows:

### **Restriction on corporation or partnership**

5(1) To better effect the intent and purpose of this Act and to prevent the procedure provided by this Act being used by a corporate person to collect a debt or a liquidated demand where there is no dispute, no partnership within the meaning of the Partnerships and Business Names Registration Act and no corporation may succeed upon a claim pursuant to this Act in respect of a debt or liquidated demand unless the claimant is one of the original parties to the contract or tort upon which the claim is based or unless the claim is raised by way of set-off or counterclaim.

[13] The intent and purpose of the *Small Claims Court Act* is to constitute a court where claims within the Court's limited monetary jurisdiction are adjudicated "informally and inexpensively but in accordance with the established principles of law and natural justice": Section 2 of the *Small Claims Court Act*.

[14] There is no doubt that Preferred Credit's Claim against Mr. O'Halloran falls within the monetary jurisdiction of this Court – the Claim is for less than \$25,000 on account of alleged breach of contract: Section 9(a).

[15] On the other hand, there is also no doubt that Preferred Credit is not an “original party” to the contract sued upon in this case, even if one were to adopt the somewhat expansive understanding of that term set out in the decision of Justice MacLellan in *VFC Inc. v. MacLean*, 2009 NSSC 314.

[16] When I pointed out this issue to the Claimant's representative at the hearing before me, I was provided with a copy of the decision in *Preferred Credit Resources Limited v. Morrison*, 2016 NSSM 27. In the circumstances, Preferred Credit took the position that, in similar factual circumstances, another Adjudicator had held that this Court does have jurisdiction.

[17] In that other case, the allegedly outstanding credit card debt was assigned by MBNA Canada Bank to Preferred Credit. On the strength of that assignment, Preferred Credit commenced an action in the Supreme Court of Nova Scotia. The defendant in that case filed an election to transfer the matter to the Small Claims Court

and Preferred Credit brought a preliminary motion before the Small Claims Court Adjudicator concerning the jurisdiction of the Small Claims Court.

[18] According to the written decision, Preferred Credit was content to proceed in the Small Claims Court but it was simply bringing its preliminary motion in order to forestall a future argument by a potentially unsuccessful defendant that the Court had not had jurisdiction to decide the case in the first place.

[19] The Adjudicator concluded that the Small Claims Court did have jurisdiction to hear the case although he also wrote that the decision was “based on the very unique facts of this case.”

[20] Unfortunately, no one at Preferred Credit took heed of that last mentioned but very significant caveat. The decision was apparently interpreted as endorsing Preferred Credit’s ability to pursue debts assigned to it by way of the Small Claims Court even if Preferred Credit’s claim was otherwise seemingly barred by Section 5(1) of the *Small Claims Court Act*.

[21] I do not find the decision in *Preferred Credit Resources Ltd. v. Morrison* to be determinative in this case. At the very least, it is

clearly distinguishable in that sense that, in that earlier case, both parties were consenting to the jurisdiction of the Small Claims Court. In the case before me, Mr. O'Halloran, the Defendant, is expressly withholding his consent and, further, he is not the party who filed the election to transfer the matter from the Supreme Court to the Small Claims Court.

[22] Even more fundamentally, I must respectfully disagree with the notion in *Preferred Credit Resources Ltd. v. Morrison* that “the delivery of appropriate justice would be lost” if parties were not permitted to consent to jurisdiction even if that jurisdiction could not otherwise be found somewhere within the provisions of the *Small Claims Court Act*.

[23] In this regard, it is trite to say that the Small Claim Court is a statutory court whose powers are limited to those set out in the statute that created it (see, e.g., *Howard E. Little Excavating Ltd. v. Blair's Custom Metals*, 2006 NSSC 251 at para. 6) with some allowance for adjudicators to “fill gaps in legislation” in furtherance of the stated purpose of the Small Claims Court (see, e.g., *CIBC Life Insurance Company Limited v. Hupman*, 2016 NSSC 120 at para. 24).

[24] However, that last mentioned concept that I would describe as “implied jurisdiction” is limited to matters necessarily incidental or ancillary to the Court’s statutory jurisdiction. It does not go so far as to permit a Small Claims Court Adjudicator to effectively override the statutory provisions pertaining to the Court’s jurisdiction in pursuit of what is perceived to be the most just approach.

[25] This is so even if all parties consent to an extended but unjustified exercise of jurisdiction by a statutory court or administrative board. There is a long line of authority going back at least to 1750 that makes this clear: Halsbury’s *Laws of England*, 4<sup>th</sup> ed., p. 326 but for further references (among many others) see, e.g., *Ottawa & New York Railway v. Cornwall (Township)* (1915), 52 S.C.R. 466, aff’d [1917] A.C. 399 (J.C.P.C.), *Re McKittrick*, [1926] 4 D.L.R. 44 (Ont. C.A.), *Re Monarch Dress Co. v. Aaronson*, [1929] 2 D.L.R. 514 (Ont. S.C.), *Jackim v. Kusy* (1953), 9 W.W.R. (N.S.) 675 (Man. Q.B.) and, more recently, the comments in *Leighton v. Stewiacke Home Hardware Building Centre*, 2012 NSSC 184 at para. 66.

[26] In short, the Nova Scotia Legislature has clearly expressed its view that the intent and purpose of the Small Claims Court is better

effected by specifically limiting the Court's jurisdiction in the manner set out in Section 5(1). My refusal to overlook that view does not frustrate the Legislature's reason for establishing the Small Claims Court. Further, it is neither my role nor within my power as an Adjudicator to say that the Legislature is wrong in making its choice.

### **CONCLUSION**

[27] Section 5(1) provides that Preferred Credit cannot succeed upon its Claim in the Small Claims Court and, accordingly, the Claim will be dismissed.