

Claim No: SCAM 482057

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *MacLean v. Scott*, 2018 NSSM 100

BETWEEN:

TREVOR MacLEAN

Claimant

- and -

JESSICA SCOTT

Defendant

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Amherst, Nova Scotia on December 6, 2018

Decision rendered on December 7, 2018

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant and Defendant are former common law partners who have two very small children together - aged two and almost one year old. The couple are fairly recently separated, and the children live with the Defendant.

[2] I note that the spelling of the Defendant's name was incorrectly shown as Jessicca (with two c's), rather than the correct spelling of Jessica. The style of cause is amended accordingly.

[3] While still together, the Claimant paid for a car which was registered in the name of the Defendant and driven by her. As she testified, it was needed because of the children.

[4] When they separated, the Defendant retained the car and continued to drive it - although it is currently in bad shape after a recent accident and may not be worth fixing.

[5] The Claimant is asking the court to award him half the value of the car, on the theory that he paid for it and he had a property interest therein.

[6] The car was a 2005 Honda Accord. The Claimant testified that he paid \$1,800.00 to a private seller, although the sale document shows the price as having been \$1,000.00. The Claimant was evasive in trying to explain the discrepancy, suggesting that it was perhaps an error. The Defendant testified that she was present when the Claimant asked the seller to write it up for \$1,000.00 so he could pay a lower amount of HST when they went to register the car. In other words, the Claimant perpetrated a fraud on the tax authorities.

It is unclear whether the Defendant participated in this fraud or was simply a bystander. I will give her the benefit of the doubt.

[7] The evidence before me reveals that there are other financial issues between the parties. Most significantly, the Claimant is not paying any child support, and is refusing to give her any money unless she gets a court order against him. He says that he has been willing to buy things for the children but does not trust the Defendant with cash. Apparently, the Claimant does not understand his obligation under the law to pay support to the custodial parent of his children.

[8] Of course, this is not the Family Court and I have no jurisdiction to deal with child support.

[9] In the Small Claims Court, we have the jurisdiction to award compensation in cases of common law partners, where there has been a formal agreement as to ownership, or (more often) where there would be unjust enrichment allowing the other party to obtain property without accounting for the value.

[10] In the case of *Cook v. Orr*, 2008 NSSM 23 (CanLII), I discussed the nature of cases by former common law spouses against each other:

[4] It is a common misconception that property (as opposed to support) issues following separation of a common law couple may be dealt with in the same way as if the parties had been married. Issues of child and spousal support fall under the *Maintenance and Custody Act*, which provides relief for unmarried couples that have lived as spouses for two years. That Act does not deal with property. Only the *Matrimonial Property Act* does.

[5] The *Matrimonial Property Act* does not yet (any may never) apply to common law couples. As such, for unmarried couples property issues by and large fall to be determined under principles of basic contract and property law, with principles of unjust enrichment coming into play.

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[7] When a claim like this is brought, the threshold question to be asked is: what was the agreement or contract that the spouses entered into, or the general understanding that they had?

[8] The mere fact that money changed hands, or that one party contributed more money to the joint household, does not automatically mean that there should be a return of money or any other form of financial reckoning. In order for such adjustments to be made, there must have been an agreement or understanding that one party has not honoured after the fact. That agreement may have been very clearly articulated, as some people are inclined to do, or it may have been more subtle and essentially have been implied in the arrangements.

[9] A contract to share expenses with a spouse in a particular way, or a contract to borrow money from one's spouse, is legally enforceable, if the necessary facts can be proved.

[11] In the case here, the evidence suggests that the parties required a car to provide transportation for their two small children. The car was registered in the Defendant's name in part because the Claimant does not have a valid driver's licence. The Claimant provided money for the car because he had the ability to do so, but the purpose of the car was for the Defendant to drive with their two small children.

[12] I cannot imply any agreement that the Defendant would have to buy out the interest of the Claimant upon separation. The Defendant has custody of the children and her need for the vehicle did not decrease because of the separation.

[13] Nor do I find there to be any unjust enrichment. The reasons for the Defendant to retain the car have not changed, and I see no injustice in her retaining it.

[14] Even if the Claimant could establish some interest in the car, I find that he is not entitled to anything. Although it happened after separation, the car was damaged to the point that the cost of repair may exceed its value. Any award to the Claimant would be based on the current value of the car which is basically zero.

[15] I must also mention that the Claimant's act of defrauding the HST authorities in connection with the purchase would also count against him. It is customary for courts to decline to assist litigants who have acted illegally in connection with the transaction that is before the court.

ORDER

[16] In the result, the claim is dismissed.

Eric K. Slone, Adjudicator