

Claim No: 389000

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

Cite as: Huckle v. Spencer, 2012 NSSM 13

BETWEEN:

MARIE HUCKLE

Claimant

- and -

ADAM SPENCER and  
HELENA DARLING (also known as HELENA PELLETIER)

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 15, 2012

Decision rendered on June 1, 2012

**APPEARANCES**

For the Claimant            self-represented

For the Defendants        self-represented

**BY THE COURT:**

[1] The Claimant, Marie Huckle, is suing the Defendants, Adam Spencer and Helena Darling, as a result of a tattoo gone wrong. Under circumstances which I will describe in greater detail below, a tattoo that was supposed to read “See You at the Crossroads” was misspelled, “See You at the Cossroads”.

[2] Mr. Spencer is one of the partners in the Defendant business, Newcombe’s Ink. Ms. Darling is an employee of the business. Although she is named as Helena Darling in the Claim, she testified that her legal name is Helena Pelletier, and the style of cause in this proceeding will be amended to reflect the fact that she is known by both names. I will refer to her as she apparently wishes to be referred to, as “Ms. Pelletier.”

[3] The Claimant decided to have a tattoo placed on the side of her abdomen in order to honour a friend who had recently died. The slogan obviously had some special personal meaning. She did some searching on the Internet, and came up with a font that she felt was suitable. It is something that I would describe as Gothic or Old English. She also did some research and came up with the name of a Mr. John Newcombe as a suitable tattoo artist. Mr. Newcombe was at the time, but is no longer, an employee of Newcombe’s Inc., although his name continues to be associated with the business.

[4] The Claimant telephoned on Thursday, December 16, 2010, hoping to get an appointment with Mr. Newcombe. She was informed that he was not available, but that another artist, Ms. Pelletier, would be available. Not being prepared to wait, the Claimant decided to go with Ms. Pelletier.

[5] The Claimant brought in a printout of the “See You at the Crossroads” proposed tattoo, whereupon Ms. Pelletier attempted to replicate it on her own computer font generator. A template was created. Apparently, the initial template was too large and needed to be resized. Ms. Pelletier left her work station and went to the computer to perform this resizing of the template, out of the view of the Claimant.

[6] There is a difference in the evidence as to whether or not the spelling error was made initially on the first template made by Ms. Pelletier, or subsequently when the second template had to be created in a smaller size. This would only make a difference if I were to hold the Claimant partially responsible for not having noticed the spelling error. According to the Claimant, the first template she saw was spelled correctly and it was only the second template that contained the spelling error. She says that she did not have much of an opportunity to see that template because it was held up to her side and she could only see it in the mirror, as a reversed image. It is acknowledged that when viewing a mirror image it would be much more difficult to detect an error.

[7] I do not intend to base my decision on the question of whether or not the Claimant might have caught the error before it became tattooed on her skin. There is no question that it was Ms. Pelletier who made the error, and I believe it is fair to say that it is relatively subtle if one is not looking for the error. As such, it is truly the responsibility of someone in Ms. Pelletier’s position to make sure that there are no spelling errors. People who are about to be tattooed may not be in the best position to be alert to such errors.

[8] The Claimant was also critical of Ms. Pelletier for chatting with a previous client during much of the time that she was applying the tattoo. Ms. Pelletier

insists that she was only being polite to this former client, and that more than enough of her attention was being paid to the tattoo and that this in no way would explain why the error was made. In this case as well, I do not intend to base my decision on any alleged distraction on the part of Ms. Pelletier. I believe it is sufficient to say that the duty of a tattoo artist, and by extension his or her employer, is a fairly strict one. Given how difficult tattoos are to remove, it behoves a tattoo artist to be extremely careful that no errors are made.

[9] It was not until the Claimant got home and took a much closer look at her tattoo that she discovered the spelling error. Needless to say, she was quite upset. She had a friend of hers call Mr. Spencer on her behalf to report the mistake. To his credit, Mr. Spencer was very supportive and indicated that he was prepared to do whatever was necessary to fix the problem. There were discussions about whether or not the missing “r” could be inserted in the appropriate place. There were also discussions about so-called cover-up tattoos. In the end, the Claimant determined that she simply wanted the tattoo to be removed and Mr. Spencer agreed with her and indicated that he would pay for such removal. He also immediately refunded the amount that the Claimant had paid for the tattoo.

[10] Mr. Spencer put the Claimant in touch with a technician who specializes in tattoo removal, Ms. Marina Munroe, the proprietor of a business called Total Body Laser Clinic. As Ms. Munroe testified, tattoo removal is a painful and time-consuming process. Only very small areas can be worked on at any given session, and sufficient time has to be taken between sessions in order for the flesh to heal. Essentially, the laser is burning the tissue and the area must be bandaged and cleaned according to a fairly rigorous protocol. The Claimant has

had eight sessions of tattoo removal so far. All of those sessions have been paid for by Mr. Spencer.

[11] Despite the good faith efforts of Mr. Spencer, the Claimant is dissatisfied with how matters stand, and has brought this claim to recover the anticipated future cost of removing the rest of the tattoo. Those costs include \$6,000 for 15 further sessions at \$400 per session, plus \$2,300 which represents the cost of supplies used to care for the treated area, both for the eight sessions to date as well as the anticipated 15 further sessions. She also claims \$184 as the estimated cost for gasoline to get her to and from the treatment sessions. In addition, she seeks \$100 in general damages, which of course is the limit of what this court can offer. On the question of general damages, there is no doubt in my mind that the Claimant has suffered considerable injury and inconvenience and \$100 represents but a fraction of the value that a higher court might place on that.

[12] Ms. Munroe has estimated that 15 further sessions will be needed to completely remove the tattoo, but she emphasized that this is only an estimate. Each person's skin will react differently.

[13] Mr. Spencer admits that he paid for the eight previous appointments, but he did not pay for the supplies that the Claimant has used to take care of the area between treatments as it does not appear that he was ever asked to do so. He also questions whether the entire tattoo should be removed. He believed that only the bottom line containing the misspelling would have to be removed. This would only be the case if the Claimant were determined to have the tattoo put in place as she had originally intended. It does not appear that she wishes to have

that tattoo anymore, and given her experience I do not believe it is reasonable to hold her to any such course of action.

[14] Ms. Pelletier does not dispute that she made the error, but she has sought to have some of the responsibility deflected to the Claimant for not catching the mistake in time. On the facts as I have found them, I do not believe this is a proper case for a finding of contributory negligence. As I have already indicated, it is far from certain that the Claimant ever had a real opportunity to inspect the proposed template before it went on her skin. And as I have also indicated, I believe there is a high duty upon a tattoo artist to double check that everything is precisely as it ought to be before putting a needle to someone's skin and potentially making permanent something that the person would not want on their skin.

[15] I acknowledge that emotions have run fairly high in this matter, but this case should be decided on dispassionate legal principles. I believe that the Claimant entered into a contract with the Defendants, under which contract the Defendants undertook a legal duty to use all of their best skills and care in creating a tattoo that closely matched that which the Claimant wanted. It would not be a standard of perfection. I accept that when working on a living canvas, such as someone's skin, the results may not be exactly as hoped for. However, a spelling mistake is clearly a breach of that duty of care.

[16] It appears that the Defendants normally have the clients sign a waiver form, but because of a printer malfunction on the day in question they did not have the ability to put a waiver in front of the Claimant. I do not know what such a waiver might have said, and I do not wish to be interpreted as suggesting that a waiver would necessarily have protected the Defendants against liability in a

situation such as this. There is a large body of case law dealing with waivers of liability, and setting out circumstances under which waivers may not be enforced. As I have said, this is really an academic question because there is no waiver in this case.

[17] I accept that the Defendant, Mr. Spencer, may have believed that he was fulfilling all of his (i.e. his partnership's) responsibilities by paying for the treatments that he did, but it does not appear that he was willing necessarily to do everything that Ms. Huckle required. I do not question his good faith in this matter, as it appears that he responded to a situation not of his own creation with generosity and sensitivity. However, the liability to the Claimant still remains.

[18] The Defendants brought to my attention a reported decision of Adjudicator David Parker of this Court in a case of *Ullock v. Slaunwhite* 2010 NSSM 22, which was decided in March of 2010. That case has many similarities to the one here. In that case, the tattoo was on the Claimant's arm (not as here on the side) and it appears that the misspelling of the phrase "you're so beautiful" (the last word having been spelled "beatiful") was obvious on the computer and on the stencil which was shown to be client. Adjudicator Parker found that the Claimant was "the author of her own misfortune."

[19] The text of that decision is fairly brief, and it is difficult to get the nuance of the evidence that Mr. Parker heard. I am not certain that I would necessarily have decided that case the same way, but even so it is difficult to know without having heard the evidence. In any event, I'm not bound by that case. Every case is different, and I believe that the Defendants here bear a higher degree of responsibility for the error than did the Defendant in the case decided by Mr. Parker.

[20] In the result, the Claimant will have judgment against both Defendants, jointly and severally, for the amount claimed, which to reiterate is:

- a. \$6,000.00 representing 15 further sessions at \$400.00 each
- b. \$2,300.00 representing 23 instances of having to purchase \$100.00 in supplies
- c. \$184.00 representing 23 x \$8.00 per session in gasoline
- d. \$100.00 in general damages
- e. Filing fee of \$182.94 plus bailiffs fees in the amount of \$225.00 to serve the claim on the Defendants.

[21] These amounts total \$8,991.94.

**Eric K. Slone, Adjudicator**