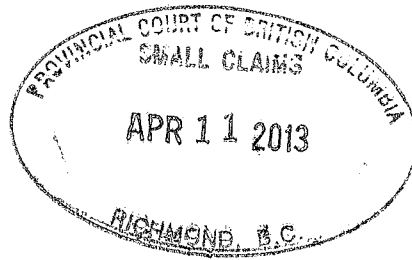


Citation:



Date:

File No: 24242
Registry: RICHMOND

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

A-1 INSULATORS INC.

CLAIMANT

AND:

LALLI DEVELOPMENT LTD.

DEFENDANT

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE E. J. McKINNON**

Counsel for the Claimant:

C. Drinovz

Counsel for the Defendant:

W. van der Sande

Place of Hearing:

Richmond, B.C.

Date of Hearing:

March 12, 2013

Date of Judgment:

April 11, 2013

[1] The Claimant obtained a default judgment against the Defendant Lalli Developments Ltd. in the amount of \$7,080.70, plus post-judgment court ordered interest, on January 11, 2002. That default judgment was granted following the filing of a Notice of Claim on November 26, 2001 in Small Claims File No. C20116005, wherein the Claimant was seeking payment of a debt allegedly owed by the Defendant in an amount of \$8,525.36. No reply was filed by the Defendant, and the Claimant proceeded successfully through the default process under the ***Small Claims Act***.

[2] Nothing has been paid on that judgment to date.

[3] On November 29th, 2011, the Claimant obtained an order from this court amending the name of the Defendant from "Lalli Developments Ltd." to "Lalli Development Ltd.", and amending the Default Order of January 22, 2002 accordingly.

[4] On December 22nd, 2011, the Claimant filed this action, Richmond Provincial Court No. 24242, seeking the following:

- a) Judgment in favour of the Claimant against the Defendant in the amount of \$7,080.70;
- b) Post-Judgment interest pursuant to the Court Order Interest Act from January 11, 2002 to date of payment;
- c) Costs (Filing fees of \$156 and Service fees of \$80); and
- d) Such further and other relief as to this Honourable Court may seem just and reasonable.

[5] On January 27th, 2012, the Defendant filed a reply indicating that the Claimant had failed to enforce the judgment obtained on January 11th, 2002, and that the Defendant had suffered prejudice thereby.

[6] A settlement conference took place on August 29th, 2012, and a hearing was set for legal argument on whether or not the Claimant could renew its judgment obtained in 2002 through this new action.

[7] Both the Claimant and the Defendant cite the decision in Young v. Younge [1985] B.C.J. No. 2342 which stands for the proposition that an action on an earlier judgment is a different cause of action from the original cause of action.

[8] The principle that an action is maintainable on a judgment of a court for a sum certain in money was confirmed in Young v. Verigin 2007 BCCA 551 and in other authorities provided to me by counsel. In this instance, the default order is a judgment of a court for a sum certain in money.

[9] The issue central to the authorities provided at this hearing was whether allowing a renewal of a judgment would amount to an abuse of process. Abuse of process has not yet been argued at this hearing. The issue of the jurisdiction of this court to allow the renewal of the judgment needed to be decided first.

[10] The British Columbia Provincial Court finds its authority over civil claims in the **Small Claims Act and Rules**. Section 3 of the **Small Claims Act** states:

"Section 3 (1) The Provincial Court has jurisdiction in a claim for

- (a) debt or damages,*
- (b) recovery of personal property,*
- (c) specific performance of an agreement relating to personal property or services, or*
- (d) relief from opposing claims to personal property if the amount claimed or the value of the personal property*

or services is equal to or less than an amount that is prescribed by regulation, excluding interest and cost.”

[11] The Claimant submits that the “new action” is a debt owed by the Defendant to the Claimant and is expressly allowed under Section 3(a) of the **Small Claims Act**.

[12] The Claimant also submits that the **Limitation Act** confers a wider jurisdiction upon this court beyond the strict wording of the **Small Claims Act** so as to allow a renewal of a judgment. In the **Limitation Act**, “action” is defined as including any proceeding in a court and any exercise of a self-help remedy. “Judgment” is defined as meaning an extra-provincial judgment or a local judgment. A “local judgment” is defined as meaning a judgment, order or award of various courts, including the Provincial Court. Section 3(3)(f) in relation to limitation periods indicates that after the expiration of 10 years after the date on which the right to do so arose, a person may not bring an action on a local judgment for the payment of money.

[13] The “new action” was commenced before the 10-year limitation period in Section 3(3)(f) expired.

[14] The Claimant relies upon two decisions of this court, that is, **Canada (Attorney General) v. Robbins** 2012 BCPC. 272 and **RK v. McBride** [1994] BCJ No. 2791,

[15] **McBride** dealt with the inherent procedural jurisdiction of the Small Claims Court in British Columbia over its own process in order to achieve the purpose of the **Small Claims Act** set out in Section 2. **McBride** did not deal with the substantive jurisdiction of the court under the **Small Claims Act**, but did comment at paragraph 24:

“There is a significant distinction to be drawn between substantive jurisdiction (and by that I mean the jurisdiction to entertain a claim or to maintain a defence), and procedural jurisdiction (by which I mean the range of mechanisms available to administer justice in respect of the substantive jurisdiction). It is my view that a court of statutory jurisdiction can only derive its substantive jurisdiction through a granting or vesting of jurisdiction by the legislature through statute.”

[16] In Robbins, the court was considering an application by a defendant to dismiss a claim filed in Small Claims Court based upon a judgment having been rendered in B.C. Supreme Court. The judgment was founded upon the failure of the defendant to repay his student loans. At paragraph 7:

“7. The first issue in my view, however, is the limitation period. Of course under Section 3(3)(f) of the Limitation Act RSBC 1996 C26 the creditor, being the Attorney General of Canada, has 10 years to commence an action. The order was made October 31st, 2000. The Notice of Claim was filed in this Court September 14, 2010. Therefore, I am satisfied that the action was started before the limitation period expired, and I dismiss the defendant’s application with respect to the limitation period.

8. With respect to the jurisdiction of the Court, of course the Court has the jurisdiction for actions in debt and our limit is \$25,000, so the maximum that the Court could award if the claimant were successful is \$25,000. Any excess would be waived of course. So I am satisfied that the court does have jurisdiction because the matter is claimed in debt. Thus there is jurisdiction in quantum and I have to dismiss the defendant’s application with respect to jurisdiction in monetary amount.”

[17] The court then went on to discuss the decision in Young v. Young.

[18] The Defendant has submitted that the jurisdiction of this court is strictly limited by Section 3 of the **Small Claims Act**. Assuming that the Claimant characterizes this action as being debt or damages, the Defendant submits that the **Limitation Act** applies and that this action would have expired some time in 2008. If the claim is not

founded in debt or damages, he submits this court has no jurisdiction to entertain the claim as framed.

[19] The Defendant relies in part upon the definition of “action”, “judgment”, and “local judgment” in the *Limitation Act*.

[20] By analogy, the Defendant relies upon a decision in this court in R v. DAD 1999 BCPC 0017 and Carter v. Ghanbari 2010 BCPC 266, and Cimaco Travel v. British Airways, PLC 2002 BCPC 0226. All three decisions deal with the jurisdiction of this court. The most expansive analysis is set out at paragraph 15 following in Cimaco:

[15] I first note, as have many judges of this and higher courts, that the Provincial Court, Small Claims, is a creation of statute and takes its substantive jurisdiction from the Small Claims Act, R.S.B.C. 1996, c. 430, and its procedural jurisdiction from the Act and the Small Claims Rules: see Lou Guidi Construction Ltd. v. Fedick, [1994] B.C.J. No. 2409 per Stansfield PCJ.

[16] There is, in addition, a narrow inherent procedural jurisdiction complementary to the powers specified in the Small Claims Act and Rules which may be invoked to achieve the purpose of the Small Claims Act: see R. K. v. McBride, [1994] B.C.J. No. 2791 per Mondin PCJ citing Craig v. Gidyk, [1994] B.C.J. No. 1591 per Stansfield PCJ.

[19] On a plain reading of the section, the Provincial Court had jurisdiction to hear a claim for debt or damages if the amount claimed is \$10,000 or less, excluding interest and costs. The Court also has jurisdiction in a claim for the recovery of personal property, or for the specific performance of an agreement relating to personal property or services, if the “value of the personal property or services” is \$10,000 or less, excluding interest and costs. Conversely, this Court has no jurisdiction in a claim for the specific performance of an agreement if the value of the personal property or services under the agreement exceeds \$10,000.

[20] As noted in Evan v. Campbell, [1993] B.C.J. No. 169, the Small Claims Court does not have inherent jurisdiction to grant equitable remedies, including declaratory orders. A decree of specific performance is an equitable remedy and, in the absence of section 3 of the Act, would not be available to a litigant in Small Claims. Under section 3 of the Small Claims Act, the legislature has carved out a narrow equitable jurisdiction

to grant an order for the specific performance of an agreement if the monetary value of the subject matter of the contract is \$10,000 or less. This remedy remains within the court's discretion, however, and the trial judge may award damages instead of a decree of specific performance."

[21] Although not cited by either the Claimant or the Defendant, the decision in Lau v. Lee, 2006 BCSC 643 dealt with the question of whether B.C. Supreme Court orders for judgment which were more than 10 years old were barred by the expiration of time under Section 3(3)(f) of the **Limitation Act** since the judgment had never been paid. The judgment had been registered against title to property owned by the debtor, but the debtor had executed mortgages on the properties in priority to the judgment. The creditor sought to have the mortgages set aside.

[22] The court at paragraph 20 asked the question: "*Is this action an action on the judgment within the meaning of Section 3(3)(f) of the Act?*" Beginning at paragraph 27, the court restated the principles in Young and Younge, Toore and Braich, and Muirhead v. Newman:

"27. *In the case of Young v. Younge, 1985 BCJ No. 2342, Esson, J.A. cited at [paragraph 5]:*

This action, as is clear from the Statement of Claim, is one upon the judgment itself which, of course, is a different cause of action from the original cause of action in the 1969 action. So there can be no question of res judicata.

28. *At [paragraph 8], he quoted with approval from the judgment of Vanderhoop CJFC in Toore v. Braich [1979] BCJ No. 1122 (FC), obviously, a plaintiff cannot, immediately after obtaining one judgment of the court, start action on that judgment, obtain judgment on such action together with costs of the second action and thereafter add infinitum pile judgment after judgment with costs on the original judgment, and, therefore, it must be determined in each case whether the new action does constitute an abuse of the process of the court.*

29. *Later at [paragraph 11], quoting with approval from the case of Muirhead v. Newman (1931) 1 W.W.R. 589, he stated:*

The law is perfectly clear that an action is maintainable on a judgment of the court of record for a sum certain in money.”

[23] The judge in Lau and Lee at paragraph 34 stated unequivocally:

“An action on a judgment is a debt action. The judgment, if granted to the plaintiff, would be for a sum certain. The essence of the cause of action is the pronouncement of a new judgment arising from the debt, that is the old judgment.”

[24] Relying upon the analysis in Lau and Lee, and the other authorities provided to me by counsel, it is apparent that Small Claims court file no. 24242 is a claim for debt within the meaning of Section 3(1)(a) of the **Small Claims Act**, being a sum certain, and the sum falls within the monetary jurisdiction of this court. Thus, the claim is one which may be brought pursuant to the **Small Claims Act**.

[25] The analysis of the learned Supreme Court judge in Lau v. Lee and the other authorities provided to me indicate that the limitation period for this action in debt began to run at the date of the granting of judgment on January 11, 2002. The Claimant submits that the limitation period is that set out in the **Limitation Act** in Section 3(3)(f), that is 10 years when actions may be brought on a local judgment for the payment of money. The Defendant has submitted that the limitation period which should be applied is the 6-year limitation set out in Section 3(5) which states:

“Any other action not specifically provided for in this Act or any other Act may not be brought after the expiration of 6 years after the date on which the right to do so arose.”

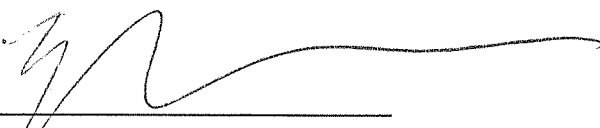
[26] This action is an action in debt on a local judgment for the payment of money.

Section 3(5) of the **Limitation Act** has no application.

[27] I find that the claim is within the jurisdiction of this court and is not barred by the expiration of the applicable limitation period to be applied.

[28] I indicated that counsel could, should this matter proceed further, provide submissions in writing on the issue of abuse of process. It is for the Defendant to show that an abuse of process has occurred through the filing of this claim. Therefore, the Defendant will file its written submissions within 30 days, following which the Claimant will file its response within 15 days. Should the Defendant wish to file a reply, Lalli Development Ltd. should do so within 7 days of the filing of the Claimant's written submission.

[29] I am not seized of this matter.



E. J. McKINNON, P.C.J.