

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Findlay v. Beaver, 2005 NSSM 20

Claim No.: SCCH 242879
Date: 20050630

BETWEEN:

Name: **Karen Louise Findlay** Claimant

- and -

Name: **Doug John Beaver** Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on December 13, 2006. This decision replaces the previously distributed decision

Appearances:

Claimant: Pamela K. Earle, Articled Clerk (Boyne Clarke)
Defendant: Self Represented

D E C I S I O N

[1] This matter was heard on May 16, 2005. At the conclusion of the hearing I suggested to Ms. Earle that she make a written submission dealing with the issue of unjust enrichment. The issue is whether the Small Claims Court has jurisdiction to make an award based on unjust enrichment, being an equitable remedy.

[2] The jurisdiction of the Nova Scotia *Small Claims Court Act* is set out in Section 9. Basically, the Court has jurisdiction to make an award (not exceeding the statutory limitation of \$15,000.00) in respect of a matter arising under a contract or a tort. And as well, the court can make an order for municipal rates and taxes and an order requiring the delivery of personal property.

- [3] It is clear to me that an equitable claim such as unjust enrichment does not fall under the explicit jurisdiction of the Nova Scotia *Small Claims Court Act*. Ms. Earle suggests that because the section does not exclude matters of unjust enrichment, the *Act* implicitly includes them. I cannot agree with that submission.
- [4] The law is clear that a statutorily created tribunal only has the jurisdiction that the statute confers or as may be necessarily incidental to authority specifically given.
- [5] In my opinion, the jurisdiction to make an equitable award does not fall within either the express language of the *Act* or is necessarily incidental to an express authority. Accordingly, there is no jurisdiction and I dismiss the claim made under the argument of unjust enrichment.
- [6] With respect to the claim under debt, I was not satisfied on a balance of probabilities that the Claimant had proven that the funds were advanced as a debt. While not entirely clear, the overall thrust of the evidence indicated that it was a gift from the Claimant to the Defendant. While this also was not entirely clear, at the end of the day, the Claimant has the burden of proof to show on a balance of probabilities that the claim has been established. I find that that burden has not been met.

DATED at Halifax, Nova Scotia, this day of June, 2005.

Michael J. O'Hara
Adjudicator

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