

Claim No: 390360

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: L'Heureux v. Purdy, 2012 NSSM 22

BETWEEN:

ANDREA L'HEUREUX

Claimant

- and -

NICOLE PURDY and DWAYNE PURDY

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 22, 2012

Decision rendered on May 24, 2012

APPEARANCES

For the Claimant self-represented

For the Defendants self-represented

BY THE COURT:

[1] The Claimant in this case is suing the Defendants for the sum of \$1,301.31, which is the balance that she claims is owing from a loan advanced to the Defendants in August 2007 in the amount of \$2,801.30, which enabled them to take their honeymoon.

[2] The Claimant is the aunt of the Defendant Nicole Purdy. At one time, the two of them were close, although recent years appear to have taken a serious toll on their relationship. In August 2007, Nicole was planning her wedding and she and her fiancé Dwayne had planned to take their dream honeymoon at a Disney World resort. According to the Defendants, they were saving up their money and at that time had \$1,300.00 saved up. The wedding was to take place the following March, which would have left another six months or more to save up the balance. In fact, tickets for this particular holiday went on sale in August 2007, at which point it made sense to book early, even though the Defendants did not have all the money that they were going to need.

[3] When the Claimant heard about this, she offered to go down to the travel agent with Nicole, and have the entire ticket put on her MasterCard. Like many people, she had a credit card which allowed her to accumulate travel points. This partly explains why she was happy to use her credit card, although there was also a generosity factor involved as she was very fond of her niece.

[4] There is no dispute that on the day in question, in August 2007, the Claimant allowed her MasterCard to be used to purchase tickets at a cost of \$2,801.30. There is also no dispute that a couple of days after the wedding in March 2008, the Claimant was given \$1,000.00 in cash, which had been part of

the money given to the Defendants as wedding gifts. There is also no dispute that it's on or about August 31, 2008, the Defendants gave the Claimant a further \$500.00 in cash.

[5] According to the Claimant, the balance of \$1,301.31 remained an outstanding loan which has never been paid and which she now seeks in this claim. According to the Defendants, on the very day which the tickets were bought using the Claimant's MasterCard, the Claimant had been given the \$1,300.00 in cash which the Defendants had saved up to that point. From their perspective, the Claimant is seeking to recover money which she was paid years ago.

[6] The Claimant denies receiving that initial money.

[7] There appears to be a fairly complex and unpleasant family history, part of which came out at the hearing. The Claimant is apparently involved in several peace bond proceedings against other members of the family. She has also made accusations that her home has been burglarized by family members. According to the Defendants, the Claimant has a history of mental illness and they see this claim as a manifestation of her mental condition and vindictive feelings towards members of the family who are no longer on good terms with her.

[8] The Defendants pointed to the fact that at no time between August 2008 when the \$500.00 was given to her, and approximately two months ago, was there any mention of money being owed, let alone any demand for payment. Although the relationship has since broken down, during the years 2008, 2009, 2010 and perhaps at least part of 2011, the relationship was not so compromised

and there was contact between the Claimant and the Defendants. This would have provided plenty of opportunities for a demand to be made.

[9] The inherent difficulty with undocumented transactions and cash payments is obvious. It requires a finding of credibility. This court, like most courts, must make a finding of fact on a balance of probabilities. That means that whichever version of facts is more believable or more inherently credible, will determine the result in the case.

[10] Credibility is sometimes a matter of truth telling, and sometimes merely a matter of which witness has the more accurate recollection. Also, sometimes it is simply a matter which version of the events is more inherently probable.

[11] I listened to the evidence very carefully. I believe all of the parties are somewhat caught up in this family feud, which may colour their evidence slightly. However, I am quite satisfied that the Defendants are telling the truth. It rings true that they would have been saving for their honeymoon, and it is entirely probable, or at least credible, that the Claimant would have taken the cash (\$1,300.00) and put the whole amount on her MasterCard in order to obtain the extra travel points, rather than only putting the \$1,501.31 balance on the MasterCard and having \$1,300.00 paid directly to the travel agent.

[12] The evidence suggests that the Defendants took their obligations seriously to repay the Claimant, and I find it difficult to believe that they would have shortchanged her and left this matter outstanding for four years. In fact, I find somewhat telling the evidence that when Duane paid the \$1,000 two days after the wedding, he actually offered to pay \$1,500.00 but the Claimant insisted that they keep \$500.00 so they would have spending money on their honeymoon.

[13] I believe that had there still been money owing, the Claimant would have made mention of it in the three years or more following the last payment.

[14] While the Claimant gave her evidence in a perfectly straightforward manner, and I am not making a finding that she is lying, I believe her story is nevertheless not as probable as the story told by the Defendants. It is possible that she is simply remembering the event poorly, and is convinced that the money is owing. However, on a balance of probabilities, I find that she was paid \$1,300.00 in cash in August of 2007, and as such the loan was repaid (with the trivial exception of \$1.31) in full by August 2008.

[15] In the result, this claim is dismissed.

Eric K. Slone, Adjudicator