

SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *MacDougall v. Waye*, 2021 NSSM 59

Date: 2021-11-06
Docket: SCCH 507002
Registry: Halifax

Between:

Linda Vanda MacDougall

Claimant

- and -

Allan Marshall Waye

Defendant

Adjudicator: Eric K. Slone

Heard: October 20 and 25, 2021 via zoom in Halifax, Nova Scotia

Appearances: For the Claimant, self-represented

For the Defendant, self-represented

BY THE COURT:

[1] The Claimant and Defendant are respectively a woman and a man in their senior years, who were extremely close friends for almost four decades until they had an unfortunate falling out in 2020.

[2] During their lengthy (platonic) friendship they intermingled not only their personal lives but, in recent times, also some of their financial affairs. In this proceeding Ms. MacDougall seeks to recover money she believes is owed to her by Mr. Waye, and also seeks repossession of many of her worldly goods that she was storing in his winter home at 1744 Royal Circle, in Naples, Florida.

[3] The fact that the goods in question are in Florida presents both practical

and jurisdictional challenges, as I will elaborate upon later.

[4] I will set out the facts in a compressed form. Both sides provided me with a great deal of detail, but I do not find it necessary to recite such detail.

[5] The parties both have ties to Halifax as well as Ontario and the Southern U.S. The relevant starting point for this case is 2018 when Ms. MacDougall and her then-husband were living in Clermont, Florida. Their marriage reached a crisis and Ms. MacDougall left the matrimonial home. Mr. Waye offered to have her move her belongings to his home in Naples, Florida. He helped her pack up and transport them. He also offered Ms. MacDougall an arrangement where she could house sit for him in Naples while he was in Halifax for half the year, and then she could also house sit his Halifax home while he was in Florida. It seemed like an ideal arrangement, at least for as long as it suited Ms. MacDougall.

[6] It bears mentioning that Mr. Waye is the person of much greater financial means. He owns (at least) two homes and appears to be comfortably off, financially. Ms. MacDougall was forced into bankruptcy in the U.S. and was left poorly off as a result of her divorce.

[7] Mr. Waye insists that all of his efforts to help Ms. MacDougall through her financial difficulties were motivated by friendship and generosity, and he seemed to me to be genuinely puzzled as to why his generosity has been met with mistrust and litigation. I am not unsympathetic to his point of view, but there is no question that the breach in the parties' friendship has caused both of them to behave defensively. At this point, Ms. MacDougall finds herself in difficult circumstances and has come to realize that the issues will not solve themselves without the intervention of this court. The obstacles to a simple and fair parting of the ways appear to be personal and complex, and I am not going to embark on an exercise of trying to lay blame on one side or the other.

[8] During the time that Ms. MacDougall was first house sitting in Naples, the understanding was that Mr. Waye would be responsible for most of the expenses of the home. Not surprisingly, since they were still close friends the arrangements were somewhat nebulous. To facilitate the arrangement the parties started using a joint account, which can be a bit of a recipe for problems. It was into that joint account that Ms. MacDougall deposited some of her money and out of which expenses were paid, that Mr. Waye had committed himself to

paying.

[9] Because the relationship was based on friendship and mutual trust, Mr. Wayne did not always pay close attention to the expenses that Ms. MacDougall was paying and, to an extent, keeping him informed about. While they were friends, he did not really care. It was only after the falling out that he looked more closely and now raises objection to much of what is claimed. It is clear to me that both Ms. MacDougall and Mr. Wayne are “detail people” by nature, though it is only in the context of this dispute that they have reverted to form. Mr. Wayne in particular did not pay much attention to the details while the friendship was still intact. This attention to detail exhibited by both parties manifested in the presentation to this court of facts and spreadsheets in sometimes excruciating and at times irrelevant detail.

[10] I commented to the parties that this court is ill-equipped to perform a forensic audit of their intermingled financial affairs. The mandate of the court is set out in the Small Claims Court Act:

2 It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.

[11] I do not wish to dismiss the effort that both parties put into presenting their cases, and I appreciate that this matter is important to them, but they need to appreciate the limits of what is and is not feasible to expect. If what follows seems like rough justice, that is because I believe it is proportional to what is ultimately at stake.

History of the dispute

[12] It was in early 2020 that things seem to have gone off the rails. At the start of the pandemic, Ms. MacDougall was house sitting in Halifax and Mr. Wayne was in Florida. By March, he and his then wife left Florida bound for Halifax, following the advice that Canadians should not strand themselves out of the country and should get out while they could.

[13] This forced Mr. Wayne and his then wife to move into their Halifax home while Ms. MacDougall was still there.

[14] Mr. Wayne has not been back to Florida since March 2020 and does not know when he might get back there. He stated that he has health issues that -pandemic aside - may make it impossible for him to travel there.

[15] Ms. MacDougall plans to travel to Florida in March 2022, hopefully to retrieve her possessions and perhaps only if that can happen.

[16] While the parties were in Halifax in 2020, Mr. Wayne's marriage of some ten years began to crumble and for some reason his lifelong friendship with Ms. MacDougall get swept away as well.

[17] After a few weeks of tense relations Mr. Wayne finally asked Ms. MacDougall (and his wife) to leave his home, which they did within several days. After a few days in a hotel Ms. MacDougall arrived in London, Ontario where she remains.

[18] In an email dated May 24, 2020 Mr. Wayne invited Ms. MacDougall to *“provide an update of the expenditures you've made on my behalf at your earliest convenience and I will compensate you accordingly. We can collaborate at a later date on how to retrieve your personal belongings in my solely owned Naples home.”*

[19] I believe this email demonstrated good faith on the part of Mr. Wayne, who implicitly accepts that there is money owing and stored goods to be accounted for.

[20] Ms. MacDougall began putting together her accounting. There followed further emails over the summer of 2020 where the numbers became more refined. The final number which found its way into the Claim is \$6,132.86 USD. Attached to the Claim is also a 3-page list of personal items, one of which (an inexpensive microwave oven) is in Mr. Wayne's Halifax home and the balance of which are in Naples.

[21] Mr. Wayne's position is that he wants to pay what he owes, but that he has struggled to reconcile Ms. MacDougall's accounting. He does not want to be exploited.

[22] In some instances, he has a quarrel with choices that Ms. MacDougall made in her incurring or attributing of expenses, such as (most notably) whether she was

appropriately charging him for a share of the costs of a cell phone plan.

[23] On the issue of personal items, he concedes that Ms. MacDougall had many items in his Naples home but says that at the time they were brought in, Ms. MacDougall offered some of them to him as gifts. He was surprised to see the request for those items' return. As for items that are clearly hers, he concedes that she is entitled to them but wants Ms. MacDougall to be supervised if and when she is in a position to enter his home to retrieve them.

[24] Ms. MacDougall's evidence on the question of gifts is that these items represented her entire worldly goods, and that she was not looking to give any of them away. She says that she told Mr. Waye that he could have use of them in the meantime; i.e. that they would not simply be stored but put into circulation in the Naples home until it was time for Ms. MacDougall to gather her things and move to her own place. An example of this was a set of wine glasses that Ms. MacDougall knew Mr. Waye liked. I believe it is fair to say that she recognized that it could be a few years before she would need all this stuff, considering that they were just in the process of embarking on the year-round, 2-city house-sitting arrangement.

[25] There is one item, a Brother printer, that Ms. MacDougall bought for Mr. Waye and is claiming both its return and the cost thereof through her monetary claim. As Mr. Waye correctly pointed out, she cannot have it both ways. She concedes this was an error and no longer asks for the printer,

[26] The law is suspicious of gifts. As such it places a clear onus upon anyone taking the position that property was gifted to them, to prove that it was truly intended to be a gift. That onus may be easily satisfied where there are confirming documents, but it is a more difficult onus to satisfy when the exchanges are verbal only.

[27] In order to establish a valid gift, it is necessary to prove two essential elements: (1) the intent of the donor to pass title immediately; and (2) delivery of possession: see *Union Trust Company v. Gallagher*; *Ramey v. Gallagher*, 1993 CanLII 4673 (NS SC).

[28] In practice, it is the first element that is more difficult to prove. Possession is transferred in many cases that are not gifts. Examples are sales (for consideration), loans and various types of bailments of property, and

unlawful takings. To qualify as a gift the element that must accompany the transfer of possession is “donative intent.”

[29] I accept Ms. MacDougall’s evidence that she never intended to part with ownership of her property. It makes sense that she would allow Mr. Wayne to use some of her property, until she needed it. Otherwise, it would be sitting uselessly in storage. And Mr. Wayne was a friend. It also rings true when Ms. MacDougall testified that she could not really afford to give away her worldly goods. By all objective measures she was in no financial position to do so.

[30] I therefore accept that (with the exception of the printer) Ms. MacDougall is entitled to the return of all of her personal property.

[31] Turning to the claim for reimbursement of expenses, Mr. Wayne provided a line-by-line critique of many of the claimed expenses.

- a. He objects to about \$1,500.00 USD in expenses for cable equipment.
- b. He questions whether he has been appropriately charged for a share of cell phone expenses.
- c. He says there is some duplication of items for which return is sought and reimbursement is claimed.
- d. He questions whether some minor purchases were actually necessary.
- e. He says that there is an inconsistency between her claim and a statement she made in the context of court proceedings in Halifax where she (allegedly) stated that she owed him money, rather than the other way around.

[32] Dealing with these in turn:

[33] Ms. MacDougall testified that she was following Mr. Wayne’s instructions to fit all five televisions in the home with cable boxes. She argued persuasively that she would have had no reason to do so on her own account. I am satisfied on balance that she made these expenditures with Mr. Wayne’s authority.

[34] I believe that Ms. MacDougall explained adequately at the hearing that putting Mr. Waye on her family cell plan was a cost-saving measure, and I do not see that Mr. Waye can justifiably complain about how the cost was allocated.

[35] With the exception of the printer, an item costing \$181.89, Ms. MacDougall disputed that there was any duplication. The other items listed are trivial. As noted, Mr. Waye will be keeping the printer so it is correct that he also pay for it.

[36] The items in this category consist of some light bulbs and items used in a plumbing repair to the shower. Ms. MacDougall says that she discussed these items with Mr. Waye in advance, and on balance I accept that she did. One of Mr. Waye's concerns appears to the showerhead replacement that he says Ms. MacDougall did improperly, necessitating some expensive repairs. On balance I am satisfied that Ms. MacDougall made these expenditures in good faith and I believe they are properly recovered.

[37] The last item concerns a claim by Mr. Waye that the amount awarded to Ms. MacDougall should be reduced by \$3,100.00 as a result of an alleged statement by Ms. MacDougall that she owed him this amount of money.

[38] The source of this argument is a draft Statement of Expenses which Ms. MacDougall was preparing in 2019 to be used in the context of her divorce proceeding and, in particular, her spousal support claim. This is very much a working, draft document, filled out on the standard court form (without even a case name or number reference) in Ms. MacDougall's handwriting. In the area setting out Ms. MacDougall's debt payments, she wrote:

EXPENSES	MONTHLY BUDGETED EXPENSES	COMMENTS
37. Allan Waye - Repayment Food & Fuel	3824.91	Expenses incurred in Florida and Halifax (have receipts)

[39] The argument by Mr. Waye is something to the effect that he cannot owe her money for the same expenses for which she says she owes him money.

[40] Ms. MacDougall had a few things to say about this document. First of all, she says that it was never finalized, never sworn, nor used in her divorce proceeding. She says that she was sharing it with Mr. Waye (with whom she was still friends) to get his advice. She recalls that he told her that it would be advantageous to show as much debt as possible in order to maximize her support claim. So I am left in some doubt as to whose thoughts this represented: his or hers?

[41] There are other things quite wrong about this document. Even if Ms. MacDougall owed Mr. Waye money, the document is looking for monthly debt payments, not the gross amount of the debt.

[42] Furthermore, it is hard to see how the facts would fit any scenario. According to the evidence before me, Ms. MacDougall was spending her own money with the expectation of being repaid by Mr. Waye. She could only have owed him money if he had advanced the money (as a loan) which we know not to have been the case. He does not claim that he loaned her money.

[43] I am not satisfied that Ms. MacDougall fully understood the entry that was made in this draft document, and I am not prepared to treat it as some sort of admission on her part that her claim against Mr. Waye is invalid.

[44] In the result, on balance, I believe that Ms. MacDougall has established her claim and should be reimbursed the amount claimed, namely \$6,132.86 USD, which for purposes of the Order I have converted to Canadian currency and find it to be \$7,641.24 as of November 6, 2021.

[45] Ms. MacDougall is also entitled to her costs of \$199.35 and her cost of personal service of \$115.00, for a total of \$7,955.59.

[46] She is also entitled to recover the items which she has claimed, with the exception of the Brother printer which I have removed from the list.

About the personal property claim

[47] There are practical as well as legal difficulties with the personal property claim, though both can be alleviated by Mr. Waye cooperating with

the process.

[48] The authority to make an order for the return of personal property derives from s.9 (c) of the *Small Claims Court Act*:

9 A person may make a claim under this Act

...

(c) requesting the delivery to the person of specific personal property where the personal property does not have a value in excess of twenty-five thousand dollars

[49] There are two aspects of the property claim that need to be considered. First of all, the Claimant made no effort to place a value on the items. The court's jurisdiction is to order the return of property valued at \$25,000.00 or less. I am not too troubled by this fact, given that all of the items are used and would be valued as such, i.e. what they would sell for as used items rather than what they may have cost. Just eyeballing the list, it seems obvious that \$25,000.00 would be in excess of anything that the items might actually fetch in an estate sale, or some such method of selling used goods.

[50] The other issue is the lack of specificity. In my own experience as an adjudicator I have ordered the return of large ticket items that can be easily identified either with a serial number or based on a photo. Though it is not my inclination to dismiss this claim, other litigants in this court have not fared so well. In *MacDonald v. MacAulay*, 2019 NSSM 9 (CanLII) the claim failed because of a lack of specificity:

Claim for the Return of the Property

[10] The difficulty I have with this claim is the lack of identification or specificity of the items claimed. There are no serial numbers provided (other than for the vacuum) for the television or for the drill. There are no unique characteristics identified by the claimant for the cups, the lamp, the tent, or the ring.

[11] There was no evidence provided as to what was in the bags, what some of the personal items were or the pictures of the dog during his testimony. I note that the defendant testified that the claimant had taken or had custody of the dog and the claimant did not challenge this.

[12] There just is not enough specificity about the items claimed to ensure that a Sheriff can go and retrieve the items without guessing as to what is the subject of a recovery order. The only item identified is the Electrolux vacuum and the testimony given is that this is no longer working.

[51] The same issue appears here. Even if the property were in Nova Scotia, I would not trust a Sheriff's officer to go through a house and identify all of the property to be recovered. Some of it might be obvious, but many other items maybe hard to distinguish between that belonging to Ms. MacDougall and that belonging to Mr. Wayne.

[52] The only way it would work is for both parties to be physically present, or perhaps virtually present, at the time. I expect that they know whose property is whose. But in the event of any dispute, I have no idea how that dispute would be resolved. The court's order simply repeats what the Claimant listed in her Claim, and absent greater specificity there might not be a basis to allow certain items to be taken.

[53] The last obstacle is jurisdiction. This court has jurisdiction in Nova Scotia, and its orders can be enforced by execution processes such as by the attendance of Sheriff's officers to carry out the order. I have no authority in Florida to direct anyone to do anything.

[54] It is at least possible that the Florida authorities might regard my order as something to be enforced within their jurisdiction, but that remains to be seen.

[55] I believe that the best approach is to hope for Mr. Wayne's cooperation. If Ms. MacDougall indeed plans to go down to Florida in March 2022, or at any later time, it is hoped that Mr. Wayne would cooperate by allowing the extraction of these items to occur. If he cannot be there himself, he could designate a proxy who could also remain in touch via a video call (eg. FaceTime) so that he can see what is being taken and approve of same. If there was a dispute over any item, Ms. MacDougall would have to leave it behind as we cannot have any active fights over property to occur during such a process.

[56] If the property cannot be repossessed peacefully, then Ms. MacDougall has an option which is to convert her claim to a further monetary claim against Mr. Wayne. It is not uncommon for return of property claims to be made in the

alternative. As such, the order that I issue as a companion to this set of reasons will provide that in the event the property cannot be recovered within eight months of the date of the order, Ms. MacDougall is at liberty to ask the court to reconvene where she can present evidence of the value of the items that remain in Mr. Waye's possession. This would only be permitted so long as Ms. MacDougall makes a good faith effort to take possession of the property and is met with a lack of reasonable cooperation from Mr. Waye.

Eric K. Slone, Adjudicator

SCHEDULE OF GOODS TO BE RETURNED

Located in Halifax

- brand new microwave (located in Halifax, bought at Home Depot for \$107.50 on May 14, 2020
- SKU #665679007028)

Located in Naples, Florida

- two framed sunset photos (hallway)
- wine bottle oil painting(guest room)
- various framed artwork (garage attic)

GUEST ROOM

- contents of two dresser drawers
- several plastic containers under bed - large tv on dresser
- vanity mirror (closet)
- clothing contents in closet

GUEST ROOM LINEN CLOSET

- gray bath towel set
- gray cotton blanket

MASTER BEDROOM

- large tv on dresser
- 2 paintings on floor by door and large dresser

MASTER BEDROOM LINEN CLOSET

- gray sheet set

MASTER BEDROOM CLOSET

- 6 shoe racks

LIVING ROOM

- two sonos players
- large natural wood cutting board (lower shelf of living room end table)
- sonos controller (tv unit shelf)
- several electrical power bars

OFFICE/KITCHEN AREA

- office desk, filing cabinet and office chair
- files in office desk
- labeller (in filing cabinet)
- external apple hard drive (in filing cabinet or living room tv unit)
- bose radio/cd player on filing cabinet
- two mason jar lamps on desk
- all cordless phones

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KITCHEN

- knife block and knives
- martini and margarita glasses
- cookbooks
- Tiffany crystal vase

LAUNDRY ROOM

- gray plastic storage shelf containers, small and large

GARAGE AND ATTIC

- all wire shelving units
- black step stool
- luggage bags and knapsacks
- bike and bike accessories
- small beverage frig
- container of coaching books
- plastic file container with files
- ratchet set
- assorted tools, screwdrivers, hammers, wrenches, axe, alien keys, etc
- screw and nail storage container
- power tools, drills, sanders and bits
- kitchen aid mixer
- green metal flower containers (brand new)
- paint stick extender
- miscellaneous garden tools - paint supplies/ tarps
- flashlights
- picture hanging items

- tape measurers, tie downs, hooks, clamps
- large storage containers (attic) - tool bags (attic:)
- extension cords (attic)
- exercise bands (attic)
- bocce ball set (attic)
- photo albums/sports memorabilia (attic)
- golf clubs and shoes (attic)
- clothing and shoes (attic)
- wedding china set