

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Hackland RSJ, Harvison-Young and Whitaker JJ

B E T W E E N :)	
)	
THE BANK OF NOVA SCOTIA)	Doug Bourassa, for the Plaintiff/Respondent
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)	
Plaintiff/Respondent)	
)	
- and -)	
)	
)	
JACK G. MAZIN and MARCELLE MAZIN)	Jack G. Mazin, on his own behalf
)	
)	
Defendants/Appellants)	
)	
)	
)	HEARD: October 19, 2010

- [1] This is an action on a credit card debt. The appellants/defendants appeal the decision of Murray J. dated November 15, 2007, granting summary judgment to the respondent/plaintiff bank. It is agreed that the standard of review is correctness.
- [2] The appellants say generally that there are a number of issues which require a trial, but frankly acknowledge that the central and determining issue is whether the action on the debt is barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B.
- [3] The parties agree that the limitation period then applicable expired six years following breach of the Cardholder's agreement. The motions judge concluded that there were no issues which required a trial. On the basis of the material filed and the submissions of the parties, he determined that the action was brought prior to the expiry of the limitation period.
- [4] The significant facts which were before the motions judge are undisputed.

- [5] The appellants were granted a Visa Gold credit card in November 1995 pursuant to a Cardholders Agreement. The appellants used the card for cash advances and to purchase goods and services.
- [6] From time to time the appellants made various payments toward interest and principle. These included credit for returned merchandise.
- [7] The Cardholder agreement permits either party to terminate the agreement at any time. On termination by the appellants, all outstanding debt becomes immediately payable.
- [8] The appellants defaulted in the payment of interest and principle on May 16, 2000, when they failed to make a minimum payment due on that date. The respondent did not at this point terminate the card, but rather continued to permit the appellants to use the card past the date of default.
- [9] Pursuant to the provisions of the Cardholders agreement, the respondent terminated the card on July 16, 2000. The terms of the Cardholder agreement required immediate payment of the outstanding debt in full, that being \$21,680.20, on the date of termination.
- [10] The debt remains outstanding.
- [11] The claim to recover the debt was brought on June 26, 2006. Interest is claimed from this date.
- [12] The parties agree that the six year period begins to run on the breach of the agreement. The appellants assert that the breach occurred when the account was in default on May 16, 2000. The respondent takes the position that the breach occurred on July 16, 2000, when the entire debt became payable and outstanding upon the appellants' termination of the card pursuant to the express provisions of the Cardholder agreement.
- [13] The learned motions judge found that a breach of the Cardholder agreement does not necessarily occur when there is a failure to make the minimum monthly payment and further, that the respondent has a discretion to allow this to happen without constituting a breach. He concluded that the six year limitation period ended on July 16, 2006, and for this reason the action is not statute barred.
- [14] It is clear that the Cardholder agreement contemplates that the card may continue to be used by the appellants while in arrears. Further, the agreement permits either party to terminate the agreement at their discretion. The agreement also provides that the entire debt becomes immediately payable by a cardholder to the respondent upon termination by the respondent.
- [15] In our view, this credit card debt became due, and the limitation began to run, on the day that the outstanding debt became immediately payable and was not satisfied. That date is July 16, 2000.
- [16] The decision of Murray J. is correct.
- [17] The appeal is dismissed.
- [18] On agreement of the parties, costs to the respondent are fixed at \$4,300.00 inclusive of disbursements, GST/HST. Pre and post judgment interest is payable according to the provisions of the *Courts of Justice Act*, R.S.O. 1990, Chap. C.43.

Hackland RSJ.

Harvison-Young J.

Whitaker J.

Released: October 21, 2010

CITATION: Bank of Nova Scotia v. Mazin, 2010 ONSC 5827
DIVISIONAL COURT FILE NO.: DC-07-088-00
DATE: 20101021

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SUPERIOR COURT OF JUSTICE
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Hackland RSJ,
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B E T W E E N :

THE BANK OF NOVA SCOTIA

Plaintiff/Respondent

- and -

JACK G. MAZIN and MARCELLE MAZIN

Defendants/Appellants

REASONS FOR JUDGMENT

Released: October 21, 2010