

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *MacLean v. MacIsaac*, 2017 NSSM 78

Date: 2017-11-14

Docket: Sydney, No. 451447

Registry: Sydney

Between:

John Joseph MacLean

Claimant

v.

Anne Hazel MacIsaac

Defendant

Adjudicator: Patricia Fricker-Bates

Heard: September 13 and 18, 2017 in Sydney, Nova Scotia

Appearing: John Joseph MacLean, Claimant
Anne Hazel MacIsaac, Defendant

BY THE COURT:

[1] The Claimant, John Joseph MacLean, filed a Notice of Claim with the Small Claims Court date-stamped May 18, 2016. He alleges the following:

The Claimant, John Joseph MacLean, is issuing a claim against the Defendant, Anne Hazel MacIsaac, for material and labour provided to the Defendant at the Defendant's request for repairs and renovations to the Defendant's property at 38 Pleasant Street, North Sydney, Nova Scotia.

The initial date for hearing was July 20, 2016 at 5:00 p.m.

[2] The Defendant, Anne Hazel MacIsaac, filed a Defence and Counterclaim with the Small Claims Court date-stamped August 8, 2016. On a separate sheet attached to the Defence/Counterclaim Form 2, the Defendant outlined four (4) reasons for disputing the claim:

- (1) a denial that she ever requested that the Claimant assist or contribute to repairs or renovations at 38 Pleasant St., North Sydney, NS;
- (2) a denial that the Claimant ever presented her with any invoices for repairs or renovation work at 38 Pleasant St., North Sydney, NS;
- (3) an assertion that the Claimant's action in Small Claims Court was an act of extortion by the Claimant to acquire money from the Defendant to pay off his outstanding line of credit, and that he subjected her to extreme bullying and elder/senior abuse tactics since July 2015;
- (4) an assertion that monies paid from the Claimant's personal bank account were funds of his father (Daniel Martin MacLean) from a fire insurance claim [relative to 33 Wesley Street, Sydney, NS].

The Defendant also sought to recover the cost of her travel from Alberta to Nova Scotia on July 20, 2016 (Note: the matter had been adjourned by Adjudicator Ray O'Blenis to May 18, 2017, with direction to the Defendant to file a Defence/Counterclaim within two weeks); May 18, 2017 (Note: the Defendant was a day late for the actual hearing date of May 17, 2017); and, latterly, September 13, 2017 (Note: A Special Sitting was added for September 18, 2017, in order to finish the hearing prior to the Defendant's return to Alberta.)

[3] The Claimant, John Joseph MacLean, is the nephew of the Defendant, Anne Hazel MacIsaac. During the course of the hearing which spanned two sittings, this Adjudicator heard from three witnesses: the Claimant, the Defendant and the Claimant's father/the Defendant's brother, Daniel Martin MacLean. There were 19 exhibits before the court.

[4] The Claimant testified that he is Class One Truck Driver but, at the time of hearing, was on lay-off. He acknowledged that his aunt, the Defendant, had purchased the property at 38 Pleasant Street, North Sydney, NS, in July 2014 (see Exhibit No. 1) for the Claimant's father who suffered from serious health issues including missing discs in his back and a bad heart, the latter resulting in quadruple bypass heart surgery in the past. The plan was to provide the Claimant's father with a home. The Claimant also maintained that there was a verbal agreement between himself and his Aunt that his name would go on the deed to 38 Pleasant Street, North Sydney, NS, in exchange for the renovations he would make to the residence. The Claimant testified that he wanted a place for his dad and down the road the property could be used as an investment property. The residence was in deplorable shape at the time of purchase, a fact corroborated by the Defendant who described the house at 38 Pleasant Street, North Sydney, NS at the time of purchase as "a condemned building at the outset". Witness Daniel Martin MacLean also corroborated the fact that the house at 38 Pleasant St., North Sydney, NS, was in rough shape when purchased by his sister, the Defendant.

[5] The Claimant maintained that all was going well until July 1, 2015, when he had a falling-out with his father. By that time, renovations and the purchase of renovation materials had been ongoing from at least January/February 2015 (see Exhibit No. 2; and Exhibits 11-15). The Claimant acknowledged that he did not present the Defendant with invoices but did send pictures of the ongoing renovations (see Exhibit No. 1 and 2). The Claimant also had been keeping receipts and a record of his renovation-related expenditures, including the hire of three other persons, with the help of his father, Daniel Martin MacLean, who verified the handwritten pages supporting the expenditure records in Exhibits 11, 12, 13 and 14, as having been compiled by he and his son, the Claimant. The Defendant in her testimony indicated that she had not been aware of that collaboration between the Claimant and her brother.

[6] The Defendant also acknowledged in her testimony that the Claimant and his father had had a falling out on July 1, 2015. This was exacerbated by an incident following a family reunion later in July 2015, attended by the Claimant, his common law spouse and their children. At that time, the Claimant admitted that he had called the Defendant and was upset, especially because of the ongoing fall-out with his father, and spoke out-of-turn but denies threatening the Defendant.

[7] The Defendant testified that at no time was there a verbal agreement to put the Claimant's name on the deed for 38 Pleasant St., North Sydney, NS. She stated: "I had been thinking of it, but after the July 1st, 2015 incident, no." At another point in her evidence, the Defendant acknowledged that she was willing to put the Claimant's name on the deed to 38 Pleasant St., North Sydney, NS, and expressed this thought to the Claimant, but reversed her decision after the July 1st, 2015, fall-out between the Claimant and his father. However, in an email to the Claimant dated March 12, 2015 (see Exhibit No. 1), the Defendant wrote:

Hi, John. Thanks for the pics. I have been trying to imagine what the new door and windows etc. were going to look like. These pics surpass what I could imagine. You guys are so amazing! I can't believe it! I thought you guys might get a kick out of these pics of a shack I bought in July, 2014 to compare what you have accomplished. ... *I am really looking forward to putting your name on the dead (sic) for 38 Pleasant St. ...*

[Emphasis added]

She testified that the deed to 38 Pleasant St., North Sydney, NS, now is in the name of herself and her brother, Daniel Martin MacLean, for whom the house was purchased. He has been living in the home since June 2015.

[8] The Defendant maintains that she owes the Claimant nothing, that he was renovating 38 Pleasant St., North Sydney, NS, with proceeds from an insurance claim from a fire at 33 Wesley Street, Sydney, NS, that rightfully belonged to her brother, Daniel Martin MacLean. She also maintained that the bulk of the Home Depot purchases itemized by the Claimant were made with her Home Depot card, a duplicate of which she had given to her brother, the Claimant's father. However, the Defendant did not identify any such entries in the exhibits before the Court, particularly exhibits 11 to 15.

[9] The insurance policy referred to by the Defendant related to a house fire at 33 Wesley Street, Sydney, NS in August 2014. Both the Claimant and the Defendant gave evidence concerning the fire and the related fire insurance claims. The Claimant testified that there was an electrical fire at 33 Wesley St., Sydney, NS, on August 31, 2014. According to the Claimant, at the time of the fire, the following names were on the deed: John J. MacLean (the Claimant, herein),

Nadine Butler (his common law spouse), and Joan MacLean (the Claimant's mother who was living out West and had co-signed the mortgage). The Claimant was living there with his common law spouse, Nadine Butler; their two children; his father, Daniel Martin MacLean; and Nadine Butler's father. At the time of the fire, and consistent with a Renewal Policy Notice (Exhibit No. 17), the insurance policy for 33 Wesley Street, Sydney, NS, was in the name of Nadine Butler and John MacLean, the Claimant herein. Other residents in the house filled out an insurance claim for what they had lost in the fire, including the Claimant's father, Daniel Martin MacLean, under the umbrella of the home insurance policy held in the name of the Claimant and Nadine Butler. The Claimant testified that he dispersed \$15,000 to his father, Daniel Martin MacLean; and \$15,000 to Nadine's father. He acknowledged that his father, Daniel Martin MacLean put \$10,000 into the renovations at 38 Pleasant St., North Sydney, NS.

[10] At the court's direction, but subject to any health issues, the Claimant's father, Daniel Martin MacLean, appeared and testified at the hearing continuation of September 18, 2017. He confirmed the particulars of the fire at 33 Wesley St., Sydney, NS, that occurred in August 2014 and as related by the Claimant in his testimony. Mr. MacLean testified that he had lived at the residence with his son, the Claimant, Nadine Butler, and their two children between 2007 and 2014. He confirmed that the Claimant gave him a total of \$15,000 from the insurance settlement (\$5000 initially and then a further \$10,000 under a final settlement). Mr. MacLean confirmed that he authorized his son to put \$10,000 towards materials for renovations at 38 Pleasant St., North Sydney, NS.

[11] Witness Daniel Martin MacLean testified as to the arrangement, if any, between the Claimant and the Defendant for the deed to 38 Pleasant St., stating that it was his understanding that the Defendant, his sister, would put the Claimant's name on the deed to 38 Pleasant St., North Sydney, NS, because of the effort and money the Claimant had put into the property. He referred to the fall-out between he and the Claimant that had happened on July 1, 2015; that the hard feelings were mending by September 2015, and that things have been fine since then. He indicated, for instance, that he attends at the Claimant's home regularly on Sundays for supper; and at least a couple of times a week goes there to visit his daughter who is staying with the Claimant following her return from Alberta.

[12] Mr. MacLean noted that when he moved into 38 Pleasant St., North Sydney, NS, in June 2015, the renovations had not been completed. He testified that he felt one of the workers, Brett, had been dragging his feet in completing the job and then the money ran out. At the time of his initial occupation in June 2015, there was no fridge, stove, cupboards, shower or running water or taps in the tub but he secured these items by charging them to the Defendant's Home Depot card. He noted that all three of them—himself, the Claimant and the Defendant—put quite a bit of money into renovations at 38 Pleasant Street. He could not provide a figure as to how much the Claimant and the Defendant had contributed. Mr. MacLean testified that the Claimant had given him a MasterCard with a \$10,000 limit linked to the Claimant's Credit Union account with the Claimant responsible for any charges to the card. Mr. MacLean testified that he used the MasterCard often for materials relative to the renovations at 38 Pleasant St., and that his son would pay it off (see Exhibit No. 10). He testified that he had no objection to adding the Claimant's name to the deed for 38 Pleasant St., North Sydney, NS. He stated: "That's my sister, that's my son. I want what is fair."

DECISION OF THE COURT

[13] Family disputes often are unpleasant and unfortunate. It appears from the evidence that the Defendant is a hard-working single parent, employed as a Responsible Gaming Representative in Edmonton, Alberta. At 68 years of age, she is working to pay off some debts before retiring. Both she and the Claimant appeared to have enjoyed an amicable relationship prior to July 1, 2015.

[14] The Claimant undertook renovations to the dilapidated property purchased by the Defendant at 38 Pleasant St., North Sydney, NS, with the full knowledge of the Defendant and on the understanding that both his name and the Defendant's name would go on the deed. A fall-out with his father on July 1, 2015, impacted the Defendant who refused to put the Claimant's name on the deed to 38 Pleasant St., North Sydney, NS. She claimed that the money he used to renovate came from an insurance settlement that rightfully belonged to her brother, Daniel Martin MacLean, the Claimant's father. However, this is refuted by the testimony of Daniel Martin MacLean. It is the court's impression that the fall-out between the Claimant and his father, Daniel Martin MacLean, was of greater consequence to

the Defendant than to either the Claimant or his father, that they have since reconciled and now enjoy a relatively positive relationship.

[15] In addition, the Defendant challenged the Claimant's accounting for materials and other renovation-related expenditures, including \$10,000 he paid in labour to one of the workers named Brett (see Exhibit No. 16). In fairness, she was unaware that the Claimant and his father, Daniel Martin MacLean, had been working together on records of expenditures between January 26, 2015 and June 18, 2015 (see Exhibits No. 11-14). In addition, in his testimony, Daniel Martin MacLean opined that Brett had been dragging his feet on getting the work done and then the money ran out.

[16] The Claimant took other measures to secure his interest in the property at 38 Pleasant St. before taking the matter to the Small Claims Court of Nova Scotia. He hired a lawyer and sent a letter to the Defendant dated December 14, 2015, seeking (1) that his name be put on the deed; or (2) that the Defendant pay \$25,000 in compensation to him for his investment in the property (See Exhibit No. 3). Not getting a response from the Defendant, a further letter went out from the Claimant's lawyer to the Defendant on February 24, 2016, enclosing a deed conveying the subject property to the Defendant and the Claimant as joint tenants; and, in the alternative, advising that the Claimant would start an action in Small Claims Court (see Exhibit No. 4). However, the letter containing the Warranty Deed was returned marked "refused" (see Exhibit No. 6). The Claimant testified that he would be satisfied if his name were added to the deed as a joint owner along with the Defendant, Anne MacIsaac, and his father, Daniel Martin MacLean.

[17] Based on the sworn testimony at hearing and a review of the 19 exhibits, I am dismissing the Defendant's Defence and Counterclaim. I find (1) that there was an agreement between the Claimant and the Defendant that his name would be put on the deed for 38 Pleasant Street, North Sydney, NS, in return for the time, effort and money he invested in renovating the property; (2) that although specific invoices were not provided to the Defendant, she did receive copies of those invoices and receipts for the purposes of the hearing and was given ample opportunity to cross-examine the Claimant on any entries with which she disagreed; and was kept apprised via email of the extensive renovations underway

during the course of those renovations; (3) that there is no evidence before the court to support a finding of extortion on the part of the Claimant or that the Claimant used extreme bullying and elder/senior abuse tactics against the Defendant since July 2015; (4) and that there is no evidence to support the claim that the Claimant used, without authorization, insurance monies rightfully belonging to his father, Martin Daniel MacLean, to undertake the renovations at 38 Pleasant St., North Sydney, NS.

[18] The Defendant's claim to recover the cost of her travel from Alberta to Nova Scotia on July 20, 2016; May 18, 2017; and September 13, 2017 also is denied.

[19] The Defendant shall pay to the Claimant the sum of \$24,999.99; or, in the alternative, the Defendant shall execute a Warranty Deed adding the Claimant's name as joint owner of the property at 38 Pleasant St., North Sydney, NS, along with the Defendant and his father, Daniel Martin MacLean.

[20] There shall be no costs awarded in this matter.

Patricia Fricker-Bates, Adjudicator
Small Claims Court of Nova Scotia
November 14, 2017