Vermont Superior Court
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Windsor Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-04085

Richard Standish v. Dwight Doton

DECISION ON SMALL CLAIMS APPEAL

I. Procedural Posture & Background

On January 16, 2026, Appellee filed a small claims complaint seeking $10,000.00 from Appellant. The claim was premised the failure of Appellant to complete home improvement work that had been prepaid by Appellee. Appellant filed an answer to the complaint on March 6, 2026. The answer asserted that "[w]ork was executed by Doton Design & Building Co. Inc. & deposits made in same name account." A small claims trial was held on May 13, 2026, with the record held open to accept additional evidence. The court issued a detailed findings and entered judgment in favor of Appellee. *Small Claims Decision*, Case No. 24-SC-00182, McDonald-Cady, Supr. J., dated Jun. 21, 2026.

Appellant filed a timely notice of appeal on July 21, 2026. Appellant's statement of issues asserts the following error: "Dwight Doton was an employee of Doton Design & Building Co., Inc. Payments were made to Doton Design & Building Co., Inc." *Statement of Issues for Small Claims Appeal*, dated Jul. 21, 2026. Appellee filed a timely response in opposition on July 31, 2026, asserting that Appellant had not introduced any evidence at the small

The decision and judgment of the small claims court did not address the issue raised in Appellant's answer, which has again been raised on appeal.

II. Discussion

12 V.S.A. § 5538 provides that small claims appeals "shall be heard and decided, based on the record made in the small claims procedure." See also V.R.S.C.P. 10(c). Additionally, V.R.S.C.P. 10(d) provides that "appeal is limited to questions of law and will be heard by a judge who has not participated in any way in the judgment being appealed."

Small claims cases follow simplified processes versus regular civil actions. V.R.S.C.P. 1 provides that small claims procedural "rules shall be construed to secure the simple, informal, and inexpensive disposition of every action subject to them." *Cold Springs Farm Dev., Inc. v. Ball*, 163 Vt. 466, 469 (1995) further provides:

> The purpose of Vermont's small claims court is to provide "a simple, informal and inexpensive procedure" for determining civil actions where the amount in controversy is no more than $3500. 12 V.S.A. § 5531(a). Our decisions about small claims court have sought to promote this policy. See ... *Ferris–Prabhu v. Dave & Son, Inc.,* 142 Vt. 479, 480, 457 A.2d 631, 632 (1983) (small claims proceedings should be as simple and untechnical as possible to encourage litigants to appear pro se). Our rules reinforce the informality. Hearings without juries are conducted "in a summary manner," and the examination of the witnesses is done primarily by the judge, although parties may supplement the court's questioning. Except for those with respect to privilege, the Vermont Rules of Evidence do not apply. See *id.* The court must "assist the litigants in developing relevant and reliable evidence." See *id.* Many of the civil rules, including those authorizing discovery, do not apply in small claims court. Much of the hearing and prehearing procedure is intended to encourage appearance without lawyers by preventing "unfair imposition" on a pro se litigant.

(some internal citations omitted); see also V.R.E. 1101(b)(5) (noting the rules of evidence are inapplicable to small claims proceedings); V.R.S.C.P. 6(b) ("If the trial is by court, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege."). Additionally, 12 V.S.A. ch. 187 does not provide statutory discovery rights or restrict the court's discretion in considering evidence or how to conduct the hearing.

Motions practice in a small claims case is also limited by rule:

> The only motions permitted are (a) a motion for judgment by default, (b) a motion to reopen a default judgment, (c) a motion to extend the time for service of the summons and complaint by a sheriff or other person authorized to serve process, (d) a motion for continuance of trial which will be granted by the court only for good cause, (e) a motion to dismiss for lack of personal jurisdiction over the defendant, (f) a motion to dismiss for lack of subject matter jurisdiction, and (g) any motion necessary to request a procedure available under these rules. Any of these permitted motions must be filed in writing.

V.R.S.C.P. 4. Notwithstanding this, V.R.S.C.P. 13 provides:

> When matters arise that are not covered by these rules, the court will proceed by analogy to any applicable provision of the Vermont Rules of Civil Procedure that is consistent with these rules, including the provisions of V.R.C.P. 11, and with the objective of securing a simple, informal, and inexpensive disposition of the claim.

The interplay of these rules leaves it somewhat unclear whether Appellant was entitled to file a pretrial motion to dismiss under V.R.C.P. 12(b)(6), under a theory that relief could not be

granted against him in his personal capacity, or to V.R.C.P. 12(b)(7) that a necessary party, Doton Design & Building Co., Inc., was not joined pursuant to V.R.C.P. 19(a).

It is clear, however, that Appellant raised the defense of being an improper party to the proceeding in his answer. See *Messier v. Bushman*, 208 Vt. 261, 271 (2018) (holding that defenses relating to lack of personal or subject matter jurisdiction or other V.R.C.P. 12(h) defenses must be raised in the initial filing or answer). He did not, however, assert or offer testimony on this defense at the small claims trial.[1] Likewise, Appellant has not asserted that he presented such evidence in his statement of issues. Appellee, in contrast, highlighted this in the response to the statement of issues.

In view of the "simple, informal, and inexpensive disposition" parameters of a small claims trial and the need for the court to "assist the litigants in developing relevant and reliable evidence" there is an argument to be made that a small claims court may need to direct inquiry into defenses raised in an answer. However, there is no affirmative duty under the applicable statutes, rules or caselaw governing small claims for a court to do so.

The Vermont Supreme Court has instead held merely raising a defense in an answer to a complaint is insufficient to preserve the issue for appeal, absent some evidence or assertion of the defense being offered at trial. In *Mann v. Levin*, the Court held:

> Levin waived this argument by failing to fairly present it to the trial court. See *Bull v. Pinkham Eng'g Assocs.,* 170 Vt. 450, 459, 752 A.2d 26, 33 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). Contrary to Levin's assertion, she did not preserve this argument by pleading "lack of standing" as an affirmative defense in her answer to the Manns' complaint. … We therefore conclude that Levin waived this argument, and we do not address it.

177 Vt. 261, 266 (2004).

Here, the court concludes that Appellant waived this issue by failing to present any evidence in support of the defense at the small claims trial or by means of motion practice prior to trial. Appellant's defense may have been compelling to the Small Claims Court, however, his failure to introduce evidence or provide argument on the issue precludes relief by this court.[2]

Notwithstanding the omission of evidence in support of the defense, it is unlikely Appellant would escape liability altogether even if this matter were subject to remand. The option of

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[1] The court has reviewed the audio of the hearings held on May 13, 2026 and the hearing on June 16, 2026.
[2] Notably, the original complaint names "Dwight Doton" as Defendant, and the testimony and evidence reflect a verbal contract for the services provided, and, notably, the wire transfers to Appellant were made to "Dwight Doton". The record and admitted exhibits do not include testimony or evidence as to whether the named beneficiary was selected by the Appellee or was inserted by the banking institution. See *Pl Ex*. 1, *Pl. Ex*. 3. Within *Pl. Ex*. 3, correspondence from counsel formerly representing Appellee and addressed to Appellant uses the salutation "Mr. Dwight Doton, Doton Building and Design." *Id*. at p. 3. This suggests awareness by Appellee that Appellant was operating as the principal or agent of a business enterprise.

relating back an amendment to the complaint appears viable under V.R.C.P. 15(c) (applied by means of V.R.S.C.P. 13). V.R.C.P. 15(c) provides, in pertinent part:

> An amendment of a pleading relates back to the date of the original pleading when …
>
> (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
>
> (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the condition of paragraph (2) of this subdivision is satisfied and, within the period provided by Rule 3 for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

This court will defer and reserve to the Small Claims Court on whether to permit any post-adjudication motions practice as to the substitution of a defendant or amendment of the judgment. From this court's perspective, there is no indication that any material fact or other available defense would change based on the substitution of defendants, rather, the issue of whether Appellant is liable in his personal capacity or through his business interest does not change the relative merits of Appellee's claim of damages. From the available record, as the ostensible principal or sole proprietor or the business entity, Appellant had notice of the action and cited the mistake in his answer. See, e.g. *Lasek v. Celik*, No. 2012-160, 2012 WL 5974077, at *3 (Vt. Sept. 26, 2012) ("courts and commentators have recognized that constructive notice of a lawsuit under Rule 15(c) may be imputed to an unnamed defendant where there is a sufficient "identity of interest" with the named defendant.").

III. Order of the Court

The small claims judgment issued in Case No. 26-SC-00182 is AFFIRMED.[3]

So ordered.

Electronically signed on Friday, November 13, 2026 pursuant to V.R.E.F. 9(d)



Rory T. Thibault
Superior Court Judge

[3] Notwithstanding affirmation of the decision and judgment, the Small Claims Court, in its sole discretion, may entertain post-trial motions on substitution of a defendant or amendment of the judgment, subject to the limitations of the Rules of Small Claims Procedure and Civil Procedure (as applicable).