

SCT Claim no. 477326
IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Greener-MacLean v. Meadowbrook Stables*, 2019 NSSM 36

BETWEEN:

NICOLETTE GREENER-MACLEAN

[...]



CLAIMANT

- and -

MEADOW BROOK STABLES and KAILA WATTERS

[...]

DEFENDANT

REASONS FOR DECISION

BEFORE

Shelly A. Martin, Adjudicator

Hearing held at Truro, Nova Scotia on February 25, 2019

Decision rendered on July 4, 2019

APPEARANCES

For the Claimant Self-represented.

For the Defendant Mark Holden, Walker-Dunlop

BY THE COURT:

- [1] In 2015, in her last year of high school, the Claimant Nicolette Greener McLean, an equestrian since the age of 5, purchased a young rescue horse named Prince. Her intention was to train and eventually compete with Prince.
- [2] To facilitate this, the Claimant signed a training contract to cover the months of June, July and a portion of August, and paid a deposit of \$300.00 on March 27 of 2015 to Kaila Watters, a well-regarded trainer, owner and operator of Meadow Brook Stables and Defendant to this action. The Claimant was to pay \$700.00 per month for Price's training, payable prior to the start of each month of training. To pay for this, the Claimant worked hard at a dairy farm in her spare time, starting at about 4:30 a.m., earning \$10.60 an hour, shovelling manure, milking cows and performing other farm chores. By her estimate, it took almost 100 hours of work to pay the deposit required for Prince's training alone.
- [3] Prince was due to be transported to Meadow Brook stables on June 1 2015. The Claimant had to hire a truck and hauler to accomplish this. The Claimant transferred \$700.00 for the month of June for Prince's training. Unfortunately, on that day, Prince would not load onto the trailer hired for his transport, nor would he load during a second attempt on June 3.
- [4] The communication between the parties was hampered somewhat by a lack of access to reliable internet and cell service, but the Defendant, upon learning Prince would not load, sent a text message to the Claimant's mother, Natasha Greener-MacLean on June 3, offering to come to the Claimant's home and assist with loading Prince. However, the Claimant's mother, Natasha Greener-MacLean "I will discuss the above with Nicolette. Not really sure what she will want to do. She is pretty discouraged about the lost training time and the incurred expenses."
- [5] Later that night, the Claimant's mother wrote via text to ask the Defendant her policy on a refund. Acknowledging this was a unusual situation in that "we've never had a horse not show up for training," The Defendant pointed out the sections of the contract that stated deposits were non-refundable and that changes or cancellations required 30 days notice to avoid a penalty, but that she might be able to give a partial refund if another horse could be brought in on short notice to fill Prince's space.
- [6] The Defendant was unable to secure a horse for June and July. The Claimant has asked the court to recover \$900.00 of the money she paid for Prince's training. The Defendant Ms. Watters has counterclaimed, asking the court to award \$1133.20, representing her reliance on the contract, the costs of preparations made in advance of Prince's date of arrival and the balance of the contract for the months of July and August.

Is the Contract Valid?

- [7] The Claimant denied the contract was binding on the basis of two arguments. The first argument was that she lacked capacity to contract as she was a minor at the time the contract was signed. The second argument was that the contract was somehow void or voidable owing to the fact the Claimant did not receive a signed copy of contract from the Defendant.
- [8] Neither of these arguments were persuasive. In Canada, there is a tension between two approaches to minors and contracts. One approach suggests minors must be protected from themselves and others. The other approach recognizes that minors should be allowed access to the market and not barred from entry to it where their access is necessary or desirable. This contradiction has often led to a varied approach in cases where the capacity of minors is raised but it cannot be said that one's minority is a barrier to contracting. Although much was made of the Claimant signing the contract as a minor, she also testified that her mother Natasha Greener- MacLean did the lion's share of the work in orchestrating the training contract with the Defendant. Indeed, the Claimant's mother, Natasha signed the contract as a witness to her daughter's signature. I am comfortable that the Claimant wanted Prince trained as a show horse and had sufficient parental oversight to ensure the contract was in her best interests and reject her argument that her age somehow invalidates the contract.
- [9] In this case, the Claimants also argued that the fact they were never given a copy contract showing Ms. Watters signature meant the contract was void or voidable. Again, this is not persuasive and I accept the Defendant's argument with respect to electronic communications and the acceptance of contracts through electronic means. On this basis, I find there was a validly executed contract between both parties.

Was the Contract Frustrated?

- [10] Although the Claimant's first argument on the validity of the contract has failed, there is still the remaining issue of whether the contract was somehow frustrated. The Claimant's position seemed to be that since Prince was unable to load, the Defendant did not perform the training. Accordingly, the Claimant is owed a refund of the money she has paid to the Defendant under the contract.
- [11] The contract itself speaks to the payment arrangements between the parties in section 3:

3. FEES, TERM, and LOCATION: Owner shall pay the Trainer for professional services and board as described below, the fee of \$800.00 per month for a minimum of 60 days. All fees for training and other incidental services are due each month, PRIOR to training. Changes in monthly rates or other charges are subject to alteration upon thirty (30) days notice to Owner. All expenses incurred for veterinarians, farrier care, or other out-of-pocket cost shall be billed after the incurrence thereof upon the next billing by Trainer. A non-refundable deposit of a minimum amount of \$100.00 per month of training shall be paid at time of booking. This amount will come off the above price per month.

[12] Section 14 outlines in general terms the protocol for changes or termination to the agreement. It reads:

14. CHANGES OR TERMINATION OF THIS AGREEMENT: It is agreed by the parties that this agreement may be changed or terminated by Trainer upon thirty (30) days notice, regardless of the rental or training period. All notices must be issued in writing unless otherwise agreed upon by the parties. The posting of updated rate schedules in a conspicuous or open place in Trainers office shall constitute notice of any and all rate changes or regulation changes as may be deemed appropriate by Trainer.

[13] The Claimant signed the contract in March and provided a deposit of \$300. On June 1, she paid the Defendant another \$700.00 via e transfer, representing the balance owing for the month of June. In total, the Claimant paid a total of \$1000.00 to the Defendant and is asking for the return the return of \$900.00, a figure which reflects, presumably, her recognition that the \$100.00 for the month of June is in fact non-refundable under the contract.

[14] There is no legislation governing frustrated contracts in Nova Scotia. Rather, frustration of contract is a legal doctrine that provides an excuse for non-performance of a contractual obligation. Where a contract cannot be performed because of something external that intervenes which has made it impossible for one of the parties to perform their part of the contract, the contract should be cancelled and the parties returned to their pre-contract positions. *KBK No. 138 Ventures Ltd. v. Canada Safeway Ltd.*, 185 DLR (4th) 650 outlines the test to meet in order to find that a contract was frustrated:

[15] *The event in question must have occurred after the formation of the contract and cannot be self-induced. The contract must, as a result, be totally different from what the parties had intended. This difference must take into account the distinction between complete fruitlessness and mere inconvenience. The disruption must be permanent, not temporary or transient. The change must totally affect the nature, meaning, purpose, effect and consequence of the contract so far as concerns either or both parties. Finally, the act or event that brought about such radical change must not have been foreseeable.*

[16] Applying the test for frustration to the circumstances before me, can it be said that Prince refusing to load on two occasions frustrated the contract between the parties? I have difficulty with this proposition, as one of bars to frustration is that cannot be self-induced.

[17] It seems for all of Prince's charm and promise as a rescue and potential as a show horse, his training was an ill-timed and expensive decision for the Claimant. She testified to being stressed about exams and preparations for a trip to Japan. The extra costs of unsuccessful attempts at transport and the lost training time was undoubtedly discouraging. In certain training centres, owners are still expected to provide a level of care of their horse outside of training hours. There was no evidence of this nature put before the court and the

contract is silent on this, but Natasha's statement that she "wasn't doing it" indicates that she too was wary, for whatever reason, of continuing training at that time. The evidence bears this out. The Defendant's initial offer to assist with transport was met by a criticism that the Defendant should have offered it sooner, even though this was not her responsibility. The parties were still attempting to negotiate a way to continue Prince's training on June 5 and the Defendant once again offered to assist with transport. The Defendant asked the Claimant and Natasha to contact the hauler to see if a Saturday transport was feasible. The Claimant then asked them to inform her, so that she could be present and assist with the loading. After that offer, there was no further discussion of transport. The Defendant received periodic texts were sent from Natasha to Kaila, with a "without prejudice" caveat appearing on them at the top, pointing out the various ways in which the Defendant's legal position was untenable.

[18] The evidence before the court suggested this was a novel situation for the Defendant, who had never had a horse not show up for training. She had proven success in loading other horses for transport and I am satisfied on a balance of probabilities that had she been given the opportunity to assist Prince, the Defendant would have loaded him. Not exploring the possibility of having the Defendant assist with the loading appears to this court as a self-induced frustration on which the Claimant cannot rely: see *Maritime National Fish Ltd. v. Ocean Trawlers Ltd.*, 1935 CanLII 323 (UK JCPC), [1935] 3 D.L.R. 12, [1935] A.C. 524, [1935] 2 W.W.R. 606.

[19] On this basis then, the Claimant's claim is dismissed.

[20] The Defendant has raised the issue of estoppel, arguing that the Claimant should not be allowed to go back on the promise to the Defendant, who relied in good faith that Prince would arrive for training, as contracted. On this basis, the Defendant has counterclaimed for the balance of the contract for July and August, in the amount of \$1133.20.

[21] The categories of estoppel are numerous, but the Defendant relies on the doctrine of estoppel by representation. Counsel for the Defendant referred to the case of *Kennie v. Ford*, 2002 NSCA 140, which referenced the decision in *W. J. Mowat Ltd. (c.o.b. Mowat Express) v. United Parcel Service Canada Ltd.*, [1998], O.J. No. 4337, and the three factors required to establish estoppel by representation:

- (1) *A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.*
- (2) *An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made.*
- (3) *Detriment to such person as a consequence of the act or omission.*

[22] In *Kennie v. Ford*, the Nova Scotia Court of Appeal excerpted Hanbury and Maudsley: *Modern Equity* (London: Sweet & Maxwell Ltd., 2001) at p. 891 to add:

- [23] *... The basic principle is that a person who makes an unambiguous representation, by words or conduct or by silence of an existing fact, and causes another party to act to his detriment in reliance on the representation will not be permitted subsequently to act inconsistently with that representation...apart from a few long established exceptions, such an estoppel works negatively. It is not capable of creating a cause of action. It works like a rule of evidence, a rule which excludes a particular defence or line of argument...*
- [24] There was clearly a representation made to the Defendant that the Claimant intended to create legal relations between them, by signing a contract for training, paying the requisite deposits and the training fee for the month of June. In anticipation of the contract being honoured, she incurred real costs for the preparation of Prince's spot at Meadow Brook Stables, including ordering ahead for hay, buckets, bedding and the labour involved in preparation of the stall. During the hearing, Ms. Watters stated the amounts for this preparation was \$465.80.
- [25] The Defendant is claiming for the balance of the contract for July and part of August. While the contract is silent on cancellation at the option of the Owner, I find that 30 days was established as the notice period for changes of cancellations in other sections of the contract and in this case would have been reasonable notice for the Defendant. I do acknowledge there was nothing tendered in evidence expressly stating that the Claimant was not sending Prince, but a reasonable person would have inferred from the texts from Natasha Greener MacLean around June 5th that the parties were seeking a refund and had no intention of pursuing the training. This is also borne out by the evidence of the Defendant, who testified that she contacted other owners on her waitlist to see if Prince's spot could be filled.
- [26] I find that it was clear effective June 5th that the Claimant had changed her mind about pursuing training for Prince and find that on that date, the notice period of 30 days began to run and would have been completed by July 5th. Accordingly, I am not inclined award an amount for July. Further, I am not inclined to award recovery for the partial month of August, owing to the social media posting entered into evidence that stated the training paddock at Meadow Brook Stables was full for the month of August. This suggests strongly that the spot reserved for Prince that was vacated for June and July, was in fact, filled and that the loss for the month of August was mitigated.
- [27] I am however, prepared to allow the Counterclaim of the Defendant for the actual costs incurred, which the Defendant testified were in the amount of 465.80. I am not inclined to award costs in this matter and each party shall bear their own.
- [28] The total judgment is therefore for \$465.80

Shelly A. Martin

Adjudicator

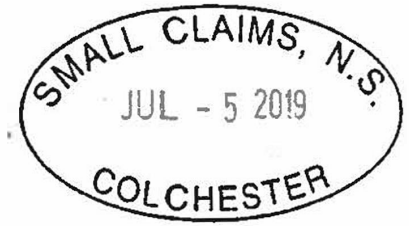
SCT Claim no. 477326

Order in the Small Claims Court of Nova Scotia

BETWEEN:

NICOLETTE GREENER-MACLEAN

[...]



CLAIMANT

- and -

MEADOW BROOK STABLES and KAILA WATTERS

[...]

DEFENDANT

On February 25, 2019 a hearing was held in the above matter, with both parties representing themselves. Based on the representations of each party during the hearing and materials provided at that time, the following Order is made:

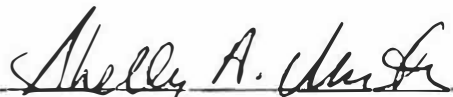
1. That the **CLAIMANT'S** action against the **DEFENDANT** is dismissed.
2. That the **DEFENDANT'S** Counterclaim against the **CLAIMANT** is allowed.
3. That the **CLAIMANT** pay to the **DEFENDANT** the sums as follows:

Debt: \$465.80

Costs: n/a

Total Judgement: \$465.80

Dated at Truro, in the County of Colchester
on the 5th day of July, 2019.


Shelly A. Martin
Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)