

FILED

JUN 05 2008

CALEDONIA COURTS

STATE OF VERMONT
CALEDONIA COUNTY, SS

Dolgin Realty
Plaintiff

v.

April Collins Howland
Defendant

SUPERIOR COURT

Docket No. 169-5-08 Cacv

DECISION ON APPEAL

In this matter, Plaintiff appeals the dismissal of an attempt to renew a small claims judgment first obtained in 2000. The original judgment amount was \$3,378.21. The Plaintiff filed a renewal action on March 26, 2008 in small claims. Prior to service, the small claims court dismissed the appeal, citing a lack of jurisdiction as a result of accrued interest over eight years causing the total amount due on the judgment to exceed \$5000. Plaintiff has appealed the still un-served action.

12 V.S.A. § 2681(b) states:

Executions on small claims court judgments may be made so long as the judgment remains unsatisfied, but not after eight years from the date of rendition of the judgment. Actions to renew small claims court judgments shall be brought by filing a complaint in small claims court prior to the expiration of the judgment, and may be made for the amount of the judgment and any postjudgment costs, fees, and interest allowed by law.

The small claims judge reasoned that jurisdiction of the small claims court terminates at \$5000 and that to hold otherwise might create an incentive for judgment creditors to simply hold their judgments at 12% interest rather than attempt to collect them. The judge further reasoned that the legislature did not intend to expand jurisdiction of the small claims proceedings beyond the \$5000 limit.

The reasoning of the small claims court is flawed in both respects. First, interest on unpaid judgments is allowed at 12% whether they are judgments in small claims proceedings or civil actions. 12 V.S.A. §2903(b). Accordingly, the incentive to let interest accrue is equivalent, whether the judgment is rendered in a superior court action or in small claims proceedings. The possibility that a judgment creditor will use any money judgment as way to collect 12% on the debt is an issue for the Legislature.

Secondly, §2681(b) is clear on its face as to its meaning. Actions for renewal of small claims judgments are to be made in small claims proceedings. Small claims

renewal actions are allowed for the amount of the small claims judgment and any post judgment costs fees and interest. The statute specifically contemplates the issue of post judgment interests and cost and requires those actions to be brought in small claims proceedings, regardless of the amount of post judgment interests and costs.

As was stated in *Swett v. Haig's Inc.*, 164 Vt. 1,5 (1995) “[i]n construing a statute, our primary objective is to effectuate the intent of the Legislature. See *Bisson v. Ward*, 160 Vt. 343, 348, 628 A.2d 1256, 1260 (1993). Initially, we presume the Legislature intended the plain, ordinary meaning of the statute. Where the meaning is clear and unambiguous, we construe and enforce the statute according to its express meaning.”

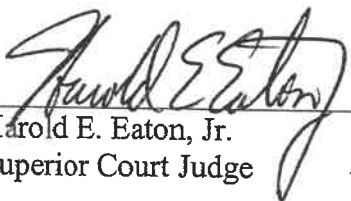
The statute is clear; small claims judgment renewals, regardless of the amount of post judgment interest or costs, are to be brought in small claims court, as plaintiff here has done. It makes no sense for the small claims court to be divested of jurisdiction at the point when unpaid interest makes the total amount owed greater than \$5000 in the face of a statute which clearly states that a small claims renewal must be sought in small claims and are allowed for the original judgment and any amount of post judgment interests and costs as allowed by law. The small claims procedure is available when the original debt or damage does not exceed \$5000. The small claims court retains jurisdiction of those matters, even when post judgment non-payment renders the total amount due greater than the original jurisdictional limit of small claims procedures.

The original judgment here was within the jurisdiction of the small claims procedure. The attempted renewal was filed in compliance with the requirements of 12 V.S.A. 2681(b). The dismissal for lack of jurisdiction was improper.

ORDER

The Order of the small claims judge dated April 30, 2008 is vacated and this matter remanded to small claims court for further proceedings. The renewal action is reinstated on the small claims docket. Plaintiff remains obligated to effectuate service within the time and in such manner as required by law.

Dated at St. Johnsbury this 5th day of June, 2008.



Harold E. Eaton, Jr.
Superior Court Judge