

SUPREME COURT OF NOVA SCOTIA

Citation: *O'Brien v. Brunt*, 2024 NSSC 170

Date: 20240606

Docket: SFH 1201-073945

Registry: Halifax

Between:

Sheila O'Brien

Petitioner

v.

Nathan Brunt

Respondent

Judge: The Honourable Justice C. Lou Ann Chiasson

Heard: March 14, 2024

Counsel: Nathan Brunt, self-represented
Meaghan Johnston, counsel for Sheila Brunt (O'Brien)

By the Court:

Introduction

[1] This matter relates to the disposition of proceeds from the sale of the matrimonial home. The parties are unable to agree on the adjustments to be made following the sale.

[2] I rendered a decision addressing the issue of the matrimonial property, including the matrimonial home in July 2023. The home was eventually listed for sale and the closing date was January 2024. The amount of \$320,430.57 (plus accrued interest) has been held in trust by counsel handling the real estate matter.

[3] The parties were unable to agree on a disbursement of the balance of the funds in trust. This necessitated a hearing to address the issue. Both parties provided evidence and submissions for the court to consider.

[4] I have considered the relevant admissible evidence as well as the appropriate case law in reaching my decision. In particular, I have considered the cases of *Rhyno v Rhyno*, 2023 NSSC 348; *Stephen v Patriquin*, 2011 NSSC 117; *Andrews v Andrews*, 2006 NSSC 120; and *MacDonald v. Ferguson*, 2010 NSSC 18.

[5] In my decision of July 2023, I stated the following in relation to the home in the event of a sale to a third party:

- “1) Upon the sale of the home, the net proceeds of sale shall be divided equally between them. Adjustments related to the division of other matrimonial assets and debts shall be made from the proceeds of sale (if the division of those assets/ debts has not already been done at the time of sale). Any amounts owing related to child support shall be deducted from the proceeds of sale owing to Nathan Brunt.
- 2) The net proceeds of sale, or the equity in the home owing to Sheila O’Brien (should Nathan Brunt keep the home), will be calculated in accordance with the principles laid out in *Simmons v Simmons*, 2001 NSSF 35. The mortgage owing as of the date of division/ transfer shall be equally divided. Both parties will have the benefit of the mortgage pay down. Nathan Brunt paid mortgage and Sheila O’Brien paid rent post separation.

- 3) As noted in the case of *Crowe v Crowe* 2012 NSJ 244, the value of the home and the value of the mortgage shall be calculated as of the date of division or sale.”

[6] The mortgage as of the date of sale was equally attributed to both parties in accordance with my decision. The parties also confirmed that the child support owing by Nathan Brunt would be deducted solely from his portion of the net equity of the home.

[7] The dispute arises related to the “adjustments related to the division of other matrimonial assets and debts”.

[8] By consent of the parties, each of them received the sum of \$98,185.29 following a conference January 9, 2024. The balance of the monies remain in dispute. In their submissions, both parties provided the court with three charts related to the proposed adjustments. In this decision I will refer to the three charts for ease of reference for the parties.

Equalization amounts pursuant to the Corollary Relief Order (“CRO”)

[9] In the first chart provided, both parties agreed on some of the adjustments to be made:

- 1) The parties agreed that Sheila O’Brien owed Nathan Brunt a total of \$26,021.87 for the following assets and debts:
 - a. \$9,174.22 for the Ford Explorer;
 - b. \$7.92 for the savings account ending in 8678;
 - c. \$140.81 for the TD GIC;
 - d. \$4,080.94 for the PC Financial Mastercard;
 - e. \$589.77 for the Triangle Mastercard
 - f. \$533.09 for the Best Buy Account; and
 - g. \$11,495.12 for the TD Line of Credit

- 2) The parties also agreed that Nathan Brunt owed Sheila O'Brien the sum of \$3,299.77 for the following assets and debts:
 - a. \$694.75 for the insurance on the Ford F150 (subject to an adjustment for the period of July 2023 to Jan 2024- see below);
 - b. \$1,562.79 for the Joint account ending in 6869;
 - c. \$100.73 for the chequing account ending in 180; and
 - d. \$941.50 for the Costco Mastercard

[10] The debt over which there is disagreement in the first chart relates to the Scotiabank line of credit. The line of credit was in the amount of \$11,960.20. Sheila O'Brien sought to divide this debt equally and Nathan Brunt objected at trial. I dealt with this debt in my decision which was incorporated into the CRO at paragraph 27.

[11] I stated that Sheila O'Brien was to provide documentation to show the balance of the line of credit owing at the date of separation within 30 days of the decision. Once documentation has been provided, the amount was to be shared equally between the parties.

[12] Sheila O'Brien asserts that she complied with this provision and that documentation was provided to Nathan Brunt within the 30 day time frame. Nathan Brunt denies receiving the documents. I find as a fact that the documentation was provided to Nathan Brunt within the requisite time frame.

[13] He had requested correspondence to be received via email. The documentation was forwarded by counsel for Sheila O'Brien to his email address noted on the record. As a result, the line of credit debt of \$11,960.20 is to be shared equally.

[14] In relation to chart #1, therefore, I accept that the equalization payment owing to Nathan Brunt is \$10,761.89.

Amounts sought to be shared equally between the parties

[15] In relation to chart #2, the parties are each seeking to have these adjustments shared equally between them. These adjustments are in dispute.

- 1) Sheila O'Brien is seeking the following adjustments to be shared 50/50:
 - a. Overdraft fees for the TD joint account of \$300.00;
 - b. Interest charges on the Line of Credit of \$1,027.90;
 - c. Towing charges related to the Ford F150 of \$1,265;
 - d. Miscellaneous charges related to the Ford F150 (courier fee re: truck keys, inspection, tires) totalling \$518.39;
 - e. Insurance for the Ford F-150 from July 2023 to Jan 2024 of \$443.94.

- 2) Nathan Brunt is seeking the following adjustments to be shared 50/50:
 - a. Insurance on the home from June 2021 to November 2023 of \$9,494.04;
 - b. Cleaning and preparing the house for sale- \$4,253.66;
 - c. Storage of matrimonial property of \$13,130.59;
 - d. Storage of the Ford F150 of \$1,265; and
 - e. Nova Scotia Power bill from October 2023 to January 2024 of \$1,998.43.

[16] I will first deal with the adjustments sought by Sheila O'Brien:

- 1) The overdraft charges for the TD accrued as a result of the mortgage payments not being made by Nathan Brunt. Nathan Brunt had exclusive possession of the home during this period of

time. The charges are to be shared equally. Nathan Brunt owes \$150 in relation to these payments.

- 2) The interest paid on the Line of Credit is to be shared equally as is the principal balance of the Line of Credit. Nathan Brunt owes \$513.95 in interest charges. This interest calculation is from the date of the decision to the date of the hearing in February 2024. In allowing this interest to be credited to Sheila O'Brien, I must also provide credit to Nathan Brunt for interest charged during the same period for debts he paid (as will be noted below).
- 3) The request for towing charges made by Sheila O'Brien is allowed in the amount of \$86.25. This is the amount owing in relation to towing the vehicle from the matrimonial home to the dealership. Nathan Brunt owes \$43.12.

The balance of the monies for towing are disallowed. Sheila O'Brien's response to having the Ford F150 towed to Post Hawkesbury was not reasonable in the circumstances. Sheila O'Brien's actions in not contacting the dealer and making appropriate arrangements to sell the vehicle is unreasonable. Simply towing the vehicle without forewarning or planning with the 3rd party dealership is contrary to the direction in the CRO which obligated Sheila O'Brien to engage a third party to facilitate the sale of the vehicle.

- 4) The necessity to incur costs to courier truck keys, to replace the tires were not proven to be necessary and reasonable in the circumstance. Likewise there was insufficient detail as to the necessity of the additional expenses incurred for the Ford F150 in the amount of \$223.43. Although these expenses may have been incurred by Sheila O'Brien, it was not proven that they preserved the asset or resulted in a higher value for the vehicle. The evidence is that the vehicle was retained by Sheila O'Brien. Some of these costs may relate to her ongoing use of the vehicle.
- 5) Sheila O'Brien is seeking reimbursement for the insurance on the Ford F150 between July 2023 and January 2024. She did not

provide insurance details to Nathan Brunt regarding the new insurance. The insurance on the vehicle when the parties separated was cancelled by Sheila O'Brien in March 2022 and no further communication was made to Nathan Brunt regarding the vehicle being insured. She cannot now seek reimbursement for an expense that she did not advise Nathan Brunt was being incurred.

[17] The adjustments owing by Nathan Brunt to Sheila O'Brien total \$707.07.

[18] In relation to Nathan Brunt's request for adjustments, I find the following:

- 1) Nathan Brunt is seeking to recover insurance related to the matrimonial home from the date of separation. This claim is disallowed. There was an interim order providing Nathan Brunt with exclusive use and occupation of the home issued in August 2021. This bill is to be borne by him as an operating cost related to the home. Sheila O'Brien would be responsible for her accommodation costs solely (inclusive of any insurance costs for her).

Operating expenses related to the matrimonial home are incidents of exclusive possession. In requesting exclusive possession of the matrimonial home and being granted an order for this relief, Nathan Brunt is obliged to continue to make payments associated with his use and occupation of the home (ref. *Stephen v Patriquen*, supra). In choosing to vacate the home in advance of the sale, Nathan Brunt cannot then unilaterally shift the burden to pay operating expenses of the home onto Sheila O'Brien.

- 2) Nathan Brunt is seeking \$4,4253.66 in relation to cleaning and preparing the house for sale. There are a number of exhibits appended to the affidavit of Nathan Brunt which have no references in the body of the Affidavit. The attached exhibits are clearly problematic where there is no reference to them in the affidavit.

More problematic is the fact that there is no breakdown from him related to the expenses to clean/ prepare the house to ready

for sale. The only invoice attached to his affidavit is the invoice related to a dumpster immediately prior to closing. The cost of the dumpster will be shared equally between the parties. Sheila O'Brien is responsible for \$262.33. The balance of the claim by Nathan Brunt is disallowed.

- 3) Nathan Brunt is advancing a claim for the storage of matrimonial property of \$13,130.59. Again, he provided no particulars related to that claim. The claim for storage of matrimonial property is disallowed.
- 4) Nathan Brunt is claiming \$1,265 for storage of the Ford F150. There is no specification related to this claim. It is even more problematic given that for a period of time for which storage is claimed, Nathan Brunt was using the vehicle.
- 5) Nathan Brunt is claiming a contribution to the Nova Scotia Power Bill totalling \$1,998.43. Attached to his affidavit is a bill from Nova Scotia Power indicating an amount due of \$1972.61. It is unclear if this is the amount owing only for the period of October 2023 to December 2023, or if there is a further prior amount outstanding.

Even if the entire balance of the power bill relates to the period following his vacating the matrimonial home, I do not find this to be a shareable debt. Nathan Brunt had exclusive possession of the home. Sheila O'Brien resided in Port Hawkesbury. Expenses related to the matrimonial home would be the responsibility of Nathan Brunt as he had exclusive possession of the home in accordance with the Interim Order issued August 17, 2021.

[19] The adjustments owing by Sheila O'Brien to Nathan Brunt total \$262.33.

[20] The net difference payable by Nathan Brunt to Sheila O'Brien in this category (chart 2) is \$444.74

Amounts sought to be fully paid by the other party

[21] There is another category of claims by each of the parties. This category of claims relate to expenses each is seeking the other pay in their entirety. This category of claims is set out in chart 3 provided by the parties.

[22] Sheila O'Brien is claiming expenses related to 3 categories: NSF fees, house insurance payments and mortgage payments not made by Nathan Brunt from September 2023 to January 2024. These expenses total \$4,358.07. These payments were to have been made by Nathan Brunt. This claim is allowed.

[23] Similarly, Nathan Brunt is seeking for Sheila O'Brien to pay 100% of certain expenses. There are four categories of these expenses:

- 1) Interest on matrimonial debt from the date of separation;
- 2) Adjustments related to the Ford F150
- 3) Real Estate Commission for the sale of the home
- 4) Mortgage payments from October 2023 to January 2024.

[24] The first category relates to the interest on matrimonial debts. The Corollary Relief Order divided the PC Mastercard, Triangle Mastercard and TD Line of Credit. The CRO further specified the amount owing as of separation. The interest calculation sought by Nathan Brunt retroactive to the date of separation would necessitate the same interest calculation on the debts paid by Sheila O'Brien as well. Evidence should have been presented at trial in relation to the interest paid by each party to the date of the property trial- he did not provide any such calculation.

[25] In allowing a credit to Sheila O'Brien for interest accruing since the decision on the debt in her name, fairness dictates that the same principles should apply to Nathan Brunt. The interest accumulated on these debts from July 2023 to January 2024 is calculated as follows: \$655.95 on the PC Mastercard, \$73.52 on the Triangle Mastercard, and \$897.89 on the Line of Credit. The total interest paid during this period was \$1,627.38. Sheila O'Brien owes 50% of the interest totalling \$813.69.

[26] Although Nathan Brunt included this in chart 3 to be fully paid by Sheila O'Brien, it should properly have been in chart 2 as a shareable debt. For ease of

reference, however, I have left it in chart 3 (as noted by Nathan Brunt) but have allowed 50% of the interest.

[27] The second category relates to the Ford F150. Although noted in chart 3 as an expense Nathan Brunt is seeking to be paid entirely by Sheila O'Brien, his calculations in this chart are for 50% of the value of the vehicle. For ease of reference, I have left this adjustment in chart 3 although it more properly belongs in chart 2.

[28] Nathan Brunt seeks \$10,487.50 as the buyout on the Ford F150 which has been retained by Sheila O'Brien. The CRO indicated that the Ford F150 was to be sold. Sheila O'Brien did not sell the vehicle. She has had work done on the vehicle and it is in the possession of a member of her family. She must account for the value of the Ford F150 which has been retained by her. She may dispose of it or retain it - that is her choice. The window to facilitate the sale of the vehicle has closed.

[29] I have no value to attribute to the Ford F150 other than Exhibit L of Nathan Brunt's affidavit. Although not referenced in his affidavit, it is the only evidence proffered. If Sheila O'Brien contested the value of the vehicle, she was at liberty to cross examine him on this issue at the hearing. The evidence related to the value of the Ford F150 was limited. The court often struggles with valuations in the absence of appropriate evidence (ref. *Rhyno, supra*).

[30] Nathan Brunt was not cross examined on this evidence nor was any further amount suggested by Sheila O'Brien. The Kelley Blue Book value noted in Exhibit L is the sole evidence of value and indicates a value of approximately \$20,975. In the absence of any other evidence of value, Sheila O'Brien owes Nathan Brunt \$10,487.50 for the Ford F150.

[31] Nathan Brunt is also seeking to have the purchase price of the Tonneau cover for the F150 provided to him. At most, his claim would be for 50% of the fair market value of a used Tonneau cover. His claim is for the purchase price of the cover is not reflective of current fair market value. I have no evidence whatsoever of the value of a used tonneau cover and in the absence of that evidence, no adjustment will be given. Likewise, I have not made the adjustments requested by Sheila O'Brien related to the spare key and the funnel for the vehicle.

[32] Nathan Brunt is seeking to receive a fee for the facilitation of the matrimonial home. He is seeking \$14,720. This claim is disallowed.

[33] Nathan Brunt provided the information related to a private sale. It would be inappropriate to provide him with what would essentially amount to a real estate commission with no particulars as to the amount of time spent securing the sale of the home. There is scant evidence before the court related to Nathan Brunt's time expended in securing the sale apart from emails forwarded to and from Robert Scanlan, a real estate agent.

[34] The last category relates to a claim for partial mortgage payments between October 2023 and January 2024. Nathan Brunt asserts that these monies are owed because of Sheila O'Brien's delay in selling the home. The evidence does not disclose any undue delay on the part of Sheila O'Brien.

[35] Although initially, Sheila O'Brien's counsel indicated on October 20, 2023 that she did not accept the offer related to the sale of the home, there were no particulars provided and no documentation. Nathan Brunt communicated a verbal offer to purchase without providing any documentation nor any particulars related to who the buyers were, what conditions if any were attached to the offer, etc..

[36] The evidence discloses that there was a written offer signed by the potential buyers in mid December which was signed by all parties without delay. The closing was set for January 22, 2024. Nathan Brunt had exclusive possession of the home up to the date of sale. As such he is responsible for the payments related to the home.

[37] The adjustments in this category result in Sheila O'Brien owing Nathan Brunt \$11,301.19. This amount is adjusted for the \$4,358.07 owing to Sheila O'Brien for a net differential of \$6,943.12.

Conclusion

[38] The parties prepared 3 charts of credits/ debits to the property division. I will summarize my findings and reference the conclusions by references to the three charts.

[39] Pursuant to chart 1, Sheila O'Brien owes Nathan Brunt \$10,761.89.

[40] Pursuant to chart 2, Nathan Brunt owes Sheila O'Brien \$444.74.

[41] Pursuant to chart 3 Sheila O'Brien owes Nathan Brunt \$6,943.12.

[42] Totalling the three categories, Sheila O'Brien owes Nathan Brunt \$17,705.01 and Nathan Brunt owes \$444.74. The net differential of \$17,260.27 is owed by Sheila O'Brien to Nathan Brunt.

[43] The closing proceeds were \$320,430.57. Child support arrears were paid prior to closing to satisfy a lien in the amount of \$23,328.25. Nathan Brunt acknowledges this debt is to be solely borne by him. Had there been no lien, each party would have received 50% of \$343,758.82 = \$171,879.

[44] Sheila O'Brien is entitled to receive \$171,879 less amounts received and less the adjustments noted herein. From this amount, I deduct the amount of \$98,185.29 already received, leaving a balance of \$73,694.12 owing to her. From this amount a further deduction of \$17,260.27 will be made in accordance with the adjustments noted herein. She will therefore receive a further \$56,433.85. Nathan Brunt is entitled to the balance of \$67,626.14. These figures do not include interest accrued on the proceeds of sale which should be shared between the parties.

Chiasson, J.

APPENDIX “A”

CHART 1

EQUALIZATION AMOUNTS PURSUANT TO THE COROLLARY RELIEF ORDER *

<i>Clause of CRO</i>	<i>DESCRIPTION</i>	<i>AMOUNT OWED BY SHEILA O'BRIEN</i>	<i>AMOUNT OWED BY NATHAN BRUNT</i>
4	Explorer	9,174.22	
6	Motor Vehicle Insurance		694.75
10	Joint Account		1,562.79
21	Costco Mastercard		941.50
27	Scotiabank Line of Credit		11,960.20
12	TD Account *180		100.73
11	Savings Account *678	7.92	
13	GIC	140.81	
22	PC Financial Mastercard	4,080.94	
24	Triangle Mastercard	589.76	
25	Fairstone	533.09	
26	TD Line of Credit	11,495.12	
	TOTAL OWING BY NATHAN BRUNT		15,259.97
	TOTAL OWING BY SHEILA O'BRIEN	26021.86	
	EQUALIZATION DUE FROM SHEILA O'BRIEN TO NATHAN BRUNT	10,761.89	

*NOTE: The amounts in chart #1 were agreed upon by the parties with the exception of the Scotiabank Line of Credit

APPENDIX “B”

CHART 2

Amounts sought to be shared equally between the parties

<i>Date</i>	<i>DESCRIPTION</i>	<i>AMOUNT OWED BY SHEILA O'BRIEN</i>	<i>AMOUNT OWED BY NATHAN BRUNT</i>
July 2023- Dec 2023	Overdraft Fee for TD Joint Account (50% of \$300)		150.00
July 2023- Jan 2024	Line of Credit Interest charges (50% of \$1,027.90)		513.95
Dec 2023	Ruggles Towing (50% of \$86.25)		\$43.12
Jan 2024	Dumpster (50% of \$524.66)	262.33	
	TOTAL OWING BY NATHAN BRUNT		707.07
	TOTAL OWING BY SHEILA O'BRIEN	262.33	
	EQUALIZATION DUE FROM NATHAN BRUNT TO SHEILA O'BRIEN		444.74

APPENDIX "C"

CHART 3

Amounts sought to be fully paid by the other party **

**(NOTE: Although Nathan Brunt included various claims in chart 3, the adjustments sought were equally divided between the parties and so should have been included in chart 2. For ease of reference, however, I have left them in chart #3 and the values noted are discounted by 50%)

<i>Date</i>	<i>DESCRIPTION</i>	<i>AMOUNT OWED BY SHEILA O'BRIEN</i>	<i>AMOUNT OWED BY NATHAN BRUNT</i>
Sept to Nov 2023	NSF Overdraft Fees on TD Joint Account		220.00
Oct to Dec 2023	Mortgage payments		\$3,607
Oct 2023	Monthly fee/ mortgage increase		80.00
Nov 2023 to Jan 2024	House insurance		451.07
July to Jan 2024	Interest on matrimonial debt (50% of 1,627.38)	813.69	
	Ford F150 (50% of \$20,975)	10,487.50	
	TOTAL OWING BY NATHAN BRUNT		4358.07
	TOTAL OWING BY SHEILA O'BRIEN	11,301.19	
	EQUALIZATION DUE FROM SHEILA O'BRIEN TO NATHAN BRUNT	6,943.12	