SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Hollis Ford Inc. v. Walker*, 2024 NSSM 2

Date: 20240129
Docket: 527202
Registry: Truro

Between:

Hollis Ford Inc.

Claimant

v.

Gary Winston Walker

Defendant

Adjudicator:	Julien S. Matte
Heard:	January 24, 2024
Counsel:	Emily Hunter, Counsel for the Claimant Gary Walker, for the Defendant

By the Court:

[1] Good intentions aside, sometimes things are too good to be true. The parties come before Court to determine their rights and responsibilities flowing from an unusual set of circumstances. The Claimant is an automobile dealership in the Truro area, Rick Hollis is the Claimant's President and in 2021, the Defendant was the Claimant's Service Manager.

Facts

[2] On June 21, 2021, the Defendant was eating his lunch in his office when Mr. Hollis dropped in. The parties had a brief conversation which started when Mr. Hollis remarked on what the Defendant was looking at on his computer. Through conversation, the Defendant explained that he was looking at his dream motorcycle to which Mr. Hollis said he should buy it. The Defendant chuckled and replied that sure he would simply go to the bank and get $20,000. The inference to be taken was that he was not in a financial position to purchase a motorcycle like the one being viewed. The parties agree that Mr. Hollis left the office and returned with a cheque for $17,000 made out to the Defendant stating that he should make the call before someone else bought his dream motorcycle. Mr. Hollis handed the Defendant the cheque.

[3] Up to this point, the parties' recollections of the events are similar. However, Mr. Hollis also testified that before leaving the Defendant's office that day, he told the Defendant that he would have the Claimant's CFO make up an agreement. The Defendant, on the other hand, testified that he resisted taking the cheque and told Mr. Hollis that no one had ever done anything like this for him. The Defendant also says that he had tears running down his face and he gave Mr. Hollis a hug. The Defendant did not recall Mr. Hollis telling him that the CFO would draw up an agreement.

[4] Soon after the meeting, the Defendant contacted the seller of the motorcycle and made arrangements to purchase it. The Defendant soon realized that he needed an additional $1200 to pay the sales taxes before he could register it. The Claimant gave the Defendant a second cheque in the amount of $1,200 on June 23, 2021. The Defendant registered the motorcycle, and the Certificate of Registration was issued on June 24, 2021.

[5] On June 25, 2021, the Defendant, Mr. Hollis and the Claimant's CFO all met. For the most part, the accounts of the meeting are similar. All agree that the Defendant was presented with a document entitled "Promissory Note". The CFO testified that he drafted the document after speaking with Mr. Hollis. The specific contents of the document were not discussed and none of the provisions were

pointed out during the meeting. The CFO confirms that there was little discussion at the meeting but that it appeared to him that the Defendant was expecting the document. Mr. Hollis says that he told the Defendant to read over the documents at the meeting and says that he had earlier discussed the monthly payments. All three signed the Note.

[6] Soon after the June 25, 2021 meeting, the CFO took steps to register the Claimant's interest in the Defendant's motorbike at the Personal Property Registry, a registration that expires on June 25, 2024.

[7] On February 22, 2023, the Claimant's General Manager sent the Defendant a letter terminating his employment with the Claimant. On March 2, 2023 the Defendant sent an email to the CFO confirming that he would drop off the company cell phone and seeking clarification on how to email the $450 payment for the Note. The CFO replied that the Claimant did not accept e-transfers and that the Defendant would receive information about the Note the following week.

[8] On March 8, 2023, a lawyer for the Claimant sent the Defendant a letter claiming repayment of the money advanced for the motorcycle pursuant to the Note. The lawyer noted that the amount of $7,086.12 was due immediately but that so long as it was paid by April 6, 2023, no interest would be added. However,

the letter goes on to note that after April 6, 2023, the Defendant will be in default of the Note and liable to interest on the entire amount at the rate of 18%. Although not noted in the letter, the interest claimed is $3,276.

[9] On April 12, 2023, the Defendant sent an email to Mr. Hollis indicating that he had borrowed a couple thousand dollars that he could put towards the motorcycle and further indicating that he was just trying to pay him what he owed him. At the hearing, the Defendant testified that he intended to pay the $1200 in holiday pay he had received from the Claimant for a total of $3200.

[10] On June 6, 2023 the Claimant authorized the seizure of the Defendant's motorcycle by a private company. On June 16, 2023, a lawyer for the Claimant sent a letter to the Defendant claiming a total of $14,101.81 for the amount at issue, interest and fees.

Analysis and Findings

Loan

[11] On June 21, 2021, Mr. Hollis walked into the Defendant's office, saw him looking at the Defendant's dream motorcycle and after he suggested that he buy it, a suggestion the Defendant laughed off, Mr. Hollis left the office and returned a short time later to hand him a $17,000 cheque to buy his dream motorcycle before

it was gone. These facts are not contested. Had the story ended here, it would be difficult to conclude anything other than the cheque was a gift. A grand gesture is the only way to interpret Mr. Hollis' actions on that day.

[12] The Defendant says he tried to refuse the cheque but eventually with tears running down his face, he gave Mr. Hollis a hug. Mr. Hollis says that as he left the office, he told the Defendant that if he bought the motorcycle that the CFO would take care of the agreement, a suggestion that the Defendant denied hearing. Under cross examination, Mr. Hollis admitted that the Defendant never asked for the money.

[13] Perhaps out of excitement or because Mr. Hollis encouraged him to make the call, the Defendant wasted no time to purchase his dream bike with the $17,000 received from Mr. Hollis. To conclude that Mr. Hollis induced the Defendant to purchase a motorcycle is an understatement.

[14] The only evidence from Mr. Hollis that his actions were meant to reflect a loan was his statement that the CFO would draw up an agreement. Even if this statement was made, it was made as he left the Defendant's office having, in a quintessential Oprah moment, made the Defendant's dreams come true. While the statement may have sown doubts into the Defendant's mind about the apparent

gift, it is understandable that he did not fully take in what Mr. Hollis may have said.

[15] The parties also agree that at the latest, the Defendant realized that the Claimant considered the money a loan and not a gift when they met with the CFO and was presented with the Note on June 25, 2021. The CFO testified that in his opinion, the Defendant appeared to know about the proposed arrangement before he got to the meeting while Mr. Hollis contends he had spoken to the Defendant about monthly payments. The Defendant testified that it was only at the June 25, 2021 meeting, Mr. Hollis said that he could not give him the money. According to the Defendant this was the first time he realized it was a loan.

Second Cheque

[16] The Defendant testified that after purchasing the motorcycle, he realized that would need to pay taxes before he could register it. The Certificate of Registration issued on June 24 shows that $1125 were paid in taxes. The Defendant says that he contacted Mr. Hollis to tell him he would need any additional $1200 to pay the taxes before he could register the motorcycle. The CFO pointed to a spreadsheet that he prepared showing the $1200 amount with a transaction date of June 23, 2021. Based on the evidence, the Court finds that the Defendant approached Mr. Hollis on or before June 23, 2021 for an additional $1,200, a request that was

granted. Neither party provided any context for the $1,200 demand, only that it was made and accepted.

[17] Mr. Hollis testified that by the time the parties met on June 25, 2021 he had told the Defendant about the monthly payments although he gave no specific evidence with respect to how the $1200 cheque came about. Further, as written in the terms of the Note, the Defendant was required to apply the proceeds of the sale of his old motorcycle suggesting a conversation was had with the Defendant prior to the June 25, 2023, meeting. This conclusion also accords with the CFO's impression that the Defendant was expecting the Note when presented at the June 25, 2021, meeting.

[18] The Defendant's request for an additional sum after he says that he received a surprise gift of $17,000 undermines his assertion that he did not know that Mr. Hollis viewed the amount as a loan. Asking for a bigger gift when the Defendant could have waited to register his new motorcycle until he sold his old one raises questions about what was said on June 21, 2021 and/or shortly after when he asked for the additional $1200.

[19] The Claimant had an interest in obtaining the Certificate of Registration needed to secure its interest under the Personal Property Registry which explains

why the additional cheque was issued from the Claimant's perspective. The Court finds that on a balance of probabilities, it is more likely than not that by the time the Defendant requested and received the $1200 cheque, he was aware that the total $8200 amount was a loan and not a gift.

[20] The Court accepts that whether or not Mr. Hollis told the Defendant at the end of the June 21, 2021 meeting that the CFO would draw up an agreement, his actions from the moment he entered the Defendant's office until he left after giving him the first cheque amount to a negligent misrepresentation of the loan agreement. A negligent misrepresentation is where someone provides misleading information that induces another to enter into a contract making him liable in damages. (See *Hedley Byrne* as quoted by the Court of Appeal in *Woolridge* and adopted in *CJBC v. Dorey 1991* CanLII 4253 (NSSC)). The misrepresentation induced the Defendant into hastily purchasing a $17,000 motorcycle and signing the Note.

[21] Representations made outside a contract cannot be incorporated into a contract where those representations would add, subtract or contradict the contract's terms. However, the admission of surrounding circumstances can be used in the interpretation of the contract. (See discussion on parol evidence rule in *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53 at 59-61)

[22] Although the misrepresentation that the money was a gift, immediately induced the Defendant to enter a contract with a third party, the seller, the Defendant suffered damages when the apparent gift became a loan secured through the Note.

The Note

[23] The parties agree that they met on June 25, 2021 to sign the Note, a Note not seen by the Defendant or explained by the Claimant before the signing. This type of contract is often referred to a contract of adhesion, a contract that is presented by the drafter as a take it or leave it proposition. Where a dispute arises with respect to a contract of adhesion, the contract is interpreted to resolve any ambiguity against the drafter.

[24] The Claimant relies on the Note to argue that the Defendant is in default. Under the Default heading at p.2 of the Note, "Event of Default" lists four events. Immediately below the four listed events is a clause stating that if at any time there is an Event of Default, 18% on the principal amount is due as per the provision directly below.

[25] The Claimant says that the Defendant breached two of the Events of Default by failing to make a payment when due and by failing to meet an obligation. The

Defendant says that he never missed a payment given that the payments were taken off his pay cheques and that he tried to meet his obligations after his employment was terminated but was prevented.

[26] The clause relied on by the Claimant is found directly below the "interest clause" and reads:

> If the borrower ceases to be employed by Hollis Ford Inc. then all outstanding balances are to be paid immediately.

[27] The Defendant argues that this clause is not one of the defined "Event of Default" and therefore does not fall engage the interest clause provision.

[28] Both Event of Default provisions relied on by the Claimant refer to the Defendant's failures whether "[t]he failure of the Borrower to pay" or "Borrower fails to comply" when the above provision simply links the end of employment to the payment of outstanding balances. Given that the noted clause was placed under the interest provision, not as an Event of Default, and that the Defendant never missed a payment, the Defendant's interpretation is reasonable. On the other hand the Claimant links the term "obligation" in the fourth Event of Default and "other sums owed" in the first Event of Default to the Defendant's obligation to repay the balance of the loan at the end of his employment and therefore engaging the interest provision.

[29] While both interpretations of the clause are possible, the ambiguity in the placement of the impugned clause outside the defined "Event of Default" section must be resolved in favour of the Defendant given that the Note is a contract of adhesion.

[30] The Court concludes that if the Note is enforceable, the interest provision does not apply.

Damages

[31] The Claimant asks the Court to order the return of the motorcycle and in the alternative, the balance of the loan of $7,086.12.

[32] The remedy of repossession is ill fitted to the circumstances as it flows directly from the Note and not the loan. Awarding the repossession of the motorcycle would enrich the Claimant in circumstances where the Defendant was given little choice but to agree to a contract that he had no power to negotiate under circumstances created by Mr. Hollis.

[33] The Court rejects the Defendant's claim that he only found out about the loan on June 25, 2021. Further, once the status of the money as a loan became known between June 21-23, 2021, no efforts were made by the Defendant to

address the issue with the Claimant. On April 18, 2023 the Defendant sent Mr. Hollis an email noting "from the extremely nice gesture you made back then" and acknowledging his debt. In the context of this email, the Defendant's words can only be interpreted as acknowledging Mr. Hollis gesture to offer him an interest-free loan not a gift. It is the loan that remains outstanding.

[34] Had the Defendant elected to sell his dream motorcycle upon learning the money was not a gift, damages could easily be assessed for Mr. Hollis' negligent misrepresentation as the difference between the purchase price of $17,000 and the theoretical sale price. However, by accepting the loan through his actions and words, the Defendant took on the responsibilities associated with it. It is much less clear that the Defendant understood or agreed to the Note.

[35] The Court finds that in the circumstances and despite the initial representation through Mr. Hollis' actions suggesting that the cheque was a gift, the parties agreed to enter into an interest free loan agreement prior to the June 25, 2021, meeting. As per his testimony, the general monthly rate of $450 was discussed by Mr. Hollis. Had the parties taken the time to properly discuss a loan without the pressure created by Mr. Hollis' actions, it is foreseeable that the Defendant may have made different choices; he may have elected not to purchase such a luxury item at that time. It was incumbent on the Claimant to explain

important clauses and ensure that the Defendant was given a real opportunity to review the Note and obtain advice particularly given Mr. Hollis' action inducing the Defendant to make the purchase. As this was not done, there was no meeting of the mind with respect to the Note and the Claimant cannot rely on the Note to enforce the loan.

[36] The Court is satisfied that the Defendant understood the basic bargain of the interest free loan soon after the initial June 21, 2021, meeting with Mr. Harris and agreed to pay back the full $18,200 amount with the balance of $7,086.12 that remains outstanding. Given the initial terms discussed prior to June 25, 2021, as testified by Mr. Hollis, and the balance of the term at the time of the last payment, there would have been approximately 14-15 months left on the loan term. Any damages caused by Mr. Hollis' negligent representation can be addressed by enforcing the terms of the interest free loan.

[37] The Court finds that the Defendant has until April 1, 2025, to pay the loan in full.

Legal Fees

[38] The Claimant requests the payment of legal fees incurred prior to the filing of the Claim and relies on caselaw from this Court for the proposition that such

fees can be awarded. However, parties cannot simply incur any legal fees with the expectation that those fees will automatically be awarded by the Court. While the Court agrees that reasonable legal fees can be awarded as special damages, both the circumstances surrounding the fees and the reasonableness of the fees themselves must be evaluated by the Court.

[39] Immediately after the Defendant's employment was terminated on February 22, 2023, the Claimant hired a lawyer to draft and send the Defendant a demand letter, a letter dated March 8, 2023. The letter gave the Defendant until April 6, 2023 to pay the balance of $7,086.12. One week earlier, the Defendant asked the CFO where he could email the monthly payment but was told to wait for the demand letter. On April 18, 2023, the Defendant sent an email and as clarified during testimony, noted that he was prepared to offer the Claimant $3200 and make arrangements to pay the remaining balance as soon as he could. In response, the lawyer indicated that he now owed over $14,000 which was immediately due and advised him not to contact anyone who worked for the Claimant. Further based on emails, it is apparent that the Claimant began private enforcement procedures as early as April 12, 2023 given the Defendant's evidence that the Claimant's had sent men to his house.

[40] While parties are free to engage private companies to try and enforce their rights under an agreement, the Court process also offers enforcement of its Orders. Here the Claimant moved extremely fast in the face of a Defendant making attempts to pay nearly half of a debt that, in the Claimant's opinion, had come immediately due upon termination of his employment by the Claimant. The claimed power to insist on immediate payment flowed from the Note whose terms were unilaterally imposed on the Claimant. In these circumstances it would be unreasonable to award pre-filing legal fees.

[41] Further and as raised with Counsel, the Claimant's choice to invoke solicitor-client privilege on the claimed invoices makes it impossible for the Court to assess them. The CFO's testimony fell far short in needed detail to allow the Court to satisfy itself that the claimed fees were fair and reasonable.

[42] The Court finds that the claimed legal fees of $5,375.55 are not appropriate in these circumstances and declines to award them as special damages.

General Damages

[43] The actions of the Claimant in attempting to enforce the Note were unduly aggressive in light the Defendant's offers to pay nearly half of the outstanding balance as it came due and make arrangements for the remainder. The Court

accepts that these actions caused the Defendant stress and awards him the maximum $100 in general damages.

Conclusion

[44] While the circumstances appeared to play out like a scene from a television show, the initial jubilance was tempered when the Defendant realized that Mr. Hollis' generosity was bounded by the terms a loan. The Court concludes that in the circumstance, the apparent gift could yield to the parties' subsequent interest-free loan agreement. There can be no other takebacks.

Order

[45] The Claim is allowed in part;

[46] The Claimant shall, within 14 days, remove the relevant registration under the Personal Property Registry; and

[47] The Defendant is ordered to pay the Claimant $6,986.12 on or before April 1, 2025.

Julien S. Matte, Small Claims Court Adjudicator