

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Carpentier. v. Salmon*, 2023 NSSM 102

Date: 20231129

Docket: 526302

Registry: Halifax

Between:

Matthew Carpentier

Claimant

v.

Jessica Salmon

Defendant

Adjudicator: Eric K. Slone

Heard: November 20, 2023, via teleconference in Halifax, Nova Scotia

Decision: November 29, 2023

Counsel: Claimant – self-represented
Defendant – self-represented

By the Court:

[1] This case arises out of a relatively short-lived domestic relationship that lasted from July 2021 to sometime in August 2022.

[2] In September 2022, when the relationship was in its early intense phase, the Claimant, Matthew Carpentier, moved into the Defendant Jessica Salmon's home, bringing many of his belongings. The relationship ended abruptly and acrimoniously on August 25 or 26, 2022. The evidence varied widely on the question of who precipitated the breakup, but it is not contested that on that day Mr. Carpentier left with little more than the clothes on his back. He claims that Ms. Salmon has refused to return many items of his property and seeks an order for their return, or failing that, compensation for their value which he estimates at just over \$8,000.00.

[3] Ms. Salmon says that she has returned everything he requested, with the exception of a few items of little value that she either gave or threw away when he refused to make arrangements to pick them up. She also counterclaims for approximately \$19,000.00 for various claims arising from their time together when, she says, she made purchases on his behalf or performed services for some

of his ventures. She also claims that there were some items of hers left at his family's cottage that were never returned.

[4] Ms. Salmon very candidly stated to the court that she would be content to offset her claim for his, in order to put an end to this dispute and the need for further dealings with him.

Claims Arising from domestic relationships

[5] This type of claim is routinely brought in Small Claims Court, though the court is not always equipped to deliver what parties expect or hope for. That is partly because there is no statutory framework for dividing property, such as there is in marriages under the *Matrimonial Property Act*.

[6] I made some remarks more than a decade ago in the case of *Dyke v. Skinner*, 2010 NSSM 49, that are as true today as they were then:

52 I am not the first and will not likely be the last Adjudicator to remark that this court is poorly equipped to deal with all of the fallout from common law relationships. The problem is two-fold:

- a. We have restricted jurisdiction (currently \$25,000.00) and
- b. There is a lack of formal procedures, such as financial statements, disclosure and discovery, which would lead to a more orderly and accurate process.

53 The jurisdiction of this Court is not only restricted to \$25,000.00, but as

provided in the *Small Claims Court Act*, is limited to certain causes of action:

9 A person may make a claim under this Act

(a) seeking a monetary award in respect of a matter or thing arising under a contract or a tort where the claim does not exceed twenty five thousand dollars inclusive of any claim for general damages but exclusive of interest;

(b) notwithstanding subsection (1) of Section 5, for municipal rates and taxes, except those which constitute a lien on real property, where the claim does not exceed twenty five thousand dollars exclusive of interest;

(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; or

....

(d) respecting a matter or thing authorized or directed by an Act of the Legislature to be determined pursuant to this Act.

55 The result of these provisions is that, for all intents and purposes, there must be a claim arising “under a contract or a tort where the claim does not exceed twenty-five thousand dollars” and which “may not be divided into two or more claims for the purpose of bringing it within the jurisdiction of the Court.”

56 To narrow it down even further, there would not typically be many tort claims, so the claim will most often be contractual in nature. One example of a tort claim might be fraud or unlawful conversion of property - i.e. taking something which belongs properly to the other party.

57 Perhaps anomalously, an additional type of claim has been recognized by the higher courts in recent years, which is that the Small Claims Court has jurisdiction over claims for “unjust enrichment.” This cause of action has been recognized in several cases that do not fall neatly into a contractual framework. Although I am not aware of any cases that have utilized this remedy as a way to adjust the financial position between common law couples, the argument is there to be made that this Court has the power to redress any perceived unjust enrichment arising out of a common law relationship. Even so, unjust enrichment is not a “free for all” but is a particular inquiry that requires a court

finding that there is no “juridical” (i.e. legally-based) reason for one party or the other to retain a particular financial benefit. One of the juridical reasons that might be found is that there was a contract to that effect. In other words, if the parties agreed to a certain financial arrangement, it would not be unjust enrichment for one party to retain the benefit of that agreement.

58 So in my opinion, the starting point is to look for a “contract” that captures the agreement between the couple as to how their finances will be handled. This will often be an overall agreement, in which case only one claim may be raised concerning it. In some cases, it may be that during the course of a relationship the parties entered into more than one agreement concerning specific items.

[7] Some couples have the presence of mind to enter into cohabitation agreements that specify what happens on separation. That does not mean that the process is necessarily easy, but at least there is a set of principles to follow.

[8] The parties here, Mr. Carpentier and Ms. Salmon, appear to have simply taken the plunge into cohabitation, without any clear understanding of what would happen on separation.

[9] Certain agreements or understandings can be implied, and as such become enforceable claims. For example, items that are intensely personal (such as clothes) likely would not have been intended to become shared property. But here it appears that Mr. Carpentier brought with him many items of a domestic nature, such as furniture, tools, kitchen supplies, and electronics, which were absorbed into the household, in some cases duplicating items that were already there. Some of

the excess was given away, and some sold, with the proceeds being absorbed into the couple's finances or sometimes going to one or the other of them.

[10] To make matters more complicated, Ms. Salmon devoted time and money to assist Mr. Carpentier with readying his house for sale. She also gave evidence, which he did not dispute, that she paid a disproportionate amount of their household expenses and financed the cost of several vacations. In some cases, she stated, Mr. Carpentier promised to reimburse her, but never did. She also performed work for his business without compensation. These expenditures underlie her counterclaim.

Claims for return of property

[11] Apart from the authority to award financial compensation, the court has the jurisdiction to order the "delivery" of "specific" personal property:

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

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[12] The word "specific" is not further defined, but it highlights an important point. The item in question must be clearly identifiable. It must clearly belong to

the person claiming it, with no countervailing claims by the other person. And the court must be satisfied that the item is being wrongfully withheld.

[13] As noted earlier, Ms. Salmon testified that she no longer has any property that Mr. Carpentier seeks.

[14] In looking back on all of the evidence at the trial, I am troubled by the fact that Mr. Carpentier downplayed the efforts that Ms. Salmon made to package up and make available a great deal of property which he had requested. The process was a difficult one, involving the intervention or supervision of family members on both sides, and on more than one occasion, the police.

[15] I am willing to believe that there may be some items that never found their way back to Mr. Carpentier, but I am unwilling to find that Ms. Salmon deliberately withheld them.

[16] There would be no point making an order that Ms. Salmon return items that she says she no longer has. Orders for the delivery of property work best when the items can be clearly identified by brand and perhaps serial number, or with the aid of pictures or a detailed description. Even if I used what evidence there is, the sheriff's officers would almost certainly come away empty-handed.

[17] In the absence of an acknowledgement or other evidence that the items are in the Defendant's possession, which would enable an order for their return, I am left with the option of a financial remedy to redress any unjust enrichment or compensate the Claimant for the unlawful conversion of the items in question.

[18] Once the question of a monetary remedy is raised, I need to assess it in light of the counterclaim and the issue of unjust enrichment in a global sense.

[19] In my opinion, justice here is best served by leaving matters where they lie. I cannot find any clear agreement that governs the financial untangling of this relationship.

[20] To be specific, there was no agreement that every item that Mr. Carpentier brought with him into the relationship would be his upon separation. For example, I understand that Mr. Carpentier brought with him a TV that was perhaps superior to the one that Ms. Salmon had, and since they only needed one TV the second one was sold. Once that occurred, I believe that "his" TV became "their" TV, i.e. joint property.

[21] I find that this would also apply to other items contributed by Mr. Carpentier to the joint household.

[22] The division of joint property is an entirely different matter from what is claimed here. As was observed in *Francheville v. Levasseur*, 2013 NSSM 6:

25 Part of the difficulty is that this court does not have the same kind of jurisdiction to divide personal property as would have the Supreme Court of Nova Scotia. If a party can establish ownership of property, this court can order that property be returned to the owner. And if a party has taken property that does not belong to him or her, this court can order monetary damages based upon the tort of “conversion” measured by the value of the property unlawfully taken, and as a remedy to avoid an unjust enrichment.

[23] In conclusion, these parties intermingled their property and financial affairs, and the process of disentanglement has been difficult and imperfect. I find that neither of them has been unjustly enriched by leaving matters where they lie.

[24] In the result the claim and counterclaim are both dismissed, without costs.

Eric K. Slone, Small Claims Court Adjudicator