Claim No: SCT 4788771

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

**Citation: *Stein v. Pennie*, 2018 NSSM 95**

BETWEEN:

GARY STEIN

Claimant

- and -

MICHAEL J. VOTOUR PENNIE and
BIG IRON RELOCATIONS CORP.

Defendants

# ORDER

On October 15 and November 22, 2018 a hearing was held at Truro in the above matter and the following Order is made:

UPON HEARING the evidence and argument of the parties;

AND FOR WRITTEN REASONS delivered this day:

1. IT IS ORDERED that the Claim and counterclaim both be dismissed.

Dated at Halifax, Nova Scotia this 27th day of November 2018.

Eric K. Slone, Adjudicator

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Truro, Nova Scotia on October 15 and November 22, 2018

Decision rendered on November 27, 2018

**APPEARANCES**

For the Claimant self-represented

For the Defendants self-represented

**BY THE COURT:**

[1] This case involves a claim and counterclaim, arising out of what was a decades-long friendship between Mr. Stein and Mr. Pennie. For reasons which are not clear, that friendship gave way in the spring of 2018 and there emerged a number of grievances (on both sides) that had clearly been buried for years.

[2] Both of the individuals are long-haul truck drivers, and both have specialized in driving car-carriers. Over the years, they have exchanged or driven each other's trucks, lived in each other's houses, and been involved in numerous financial transactions. As might be expected between close friends, almost nothing is documented. Out of this cloudy past the court is asked by both parties to find that there were enforceable contractual obligations in their favour.

[3] Briefly put, the Claimant says that the Defendant owes him $17,201.64, in consequence of the Defendant having taken over a leased vehicle ("the Sterling") in late 2015. This vehicle was repossessed by the leasing company in early to mid-2016, leaving the Claimant on the hook (he says) for this amount. He also seeks delivery to him of a 2001 Ford F350 Dually ("the F350") that the Claimant says the Defendant promised to give him, as compensation for the Sterling.

[4] In response, the Defendant counterclaims for 58 months of rent at the rate of $400.00 per month, totalling $23,600.00, which the Defendant says the Claimant agreed to pay for the right to store his belongings and occasionally live, at a house in Truro, Nova Scotia.

[5] The Claimant testified that in late 2015, the Defendant needed a truck and he (the Claimant) happened to have one, a 2000 Sterling, that had until recently been driven by another driver. The Sterling was technically owned by the leasing company Equirex, but the Claimant held the lease and according to the Claimant, there was equity - i.e. value in the Sterling beyond the amount owing to Equirex. The Claimant says that he agreed to let the Defendant take over the lease in exchange for the F350, which he figures is (or was) worth about $7,000.00.

[6] There is no dispute that the Defendant took over the Sterling for a while. He says that he found it too expensive to maintain and allowed it to be repossessed, with the knowledge of the Claimant. Equirex soon thereafter served a demand on the Claimant to pay out the balance owing on the lease, but there has not been any recent demand and no one seems to know what happened to the Sterling, such as, whether it had been resold and the debt on it reduced or eliminated. The Claimant says that his credit has been negatively affected, though he gave no concrete evidence of such.

[7] The Defendant denies that he offered the F350 as an exchange for the Sterling. He says that he was dubious from the beginning that he could make a go of it with the Sterling, as it required repairs (including repairs from an accident caused by another driver before he took it over) and was too expensive to maintain. After sinking a bunch of money into it, he decided that it wasn't worth the trouble. As for the F350, he says that (at the time) he had several such vehicles in his possession and the Claimant needed one to drive. The vehicle is actually owned by the Defendant Big Iron Locations Corp., which is his company. He says that he agreed to allow the Claimant unlimited use of the

F350 so long as he paid the insurance on it. He says he did this not as an exchange, but because they were friends. He says that the Claimant did insure it and drove it for a period of time, but never (until now) asked that it be transferred to him.

[8] The court heard from a witness called by the Claimant, via conference call, one Jason Taylor, a fellow truck driver residing in Ontario, who claimed to have been present when the Defendant made (or reiterated) his promise to give the Claimant the F350 in exchange for the Sterling. This conversation was said to have taken place at the home of the Claimant. I give this very little weight. My assessment of this evidence is that Mr. Taylor had not known either of the parties for that long, and very likely did not fully understand the background between them.

[9] The counterclaim alleges that in August 2013, the Defendant leased a home on Prince Street in Truro for $850.00 per month, plus utilities. The home was on a very large lot that allowed for the parking of many large trucks. The Defendant says that the Claimant agreed to contribute $400.00 per month, in consideration of which he would have a room in the house and the ability to park any number of his trucks on the property. He says that, notwithstanding the agreement, the Claimant never made a single payment.

[10] The Claimant testified that he never agreed to pay rent. He says that the home was intended for the Defendant and his family, and that he (the Claimant) never (or rarely) actually lived there, though he slept there occasionally as a guest and used it as a mailing address for some purposes. He admitted that he

parked vehicles there and kept some of his belongings there, but that this was just an arrangement between friends.

**Findings**

[11] As a general comment, I would say that the evidence discloses a complex relationship that over the years involved much give and take. As is common in long-term friendships, one person may do more of the giving and the other more of the taking, although perceptions may vary as to who is getting more value out of the relationship.

[12] What characterizes such relationships is the fact that very little is ever written down. Also, with exceptions, there is often at most a rough mental tally sheet recording the give and take. The acts of giving and taking are more a function of friendship than they are of any commercial intent.

[13] I believe this situation is a classic case. The Claimant obviously feels taken advantage of to the extent that he was willing to blow up the friendship by bringing this case. However, his perception is utterly biassed. He is forgetting, or devaluing the favours that the Defendant did for him. Obviously, he feels that they are inadequate to compensate him for what he believes he has lost.

[14] On the other side, the counterclaim seems little more than an effort to show that this was a two-way street, with give and take on both sides.

[15] It is <u>sometimes</u> possible to pick out a clear and legally enforceable contract from a messy situation such as a long-term friendship or domestic

relationship. This court hears many such cases. Most often, when there is an intent to differentiate such a contract from just an act of friendship, parties will go to the trouble of documenting the agreement. This did not happen here.

[16] It is basic contract law that a contract is only enforceable where there is an intention to create legal obligations. Parties must understand that they are making promises that can be enforced at law.

[17] On the evidence, I am unable to find that there was an intention to create any enforceable contracts. Had there been such an agreement, one would have expected some things to be present. First of all, there would be some contemporaneous documentation informing Equirex that the Defendant was assuming the lease, and obtaining (or at least seeking) a release of the Claimant's liability. As for the F350, one would have expected to see something evidencing a demand by the Claimant much sooner. It is inconsistent with his theory of the agreement that he would have taken possession and insured the F350 without actually taking ownership. The two parties were in regular contact, and all it would have taken was for the Claimant to hand over the title document and ask, or <u>insist</u>, that the Defendant sign it. Had the agreement been as the Claimant contends, and had the Defendant refused to sign it, the dispute at least would have presented itself several years ago, when memories were fresher.

[18] In short, the Claimant has not satisfied the onus to prove that there was a contract that was intended to be enforceable, in law. The evidence inclines me to believe that the agreements, such as they were, were vague and inextricable from the web of gifts and gestures arising from the long-standing friendship that existed.

[19] The same is true of the counterclaim for rent. The Claimant never made a single $400.00 payment, and there is no clear evidence that payments were ever demanded. The Defendant stated that he asked several times over the years, but it is hard to believe that he would have stood by for five years and allowed the debt to exceed $20,000.00, had he truly believed that there was an enforceable contract. I find that he has not proved that any such agreement existed.

**Limitations**

[20] There is another potent reason why I will be dismissing both the claim and counterclaim. Under the Nova Scotia *Limitation of Actions Act*, civil claims must be brought within two years of the date that such claims are discoverable, i.e. within two years of when the claimant ought reasonably to have known that he had a claim:

> 8 (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of
> (a) two years from the day on which the claim is discovered; and
> (b) fifteen years from the day on which the act or omission on which the claim is based occurred.
>
> (2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known
> (a) that the injury, loss or damage had occurred;
> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
> (c) that the act or omission was that of the defendant; and
> (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.
>
> (3) For the purpose of clause (1)(b), the day an act or omission on which a claim is based occurred is

> (a) in the case of a continuous act or omission, the day on which the act or omission ceases; and
> (b) in the case of a series of acts or omissions concerning the same obligation, the day on which the last act or omission in the series occurs.

[21] The acts complained of by the Claimant occurred in late 2015 or early 2016, at the latest. This Claim was brought on July 30, 2018, well more than two years later. There is nothing in the evidence to suggest that the Claimant did not know that he had a possible claim. As such, his claims are statute barred.

[22] As for the counterclaim, in theory the Defendant could assert a claim for rent for the period beginning August 21, 2016, which was two years before he issued his counterclaim, but all prior rent arrears would be statute-barred.

[23] Even so, the Defendant has another legal problem. His claim is based on an alleged obligation to pay rent on a residential tenancy. Such claims may not be brought in this court by virtue of the *Small Claims Court Act*, and in particular s.10:

> 10 Notwithstanding Section 9, no claim may be made under this Act
>
> (d) which involves a dispute between a landlord and a tenant to which the *Residential Tenancies Act* applies, other than an appeal of an order of the Director of Residential Tenancies made pursuant to Section 17C of that Act .....

[24] The arrangement as described by the Defendant is most closely characterized as a tenancy and sub-tenancy, where the Defendant was the tenant and the Claimant a sub-tenant. In such situations, the relationship of the master tenant to the subtenant is considered one of landlord and tenant. See s.2 (b) of the *Residential Tenancies Act*:

> 2 (b) "landlord" includes a person who is deemed to be a landlord, a lessor, an owner, the person giving or permitting the occupation of premises and his and their heirs and assigns and legal representatives

[25] A very similar situation occurred in *Vallée v. Balsom*, 2007 NSSM 57 (CanLII). The court there declined jurisdiction to hear a case where the Claimant sought payments from the Defendant that were in the nature of rent. Following that logic, the Defendant here is deemed to be a landlord who is seeking rent from a tenant, the Claimant. Such claims, at first instance, must be brought before a Residential Tenancy Officer at Residential Tenancies.

[26] In any event, to the extent that this court may have jurisdiction under some other theory, I have found that the Defendant has not proved that there was ever such an agreement.

[27] As such, I find that both parties have failed to prove the existence of enforceable obligations, and both of them waited too long to bring their claims before the court. In the result, the claim and counterclaim must both be dismissed.

**Eric K. Slone, Adjudicator**