

Claim No: 283610

Date:20071026

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Smith v. Murphy, 2007 NSSM 96

BETWEEN:

Name Thomas McGachy Smith Claimant

Name Cynthia L. Murphy Defendant

Revised Decision: The text of the original decision has been revised to remove addresses of the parties on March 26, 2008. This decision replaces the previously distributed decision.

DECISION

NATURE OF PROCEEDINGS

- (1) The Claimant, Thomas McGachy Smith (Smith), claims the sum of \$13,500.00 plus costs from the Defendant, Cynthia L. Murphy (Murphy).
- (2) The basis of the claim is that the parties cohabited at a home owned by Smith at 122 Thomas Street, Lake Echo, Nova Scotia (the home) from mid August, 2006, to January 1, 2007. In September 2006, the parties took out a joint car loan with RBC Royal Bank in the amount of \$15,000.00. From the proceeds, both of their existing car loans were paid off, Smith's in the amount of \$10,905.71 and Murphy's in the amount of \$4,398.25.
- (3) The parties also received two Visa Platinum Avian credit cards with a combined credit limit of \$10,000.00. The parties are jointly liable for the full balance of the cards.
- (4) As of the date that the parties separated, the balance of the joint car loan was \$13,959.60 and the balance owing in respect of the joint credit cards was \$10,039.01.
- (5) Smith states that he is the one who has assumed responsibility for payments on both the car loan and the line of credit and, therefore, Murphy should reimburse him for one-half of the total debt at this time.

- (6) Murphy has filed a Defence stating that most of the debt is not hers. She acknowledges responsibility for part of the debt but not an equal part.
- (7) She also files a Counterclaim for “items damages and destroyed and everything that has not been returned”. No further specifics were provided in her Counterclaim.
- (8) The proceeding was originally set for hearing on September 4, 2007.
- (9) At that time, Smith was directed to obtain and provide to Murphy a copy of each of the Visa statements for the both accounts from the date that the accounts were open to the month of January 2007, showing the details of all transactions. Also, he was directed to contact the Bank Officer and to request verification of the disbursement of the \$15,000.00 joint loan proceeds and to provide same to Murphy.
- (10) Murphy was directed to obtain a receipt for the purchase of her vehicle from the dealer and to provide same to Smith.
- (11) As of the adjourned date of October 24, 2007, both parties were satisfied that disclosure had been complied with and a hearing proceeded on that date.

THE CLAIM IN RESPECT OF THE CAR LOAN PAYMENTS

- (12) I accept that Smith has made the car loan payments since the parties separated on or about January 1, 2007. Since that time, he has made principal and interest payments of \$238.10 every two weeks. This amounts to total payments of \$5,158.83.
- (13) I find that the proceeds of the car loan were used to payout Smith’s outstanding car loan balance of \$10,905.71 and Murphy’s outstanding car loan balance of \$4,398.25.
- (14) I also find that at the time that the loans were paid out and the joint loan was taken out by the parties, Smith’s vehicle had been written off. The parties used Murphy vehicle throughout their brief relationship as their family vehicle, including transportation for the parties and for purposes of Smith’s access with his children who reside in the Province of New Brunswick.
- (15) I also find that the car loan payments during the months that the parties were together were paid partly out of the joint bank account and partly from Smith’s personal line of credit.

Funds were deposited to the joint bank account by both parties, although Smith made a greater contribution as his income was much higher than Murphy's. Murphy was unemployed for a period of time during the time that the parties were together, and she did make some deposits to the joint bank account, although certainly not to the same extent as Smith.

- (16) Taking into consideration all of the factors outlined above, I find that as between Smith and Murphy, Smith should be responsible for two-thirds of the car loan payments made since the separation of the parties and Murphy should be responsible for one-third of the payments.
- (17) I find, therefore, that Murphy owes Smith the sum of \$1,719.61 under this heading for car payment to and including the month of October 2007 by Smith.

THE CLAIM IN RESPECT OF THE VISA CARDS

- (18) Each party had their own separate Visa card. Both used the cards either for their own personal use or for what would normally be considered family purchases such as purchase of paint or building supplies, cigarettes, gifts for family members, groceries, and so forth. I have considered that according to the evidence, it would appear that Murphy's charges exceed those incurred by Smith, however, I accept her evidence that her charges were incurred not only for her own personal use but for family purposes, as well.
- (19) It is impossible to determine with any great degree of certainty the exact amounts which would fall under each category of personal use of the respective parties and family purposes.
- (20) Based on the evidence provided, I conclude that both Smith and Murphy should be responsible for fifty percent of the Visa payments made since separation.
- (21) According to the evidence, Smith made one Visa payment of \$205.00 and the bank withdrew \$827.00 from his bank account and applied this sum to the Visa cards. These amounts total \$1,032.00 as of September 7, 2007.
- (22) I order that Murphy shall reimburse Smith the sum of \$516.00, representing fifty percent of proven payments in regards to the Visa since separation.
- (23) This Order reflects payments as of September 7, 2007.

- (24) I also conclude that Murphy shall reimburse Smith the sum of \$45.00 for interest in respect of the Visa payments since January 2007, for a total of \$561.00 under this heading for payments made as of September 7, 2007.

THE COUNTERCLAIM

- (25) Based on the evidence of the parties, I find that there were various items which belonged to Murphy which were intentionally destroyed by Smith shortly after the break up. These items include a candle holder, duo holder, a flower pot, and picture frame. Also, Smith took some of Murphy's prescriptions which she had paid for.
- (26) There was no reliable evidence tendered as to the value of these items.
- (27) Based on the evidence provided, I order that Smith reimburse Murphy for the sum of \$100.00 under this heading.
- (28) Also, Murphy provided an extensive list of items which she says are still in the home and which she requests that the Court direct that Smith return to her.
- (29) Having heard the evidence of both parties, I conclude that Smith is being truthful when he says that the only items remaining that he is aware of are the faceting machine, tool box (red) with all tools in it, a bag of stones (which Murphy describes as gemstones), and a dining room table frame with four chairs. He denies that any of the other items remain in the home.
- (30) I would add that the evidence provided by Murphy in respect of the Counterclaim was generally unsatisfactory. There were no current values provided for the assets and several of the items, including the rings, were given a value that was seriously inflated and inaccurate. I also find that Murphy was unable to provide any clear explanation why she waited approximately six months before tendering the list of items to Smith and accept Smith's position on this issue that the Counterclaim was, in large part, a reaction to the claim which Smith served upon Murphy.
- (31) Accordingly, I direct that Smith immediately return the above items to Murphy and dismiss the balance of her Counterclaim.

GENERAL DAMAGES

(32) Smith complains that his credit rating has been tarnished, however, Murphy points out that hers has been, as well. I find there is no basis for an award of general damages in this case and any such claim is dismissed.

COSTS

(33) As each party has been partly successful, they should each be responsible for their own costs of this proceeding.

SUMMARY

(34) Murphy owes Smith the sum of \$2,280.61. Smith owes Murphy the sum of \$100.00. The claims shall be set off against the other such that Murphy shall pay Smith the sum of \$2,180.61. Smith shall also forthwith return to Murphy the following items, namely, the faceting machine, tool box (red) with all tools in it, the bag of stones (which Murphy describes as gemstones), and the dining room table frame with four chairs.

Dated at Dartmouth, Nova Scotia,
on October 26, 2007.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
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Copy	Defendant(s)