

Claim No: 293216

Date:20080606

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Kane v. Dubois, 2008 NSSM 62

BETWEEN:

Name Denise Kane Claimant

Name Stephane Dubois 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

THE CLAIM

- (1) The Claimant, Denise Kane (Kane), claims the sum of \$2,500.00 from the Defendant, Stephane Dubois (Dubois), for a personal loan which she alleges she gave to Dubois. Kane also claims Court costs from Dubois.

COUNTERCLAIM

- (2) Dubois counterclaims against Kane for two items, firstly, for the sum of \$650.00 regarding dental bills and, secondly, for the sum of \$2,160.00 for amounts which he alleges to have paid towards an After School Care Program which he says the children no longer required.

THE LOAN

- (3) The parties are both in agreement that there was a loan from Kane to Dubois as evidenced by a letter dated June 23, 2005, (Exhibit C1) and that the loan was in the amount of \$2,500.00. Both parties also testified, and I accept their evidence, that the loan was to be repaid in full by the spring of 2007.

- (4) Both parties also testified, and I accept their evidence, confirmed by a receipt dated December 11, 2005, (Exhibit D2) that Dubois has made payments of \$400.00 on the loan, leaving a balance outstanding of \$2,100.00.
- (5) Both parties confirmed that the loan Agreement was entered into in 2005, a date subsequent to their legal separation.

THE JURISDICTIONAL ISSUE

- (6) The Counterclaim raises a jurisdictional issue on the basis of the pleadings and the statements of the parties.
- (7) A divorce proceeding was commenced by Dubois in the Supreme Court of Nova Scotia (Family Division). The divorce proceeding includes requests for corollary relief in the areas of custody, access, and child support, as well as a request for division of property pursuant to the Matrimonial Property Act of Nova Scotia.
- (8) A Settlement Agreement was signed by the parties following a Settlement Conference in the Supreme Court of Nova Scotia (Family Division), evidenced by Exhibit C3, which was filed with the Supreme Court of Nova Scotia (Family Division) on August 31, 2006, but not incorporated into a Court Order. There is no evidence that the Agreement has been registered with the Court pursuant to Section 52 of the Maintenance and Custody Act, R.S.N.S. 1989, c.160.
- (9) The terms of the Settlement Agreement, in essence, were that the parties would share joint custody of their two children, Kane having primary care and the children spending access time with Dubois, with Dubois to pay the Table Amount of child support plus a contribution towards Section 7 expenses.
- (10) The Section 7 expenses included the cost of child care (paragraph 6) and the cost of medical expenses not covered by Dubois' medical plan (paragraph 7) as well as the cost of extracurricular activities agreed between the parties through prior consultation (paragraph 9).

- (11) The pleadings and the statements of the parties in this case disclose that the basis of the Counterclaim by Dubois against Kane relates in both instances to matters which are encompassed by Section 7 of the Child Support Guidelines and the terms of the Settlement Agreement, that is to say, in relation to the dentist bill, his position is that he has paid for the uninsured portion entirely, and he seeks compensation from Kane of her proportionate share (25% according to paragraph 7 of the Settlement Agreement) and with respect to the After School Program costs, that he continued to pay those even though the children were no longer in attendance, and he seeks the amount of the overpayment (his share was 75% according to paragraph 6 of the Settlement Agreement).
- (12) The issues being raised by Kane are therefore already before the Supreme Court of Nova Scotia (Family Division) in respect of the divorce proceeding.
- (13) Both parties confirmed that the divorce proceeding has not yet been concluded. Although a Settlement Agreement was reached, this does not conclude the proceeding. A Corollary Relief Judgment has not been issued. Issues arising from the Settlement Agreement can be considered by the Court upon either party applying to finalize the terms of the divorce.
- (14) Section 15 of the Small Claims Court Act of Nova Scotia provides as follows:
- “15 The Court does not have jurisdiction in respect of a claim where the issues in dispute are already before another court unless that proceeding is withdrawn, abandoned, struck out or transferred in accordance with Section 19. R.S., c. 430, s. 15; 1992, c. 16, s. 118.”
- (15) This section was considered in the case of Direct Cash ATM Processing Partnership v. Eastside Billiards & Lounge Ltd., 2008 CarswellNS 105, in which Justice Scaravelli of the Supreme Court of Nova Scotia stated as follows:
- “Clearly the purpose of this Section is to ensure that proceedings involving the same cause of action are not simultaneously conducted before another Court in Province, or, presumably, outside the Province. The intent is to avoid dual proceedings.”
- (16) In that case, there were no concurrent or parallel proceedings.

- (17) In this case, however, there is an active proceeding involving the same issues before another Court.
- (18) Based on the above, I find that the Small Claims Court of Nova Scotia has no jurisdiction in relation to the issues being raised by Dubois in his Counterclaim in this case.

SUMMARY

- (19) In summary, Kane loaned money to Dubois and the amount of \$2,100.00 is outstanding according to the terms of the loan. Kane shall have Judgment in this amount against Dubois plus costs in the amount of \$85.44 to cover the filing fee.
- (20) The Courterclaim is dismissed, not on the merits, but on the jurisdictional issue.

Dated at Dartmouth, Nova Scotia,
on June 6, 2008.

Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)

