

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  
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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

  
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Thomas E. Delahanty II  
Justice, Maine Superior Court

