

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Dammer v. Hermes*, 2024 NSSM 14

Date: 20240411

Claim: 528138

Registry: Truro

Between:

Cornelia Dammer

Claimant

and

Wilhelm Hermes

Defendant

Adjudicator: Julien S. Matte

Heard: In person and videoconference on March 21, 2024

Decision: April 11, 2024

Counsel: Jordan Upton for the Claimant
Wilhem Hermes, Defendant, self-represented

By the Court:

- [1] The Claimant seeks damages for unjust enrichment after the breakdown of a common law relationship and claims the return of a coin collection, jewelry and a half interest in a truck and trailer in the Defendant's possession. The Defendant asks the Court to dismiss the claim on the basis that there has been no unjust enrichment, and that the Defendant denies possession of the claimed items.
- [2] Based on the below, the claim is dismissed.
- [3] The parties agree that they met while living in Germany many years before immigrating to Canada in 2017. The relationship ended in August 2020. The Claimant moved out the parties' home before returning to Germany in and around October 2020. In July 2021 the parties signed an agreement dealing with the sale of the home and related bank accounts needed to close the sale. Contents of the house were put in storage lockers. The Claimant moved back to Canada in November 2022.
- [4] The Claimant says that upon her return to Canada she noticed missing items from the storage locker. The Court accepts that the Defendant paid and storage locker with the contents of the parties' home. However, at the time of the sale, a second smaller locker was rented by the Claimant and the Defendant placed her personal items in the smaller locker.

Coin Collection

[5] The Defendant testified that he put a box that contained the coin collection and the jewelry in the locker along with Claimant's silverware, silverware that Claimant acknowledged receiving. According to the Defendant, the parties had had the coin collection appraised before the separation when they were facing financial difficulties. According to the Defendant, they were told that the coin collection had no significant monetary value. The Claimant says that her parents had started buying her Canadian coins as a child from age 5 and continued to age 20. Some of the coins were solid silver. In her affidavit filed with the Court, the Claimant stated "I believe their true value to be at \$10,000" but provides no basis for her belief.

Jewelry

[6] The Claimant also seeks the return of jewelry or in the alternative ascribes a value of \$5,000 to a collection that includes "several pieces" that "were solid gold". There is no supporting evidence for the claimed value given. The Defendant acknowledges the claimed jewelry but says he does not have it and previously put it in storage. The Defendant offers the opinion that the jewelry, while attractive was not of any value.

iPad

[7] The Claimant seeks the return of an iPad or its value which the Claimant says was \$800 at the time of the separation. No further information was provided about

the claimed value. The Defendant claims that the iPad was a gift from RBC for opening an account. The iPad was in the house but that he does not have currently have possession of it.

Truck

[8] The parties acknowledge that the Defendant has possession of a 2017 Dodge Ram 1500 truck that is registered jointly to both parties. The Dodge Ram was purchased new in November 2017 with a \$20,000 trade in of a 2014 Dodge Ram and \$27,743 cash payment. The Claimant testified that she believes that the 2017 Dodge Ram has a value of \$35,000 based on a conversation that she had with the Defendant. The Defendant testified that he believes the 2017 Dodge Ram has a value of between \$25, 000 and \$30,000. Neither party provided any supporting evidence of their opinions.

Trailer

[9] Both parties acknowledge that the Defendant has a trailer in his possession that is registered in both parties' names. The Claimant says that the trailer is worth \$8,000 based on a conversation she had with the Defendant where she says he told her someone was willing to buy it for that much. The Defendant says that the trailer was purchased for \$5,000 and is now worth between \$2,500 and \$3,500.

Parties' Positions

[10] The Claimant says that the parties have resolved most issues between them by agreement July 6, 2021 and asks the Court to resolve the claim with respect to the noted above items by applying the law of unjust enrichment in isolation of any other evidence. The Defendant asks the Court to dismiss the claim based on documents showing the parties bank accounts record post separation, sale of another vehicle and an RV which shows that the Defendant has not been enriched by the parties' relationship.

The Law

[11] As our Court of Appeal confirmed in *Canada (Attorney General) v. Geophysical Services Incorporated* (2022 NSCA 4), at its core a claim for unjust enrichment is a claim for the restoration of a benefit that justice does not permit. To be successful the Claimant must be able to show that the Defendant has been enriched with a corresponding deprivation of the Claimant in the absence of a juristic reason, for example a binding agreement between the parties.

Burden of Proof

[12] Whether it is a civil claim in equity or common law, the party who asserts a claim has the burden of proving that claim on a balance of probabilities by showing that the claim is more likely than not to have occurred.

Missing Items

[13] Both parties acknowledge that the coin collection and jewelry belonged to the Claimant and that the parties owned an iPad. Each says that the other should have the items. The Court finds the Defendant's evidence to be credible. The Defendant testified that the coins and jewelry were put in a box in storage under silverware. The Defendant also testified that on one or perhaps two occasions between August and October 2020, the Claimant returned to the house to discuss the parties' relationship. The Defendant's testimony that the coin collection had been appraised as having little value as well as the jewelry not being of the type to be valuable supports a conclusion that the Claimant's decision not to retrieve these items when she had a chance may be because they were of little value. Further and more importantly, the Claimant failed to lead any evidence to support her valuation of the missing items.

[14] Based on the above, the Claimant has failed to meet her burden to show that the claimed items are in the possession of the Defendant or that they have any value beyond a nominal one.

Truck and Trailer

[15] Based on the parties' testimony and despite no other evidence tendered as to the value of the truck or the trailer, and for the purposes of this case, the Court finds that the 2017 Ram 1500 has a value of \$27,500 and the trailer a value of \$2,500 for a total of \$30,000.

Unjust Enrichment

- [16] The Claimant has the burden of showing that the Defendant has enjoyed an enrichment to her detriment without legal justification.
- [17] The Claimant says that the July 6, 2021, agreement is a complete agreement of the settlement of parties' assets prior to that date. The agreement called for the parties to close four shared bank accounts (mortgage, line of credit, joint MasterCard and joint chequing) and split any remaining funds after closing 50/50. The Defendant testified that the bank required that the accounts be closed as part of the agreement. The agreement makes no mention of any other assets personal or financial. Neither parties contest that the agreement was carried out.
- [18] The Defendant points to the sale of a Jeep Patriot, an RV and transfer of cash from accounts as evidence that he has not been enriched. The Defendant tendered account statements showing the transfer of \$79,000 out of the parties' joint account in the fall of 2020 by the Claimant. The Defendant also says that the proceeds of sale of the parties' RV were partially applied to the parties' line of credit with the Claimant retaining \$15,000 as evidenced by account statements. The parties agree that the Claimant retained \$10,000 from the sale of the Jeep Patriot in March 2021.
- [19] The Claimant argues that the Defendant failed to tender evidence of the property closing that may have proven that the parties' agreement was narrow and did not

include other personal and financial assets. However, the Court notes that the Claimant elected not to advise the Court of the sale of the Jeep or the RV or large sums of money transferred out of the parties' joint accounts by the Claimant nor did the Claimant file any evidence of the property closing to supports its own position of a complete agreement.

[20] The omissions are explained by the Claimant in arguing that the Court cannot look behind the parties' agreement of July 6, 2021, because it deals with all the parties' financial affairs. This position is put forward all the while claiming that the jointly held 2017 Dodge Ram truck was not part of that agreement although the assets retained by the Claimant were. The parties' agreement cannot bear such a tortured interpretation.

[21] The parties' agreement dealt with the parties shared home whose proceeds were shared equally. All the parties' assets at separation, namely cash, vehicles and personal property are subject the Court's analysis for a claim of unjust enrichment. While there are significant gaps in the evidence for the Court to make a precise finding, little turns on it given the Court's limited monetary jurisdiction.

[22] The evidence, evidence not addressed by the Claimant in her affidavit or testimony, suggests that in the month before leaving for Germany, the Claimant

took over \$80,000 from the parties' joint accounts. The evidence before this Court supports a finding that the Claimant received the following assets:

- a. Proceeds of Sale of Jeep Patriot March 18, 2021: \$10,000
- b. Transfer from Joint Accounts
 - i. TD Chequing September 15, 2020: \$18,000
 - ii. Joint RBC Draft October 1, 2020: \$ 40,000
 - iii. Joint RBC Draft October 20, 2020: \$16,000*
*includes RV proceeds
 - iv. RBC Line of Credit October 19, 2020: \$5,000
 - v. Siimpli Chequing October 2020: \$ 2,827

[23] The Court finds that the July 6, 2021 agreement settled the parties' accounts as they stood on the day of closing, namely July 22, 2021 in order to effect the sale of their shared home. The parties' other assets as they existed at separation in August 2020 including the \$80,000 withdrawn by the Claimant, the proceeds of sale of the Jeep Patriot, the 2017 Dodge Ram, the trailer and personal items including furnishings are now the subject to a claim of unjust enrichment. The Claimant's decision to remain silent on her retainer of these assets leaves the Court without the necessary evidence to conclude that her evidentiary burden has been met to support her claim.

Conclusion

[24] The Claimant has not suffered a detriment and in fact the evidence suggests quite the opposite. Had the Defendant elected to pursue a counterclaim, it is likely that the Court would have ordered the Claimant to pay the Defendant at the top of the Court's monetary jurisdiction. The proceeds of the sale of the Jeep Patriot and RV alone undermines the claim that the Claimant has been unjustly enriched. Justice not only permits but requires that the Defendant retain his truck and trailer free from interference.

[25] The claim is dismissed.

[26] The Claimant is ordered to sign and return all necessary papers to transfer ownership of the 2017 Dodge Ram Truck and 2012 Utility Trailer within ten (10) calendar days of being presented with the necessary papers by the Defendant.

Julien S. Matte, Small Claims Court Adjudicator