Claim No: 291515

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Cook v. Orr, 2008 NSSM 23

BETWEEN:

MICHAEL L. COOK

Claimant

- and -

SUSAN ORR

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on March 25, 2008

Decision rendered on March 26, 2008

APPEARANCES

For the Claimant - self-represented

For the Defendant - self-represented

BY THE COURT:

[1] This Claim arises from a common law relationship between the parties. The Claimant seeks the return of approximately $18,000.00 which he says he loaned to the Defendant. He also asks that she convey to him her interest in a motorcycle which is currently registered in both names.

[2] Although the Defence was not styled as a Counterclaim in the documents filed by the Defendant, it became clear at the trial that she was not only denying that she owed him money, but was seeking $1,300.00 from the Claimant. The Claimant has been aware throughout of the position that the Defendant takes, and as there is no evident prejudice I will treat the Defence as if it had been filed as a Defence and Counterclaim.

Claims arising from common law relationships

[3] In her Defence and at trial the Defendant questioned whether this was a matter better dealt with in the Family Court as it involves the allocation of assets following the end of a common law spousal relationship. A few words about this Court's authority may be useful.

[4] It is a common misconception that property (as opposed to support) issues following separation of a common law couple may be dealt with in the same way as if the parties had been married. Issues of child and spousal support fall under the *Maintenance and Custody Act*, which provides relief for unmarried couples that have lived as spouses for two years. That Act does not deal with property. Only the *Matrimonial Property Act* does.

[5] The *Matrimonial Property Act* does not yet (any may never) apply to common law couples. As such, for unmarried couples property issues by and large fall to be determined under principles of basic contract and property law, with principles of unjust enrichment coming into play.

[6] If the amount involved exceeds the monetary jurisdiction of this Court, then clearly the Supreme Court would be the appropriate forum. However, where the amount is within the monetary jurisdiction of this court then there does not appear to be any reason why it cannot be brought in Small Claims Court. Indeed, this type of claim is fairly common.

[7] When a claim like this is brought, the threshold question to be asked is: what was the agreement or contract that the spouses entered into, or the general understanding that they had?

[8] The mere fact that money changed hands, or that one party contributed more money to the joint household, does not automatically mean that there should be a return of money or any other form of financial reckoning. In order for such adjustments to be made, there must have been an agreement or understanding that one party has not honoured after the fact. That agreement may have been very clearly articulated, as some people are inclined to do, or it may have been more subtle and essentially have been implied in the arrangements.

[9] A contract to share expenses with a spouse in a particular way, or a contract to borrow money from one's spouse, is legally enforceable, if the necessary facts can be proved.

The Facts

[10] The parties here are mature individuals. They lived together for approximately two years, with a short period of separation roughly halfway through. They separated finally in about March of 2007.

[11] The Claimant is a well-paid helicopter technician who owns his own home. The Defendant is a less well-paid seamstress. When they got together she moved into his house. For a short period of time her daughter lived with them.

[12] Soon after the Defendant moved in with him, on April 1, 2005, the Claimant drew on a line of credit and advanced the sum of $5,145.68 to pay off a car loan which the Defendant had been paying at a very high rate of interest. His intention was clearly to relieve her of these high interest charges. I do believe that the Defendant understood that this loan was ultimately her responsibility, and she took that obligation seriously. For most of the time they were together she gave the Claimant significant sums of cash to be applied to his line of credit, in a total amount which appears to exceed the amount advanced, although without taking interest into account.

[13] The Claimant made two other large advances to the Defendant. On October 25, 2005 he advanced her $5,200.00. On August 18, 2006 he advanced her a further $6,000.00. It appears that the Defendant had major financial pressures and these sums were intended to make her life easier. The Defendant testified that she believed they were gifts. The Claimant's evidence about these two advances was vague. He did not

agree that they were gifts, although he did not say that there was any agreement that they were loans that had to be repaid.

[14] The evidence leads me to conclude that these two advances were motivated by concern and generosity at the time they were made, and there was no agreement, express or implied, that these were loans that would have to be repaid. They were “gifts” in the sense that there was no expectation of return. This is precisely the kind of thing people do for each other when they are in a caring relationship.

[15] The evidence convinced me that the underlying basis for this couple’s financial arrangements was that each would contribute what he or she could, according to his or her means. Although I did not receive evidence of the actual incomes, I got the impression that the Claimant earned a great deal more than did the Defendant, and that so long as they were in the relationship he was unconcerned about her lower level of financial contribution. It does appear that the Defendant contributed in other ways to the domestic life. I got no sense that she took advantage of the Claimant financially.

The motorcycle

[16] In November 2006 the Claimant purchased an expensive motorcycle (a 2006 Honda motorcycle bearing VIN #1HFSC47516A500895). He used an older bike as a trade in and financed the remainder of the price - just slightly in excess of $19,000.00. For reasons that were not fully explained, the motorcycle was put in both names and they both assumed responsibility for the loan.

[17] The Claimant is an experienced motorcyclist. The Defendant only rode as a passenger. They had plans to take a major road trip together, which never happened because they separated. Only the Claimant made payments on the loan. Eventually he paid off the loan in order to get the Defendant's name off of it, in furtherance of a plan to separate their financial affairs - a plan which has never been fully implemented.

[18] It has been the Claimant's primary objective to get the motorcycle back into his own name since the separation.

The Defendant's Counterclaim

[19] The Defendant says that the Claimant owes her $1,300.00. This is made up of three components. The first is to recover one-third of a veterinary bill that was incurred when her dog's leg was broken in an accident that occurred near the end of when the parties were living together. The dog required expensive surgery. The Defendant testified that there was an express agreement that the cost would be split three ways - one third by each of the Defendant, her ex-Husband, and the Claimant. Each share would have been $594.00. The ex-Husband paid the vet directly, and the Defendant paid him $1,188.00 and expected the Claimant to come up with his share. By then they were separated and he has never paid.

[20] One of the other components of her claim arose when on the night of their break-up the Claimant lost his temper and destroyed some things that belonged to her. There was no attempt made to show how these items were valued.

[21] The last item concerns a cash jar that the Defendant says she was putting money into to save for their road trip, which she left behind when they separated. She did not know precisely how much was in it. The Claimant said he did not know of any such cash jar.

Efforts to resolve their dispute

[22] There were many efforts made to settle their dispute. A mutual friend tried to mediate during the fall of 2007, and it appears that he came very close to closing the deal.

[23] After having what she believed to be an agreement in principle, as conveyed by the mediator, the Defendant retained a lawyer who drew up a simple separation agreement that would have returned title of the motorcycle to the Claimant and compensated the Defendant for $1,391.00 (which was the amount she was originally seeking.) But for a series of misunderstandings, I am convinced that this agreement would have been signed and the matter ended.

[24] On the 1st of February 2008, the Claimant arranged to meet with the Defendant's lawyer. I believe that there was an understanding in place that the basic terms of the agreement were acceptable. The agreement had already been signed by the Defendant. However, during the meeting it appears that each side had stipulations and concerns that ended up scuttling the deal.

[25] The Defendant's lawyer had advised the Claimant earlier by phone that he could not pay by personal cheque, because of the fear that he might stop payment. A certified cheque or cash would be required. The Claimant could only put his hands on $1,300.00, not $1,391.00. The lawyer said that the $1,300.00 would be acceptable, and the Claimant showed up at the appointed time with the cash. The lawyer came with the signed agreement and the signed ownership certificate to the motorcycle.

[26] The Claimant asked that the money be held in trust until he was certain that the motorcycle could be put in his name. The lawyer said that this was not possible. The Claimant also had concerns, which he may or may not have fully expressed at the time. One was that the signed agreement would not be binding because the lawyer had scratched out the figure $1,391 and written in $1,300, without getting the Defendant to initial the changes. The other concern was that the affidavit in support of the motorcycle transfer, which had been commissioned by the lawyer, did not bear any official seal (such as a notarial seal) and might not be accepted.

[27] In the result the deal fell apart and the Claimant issued this claim later that same day.

[28] An issue was raised as to whether or not the Claimant had at one time attempted to forge the signature of the Defendant on the ownership certificate and on a letter to an insurance company concerning coverage for the motorcycle. The Claimant denies forging her signature. However, I accept that someone did so, and more likely than not it was either the Claimant or someone he knows. Perhaps nothing really flows from this, except to note that one of the problems that the Claimant anticipated in

connection with transferring ownership of the motorcycle was that there were scratched out signatures on the certificate which may have concerned the Department of Motor Vehicles office. Be that as it may, the Defendant has since signed it and acknowledges that it now bears her legitimate signature. She has the certificate in her possession.

Findings and decision

[29] Although I could examine each element of the claim and counterclaim individually, I prefer to base my decision on the fact that, I believe, there was a binding verbal agreement existing on February 1, 2008, the essential terms of which were that the motorcycle would be transferred and the Defendant be paid $1,300.00, and that everyone would go their own way. This is a contract that I believe I have jurisdiction to enforce and that enforcing it is the only just result.

[30] If for any reason I am wrong in enforcing that agreement, I make the following additional findings which I believe support the result from a different angle.

A. I believe that the Defendant paid back to the Claimant an amount sufficient to retire the $5,145.68 advance. This was done through monthly cash payments which, she believed, were being applied to the Claimant's line of credit. In the final analysis it does not matter what the Claimant did with the money. His loan to her has been satisfied.

B. The other two advances - for $5,200.00 and $6,000.00 - were gifts with no expectation of return. The fact that they later separated and bad feelings entered the picture does not transform the original nature of the advances.

C. The Defendant has no real claim to the motorcycle, and does not really make one. Although she was for a time technically responsible for the loan and potentially liable in the event of an accident, none of these things has materialized and she would be unjustly enriched were she to seek to retain any share of the motorcycle's value.

D. The Claimant agreed to share in the vet bill and has no basis to be relieved of that obligation.

E. The value of the destroyed items and the cash jar have not been established with any precision, but the parties appear to have been willing to accept the figure that was eventually arrived at, and there is no better measure available.

[31] Given my findings, the agreement that was almost completed on February 1, 2008 was a reasonable one, under the circumstances, and is no less reasonable today.

[32] It is accordingly my order that the Defendant deliver to the Claimant (through an intermediary, if necessary) the signed certificate of registration for the motorcycle, and any other documents she may have in her possession that pertain to the motorcycle. It will be up to the Claimant to

explain to the Department of Motor Vehicles, if need be, why there are some scratched out signatures on the back.

[33] It is my further order that the Claimant pay to the Defendant the sum of $1,300.00.

[34] This is not an appropriate case for any costs to be awarded to the Claimant. Although this case was the device which hopefully puts the matter at an end, I believe that the Claim was for the most part ill-founded, in the sense that it sought a great deal of money from the Defendant which I do not find to be owing.

Eric K. Slone, adjudicator