

Claim No: 284440

Date: 20071123

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Hedden v. George, 2007 NSSM 93

**BETWEEN:**

Name Mike Hedden Claimant

Name Lesa George / Leesa George / Lesa George-Worth / Lesa Jeorge Defendant

Revised Decision: The text of the original decision has been revised to remove addresses of the parties on March 26, 2008. This decision replaces the previously distributed decision.

**DECISION**

**PROCEEDINGS**

- (1) This proceeding was heard on September 25, 2007.
- (2) The Claimant, Mike Hedden (Mr. Hedden), claims the sum of \$3,552.00 plus costs from the Defendant, Lesa George (Ms. George), or the return of various items enumerated in a list attached to his Notice of Claim Form.
- (3) A Counterclaim was brought by Ms. George against Mr. Hedden, however, at the outset of this proceeding, Ms. George agreed that the Counterclaim should be adjourned as it may include matters which are beyond the jurisdiction of this Court. Ms. George may bring the Counterclaim back to this Court to be heard and all issues raised by the Counterclaim, including the jurisdictional issue are reserved to the Court.

**SUMMARY OF RELEVANT EVIDENCE**

- (4) The parties resided together in a home owned by Ms. George between April 2005 and August 2007.

(5) Following their separation, arrangements were made for Mr. Hedden to pick up some of his belongings from the home. According to Mr. Hedden, he was not able to pick up all of the items and he has provided a list of thirty-three items which he claims belong to him and have been wrongfully retained by Ms. George.

(6) A list of the items including the value assigned to them by Mr. Hedden is as follows:

1.	Mountain bike .....	\$ 300.00
2.	Kayak .....	600.00
3.	Paddle .....	25.00
4.	Lifejacket .....	50.00
5.	2 pairs of snow blades .....	250.00
6.	Carry bags for snow blades .....	25.00
7.	Ski boots .....	150.00
8.	Queen box spring and mattress .....	350.00
9.	Blow up portable bed - single .....	75.00
10.	Hutch from Mr. Hedden's daughter's desk .....	30.00
11.	4 - Star Choice Receivers - 1-HD / 3 Standard .....	350.00
12.	Video Ipod .....	300.00
13.	Mr. Hedden's daughter's curling iron .....	10.00
14.	Brown rider flip flops - size 11 .....	40.00
15.	Sandwich maker .....	12.00
16.	Frying pans (2) .....	25.00
17.	18 Volt cordless drill and case / 2 batteries and charger .....	40.00
18.	3.6 Volt cordless screwdriver kits, bits, drills, battery and charger .....	100.00
19.	Portable booster pack .....	140.00
20.	Jigsaw .....	100.00
21.	HRM issued duffle bag / fire and emergency .....	No value assigned
22.	Various towels .....	20.00
23.	Bed cloths for Mr. Hedden's daughter's bed .....	75.00
24.	Queen size bedding for my bed .....	70.00
25.	Roots watch .....	50.00
26.	2 power toothbrushes .....	75.00

27.	Painting .....	50.00
28.	2 Golf passes for Hartlen Point .....	80.00
29.	Brown shoes .....	50.00
30.	SD cord and connecting cables for his daughter's phone .....	50.00
31.	Tire pump .....	20.00
32.	Columbia snow pants - large black .....	100.00
33.	Running Room jacket - black with silver reflective pinstripe .....	<u>100.00</u>
TOTAL .....		\$3,712.00

- (7) Mr. Hedden did not provide any information concerning the items listed by him which would positively identify the item in question such as serial numbers, make or model or other identifying information.
  
- (8) Mr. Hedden did not specify the source of the value which he has placed upon the items, although I conclude from his evidence that he intended to reflect the replacement value of the items in question.
  
- (9) Mr. Hedden introduced a number of exhibits from which he asks the Court to conclude that Ms. George is not a credible witness. Those exhibits include documents relating to convictions for offences, including forgery of a document and obtaining lodgings under false pretenses. Also included were documents relating to a claim arising from a previous relationship in which Ms. George was involved in which it was alleged that certain funds were advanced to her and that she failed to repay those funds. The documents confirm that a Judgment was taken out against Ms. George. The action was commenced in June 2006, and the Judgment entered in August 2006. It is not clear from the information provided whether this was a default Judgment or whether it followed a hearing.
  
- (10) The Court also heard evidence from William Hiltz, who is employed with Prosperident, which is a company involved in the forensic investigation of employees in dental offices. Ms. George is a former dental office employee. She was discharged from her employment on August 24, 2007.
  
- (11) Ms. George elected not to comment upon Mr. Hiltz's evidence in her testimony. As such, his evidence is unrefuted. I accept Mr. Hiltz's evidence that Ms. George, who was employed in the payroll office, withheld mandatory deductions from her own pay and failed to advise her employer that there was a Revenue Canada garnishee against her wages.

- (12) Mr. Hedden produced originals of receipts which he said were provided to him by Ms. George for rental payments made by him between the months of January and June 2006. He says that these receipts were found in a bag containing some of his belongings which he picked up from the home after the separation. It is his position that these receipts were falsified. No further evidence was introduced beyond the receipts themselves and the testimony of Mr. Hedden.
- (13) Ms. George restricted her testimony to the items which Mr. Hedden is seeking the return of or money value for. She admitted that she has in her possession several of the items, including items #1 - Mountain bike, #2 - Kayak, #5 - one pair of the two pairs of snow blades referred to, #7 - ski boots (she states that the original purchase price was \$89.00 but provides no receipt), #8 - the box spring and mattress, #11 - the receivers, #19 - the portable booster pack, and #27 - the painting (Ms. George states that this was purchased at a flea market for \$1.00).
- (14) Ms. George also stated in her evidence that with respect to other items, they either do not exist or are not in her home, in particular, item #3 - paddle, #4 - lifejacket, #12 - a video Ipod, #16 - frying pans, #17 - cordless drill and case, #18 - cordless screwdriver and parts, #20 - jigsaw, #21 - duffel bag, #25 - Roots watch, #28 - golf passes, and #31 - tire pump.
- (15) There are various items which Ms. George states have already been returned to Mr. Hedden or his daughter, including item #13 - his daughter's curling iron, #14 - flip flops (she could not find his flip flops in the house so she put a different pair in an overnight bag the day that she changed the locks), #22 - towels (she produced a receipt where she purchased new towels and stated that she gave towels to Mr. Hedden when he left), #29 - brown shoes, #30 - SD cord and connecting cables for his daughter's phone, #32 - Columbia snow pants, and #33 - Running Room jacket.
- (16) Ms. George offered further explanation with respect to the remaining items, namely, item #9 - portable bed - she states she paid for this as she took it off the rent that Mr. Hedden was paying to her that month, #10 - hutch for Mr. Hedden's daughter's desk (this hutch was purchased by her and she took it off her desk and put it on Mr. Hedden's daughter's desk temporarily and removed it before giving the desk back to Mr. Hedden's daughter), #15 - the sandwich maker (she says this was a Christmas gift from her son), #23 - she says that she purchased all bed clothes for Mr. Hedden's daughter's bed and, in any event, Mr. Hedden picked them up from the home, #24 - Queen size bedding (she states that she purchased it originally and kept it for her own bed), #26 - she states that she purchased the power toothbrushes and has the charger and the handles are no good without the charger.

- (17) Ms. George testified that there were several times that the parties separated and each time, Mr. Hedden would remove various items from the home to his parents' home or some other location, then he would bring some of the items back when they got back together. She asks the Court to conclude that Mr. Hedden has either misplaced items or that he is simply mistaken when he says that the items are in the home.
- (18) Neither party has produced any evidence concerning the original cost of any of the above items or any evidence of their current market value.

### **FINDINGS**

- (19) The burden of proof is on the Claimant, Mr. Hedden, to prove on a balance of probabilities that the items in question belong to him and what value the items have and that the items remain in the possession of Ms. George.
- (20) The evidence provided is unsatisfactory and incomplete in many respects.
- (21) Mr. Hedden focused upon the credibility of Ms. George. He asked the Court to draw the conclusion that her evidence lacks credibility and that she should not be believed and that his evidence should be preferred over her evidence in all respects.
- (22) It has been proven and I do accept that Ms. George was previously convicted on a charge of forging a document and obtaining goods by false pretenses and, further, she was advanced a certain amount of funds by a Mr. Munroe which advances were made upon her assurances that they would repaid and that the amounts were not repaid. Also, I accept Mr. Hiltz's evidence concerning her being less than honest and forthright in her dealings with her former employer.
- (23) I am unable to conclude solely on this basis, however, that the entirety of Ms. George's evidence in this proceeding should be rejected.
- (24) The Court has an obligation to weigh all evidence on its own merits and to consider, in addition to issues of credibility, other issues, including what evidence of corroboration is available, what documents there are to support the evidence. Where there are conflicts in the evidence, the Court must at all times keep in mind that the burden of proof is the balance of probabilities and rests upon the Claimant.

- (25) In regards to those items which belong to Mr. Hedden and which have been retained by Ms. George, the Court must assign a value based on the evidence provided and, as indicated, evidence of value is scanty at best in this case. The value to be assigned by the Court must be one which is found to be reasonable based on all of these circumstances. The value assigned will in this case be based upon the best estimate of the current market value of the item in question which is the measure of Mr. Hedden's loss as the goal is to put Mr. Hedden back in the same position as he were had the item not been unlawfully retained from him.
- (26) Finally, it would not be practicable, in my opinion, to order the return of any of the specific items as insufficient identifying information was provided by Mr. Hedden to include in an Order which he would be able to enforce.

### **ORDER**

- (27) Based on all of the above considerations and findings, I conclude firstly that there are various items that remain in the home which Ms. George has admitted to as set out earlier herein, and I conclude further that with respect to items 3, 4, 12, 16, 17, 18, 20, 21, 25, 28, and 31, that these items also remain in the home. I believe Mr. Hedden is being truthful when he states that the items were in the home when he left as, for example, I do not believe that he would have removed the lifejacket and paddle but not the kayak.
- (28) With respect to the remaining items, with the exception of the portable bed, I find that Mr. Hedden has not met the necessary burden of proof.
- (29) I therefore order Ms. George to pay to Mr. Hedden the following amounts:

1.	Mountain bike .....	\$ 150.00
2.	Kayak, paddle, and lifejacket .....	500.00
3.	Snow blades (1 pair) and ski boots .....	150.00
4.	Box spring and mattress .....	200.00
5.	Portable bed .....	50.00
6.	Receivers .....	200.00
7.	Portable booster pack .....	60.00
8.	Painting .....	25.00
9.	Tools .....	300.00
10.	Watch .....	25.00

11.	Golf Passes .....	80.00
12.	Ipod .....	150.00
13.	Pump .....	10.00
14.	Frying pans .....	<u>10.00</u>
TOTAL	.....	\$1,910.00

**COSTS**

- (30) Mr. Hedden claims costs of bailiff fees and filing fees, the cost of renting a truck to remove his items, and the cost of an address change.
- (31) Ms. George claims the costs of filing her Counterclaim and the bailiff fee and the cost of changing the locks.
- (32) The costs relating to the Counterclaim put forward by Ms. George are reserved since, as indicated, this proceeding has been adjourned without day.
- (33) As for the costs relating to the Claim, since the Claimant has been partially successful, I will award him 50% of his costs or \$130.00.

**SUMMARY**

- (34) The Defendant, Lesa George, shall pay to the Claimant, Mike Hedden, the following amounts:
    - 1. Value of items retained by her belonging to Mr. Hedden ..... \$1,910.00
    - 2. Costs .....
- |       |       |            |
|-------|-------|------------|
| TOTAL | ..... | \$2,040.00 |
|-------|-------|------------|

Dated at Dartmouth, Nova Scotia,  
on November 23, 2007.

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Patrick L. Casey, Q.C., Adjudicator

