

Claim No: 287433

Date:20080502

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Dunlap. v. Albert, 2008 NSSM 59

BETWEEN:

Name Thelma Prudence Dunlap Claimant

Name Juanita Ann Albert Defendant

REVISED DECISION: The text of the original decision has been revised to remove addresses and phone numbers of the parties on September 23, 2008.

DECISION

On March 12, 2008, a hearing was held in the above matter and the following Order is made:

APPEARANCES:

Brenda Landry, Agent for the Claimant

Mark Mario Albert, Agent for the Defendant

FACTS

- (1) The Claimant, Thelma Prudence Dunlap, claims the sum of \$9,168.20 from the Defendant, Juanita Ann Albert.

- (2) The Defendant, Juanita Ann Albert, was the sister of Helen Horne.
- (3) A dispute arose following the death of Helen Horne on Saturday, June 23, 2007.
- (4) Helen Horne had several insurance policies. The policy relative to the dispute in this case was a policy with Grand Orange Lodge of British America Benefit Fund (Orange Lodge) in the face amount of \$7,000.00.
- (5) On June 17, 2007, Helen Horne signed a Change of Beneficiary form changing the beneficiary of the Orange Lodge insurance policy from Janice Carpenter (one of her daughters) to the Defendant, Juanita Ann Albert, and her husband, Mario Albert. The Change of Beneficiary form was witnessed by Winnifred Hartlen.
- (6) Winnifred Hartlen testified in this proceeding, and there was nothing in her evidence nor was any medical evidence tendered to suggest that Helen Horne did not understand that she was signing a Change of Beneficiary form and did not do so of her own free will.
- (7) Helen Horne had a policy with another insurance company, the beneficiary of that policy was also Janice Carpenter, and the face amount of the second policy was \$3,000.00. Helen Horne did not change the beneficiary of this policy before her death, although there was evidence provided by the Defendant, Juanita Ann Albert, which I accept, suggesting that she had an intention to do so as she had requested of the insurance company that she be provided with a copy of the policy which had been misplaced by her, however, these arrangements were not finalized prior to her death.
- (8) The Defendant testified that the reason for wanting to change the beneficiary was that Helen Horne trusted her sister to carry out her wishes.
- (9) The dispute in this case concerns exactly what those wishes were.

DETERMINATION OF HELEN HORNE'S WISHES

- (10) The position of the Claimant is that the insurance proceeds were to be used towards burial costs for Helen Horne.

- (11) It is the finding of the Court based on a review of the evidence of the parties to this proceeding, and the evidence of various witnesses, namely, Jeanette Horne, Winnifred Hartlen, David Mattatall and Laura Lee Parris, of Mattatall's Funeral Home, Larry Dunlap, and Richard Horne, that it was Helen Horne's intention that the insurance funds be applied towards burial costs.
- (12) I have considered the relevant evidence in arriving at this conclusion, however, it is not necessary, in my view, to review all of the evidence in detail in this decision.
- (13) Suffice to say there are difficulties with the evidence of the Defendant, Juanita Ann Albert, the major one being that she denies telling David Mattatall and Laura Lee Parris sometime between the date of the "family fight" (which is referred to in more detail below) and the date of Ms. Horne's death that she was the beneficiary of an insurance policy and would be paying for the funeral costs. This is so despite Mr. Mattatall's notes of a conversation and the evidence under oath to that effect of both Mr. Mattatall and Ms. Parris. Mr. Mattatall and Ms. Parris' evidence was clear and straightforward and not seriously challenged upon cross-examination.
- (14) Also, there are inconsistencies with her evidence and position before the Court, for example, she stated that the reason Helen Horne made the change of beneficiary was that Ms. Horne trusted her to carry out her wishes yet in her submissions to the Court, she stated that she and her husband were named as beneficiaries of the insurance policies as a gift from Helen Horne.
- (15) I find the sequence of events to be as follows:
1. Helen Horne signed a Change of Beneficiary form naming Juanita Ann Albert and Mario Albert as beneficiaries of the Orange Lodge insurance policy on June 17, 2007;
 2. Juanita Ann Albert contacted David Mattatall and discussed "pre-arrangements" and was given a rough quotation of costs;
 3. A family fight ensued at Helen Horne's apartment over those arrangements, specifically the pallbearers. Present during this family fight were Mr. and Mrs. Albert and various members of Helen Horne's immediate family. As a result of the

family fight, Mr. and Mrs. Albert left Helen Horne's apartment, and it was made clear that they were not welcome to return;

4. Attempts were made by members of Helen Horne's immediate family to freeze Juanita Ann Albert out of making funeral arrangements and even attending at the funeral home subsequent to Helen Horne's death. Juanita Ann Albert contacted Laura Lee Parris to ask if she could be informed when Helen Horne died;
 5. On June 23, 2007, Helen Horne died;
 6. Ms. Parris called Ms. Albert during her meeting with Richard Horne, Thelma Dunlap, and other members of Helen Horne's family, shortly after Helen Horne's death. During this conversation, Laura Lee Parris was told by Juanita Ann Albert that she (Ms. Albert) did not think that the family was going to pay the bill. She mentioned that she was the beneficiary of an insurance policy and would take care of the cost. At one point during the conversation, she became upset and hung up the phone. Before doing so, however, Ms. Parris was adamant that Ms. Albert told her several times that Ms. Parris was not going to get any money from the family;
 7. Following this conversation, the Claimant, Thelma Prudence Dunlap, gave a deposit to cover the funeral costs and made arrangements for payment of the balance.
- (16) This was an emotional and difficult time for everyone, and it would serve no purpose to comment in further detail upon the actions of various individuals involved concerning what occurred around this time. The finding of this Court is that it was Helen Horne's intention that the insurance funds be used towards her burial costs.
- (17) Ms. Albert's denials of any knowledge of Helen Horne's stated intention with respect to the insurance funds is not consistent with her subsequent actions and conversations.
- (18) I find that Ms. Albert was aware of Helen Horne's intentions and had every intention to follow them through until the family fight occurred. After that and as a result of various actions undertaken by family members to freeze her out and her perceived and/or actual loss of control over the funeral arrangements, her relationship with members of Helen Horne's immediate family were, to say the least, strained.

- (19) I prefer the version of events as described by David Mattatall and Laura Lee Parris to that described by Juanita Ann Albert, and I accept their evidence in its entirety. I find that the Defendant, Juanita Ann Albert, advised David Mattatall and Laura Lee Parris that she was the beneficiary of insurance monies and was going to be paying for the funeral arrangements. I find that she did so because of her understanding of Helen Horne's intentions. Her denial that she made these statements to Mr. Mattatall and Ms. Parris is simply not credible.
- (20) I find therefore that it was Helen Horne's intention that the proceeds of both insurance policies be applied towards her burial costs.

BASIS FOR THE CLAIM BY THE DEFENDANT

- (21) There is no privity of contract between the parties in this case. The Claimant is suing in her personal capacity not on behalf of the estate.
- (22) Subject to the exclusions set out in Section 10, the jurisdiction of the Small Claims Court is set out in Section 9 of the Act as follows:

“9 A person may make a claim under this Act

(a) seeking a monetary award in respect of a matter or thing arising under a contract or a tort where the claim does not exceed twenty-five thousand dollars inclusive of any claim for general damages but exclusive of interest;

(b) notwithstanding subsection (1) of Section 5, for municipal rates and taxes, except those which constitute a lien on real property, where the claim does not exceed twenty-five thousand dollars exclusive of interest;

(c) requesting 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; or

(d) respecting a matter or thing authorized or directed by an Act of the Legislature to be determined pursuant to this Act. R.S., c. 430, s. 9; 1992, c. 16, s. 117; 1999 (2nd Sess.), c. 8, s. 16; 2002, c. 10, s. 38; 2005, c. 58, s. 1.”

- (23) The Supreme Court of Nova Scotia, in Wacky's Carpet & Floor Centre v. Maritime Project Management Inc., 2006 NSSC 353, 57 C.L.R. (3d) 133, 792 A.P.R. 278, 249 N.S.R. (2d) 278, found that the jurisdiction of the Small Claims Court extends to applying the remedy of unjust enrichment in an appropriate case.
- (24) Even if it were possible to establish the type of special relationship necessary to base a claim for unjust enrichment, however, the test could not be met in this case as the undisputed evidence is that the Defendant has not in fact received the proceeds of the insurance policy, therefore, it cannot be said that she has been enriched.
- (25) It is possible that the Claimant in this case may have a valid claim against the estate of the late Helen Horne, however, that issue is not before me.

CONCLUSION

- (26) Based on the above analysis, there is no basis upon which the Claimant can support a claim against the Defendant. There is no contract between the parties. An argument for unjust enrichment cannot be sustained as the Defendant has not received the insurance proceeds and thus has not been enriched.
- (27) Based on the above, the disposition of the Court is to dismiss the claim, but it should be noted that the dismissal is not on the merits, that is to say, if the Defendant were in fact to receive the insurance proceeds, then it would be open for the parties to apply again to a Court of competent jurisdiction regarding this issue.
- (28) In the circumstances, therefore, the claim is dismissed for jurisdictional reasons. Each party is to bear their own costs.

Dated at Dartmouth, Nova Scotia,
on May 2, 2008.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)

Copy Defendant(s)