

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Peskett v. Peskett, 2013 NSSM 45

Claim No: SCCH 419004

BETWEEN:

Name	<u>Ray Peskett</u>	Claimant
Address	[removed]	
Phone	[removed]	

Name	Mike Peskett	Defendant
Address	[removed]	
Phone	[removed]	

Date of Hearing: October 8, 2013

Date of Decision: October 9, 2013

Ray Peskett – Self Represented

Mike Peskett – Self Represented

DECISION

The parties to this claim are brothers. The claim revolves around the sharing of a \$250,000 prize from a winning Atlantic Lottery Keno Ticket. Most of the facts are not seriously in dispute. As with most “lottery ticket cases”, this case turns on the facts, more so than the law.

Mike Peskett (“Mike”) and his former common law partner, Roseanne Kaizer, reside in a home in Hatchett Lake. Despite that their relationship has terminated, they continue to live together as “roommates”. Each of them plays the lottery including Lotto 6/49 and Super 7. On August 17, 2013, both Mike and Roseanne each purchased Keno tickets, one of those was a winning ticket. As a result, a cheque was issued to Ms. Kaiser for \$250,000. A photocopy showing a copy of the cheque and the winning ticket were tendered into evidence, as was a photograph of Ms. Kaiser holding an oversized promotional cheque in front of an Atlantic Lottery backdrop. In both cases,

the “real” cheque and promotional cheque were made payable to “Roseanne Kaizer”. Mike Peskett’s name does not appear on the cheques.

It is common ground that as avid lottery players, both Ray Peskett (“Ray”) and his brother, Mike, discussed sharing lottery prizes. The terms of the discussions and their binding intent are at the root cause of this litigation. Ray alleges that they had an agreement which provided that should one brother win the lottery, the other brother would receive 10%. Mike contends that the statements were not intended to be binding and he did not discuss a percentage. They only discussed “taking care of each other”. There was no evidence that they purchased tickets together or with Ms. Kaizer. Ray’s is claiming \$25,000 plus costs. Roseanne Kaizer is not named in this claim.

Ray Peskett testified that he and his brother were always close. Ray and his partner, Bertha McManus, travelled with Mike and Roseanne Kaizer. The brothers being avid lottery players would discuss various scenarios if they won the lottery. When he learned of the lottery winnings, he called Mike to congratulate him and either in that telephone call or a later one, asked for his share of the money. According to Ray, Mike refused citing a previous argument where Ray apparently insulted him. Ray testified that the agreement was for either brother to pay the other a 10% share should one brother win the lottery. There was nothing in writing. He did not contribute to the cost of the ticket or a pool of tickets for the draw.

Bertha McManus is Ray’s common law partner. She testified that she did not recall a specific amount being discussed by Ray and Mike but recalled there being no limitation placed on which lottery or an amount that was won.

Paulette Bezanson is the parties’ sister. She testified that both Ray and Mike referred to themselves as “ten percenters”, meaning they discussed giving 10% of any lottery winnings to each other. She testified that they agreed they would need to win millions to “take care” of each other.

Roseanne Kaizer testified that she and Mike were common law partners, but when their relationship ended, they continued to live as roommates. She testified that she and Mike play the lotteries regularly. Both of them pay for their own separate tickets and keep them in separate places. She testified to claiming the prize and receiving the cheque. She gave some of the prize money to Mike to pay off his car loan, she spent some on herself and the rest is deposited in her bank account.

Mike Peskett testified that he and his brother enjoyed a close relationship. He confirmed that he and Ms. Kaizer are roommates. He testified that he did not receive any funds from Ray for the purchase of the ticket. His and Ms. Kaizer’s decision not to pay Ray has nothing to do with any insults or name calling.

In order to establish liability on Mike's part, Ray has to prove his claim on the balance of probabilities. I find he has not done so.

The evidence established that Ms. Kaizer claimed the lottery prize of \$250,000. I accept her evidence that she purchased the ticket with her own money without any contribution from Ray or Mike. In order to be successful, at a minimum, Ray had to prove the lottery prize was Mike's, either directly or indirectly. Ray has urged me to find that the ticket was initially Mike's and the funds are being held by Ms. Kaizer to defeat his claim in contract. He has offered no evidence which supports this submission. Indeed, given Ms. Kaizer's evidence which I accept, I am inclined to draw the opposite conclusion. Ms. Kaizer purchased the ticket from her funds and maintains control of it in her bank account. Whether she is Mike's roommate or common law partner, her ownership of the assets gives Mike no right to any share of it, absent any proof of some other legally enforceable relationship. Ray had the burden to prove the existence of such a relationship on a balance of probabilities. He has not offered any evidence in this respect. Furthermore, Ms. Kaizer has not been named in this action.

Even if the funds had been affected by any "agreement" between Mike and Ray, I find he has not proven a valid contract exists. In order to be a valid contract, certain elements must be present including an intention to create legal relations. It is clear that both brothers discussed the possibility of one or the other winning the lottery. I take judicial notice of the fact that these types of discussions are very common among lottery players. Various claims and promises are made but few people making or hearing those statements ever expects them to come to fruition, given one's odds of winning a significant amount of money. Most people would take such statements as hype or bravado, hardly capable of belief. In order to take these discussions to the status of a contract, there must be proof of an intention to be legally bound. There is nothing close to that here. One can only imagine the impact on the law and the courts in Canada, and indeed the lotteries themselves, if the opposite were true.

For these reasons, the claim should be dismissed. As there is no evidence of any costs incurred by the Claimant, I decline to award any.

Dated at Dartmouth, NS,
on October 9, 2013;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)