SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *MacInnis v Beckman*, 2024 NSSM 19

Date: 20240408
Docket: 526552
Registry: Sydney

Between:

Amy Kathleen MacInnis

v.

Scott Beckman

Adjudicator:	Darrel Pink
Heard:	April 3, 2024, in Sydney, Nova Scotia
Decision:	April 8, 2024
Counsel:	Amy Kathleen MacInnis – Self-represented Scott Beckman – Self- represented

By the Court:

The Facts

[1] The Claimant lives in Millville, Cape Breton. She works for Marine Atlantic. The Defendant, a retired veteran, lives in Sydney.

[2] The parties began a common law relationship in late 2014. At first the Defendant maintained his own apartment but in 2015 he moved into the Claimant's home.

[3] The arrangement between the parties was that the Defendant would make a monthly payment towards household and related expenses. As is common in such relationships, nothing about the arrangements was formalized either orally or in writing. There were no set agreements about how finances within the domestic partnership would be managed.

[4] The Defendant owed a substantial sum to the Canada Revenue Agency (CRA) and his credit rating did not enable him to borrow money in his own name. The Claimant paid a substantial sum ($36000 according to the Defendant) towards his $98000 debt.

[5] The Claimant was generous and wanted to help the Defendant, especially with his CRA obligations. Though she did so, there was no discussion about repayment to her or any agreement on the terms of her payment. Because the matter was not discussed, no contract required the Defendant to reimburse the Claimant.

[6] The Defendant, with help of a friend, renovated the basement of the Claimant's house. He provided the labour and some supplies. The Claimant paid for other supplies. There was no agreement between the parties as to how the value of the expenses and time spent would be distributed.

[7] Other exterior renovations followed, with both parties contributing value to the work. Again there were no discussions about who was responsible for what spending and thus no agreements about this.

[8] The Defendant had access to and used a credit card in the Claimant's name. The Claimant alleges this was to be used exclusively for household purposes when she was working, as her job kept her on board ship for two weeks at a time. The Claimant says the Defendant used the credit card for personal matters. There was not enough evidence to prove that.

[9] The parties bought a camper trailer for about $50000. Though it was registered in both names, the loan, taken out to buy the trailer, was only in the Claimant's name. The evidence shows the parties set up a joint account. The Defendant paid money into the account each month and the Claimant withdrew money to make payments on the loan. Though the evidence shows this arrangement happened over many months, the details of ownership and entitlement of the trailer are not clear. After the relationship ended, there was a brief exchange giving the Defendant an opportunity to buy the trailer before it was sold by the dealer, but there was not enough time for this to be completed. There was no agreement between the parties about ownership and the details of the financial obligations of each. Though their conduct might let the Court imply an agreement, when looked at in light of the mixing of their many financial obligations, which included payments on the Claimant's personal vehicle, I am not prepared to imply terms of an agreement.

[10] There was evidence the Defendant made payments on the Claimant's personal vehicle. He also contributed a lump sum payment from the Department of Veterans' Affairs to the couple's shared finances.

[11] In September 2020, the relationship ended. The Defendant left the Claimant's home. Over the five years of the relationship, the couple incurred

substantial debts. The camper trailer was returned to the dealer and sold at a loss. About $15000 was owed on the loan after the sale.

[12] The Claimant says she took out a second mortgage to cover the debts she had incurred on the Defendant's behalf. She produced no evidence relating to the mortgage, its sum, the date it was signed or any discussions about it with her bank.

[13] When the relationship ended the Claimant had substantial debt that resulted in her making a consumer proposal under the *Bankruptcy and Insolvency Act*, which she continues to pay. She says her credit rating has been destroyed because of the debts she incurred during her relationship with the Defendant.

[14] In October, November 2020, and January 2021, the parties exchanged text messages about their various financial obligations and entitlements. In January 2021 it was clear the Defendant had no intention of paying the Claimant any sums he allegedly owed as a result of the relationship. Nor did he assert that he felt the Claimant owed him money or anything, though he asked for the return of an engagement ring.

[15] The Claimant lost contact with the Defendant and says she could not locate him. She demanded that he reimburse her for expenses and loans she incurred in

the Defendant's name. By early 2021 she was aware the Defendant denied any financial obligation to her.

[16] On September 7, 2023, the Claimant sued in the Small Claims Court seeking $25000 from the Defendant. On November 1, 2023, the Defendant filed a Defence and Counterclaim. He denied any obligations to the Claimant and claimed $25000 for work done to improve the Claimant's home and for payments made by him towards the camper trailer.

Common Law Relationships

[17] This Court has dealt with the difficulties associated with sorting out financial obligations arising from common law relationships. Adjudicator Richardson summarized those difficulties in Rayner v Smith, 2010 NSSM 6.

> [36] The first difficulty revolves around the attempt to "account" for the multitude of economic contributions that are made by individuals to the "common account" during the course of the relationship.
> [37] When people join together in a common law relationship, they often merge their finances. The income and expenses of one become the income and expenses of both. As well, the way in which that common burden is shouldered varies from couple to couple. In one all income and expenses may be tracked and shared on a 50/50 basis; in another, on a pro-rated basis; and in a third, one partner may pay all the basic living expenses while the other contributes to the joint retirement savings. The fact then that a loan is taken out in the name of one does not mean necessarily that it is for the benefit of that person alone–it may be for and often is for the benefit of both.
> [38] Specific agreements to share expenses or to contribute to the purchase or property are enforceable as contract. On the other hand, gifts of property that are made with no expectation of return or repayment cannot be turned into agreements to repay by subsequent regret in the event that the relationship falls apart: see, for e.g., *Cook v. Orr*, *supra*, at paras 8 and 14. The difficulty lies in distinguishing between the two. That task is not an easy one, especially given that contributions to the common good (what are,

> in effect, gifts) are "precisely the kind of thing people do for each other when they are in a caring relationship:" *Cook v. Orr*, per Adjudicator Slone at para.14.
> [39] The second difficulty, which springs from the first, has to do with how best to determine whether particular transactions are "gifts" or "agreements to contribute." Something which on its face may appear to be a gift may in context of the entire history of the relationship be an "agreement to contribute,"–or *vice versa*. Alternatively, something that started out as an "agreement to contribute" may over time have become a gift. For an Adjudicator to hear one claim in isolation deprives him or her of the ability to consider the claim in the context of the relationship that gave birth to it.
> [40] The third difficulty is that notwithstanding the fact that the parties are in a "common law" relationship it remains the case that they have chosen not to marry. Marriage by law legitimizes the notion of the common good. It signals an agreement to be bound by the provisions of the *Matrimonial Property Act*. It thereby ensures to some extent that financial burdens are *prima facie* assumed to be joint burdens and hence joint liabilities. Those who do not marry cannot rely upon that assumption. For whatever reason they have chosen not to be governed by the same law that governs married couples: see, in general, *Attorney General of Nova Scotia v. Walsh* 2002 SCC 83 (CanLII), [2002] 4 SCR 325 at paras.35, 40, 43, 49. And it means as a result that a common law partner who decides unilaterally to incur a debt cannot automatically assume that the burden of that debt will be shared by his or her partner, even if that partner takes some advantage from the debt. Whether or not the burden was jointly assumed will have to depend upon the facts of each case.

[18] The task for this Court is to determine if there is any legal basis to fix a financial duty on either party in this common law relationship. As Adjudicator Richardson noted the most common basis for doing so is an agreement between the parties on how funds were to be spent, debts incurred, or labour contributed would be accounted for. It is also necessary to determine if one party gifted money or services to the other. There could also be a remedy arising from an unjust enrichment of one party to the detriment of the other.

The Claims

[19] The Claimant seeks.

1. $15429.33 owed after the camper trailer was sold.

2. The sum paid to reduce the Defendant's CRA debt.

3. The amount the Defendant spent using the Claimant's credit card - $10148.68 plus $5013.39 she paid on his credit card.

4. $7318.38 paid to allow the Defendant to travel to Manitoba to go to a veterans' conference.

[20] There are other small items too, but the total sought is $25000, the maximum financial authority of this Court.

[21] The Defendant counterclaims for the payments made by him towards the Claimant's vehicle ($24000), the value of the engagement ring he 'gave' the Claimant ($4500), and items such as a mattress and appliances he paid for and left with the Claimant ($4950)

[22] Again he limits his total claim to the Court's maximum authority of $25000.

Defence

[23] The primary defence asserted by the Defendant is that the Claim was filed outside the time limits set by the *Limitations of Actions Act*, SNS 2014, c. 35. The relevant section is s. 8:

> **8(1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of**
>
> (a) **two years from the day on which the claim is discovered; and**
>
> (b) fifteen years from the day on which the act or omissionon which the claim is based occurred.
>
> **(2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known**
>
> (a) that the injury, loss or damage had occurred;
>
> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) **that the act or omission was that of the defendant**; and
>
> (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.
>
> **(3)** For the purpose of clause (1)(b), the day an act or omission onwhich a claim is based occurred is
>
> (a) **in the case of a continuous act or omission, the day on which the act or omission ceases**; and
>
> (b) in the case of a series of acts or omissions concerning the same obligation, the day on which the last act or omission in the series occurs. 2014, c. 35, s. 8.

[24] The Claimant had to file her claim within 'two years from the day on which the claim is discovered.' Her claim, based on an alleged breach of the Defendant's contractual obligation, was 'discovered' when the act or omission that provided the basis for her claim occurred. On the facts, in January 2021, when the Defendant advised that he would not be responsible for any financial obligations to the Claimant, the Claimant had the basis for a claim in contract.

[25] The Claimant testified she lost contact with the Defendant and could not locate him in order to make her claim. The *Limitations of Actions Act* does not recognize that as a basis for extending a limitation period.

[26] The fact she did not know where the Defendant was did not prevent the Claimant from commencing her claim in this Court within the two years required by the Act. Once the action was begun, she would have to serve the Defendant, a process which the Court could facilitate through substituted service if that was required.

[27] Based on the *Limitations of Actions Act*, the Claimant did not file her claim within the time limits given and she is barred from bringing her claim. Her action against the Defendant is dismissed.

[28] The same analysis pertains to the Defendant's Counterclaim. This is an independent claim, and though it is tied to the main action as it relates to facts that are common, the Defendant could have commenced a claim against the Claimant for the sums he alleges she owed to him. The end of the relationship is when the time would start to run for the applicable limitation period. It is not clear if the Defendant intended to claim anything from the Claimant until she sued him, but that does not result in an extension of the time allowed for him to do so. His right to claim repayments for funds he spent, allegedly on the Claimant's behalf, or for the return of an engagement ring, began when the relationship ended, and the payments were not being made. At that point, the Defendant could have filed a

claim for what he asserts she owed him. He did not do so within the two year limitation period. The Counterclaim is dismissed.

Were there contracts between the parties?

[29] If my analysis of the Limitations Act is wrong, I must determine if there were contractual relationships between the parties requiring payments between them.

[30] The onus is on the Claimant to prove on the balance of probabilities there was a contract between her and the Defendant that required him to reimburse her for expenditures made on his behalf or that benefitted him. Proof of a contract requires evidence of an agreement between the parties. There had to be terms that were agreed to as well as proof of a mutual benefit (offer and acceptance) and value. Because the Claim relates to a number of times that money was paid to a third person, ostensibly for the benefit of one of the parties, each arrangement must be analyzed to determine if a contract exists.

[31] In a domestic relationship, as in a business relationship, the requirements for a contract are that the parties must agree on their mutual obligations. To do so they must turn their minds to what each party will do. For example, when we buy this camper trailer, we will each contribute 50% to the loan payments and if one of us

fails to do so, these are the consequences. Or, in return for you renovating the house, you can live here, or you will get a percentage interest in the home. There are no end of arrangements the parties could have made.

[32] I am satisfied there were no agreements on how various payments would be managed. The parties simply made payments in the hope their relationship would last and all would be well. Because that was not the case, does not let the Court impose arrangements or agreements that did not exist.

[33] On that basis, I find the Claimant has not proven that there were agreements between the parties on the consequences of mixing their finances in their short relationship. I find they went into the relationship with their eyes wide open. The Defendant had significant debts, which the Claimant helped him with. In doing so there were no stated expectations of repayment, and none were asserted until the relationship ended. The same is true for payments made on the camper trailer and the Claimant's vehicle. The couple mixed their finances, maybe not equitably. In doing so, they did not tur their minds to the consequences that flowed from the payments and certainly did not establish any agreements or any requirements to repay one another.

[34] Nor do I find that either party has been unjustly enriched because of the mixing of their financial lives that would justify an order in *quantum meruit* or unjust enrichment.

Conclusion

[35] The Claim and Counterclaim are dismissed without costs.

Darrel Pink , Small Claims Court Adjudicator