

SCCH 357532

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Beck v. Driscoll, 2012 NSSM 35

Between:

Shelley Beck

c/o Gilles Deveau

Barrister & Solicitor

5336 Young Street

Halifax, NS B3K 1Z4

CLAIMANT

- and -

Carmen Driscoll

c/o Peter Rumscheidt

Cox & Palmer

1100-1959 Upper Water Street

PO Box 2380 Central

Halifax, NS B3J 3E5

DEFENDANT

Adjudicator: David T.R. Parker

Heard: February 1, 2012 and February 8, 2012

Decision: March 24, 2012

Counsel: Gilles Deveau represented the Claimant

Peter Rumscheidt represented the Defendant

DECISION

This claim is result of a common-law relationship wherein the parties to this action purchased a home during the time they were cohabitating. The time they purchased the home they paid \$199,000.00. This home purchase was financed by \$5000.00 from the claimant, a mortgage with the Royal Bank of Canada of \$105,000.00 and the second mortgage from the defendant's mother in the amount of \$100,000.00. Their relationship ended in March of 2007 and the claimant moved out of the home in May of 2007. In April of 2007 the claimant executed a Quick Claim Deed in favor of the defendant and at that time the claimant received \$5000.00 from the second mortgagee, the defendant's mother.

The claimant commenced a claim in October of 2011 wherein she claimed in her pleadings an amount of \$9500.00 respecting her financial contribution to the home's expenses at the time she owned the home with the defendant based on unjust enrichment and/or constructive trust. The claimant also claimed interest on the \$5000.00 being her contribution towards the purchase price of the home and interest from the period September of 2005 to April 2007. The claimant also claims \$11,850.00 for her equal share of the increase in value of the home from September 2005 to the date of the trial, consisting of the difference between the \$199,000.00 purchase price of the home in 1999 and the assessed value of \$222,700.00 being the assessed value in 2011 or in the alternative that the Quick Claim Deed is invalid and voidable at her option.

Analysis:

There is no evidence that there was an unequal division in the payment of expenses during the time the parties resided together in the home. The monthly expenses were shared equally and with respect to the vehicle they both use the vehicle for travel to work, obtain their groceries and for various travel required during their cohabitation. The car remained in the defendant's name as to insure the claimant apparently was costly.

According to the defendant and I accept his testimony on this, he drove the car during the time they were cohabitating and it was not an issue as they went everywhere together.

As Mr. Deveau stated in his summation the main basis of their claim centers around the Quick Claim Deed and whether there was undue influence with respect to that matter and then secondly whether there was unjust enrichment. Brian Curry, a Barrister and Solicitor dealt with the matter as a related to the Quick Claim Deed and the defendant releasing her interest in the home in 2007. I was extremely impressed with the detailed testimony, the detailed notes taken by Mr. Curry at the time in ensuring that the claimant was well aware of what she was signing and dealing with at that time. The claimant said in her testimony she was anxious to rid herself of the home and get back her \$5000.00 and have herself removed from the obligations to the Royal Bank of Canada. At the same time she said she was confused and did not understand what was happening, she was emotionally distraught. This and the clear evidence of Brian Curry simply does not match up with the claimant's now recollection of what happened and why it was happening. The claimant clearly understood what was happening with respect to her giving up her interest in the home and this clearly is what she wanted. Further, even if I was to accept the claimant's testimony with respect to her not understanding what was happening when she signed the Quick Claim Deed there is insufficient evidence on which to base a claim on the value of the home at the date of this trial. Also there would be some concern that I could deal with a Quick Claim Deed being void or voidable as it fundamentally involves an interest in land or for the recovery in land.

The claimant will not succeed in her claim.

It Is Therefore Ordered that the claim against the defendant be dismissed with no order as to costs

Dated at Halifax this 24th day of March 2012