

2018

S.C.C. No. 482362

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

*Citation: MacDonald v. Brufatto, 2019 NSSM 72*

BETWEEN:

**SCOTT MACDONALD**

CLAIMANT/DEFENDANT  
by COUNTERCLAIM

and

**JUDY BRUFATTO**

DEFENDANT/CLAIMANT  
by COUNTERCLAIM

**FINAL DECISION**

**BEFORE:** A. Robert Sampson, Q.C., Adjudicator  
**DATE OF HEARING:** Hearing held at Sydney, Nova Scotia on March 6<sup>th</sup>  
and June 5<sup>th</sup>, 2019

**DECISION RENDERED:** **Interim Decision and Order - June 10, 2019**

**FINAL DECISION:** **Final Decision and Order - July 5, 2019**

**APPEARANCES:**  
**For the Claimant:** Self-Represented - Scott MacDonald  
**For the Defendant:** Self-Represented - Judy Brufatto  
**Witnesses:** **None**

## FINAL DECISION

### **BY THE COURT:**

1. This final decision is further to the court's Interim Decision issued on June 10<sup>th</sup>, 2019 principally relating to matters arising from the Claimant's claim. The court is satisfied that the Interim Decision dealt with all outstanding issues advanced by the Claimant and assumes at this point in time the parties have complied with the Interim Order issued by the court. Therefore, this decision is intended to address the matters raised by the Defendant in her counterclaim filed with the court together with her original Defence.
  
2. This claim was commenced by a Notice of Claim filed with the court on November 14, 2018 and scheduled to be heard on March 6, 2019. A Defence and Counterclaim was filed on December 18, 2018. At the request of the parties the hearing was adjourned on March 6<sup>th</sup> to afford the parties an opportunity to properly prepare their anticipated cases before the court and to ensure the required number of copies of any anticipated exhibits was made ready. The matter was re-scheduled to June 5<sup>th</sup> at which time the parties appeared and the hearing of the evidence was concluded.
  
3. At the outset the court reviewed the general procedure to be employed in hearing the claim/counterclaim, the role of each party and how evidence was to be received including the opportunity of both parties to provide their "side of the story", that each would be afforded a chance to question the other and any witnesses, and further that at the end of the evidence each would be afforded a chance to sum up their positions based on all the evidence presented. The parties, who were not represented by counsel, were placed under oath at the outset as is the practice of this Court when dealing with self-represented parties and each were advised that any comments made by them at any time throughout the proceeding would be considered information given under oath.
  
4. The issues associated with this claim and counterclaim arises out of a common-law relationship that existed between the parties for a period of approximately three years, ending in late August 2018. The evidence confirmed that the parties had been dating for approximately one year leading up to the mutual decision of the parties that Mr. MacDonald would relocate from his home/apartment in the Halifax region to commence living full-time with Ms. Brufatto in her home situate in Glace Bay where they remained together until

sometime in late August 2018 at which time the parties separated and Mr. MacDonald moved out to a new residence.

5. As evidenced by the claim filed by Mr. MacDonald, he sought a monetary value of \$7768.00 representing what he believed to be the value of various personal items of property that he had acquired over the years which he had brought into the relationship and were located in Ms. Brufatto's home at the time he departed. His evidence was that he had attempted on several occasions to retrieve these items but was prevented from doing so by Ms. Brufatto.

6. The Defence filed simply stated the items left were less than \$1000.00 and then went on to set out the basis of her counterclaim, most of which related to claims associated with expenses she had incurred on her own both for personal items purchased for the benefit of Mr. MacDonald, storage issues associated with a camper and vehicle which remained on her property, loss of alimony associated with an earlier divorce proceeding and various expenses associated with the operation of her home during the period in which they resided together. Details of each were presented to the court with a number of exhibits.

7. The Defendant, in response to this evidence acknowledged, for the most part, that she still had possession of these items and that they were in fact property which the Claimant had owned and brought to her home. There were a few items that the Defendant was not familiar with or was not able to say whether such items still existed in her home but verbally undertook to investigate, mainly in her garage associated with her property. The Defendant's position was that she wanted/expected to be paid something from the Claimant for the various expenses she had incurred during the time in which they lived together and was essentially holding these items against this expected payment.

8. With reference to the list of items (Exhibit C-1) the Defendant identified the following items that she was uncertain of:

- i) three-man tent - she noted there were several tents located in her garage so simply did not know which one may belong to Mr. MacDonald;
- ii) electric drill - Defendant was simply not aware whether this existed or not. Mr. MacDonald last recalled it was located in her basement. It was a Black and Decker/dark green;
- iii) screw driver set – Ms. Brufatto acknowledged there were lots of tools/screw drivers located in the garage because her former husband had

been a contractor. With that, she said if the Claimant can identify them once he attends at her residence he is welcome to have them back.

iv) winter boots - the Defendant was simply not familiar with these and had no idea where they may be located. She undertook to look for them.

v) dinnerware set - these were described as mainly “white” and a full set. The Defendant believed they were located in her residence and the Claimant could have them back.

9. The Defendant acknowledged having the remaining items as set forth on the list and through discussions between the parties during the hearing, and with the assistance of the court, the parties agreed to an arrangement whereby the Claimant could retrieve these various items from the Defendant, on a specific date and time and if the parties fulfilled their commitment to each other that would resolve the Claimant’s claim completely. To that end, the parties acknowledged and agreed that the court would immediately issue an interim order dealing with the principal claim and the agreed-upon settlement relating to the return of the Claimant’s personal property as well as two items which arose from the Defendant’s counterclaim dealing with a motor vehicle and slip-on camper trailer.

10. The Claimant identified two items of personal property, namely a motor vehicle and a slip-on camper that the parties had used and both remained on the Defendant’s property. The evidence of the Defendant was that the Claimant had previously signed over the registration to her for the motor vehicle but there remained a problem effecting the transfer. The Defendant felt there was no value in the motor vehicle at this point in time and therefore wanted it removed from her property immediately. As for the slip-on camper, the Defendant felt she needed something concrete to evidence her ownership of this unit so she could either sell it or have it repaired. Again through discussions between the parties during the hearing a method to resolve these two issues was agreed upon with the understanding that it would form part of the court’s Interim Order relating to this aspect of the counterclaim issues. The court issued its Interim Order which addressed these two afore-mentioned issues which may be considered forming part of the Defendant’s counterclaim. Otherwise, the remaining issues arising from the counterclaim are the principal subject of this decision.

11. The written counterclaim bears repeating as follows:

“Scott owes me for a trip to Jamaica and Cuba \$3500. Scott lived off of me rent free for 3 years. He owes me for living expenses. Visa, heat, lights, and etc. Amount of \$25,000.00 total and for my loss of income from my ex-spouse. I gave up \$600 alimony a month when Scott moved in. Scott needs to pay me \$25,000. – Judy Brufatto”

12. The Defendant tendered Exhibit D-1 which represented a summary sheet setting forth a host of expenses being claimed together with some supporting documentation of the actual expense or invoice having been received/paid by the Defendant. The various expenses appeared to include all or most household expenses incurred during the time they resided together. Some of those (not all) are noted as follows:

- (i) heat, power, cable, etc.;
- (ii) loss of alimony (\$216,000.);
- (iii) oil/heating expense (\$12,800.);
- (iv) savings the Claimant would have realized because he moved in with Defendant and no longer had to pay rent elsewhere (\$32,300.);
- (v) her truck payments (\$12800.);
- (vi) car and camper storage on her property during the time they lived together and after (\$14,810);
- (vii) clothes and perfume the Defendant had purchased for the Claimant (\$5000);
- (viii) additional hydro expenses associated with a hot tub the Defendant had purchased and they used together to note only a few.

The court has reviewed all documents tendered.

13. In addition the Defendant provided evidence that she believed the Claimant was withholding information associated with his mother’s estate and that he likely received a large inheritance from her estate which she believed, in part, played a role in his terminating their relationship. She also testified that she had assisted him in securing his current employment where he was able to advance to a significant level of earnings which existed at the time he left the relationship.

14. In response the Claimant tendered copies of his Bank of Nova Scotia statements (Exhibit 3) for the period extending from 2016 through to 2018. He confirmed, as shown on each of the statements tendered that he routinely would take cash from his account immediately after receiving his pay in amounts which consistently ranged from \$800 to \$950 and gave this to the Defendant to contribute

towards household expenses. He confirmed that this arrangement was satisfactory to both parties throughout the period they resided together.

15. The Claimant also tendered a copy of a specific cancelled cheque, payable to the Defendant dated April 2016 in amount of \$1600 which he stated represented his one-half payment of the cost towards their Jamaica trip which took place in the spring of 2016.

16. The Defendant's overall position was that she supported the Claimant from the time he re-located to Glace Bay and they commenced living common-law. From her evidence I conclude that there was never any "written" contract associated with their living arrangements nor any evidence that any of the expenses incurred, by either of them while they resided together, were intended to be of a contractual nature whereby such expenses were incurred in exchange for any promises.

17. The evidence did not extend into the parties' current income situations for this court to make any determination as to whether any party was unjustly enriched to the detriment of the other. The court has little doubt that there was a "wish", which the Defendant may view as an expectation, that they would remain together as a couple. I find that the expenses claimed were for the most part all within the ordinary expenses incurred by couples, whether at times dating and for certain living in a common-law relationship.

18. In more modern times, particularly with couples who are older or have been through a relationship break up, they will enter into to cohabitation agreements for purposes of explicitly setting out who owns what, who pays for what and what is to occur upon separation. That was not done here.

19. In order for the Defendant to succeed I find that she must satisfy the court that there had been some form of contract (written or otherwise) sufficient to allow the parties themselves and, in this instance, this court with sufficient certainty as to what the exchange of promises and expectations were at the beginning or during their period of cohabitation. I find there were none. As a result, while I have no doubt that the various expenses and bills tendered to the court by the Defendant are accurate as to what she may have paid, I have been given no sufficient evidence to find that either of their contributions towards the other, or lack of contribution towards the other, breached any promise.

20. Based on the representations advanced to the court by the Defendant it was clear that she was upset with the fact that the Claimant had decided to leave her. She was bitter, felt used and upon receiving the initial/formal claim by the Claimant she lashed out. The extent and content of the Defendant's claim and the amounts in many cases are bordering on absurd. The court can't help but wonder if this counterclaim would have ever been formalized into a court action but for the fact that the Claimant took action in the first instance to obtain his personal property from the Defendant's home.

21. The Defendant's counterclaim is hereby dismissed.

22. As for the issue of costs, as there was no evidence tendered to me in relation to process server fees that may have been incurred and given that there has been some measure of success by both parties as it relates to the matters settled in the interim order, the court makes no award of costs to either party.

**DATED** at Sydney, Nova Scotia this 5<sup>th</sup> day of July, 2019.

**A. ROBERT SAMPSON, Q.C.**  
**Adjudicator**