

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Constantine v. Hall*, 2017 NSSM 90

SCC SN No. 454264

BETWEEN:

DONNA CONSTANTINE

CLAIMANT

and

DOUGLAS HALL

DEFENDANT

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator
DATE OF HEARING: Hearing held at Sydney, Nova Scotia on October 11, 2017
DECISION RENDERED: October 18, 2017

APPEARANCES:

For the Claimant: Self-Represented

For the Defendant: Self-Represented
Gail Courtemanche, Witness
Carolyn Jamael, Witness

BY THE COURT

1. This matter was initiated by way of Notice of Claim dated the 9th day of August 2016 and filed with the court on the same date. A Defence was filed by Douglas Hall dated the 16th day of August 2016 and filed with the court on August 17th, 2016.
2. The principal basis of this claim was for the return of monies paid in the amount of \$1,000.00 by the Claimant to the Defendant in contemplation of the Claimant purchasing the

Defendant's real property situate at 6 Lakefront Drive, Mira Gut, in the Cape Breton Regional Municipality, County of Cape Breton, Province of Nova Scotia.

3. Before proceeding, the court reviewed with both parties the process of the Small Claims Court and how the proceedings were to take place. Specifically, with regard to the Defendant, Mr. Hall, it was identified to the court that he was hard of hearing and as such he had Kim Sadler accompany him for the purposes of assisting to ensure that he understood the flow of information. In addition, the court made accommodation to have Mr. Hall and Ms. Sadler position themselves closer to and in between where the Claimant was positioned and the adjudicator.

4. Both the Claimant and Defendant were sworn in.

5. The evidence of the Claimant was that in July 2016, while visiting a friend who owned property near the Defendant's property situate at 6 Lakefront Drive, she became interested in acquiring property in this area. Through discussions, it was noted that Mr. Hall's property situate not far from the Claimant's friend's lands may be for sale which in turn led to the Claimant having a direct discussion with Mr. Hall. During that initial discussion Mr. Hall indicated that he was "thinking of putting his property up for sale" and the Claimant asked Mr. Hall if she could have "first dibs" on buying the property if he did sell it.

6. The Claimant indicated that two days later, on or about July 5, 2016, as a result of further discussions with Mr. Hall, she had e-transferred to him the sum of \$1,000.00 for the purposes of securing the sincerity of her desire to buy the property.

7. Exhibit C-1 was tendered to the court representing a copy of a Royal Bank of Canada e-transfer from the Claimant to the Defendant in the amount of \$1,000.00.

8. The Claimant's evidence was that on Thursday, July 7th, she and Mr. Hall again spoke and effectively entered into the beginnings of negotiations for the purchase of the property. She confirmed that Mr. Hall indicated that he wanted to sell his property for \$79,000.00 but was prepared to go down to \$60,000.00. Mr. Hall further indicated that he was going to complete some minor repairs and painting to the cottage.

9. The Claimant further confirmed that following her discussions with Mr. Hall confirming some of the details surrounding the anticipated purchase and sale of this property, she had made arrangements with a local lawyer, Alan Stanwick, to meet with him for the purposes of Mr. Stanwick preparing a formal Agreement of Purchase and Sale and any other transaction documents required on her behalf.

10. The Claimant advised that on Friday, July 8th, she found out she was unable to secure the required mortgage funds. The Claimant further advised that on July 11th she contacted Mr. Hall advising that she was not able to get the amount of money that she thought she was going to be able to get given that her interest in an existing property and other related investments were still tied up in an ongoing divorce proceeding.

11. The Claimant assumed from this discussion that the Defendant would e-transfer her money back to her. The Claimant confirmed that on July 19th she again contacted the Defendant and asked for her money back. During this discussion, the Claimant confirmed that she suggested to the Defendant that he may want to contact another couple who had viewed the property in and around the same time the Claimant had viewed the property to see if maybe they were still interested in purchasing.

12. The Claimant further testified that she had spoken with someone at the port to advise them of the availability of this cottage for sale but she was uncertain as to whether anything subsequently transpired.

13. The Claimant tendered as Exhibit C-2 a copy of a letter from Boudrot Rogers (Jason Boudrot, Solicitor) to Mr. Douglas Hall dated September 7th, 2016 demanding the return of the \$1,000.00 deposit that had been paid on July 5th, 2016. As a result of receiving no response from Mr. Hall, the Claimant initiated the claim now before the court.

14. The Defendant, Douglas Hall, presented evidence under oath. Similar to his written Defence, his position was that no legitimate reason had been given to him by the Claimant for not completing the purchase of the property and further that the Claimant had indicated numerous times during their discussions that funding for the purchase was available.

15. The Defendant tendered as Exhibit D-2 a series of text messages identified as pages A – P. These text messages verify to some extent the timeframe as presented by the Claimant. Commencing on July 5th there was an exchange relating to different factors in connection with the property such as the tax assessed amount, the capped amount and other miscellaneous items leading to the Claimant's request to put a \$1,000.00 payment down on the property by way of e-transfer so the Defendant would hold the property for her to buy. In this exchange it included a response from the Defendant as follows: "Okay, we have to get together to discuss closing and I have to give you the exact address and PID number". Later on in the July 5th exchange the Claimant texts: "...okay or else wait until Thursday and I can go out and learn more about the place".

16. The text exchanges also include on July 6th a note from the Defendant as follows: "Hi Donna, I am going to be with Trevor tomorrow morning and after that I can get together and give you all the information for your lawyer". Again later in this exchange from the Defendant: "So do you want to get together tomorrow to discuss lawyer paperwork, closing date and I do have to make a receipt for you".

17. In addition, the Defendant tendered Exhibit D-2 representing his response dated December 2, 2016 to Mr. Jason Boudrot's initial correspondence (Exhibit C-2).

18. The Defendant's evidence surrounding the circumstances leading up to the payment of the \$1,000.00 was similar to that of the Claimant. He confirmed that she viewed the cottage and that after her initial view of the cottage there was no offer. The Defendant confirmed that

the next day the Claimant came by to discuss the work the cottage needed and at that time he had confirmed to her his willingness to sell the property for \$60,000.00 which he felt was more than reasonable.

19. The Defendant in his evidence confirmed that after he had received the \$1,000.00 payment by email he communicated with the Claimant saying: "We should get together to discuss closing, go to lawyers, etc." He further confirmed that the following day they met and he discussed with her that the required contract items should include his agreement to complete some painting and blocking of the cottage, etc.

20. The Defendant confirmed that it was he who suggested Alan Stanwick. The Defendant confirmed that around July 18th he learned that the Claimant did not want to complete the purchase of the property; however, confirmed that he was given no reason why. He indicated that the first time he heard of any money problems is when he received the Small Claims Court claim.

21. The Defendant presented Gail Courtemanche, who resides at [address removed], Mira Gut, as a witness on his behalf. She testified that she was a friend of the Claimant and had spoken with her in connection with the Claimant's desire to purchase the Defendant's property.

22. Ms. Courtemanche recalls discussing with her whether she was certain in her intentions and at one point suggested that she may want to only give a \$500.00 deposit as opposed to a \$1,000.00 deposit.

23. Ms. Courtemanche confirmed that the Claimant indicated that there was no problem with her obtaining the money and felt that the Defendant was honest in his intentions.

24. Ms. Courtemanche confirmed that the Defendant, at the time of hearing, still owned the cottage situate at 6 Lakefront Drive, Mira Gut.

25. The Defendant also presented Carolyn Jamael who resides at [address removed], Sydney, as a witness on his behalf.

26. Ms. Jamael confirmed she also discussed with the Claimant the purchasing of the property and provided to her the lawyer, Alan Stanwick's number. Ms. Jamael indicated in her discussions with the Claimant that she had advised her, from her own experience that she should get a lawyer involved early so that the required paperwork is completed.

27. The Claimant was offered the opportunity to ask questions of the witnesses. There were none.

28. In the concluding remarks of the parties, the Defendant confirmed that the closing date was to be left up to the lawyer but they were hoping it was the end of July. The Defendant further indicated that he was hoping Mr. Stanwick was going to be his lawyer as well but he wasn't one hundred percent certain whether he was going to use the Claimant's lawyer. He

confirmed that there was nothing in writing nor were there any discussions with the use of the word “refundable” or “non-refundable” associated with the \$1,000.00 payment made.

29. The Defendant confirmed that the main reason he did not return the deposit is that there was “no excuse given to me” as to why she did not purchase the property. He felt the deposit was a commitment. The Defendant confirmed the property was not listed for sale.

DECISION

30. The principal basis for this claim is grounded on contract law. More directly, the issue is whether a contract in a final form was ever completed between the two parties and more directly whether the terms of any contract specifically address or otherwise lend support to how the \$1,000.00 payment was treated.

31. The evidence presented to the court in large measure is undisputed. The Claimant, by her own admissions, was clearly desirous of securing the purchase of the Defendant’s property and to that end, in order to secure her position or as she put it “first dibs” on the right to purchase the property, even before the details were ironed out, she provided a \$1,000.00 payment to the Defendant. The evidence was that this quick decision to advance a deposit was given at a time when supposedly there was another third party wanting to look at the property with the hope of purchasing it. The evidence was that the third party did look at the property but there was no further evidence as to what, if any, offers were made or whether in fact they were desirous of purchasing the property.

32. The essential ingredients in order to determine if a formal contract has been entered into by two or more parties is to be able to identify a clear offer, a clear acceptance, consideration paid and certainty as to the terms of the contract. While generally speaking contracts can be “verbal” or alternatively pieced together through a series of communications, what is certain when it relates to contracts involving real property is that they must be in writing. In Nova Scotia, the *Statue of Frauds, R.S., c. 442*, is an Act to specifically deal with agreements or contracts involving the sale of land where there is a promise to convey one’s interest in land. Simply put, this statute requires that any such contract must be in writing and signed by the person creating or making the commitment or his lawful agent in order for it to have force and effect.

33. In the normal course, written contracts involving the sale of land generally require some minimum deposit or consideration to confirm the deal and further set out the anticipated terms of the sale including the identification of the parties, the property to be sold, what if any conditions are to be included (i.e. appliances), the closing date, the manner in which title is to be conveyed and so forth.

34. Having regard to the evidence presented, both the Claimant and the Defendant viewed the \$1,000.00 payment made as being a “deposit” and both confirmed that at no time was there any discussion as to whether it was refundable or non-refundable. The parties further confirm that the “details” of the pending transaction were to be formulated in writing by the Claimant’s lawyer when she had an opportunity to visit with him.

35. Most often written contracts for sale of land identify the deposit amount to be paid and further indicate whether there are any conditions upon which the deposit will be returned to the Purchaser such as if they are unable to secure financing, a survey does not represent what they thought they were purchasing, a well test where the water is not potable and so forth. Again, the parties in their discussions appear not to have addressed any of these items other than determining the sale price, the fact that the Defendant would complete some painting and leveling of the cottage and their hope that the closing date would be the end of July. However, as stated, other than the exchange by way of texts between the parties, none of these details were reduced into any type of formal agreement as both anticipated from the outset that the Claimant would be engaging legal representation to complete a formal agreement.

36. Therefore, based on my review of the evidence and the facts that transpired suggests that the parties, at best, made a promise to enter into a written agreement and that the \$1,000.00 payment was paid in contemplation of both parties entering into a written agreement setting forth the terms of the ultimate purchase and sale. At the time in which the \$1,000.00 payment was made to the Defendant, the terms of what the final transaction would look like, remained uncertain in a host of areas such that, even their verbal exchanges were insufficient for me to find any form of contract with the required level of certainty.

37. The Defendant, both in his written Defence as well as his testimony confirms his position for not returning the deposit was principally based on the fact that he was not provided with "any legitimate reason from the Claimant." This is the position he has formulated in his own mind as it was certainly not something that the parties had discussed regarding in what circumstances the \$1,000.00 payment may be required entitled to be returned.

38. The Defendant taking this position begs the question as to whether he was of the opinion that, if there was a legitimate reason advanced by the Claimant, then she would have been entitled to return of the deposit. In either case, there was simply no discussion between the parties as to what circumstances, if any, the monies paid would be entitled to be kept by the Defendant and returned to the Claimant.

39. It is clear the Claimant did pay the Defendant \$1,000.00. I find that both parties categorize the payment as a "deposit" relating to the purchase of land, and since there was no contract in writing, and further that the transaction did not occur for whatever reason, there is no justification for the Defendant being entitled to keep the monies paid.

40. Therefore, I find that the deposit monies in the amount of \$1,000.00 paid by the Claimant to the Defendant shall be returned to the Claimant forthwith. The Claimant shall also be entitled to her costs of this action.

A handwritten signature in black ink, appearing to be the name 'B. J. L.', written in a cursive style.

A. ROBERT SAMPSON, Q.C.
Adjudicator