

Claim No: 407160

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

Cite as: Cram v. Miller, 2012 NSSM 63

BETWEEN:

JASON CRAM

Claimant

- and -

SARAH MILLER

Defendant

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**REASONS FOR DECISION AND ORDER**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 6, 2012

Decision rendered on November 7, 2012

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        self-represented

**BY THE COURT:**

[1] The basic facts in this case are that the Claimant and the Defendant are a former husband and wife respectively (and I will refer to them as “the wife” and “the husband” for ease of understanding) who were divorced several years ago. As part of their matrimonial litigation, they entered into a Consent Order dealing with most if not all of the financial items that we would usually see in a Corollary Relief Order. The parties were both represented by counsel at that time, and the order dated August 26, 2009 arose out of a Court-sponsored settlement conference. That order contains a paragraph that states:

“Sara Janette Cram [i.e. the wife] shall retain the motor vehicle in her possession. She shall take all responsibility for the loan related to that vehicle and indemnify Jason Robert Cram [the husband] if he should be called upon to contribute to the repayment of the loan.”

[2] The wife was not able to obtain the release of the husband from the car loan with the Bank of Montreal, and she is still driving the vehicle.

[3] Within the last year she became unable to keep up with her payments on the vehicle, and the bank sought payment from the husband. Also, a Small Claims Court claim was brought against both of these parties several months ago and a judgment entered against them jointly for approximately \$7,700. It is my understanding that the husband attempted to raise the existence of the Supreme Court order as some kind of a defence to that claim, but the adjudicator correctly determined that these obligations between the husband and wife had nothing to do with the obligations owed to the bank. The wife did not defend the bank’s action, because she appreciated that she had no defence.

[4] Although the bank has apparently lodged a garnishee order against the wife, who is employed by the military and is about to go on maternity leave, it has also begun to receive payments of \$150 per month from the husband. He has apparently paid \$600 so far, and remains on the hook until or unless he can extricate himself from this responsibility. The wife claimed to be unaware that the husband had actually been called upon to make payments, but there is confirming evidence to this effect.

[5] The husband has sought relief in this court. He seeks a monetary payment by his former wife in the amount of \$7,752.79 plus certain costs. He is also asking that the vehicle be “repossessed”, which I interpret to mean that he wants the bank to repossess it so that it can be sold and reduce the debt. He is not asking that the vehicle be turned over to him.

[6] The problem that I face as an Adjudicator of the Small Claims Court is that I am essentially being asked to assist in the enforcement of an order of the Supreme Court Family Division. This is not the first time that such a matter has come before me. I faced the same issue in a recent case of *Perry v. Sabeau*, SCCH #405056 where I observed the following:

“The much larger problem, which I find to be insurmountable, is that there is already a court order, namely the Corollary Relief Order, in force. The Small Claims Court is a statutory court which has jurisdiction to resolve disputes in specific situations set out in the Act. It is quite clear to me that enforcing an order of the Nova Scotia Supreme Court is not one of those matters entrusted to the Small Claims Court.”

[7] More specifically, section 9 of the *Small Claims Courts Act* provides that an adjudicator has jurisdiction in the following matters:

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.

[8] In my view, the situation at hand does not fit within any of the above noted categories. It is superficially arguable that there might be some jurisdiction to deal with the possession of the vehicle under subsection (c), but I am still convinced that the substance of the claim before me involves the enforcement of a Supreme Court order and is not within the competence of a Small Claims adjudicator. Furthermore, the relief sought respecting repossession of the vehicle involves a third party who is not before the court. Even had the husband asked for the vehicle to be turned over to him, I would still have grave difficulty reconciling such relief with the jurisdiction of this court, given all of the surrounding issues.

[9] It is undoubtedly tempting for people to look for an efficient and inexpensive mechanism to deal with these thorny enforcement issues. It is well understood that the procedures in the Supreme Court, whether in the general division or the Family Division, are more exacting and less easily navigated by self represented litigants. Those courts are also less able to deliver timely relief.

Nevertheless, until or unless the legislature clothes this court with jurisdiction in such matters, or a higher court finds that we already have such jurisdiction, we adjudicators ought not to be taking up matters such as this.

[10] It also appears that lawyers and even court staff may be directing people to bring such matters before this court. In my respectful view, great care must be taken to ensure that matters brought before this court are truly within our jurisdiction to provide relief. It has become well-known that the Small Claims Court does have jurisdiction in matters of property and other financial claims between common-law spouses, but once the matter has been reduced to an order of the Supreme Court, it takes on a different character.

[11] For the record, I do note that the Defendant, i.e. the wife, raised more than once in her defence her position that this court lacks jurisdiction. This is not merely something that I am raising out of the blue. The husband was aware of his former wife's legal position on this matter, and could not be said to have been taken by surprise.

[12] In the result, the claim must be dismissed without prejudice to such further actions that the Claimant may wish to take in the appropriate court. I note that there is a counterclaim in this matter, which I do not propose to deal with as it also raises a number of issues from the ongoing post-matrimonial relationship. I also believe that it is well outside the jurisdiction of this court.

**Eric K. Slone, Adjudicator**