

STATE OF MAINE
Androscoggin, ss

SUPERIOR COURT
Civil Action
Docket No. AP-02-018

RONALD HERRICK, *et als.*,
Plaintiffs

v.

TERRIEN'S BODY SHOP,
Defendant

ORDER ON APPEAL
RECEIVED & FILED

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MAY 14 2003

ANDROSCOGGIN
SUPERIOR COURT

MAY 28 2003

This is an appeal by defendant from a Small Claims judgment entered after hearing in favor of plaintiff in the amount of \$1,279.84 plus costs. (District Court, Lewiston, Beliveau, J.). The defendant appealed.

In the Notice of Appeal the defendant complained that the hearing judge refused to continue the case to provide an opportunity to secure the presence of the prior owner of the business as a witness and that the plaintiffs never complained about repairs until the defendant "pressed charges for negotiating a worthless instrument." This appeal is on issues of law only.

The clerk of this court has previously provided notice to the parties of the briefing schedule. Both parties waived oral argument and the court is deciding this case on the record and the written statements of the parties.

Jeffrey McKechnie appeared at the hearing for the defendant. He had recently purchased Therrien's Body Shop from Thomas Therrien and claimed that plaintiffs' problem was Mr. Therrien's responsibility. During the hearing (Transcript p. 17-18) the defendant requested a continuance.

The issue of whether or not to grant a continuance is within the discretion of the trial judge. Upon receiving the original Statement of Claim Mr.

McKechnie was informed of the nature of the complaint. A Notice of Hearing was mailed by the clerk two months before the scheduled date. There is no showing here that Mr. McKechnie made any effort to secure the presence of Mr. Therrien for trial, that Mr. Therrien was unavailable or that, if present, what his testimony would be or that it would have resulted in a different judgment.

There is no showing of an abuse of discretion by the judge to not grant a continuance during the hearing.


IT IS ORDERED that the judgment for plaintiff as entered is affirmed.

This case is remanded to the District Court for entry of final judgment.

The clerk is directed to incorporate this Order into the docket by reference.

SO ORDERED.

May 14, 2003



Thomas E. Delahanty II
Justice, Maine Superior Court

Action SMALL CLAIMS APPEAL - 8th Dist. Ct.

RONALD HERRICK
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~~Sabattus, ME 04280~~ Lisbon, ME 04250

THERRIEN'S AUTO BODY n/k/a
J & K Collision Center
c/o Jeff McKechnic
693 Sabattus Street
Lewiston, ME 04240

vs.

Plaintiff's Attorney

Pro Se

Defendant's Attorney

Pro Se

Date of
Entry

2002 Sept. 19:	Received 9-18-02. Notice of Appeal, Small Claims, filed. Notice is hereby given that the Defendant appeals to the Superior Court from the Judgment entered in this action on June 18, 2002. The defendant does not request a jury trial de novo. (LEW-SC-02-94)
" "	Received 9-18-02. Entire original file including envelope containing Exhibits, transcript of hearing held June 18, 2002 and certified copy of Docket Entries from 8th District Court received and filed.
" "	On 8-19-02. Notice and Briefing Schedule 76G Appeal of District Court Civil Action mailed all parties on 9-19-02. (Appellant's brief is due on or before October 28, 2002.)
Oct. 29:	Received 10-28-02. Appellant's Brief, filed. (Appellee's Brief due on or before November 27, 2002).
Nov. 4:	On 11-4-02. Copy of Appellant's Brief mailed Appellee per telephone request.
Nov. 19:	Received 11-19-02. Appellee's Brief, filed. (Reply Brief due on or before December 3, 2002)
<u>2003</u> May 16:	Received 5-14-03. Order on Appeal, filed. (Delahanty, II, J.) IT IS ORDERED that the judgment for plaintiff as entered is affirmed. This case is remanded to the District Court for entry of final judgment. The clerk is directed to incorporate this Order into the docket by reference. So Ordered. Copies mailed all parties on 5-16-03.