

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Breakspear v. Buchanan, 2007 NSSM 16

BETWEEN:

STEPHEN L. BREAKSPEAR

Claimant

- and -

KEVIN BUCHANAN, KAREN WATTS  
and K-K RADICAL MUSCLE CARS

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on April 30, 2007  
Decision rendered on May 2, 2007

**APPEARANCES**

For the Claimant - self-represented  
For the Defendants - self-represented

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1. The Claimant sues the Defendants for damages arising out of a transaction which cost the Claimant a beautifully restored antique 1938 Pontiac.
2. The undisputed facts are that in about April 2006 the Claimant learned that the Defendant Kevin Buchanan (hereafter "Buchanan") was in the business of buying, selling and trading specialty cars. The long and the short of it

was that the Claimant handed over his 1938 Pontiac to the Defendant Buchanan upon the promise that he (Buchanan) would transport it to Toronto and obtain a 1972 Corvette in exchange.

3. It is also uncontested that Buchanan arrived back from Toronto having sold the Pontiac for an undisclosed amount of money, but without the Corvette or anything like it. There is no other possible conclusion than that Buchanan simply pocketed the money. He admitted as much when later confronted by the Claimant, at which time he signed what amounts to a crude promissory note, promising to deliver to the Claimant either his 1938 Pontiac, a 1972 Corvette, or pay to the Claimant \$17,000 by October 15, 2006. That date has long since come and gone and the Claimant is empty-handed.
4. I am left to wonder how the Defendant Buchanan can begin to justify his actions. He filed a Defence claiming that he had repaid the Claimant \$12,000, which is simply not true. The Defendant Buchanan represented himself at the trial but declined to testify on his own behalf for fear that he might be forced to incriminate himself in connection with a criminal proceeding which, as far as I can tell, involves another transaction entirely. At trial he conceded that he "owes" the \$17,000. That is an understatement. There will be judgment against Buchanan for \$17,000 plus interest and costs.
5. Much of the trial was consumed by the efforts of the Claimant to establish joint liability of the Defendant Karen Watts.

6. While not expressed precisely this way, I understand the Claimant's argument to be that Karen Watts was a business partner of Buchanan, which could render her jointly liable for a debt of the partnership. The Claimant also sued "K-K Radical Muscle Cars" which he believes to be a business owned and operated by Karen and Kevin (K and K). Buchanan was known to drive a truck with the name K-K Radical Muscle Cars painted thereon. He also had some commercial accounts in that name, including his account at a repair facility, Major Discount Complete Auto Service in Lower Sackville.
7. A search of the records of the Companies Office discloses that there is no registered entity known as K-K Radical Muscle Cars, or anything like it. The Defendant Watts testified that as far as she knew, it was not a registered business and she denied that she was associated with it or a business partner of Buchanan. She did not deny that she had been cohabiting with him for about a year and that she sometimes did favours for him such as paying some bills or doing light work on a vehicle. She also allowed Buchanan to use her Visa card to pay some bills and her bank account was used to receive some deposits from customers.
8. The non-registration of a business name would not necessarily preclude a finding that a person or persons were carrying on business under that name. However, a positive registration could have removed all doubt as to who was using that name.
9. The Claimant attempted to establish that Watts was a business partner of Buchanan by calling a number of witnesses who had had some dealings with her in matters also involving Buchanan. I found much of that

testimony difficult to understand and rife with hearsay. In the end, I am left with the impression that Watts played a role in Buchanan's business that is arguably greater than that of a passive spouse, but less than a business partner. There is not sufficient evidence to establish that she was a partner in the legal sense such as to render her liable for a debt incurred by Buchanan, unless she could be shown to have had a direct involvement in the transaction.

10. In the case here, the Claimant knew nothing of Ms. Watts when he handed his vehicle over to Buchanan, and on the evidence it was clear that she knew nothing more than the fact that Buchanan was taking a vehicle or vehicles to Toronto to sell or trade. She did not accompany him on this trip. In fact, a strange twist to the tale occurred when Buchanan returned from Toronto and went missing for a period of time sufficient to frighten Ms. Watts. She ended up frantically calling a number of people - including the Claimant - whose names and numbers she had found, to ask if they knew where Buchanan was. The upshot of these calls was a confrontation at Ms. Watts's apartment where the Claimant and several other concerned customers of Buchanan came looking for him and for the items that they had been promised. But all of that is a sideshow, because it does nothing to establish that Ms. Watts participated in the taking of the Claimant's vehicle, the selling of it, or the failure to account to him for the proceeds. Nor is there any evidence that she received any of the pocketed proceeds of this transaction.
11. As such, I am not prepared to place any personal liability on Ms. Watts. It is my finding that she was not a party to this transaction. The fact that she may have been more involved with other transactions sufficient to place

liability on her in connection with those transactions, does not affect the result here where clearly Buchanan was operating on his own.

12. There is no reason to give judgment against K-K radical Muscle Cars because it is not a legal entity.
  
13. In the result there will be judgment against the Defendant Buchanan for \$17,000. I also allow prejudgment interest at the rate of 5% from October 15, 2006 (6-½ months), which I calculate to be \$460. The Claimant is also entitled to his filing fee of \$160, for a total judgment of \$17,620.00.

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Eric K. Slone, Adjudicator