

Claim No: SCCH - 470222

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: McCarthy v. Quillan, 2018 NSSM 22

BETWEEN:

GERALD JOSEPH McCARTHY
(Originally styled All Season Contracting 2012 Ltd.)

Claimant

- and -

CHRISTOPHER M. QUILLAN and MONIKA A. QUILLAN

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 16, 2018

Decision rendered on April 19, 2018

APPEARANCES

For the Claimant

self-represented

For the Defendant

Geoffrey Franklin
Counsel

BY THE COURT:

[1] This case was originally commenced on November 9, 2017, naming All Season Contracting 2012 Limited as Claimant. It sought the sum of \$16,400.00 against the Defendants. In the reasons for the claim, it stated:

“All Seasons replaced the defendants roof and no matter what we tried to do to make them happy, they still refused to pay.”

[2] The person who signed the Claim form on behalf of All Season Contracting 2012 Limited was Gerald McCarthy.

[3] A Defence was filed on behalf of the Defendants on December 19, 2017. One of the grounds of the Defence (among many) was that the Claimant’s corporate registration had been revoked, and under s.17 of the *Corporations Registration Act*, it was ineligible to maintain an action in Nova Scotia. When the matter came up before an Adjudicator (not me) in January 2018, this problem was discussed, and the matter was not proceeded with.

[4] About two weeks later, on February 12, 2018, Mr. McCarthy filed an Amended Claim in this same claim file, naming himself as the Claimant, seeking the sum of \$14,450.00 for a “new roof that was installed.” The discrepancy in the dollar amounts was not explained.

[5] Counsel for the Defendant argues that this Claim cannot succeed, as the wrong person is suing, and Mr. McCarthy is trying to do an impermissible end run around the *Corporations Registration Act*. This was raised as a preliminary

objection. I ruled that the Claimant ought to be permitted to present his evidence before facing possible dismissal of his Claim.

[6] As such I allowed Mr. McCarthy to present his evidence, after which Mr. Franklin moved for a non-suit. I dismissed the non-suit motion on the basis that, I said, there was some evidence that could support a personal claim by Mr. McCarthy, though I also stated that such evidence was weak and might not be accepted. Mr. Franklin elected to call no evidence, and the matter proceeded to argument on the evidence, such as it was, of Mr. McCarthy and his witnesses.

[7] The test accordingly changed from whether there was any evidence to support a personal claim by Mr. McCarthy, to whether or not on a balance of probabilities Mr. McCarthy had proved a right to sue on this contract.

The parties and the facts

[8] I have consulted the available public records and gleaned the following.

- a. All Season Contracting Ltd. is a company that was incorporated in the year 2000 but has had its registration revoked for non-payment since May of 2013. The Joint Stocks information lists the Claimant, Gerald McCarthy, as its President and sole Director as at the time its registration was revoked.
- b. All Season Contracting 2012 Limited appears to have been incorporated in 2012 but has also been defunct (for non-payment) since February 2017. The Joint Stocks information lists one Penelope Kirby as its President and sole Director. There is nothing in the public record that identifies Gerald McCarthy as having any connection to the company.

[9] Mr. McCarthy testified that he has been in the roofing business for about forty years. He testified that he got the call from another roofer - someone associated with Metro Roofing - to quote on a new roof for the Defendants' home, and that he did so in writing, addressed to the Defendant Christopher Quillan. He was not able to produce a copy of that quote, so I have no way of knowing who the quote described as the quoting party. Nor was any invoice produced to see who was later seeking payment for the job. Mr. McCarthy appeared to be suggesting that there was no invoice, only the quote, which is possible though it would be a bit unusual.

[10] There appears to be no question that a new roof was installed. There is also no doubt that Mr. Quillan was unhappy with the job and had Mr. McCarthy return to attempt to remedy the alleged problems. As Mr. McCarthy observed, Mr. Quillan was still unhappy and the roof he installed has apparently now been removed and replaced by another roofer.

[11] Mr. McCarthy admitted that he has done some of his work through the company All Season Contracting 2012 Limited. He was vague in describing his relationship to that company and to Ms. Kirby, its president and director.

[12] Mr. McCarthy justifies bringing this claim in his personal name because, he says, he bought the materials and paid his crew personally, the latter in cash. He did not produce a single document that might have corroborated his evidence that he was personally invested in this project.

[13] It is not disputed that Mr. McCarthy had a role to play in the roofing job. He was there throughout acting as a foreman, with a crew of four people he

described as subcontractors. There is no evidence as to what role, if any, was played by anyone else associated with All Season Contracting 2012 Limited, such as Ms. Kirby.

[14] It bears mentioning, and it is of some significance, that Mr. McCarthy believed this job was being done as part of an insurance claim and that he had some direct contacts with Intact Insurance, the Defendants' property insurer about getting paid. He says that he was told that there had been a cheque made out by Intact to Mr. Quillan and All Season Contracting 2012 Limited, jointly. He tried to get his hand on that cheque. It would appear that Intact believed the job was being done by All Season Contracting 2012 Limited.

[15] Mr. McCarthy did not testify that he advised Intact that they had named the wrong party on this cheque.

Discussion

[16] Mr. McCarthy does not appear to appreciate that the distinction between himself and All Season Contracting 2012 Limited is important.

[17] The inference is irresistible that when Mr. McCarthy first commenced this Claim, he chose the name of the Claimant - All Season Contracting 2012 Limited - advisedly. He saw some advantage to taking on this contract through that company. He sued in that name because he believed that it was that company that had contracted with the Defendants, or one of them. I cannot accept that did so in error, and that the contracting party had been Gerald McCarthy all along.

[18] Clearly, it came as a surprise to Mr. McCarthy to learn that All Season Contracting 2012 Limited was in default and could not bring or maintain an action in the courts. He could have chosen to do one of several things, including causing All Season Contracting 2012 Limited to cure its default and starting the Claim anew. That would have made some sense. He could have sought to have the debt (such as it was) properly assigned to him by a legal instrument, and sued as an assignee, which would also have made some logical sense. Instead, he chose to sue in his own name, and engage in a form of revisionist history by whitewashing the role of All Season Contracting 2012 Limited in the contractual relationship.

[19] Mr. McCarthy openly expressed the view that it should not matter - a roof was installed, and the Defendants should pay. He appeared to believe that the Small Claims Court should not concern itself with such technicalities. With respect, that view is naive and wrong.

[20] The law permits people to incorporate companies and transact business through them, with all of the advantages (reduced tax and limited liability among them) that may ensue. The downside is that these new corporate entities are "persons" under the law and have rights. As a court, I have a duty to treat the various people and companies as their involvement may appear, and not to gloss over these distinctions.

[21] On the evidence before me, there was a contract (partly written, at least) between All Season Contracting 2012 Limited and Mr. Quillan (not Ms. Quillan) to construct a new roof. I have no evidence before me as to the relationship

between Mr. McCarthy and All Season Contracting 2012 Limited. He might have been an employee, a subcontractor, a volunteer, or something else.

[22] Were Mr. McCarthy allowed to collect this debt personally, it would be an affront to all of the financial obligations and rights that All Season Contracting 2012 Limited may have or enjoy. For example, it may owe money to employees or subcontractors. It may owe tax. It may have a right to enjoy the profit. In short, the right to sue (such as it is) quite obviously belongs to All Season Contracting 2012 Limited, if anyone, and Mr. McCarthy cannot simply insert himself in the role as bill collector.

[23] In the result, the Claim by Mr. McCarthy should be dismissed as against both Defendants. The claim against Ms. Quillan would have been dismissed also because of the fact that it did not appear that she played any part in the process and did not place herself in a contractual relationship with All Season Contracting 2012 Limited or anyone else.

[24] This decision does not purport to deal with the merits of the Claim, in the sense of whether or not the roof was defective. That may yet be dealt with in a different proceeding involving different parties.

Eric K. Slone, Adjudicator