

SCCH 440239

SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Vincent v. Rose, 2015 NSSM 32

BETWEEN

Arline Patricia Vincent

CLAIMANT

-and-

Clarence Leroy Rose

DEFENDANT

Adjudicator: David TR Parker QC

Heard: August 6, 2015

Decision: August 13, 2015

Order

1. This matter came before the Small Claims Court in Halifax Nova Scotia on August 6, 2015. The claimant was claiming \$20,000.00 however during the hearing the claimant was more interested in the return of certain items of furniture or other chattels that were being held at the home of the defendant.
2. The defendant in his defence said he was still owed \$25,000.00 from a \$50,000.00 debt and that he will release any belongings upon payment of the debt.
3. During the hearing the claimant and defendant agreed that there were the following items remaining at the defendant's home 35 Sunset Path, Waverley, Nova Scotia. These items were as follows:

Ted Petrie Hutch/original/\$5700.00

Ted Petrie four poster bed/mattress original/\$6200.00

Ted Petrie dresser/original/\$4500.00

Sodi glass table[4]/ \$2400.00 custom design

1 Diana Art chair/\$300.00

Ferretti leather sofa [eggplant] /\$2700.00

Ferretti leather ottoman [2] [eggplant]/\$2200.00

Ferretti leather [2] [eggplant] \$3400.00

Ferretti microfiber sectional sofa/\$2700.00

Quad trip Metal Art /\$225.00/

Anna spoonor lamp shade/one-of-a-kind/\$1500.00

Rod iron Canleabra [3]/\$200.00

Metal wall tea light[18] candleholder/half-moon/\$200.00

4. These were the items that were agreed were in the premises of the defendant. The prices referred to above beside the items were the ones that were put on by the claimant. The total would be \$32,225.00. However there was some testimony that a number the items were used and/or were damaged so the price or value them would be less than the price indicated. If I had to assess it based on the testimony I would say there would be a reduction in price of 40% .That would be more likely the cost of the items.
5. The claimant and defendant entered into a relationship and at the beginning of the relationship they lived at the claimant's residence in Bedford, Nova Scotia. During their time in the Bedford residence the defendant bought some appliances, his son did some work around the house with respect to the claimant's floor, they traveled together on vacation and the defendant paid off the claimant's visa bill and motor vehicle expenses.
6. Eventually however the defendant and claimant purchased together a home in Waverley, Nova Scotia. Sometime after this occurred the claimant and defendant made a list of the defendant's contribution to the home of the claimant, and other items such as the visa and motor vehicle and which came to \$50,000.00.
7. The relationship did not survive and the claimant and defendant decided to part ways. The claimant took a number of personal items from the home at Waverly but left some of the remainder to pick up later.
8. The defendant told the court that he met with his lawyer and arranged to have the claimant's name removed from the ownership of the home. The defendant told the court that he obtained a quit claim deed from the claimant on the Waverley property and obtained a \$25,000 collateral

- mortgage from the claimant which was placed on the claimant's property in Bedford.
9. The defendant was paid out the \$25,000.00 after the claimant sold her Bedford home that they previously lived in.
 10. When the claimant went to get the remaining items from the Waverley home now owned solely by the defendant, the defendant refused her access and in his defence said that she owed him another \$25,000.00.
 11. The claimant's position was that that was all dealt with when she took her name off the home they owned together and gave the defendant the \$25,000.00 collateral mortgage.
 12. I find the claimant's position credible and I do not find the defendant credible. The defendant knew at the time he received the \$25,000.00 collateral mortgage that they agreed previously that \$50,000.00 had been contributed by the defendant. However at that time when he was with his lawyer he never asked for the remaining \$25,000.00 nor did he take any action against the claimant for that amount of money prior to her selling her home. The defendant did tell the court that the claimant told him that was the amount she was prepared to pay him back.
 13. The claimant in her testimony confirmed this and said that's what was agreed to when the lawyer drew up the documentation removing her name from the property and giving the defendant a secured \$25,000 collateral mortgage.
 14. After this was done the defendant was satisfied for the claimant to come in and take her property which she did only in part however and it was only later that he decided not to give her the remaining property.

15. It also came to light during the court case that the claimant never asked for appliances to be put into her Bedford home and that they traveled together on vacation.
16. Based on these facts I accept the claimant's testimony that they had made a settlement of \$25,000.00 and the defendant was paid out that amount by the claimant.
17. At that time the defendant was satisfied with having the claimant removed from her joint ownership on the Waverley property. He did mention however in court that she had not been removed from the mortgage to the bank which apparently the claimant was not aware of and she only became so during the hearing. The defendant was prepared to give the claimant all her personal items and only changed his mind at a later date.
18. In the Small Claims Court Act the claimant can request the delivery to the person of specific personal property where the personal property does not have a value in excess of twenty-five thousand dollars.
19. This is what the claimant requested and I will make an Order for that to occur. In the event this property simply is not available the claimant can always make an application to this court, served on the defendant to determine the value of that property. But as it was not asked for at this time I will make no Order with respect to paying the claimant the value of the property.

It Is Ordered That the defendant delivered to the claimant the following personal property of the Claimant;
Ted Petrie Hutch/original
Ted Petrie four poster bed/mattress original

Ted Petrie dresser/original

Sodi glass table[4] custom design

1 Diana Art chair

Ferretti leather sofa [eggplant]

Ferretti leather ottoman [2] [eggplant]

Ferretti leather [2] [eggplant]

Ferretti microfiber sectional sofa/

Quad trip Metal Art /\$225.00/

Anna spoonor lamp

Rod iron Canleabra [3]/

Metal wall tea light[18] candleholder/half-moon

It Is Further Ordered that the defendant pay costs to the claimant of \$199.40

It Is Further Ordered That the claim against the claimant be dismissed

Dated at Halifax August 13, 2015