

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Atiyah v. Twin Lighthouse Farm Ltd., 2013 NSSC 147

**Date:** 2013-05-07

**Docket:** Syd. No. 304367

**Registry:** Sydney

**Between:**

Heather Atiyah

Plaintiff

v.

Twin Lighthouse Farm Ltd., and Joan LeRoy

Defendants

**Judge:** The Honourable Justice Cindy A. Bourgeois

**Heard:** January 14 – 22, 2013, in Sydney, Nova Scotia

**Counsel:** Heather Atiyah, Plaintiff, in person

Joan LeRoy, Defendant, in person

**By the Court:**

[1] Money and friendship often mix, and sometimes with disastrous consequences. This is such a case. The Plaintiff Heather Atiyah and the Defendant Joan LeRoy were friends for several years. That friendship extended to include the Atiyah children as well as Paul Ginter, a resident at Ms. LeRoy's farm property. The friendship came to an end in August of 2008, with both parties now seeking financial compensation from the other for a variety of reasons.

**NATURE OF THE CLAIMS ADVANCED**

**a) The Plaintiff Atiyah**

[2] Heather Atiyah asserts that from 2005 to August of 2008 she provided money, goods, and labour to Ms. LeRoy and her business, Twin Lighthouse Farm. She asserts that most of these expenditures were to be accounted towards the cost of her boarding her horses at the farm. Ms. Atiyah claims the value of the benefit provided to the Defendant far exceeds the value of the boarding costs she would have otherwise incurred. She claims the difference on the basis of the doctrine of unjust enrichment. Her claim is against both Ms. LeRoy and the corporate defendant, although both will be referenced interchangeably in this decision.

[3] Ms. Atiyah claims that she paid for the materials required to improve Ms. LeRoy's farm property, specifically making the necessary changes to board large horses. This included the creation of nine new stalls, an outdoor structure and a riding ring. Ms. Atiyah further asserts that she provided the funds for farm equipment, the purchase of animals, and two farm trucks, all at the request of Ms. LeRoy. She was to receive ongoing board of her horses in exchange for these contributions. Ms. Atiyah further claims for the value of her labour expended at the farm, including manual labour, as well as the efforts placed in developing a marketing program for Ms. LeRoy's agri-tour business.

[4] Further, Ms. Atiyah claims that Ms. LeRoy wrongfully retained property owned by her, and despite having obtained a Recovery Order, failed to return it to her possession. It is asserted that Ms. LeRoy sold a horse, Breeze, belonging to Ms. Atiyah, and she seeks its return, or alternately, economic damages arising from its loss.

[5] Ms. Atiyah further claims against Ms. LeRoy due to a variety of actions, which the plaintiff asserts gives rise to a claim for punitive damages.

[6] Although originally named as a Defendant, Ms. Atiyah did not, at trial advance a claim against Paul Ginter. Other than being called as a witness by Ms. LeRoy, he did not participate in the trial.

### **b) The Defendant Joan LeRoy**

[7] The Defendant LeRoy is a retired school teacher and the owner of Twin Lighthouse Farm. Although Ms. LeRoy had originally incorporated a company, the corporate status was revoked and the business ran as a sole proprietorship. In or around 2000, Ms. LeRoy commenced a small agri-tour business at her farm property in Point Edward, Cape Breton Regional Municipality. This included tours, children's parties, summer camps and a variety of animals.

[8] Ms. LeRoy asserts that Ms. Atiyah started bringing her children to the farm, and quickly developed an interest in horses and a farming lifestyle. Although Ms. LeRoy acknowledges that Atiyah may have expended funds in terms of changing some aspects of the farm, most notably developing infrastructure for horse boarding, this was done because Atiyah planned to purchase the farm and business.

[9] Ms. LeRoy asserts that any funds spent by Ms. Atiyah were not at her request, but incidental to the plaintiff purchasing the property. Ms. LeRoy asserts that as Ms. Atiyah did not follow through with the purchase, any funds spent were at her own peril, and that she owes the plaintiff nothing. She further asserts that she believed some of the items being purchased by Ms. Atiyah were intended as gifts either for herself, or her boarder Paul Ginter.

[10] Ms. LeRoy has also brought a counter-claim against Ms. Atiyah. She claims damages for unpaid board in relation to the Atiyah animals kept on the farm property. She also claims against Ms. Atiyah for damages done to her business and property by virtue of the business being "hi-jacked" by the plaintiff.

## **THE EVIDENCE**

### **Heather Atiyah**

[11] Ms. Atiyah testified that she became acquainted with Joan LeRoy in 2002 or 2003, firstly, when she attended at Twin Lighthouse Farm for various children's activities. Her daughter Noorah initially became involved with a program offered by Ms. LeRoy in relation to miniature horses, and by 2005, was interested in expanding her equestrian pursuits to include full size horses.

[12] Although Ms. LeRoy had the facilities for boarding miniature horses, the farm was not capable of housing full size animals. Ms. Atiyah testified that as Ms. LeRoy was interested in expanding upon her business, and she was interested in boarding her horses, both miniature and full sized at the farm, a verbal agreement was reached between the women.

[13] Specifically, Atiyah agreed to front the costs associated with making the farm property suitable for the boarding of full sized horses, along with other incidental costs, such as feed and supplies. In exchange, Ms. Atiyah's contributions would be credited against the board which would otherwise be charged in relation to the care of her horses at the farm. This would continue until Ms. LeRoy's boarding business became established, the credit was extinguished, and thereafter, Ms. Atiyah would pay monthly board, just like any other boarder.

[14] Ms. Atiyah testified that when this agreement was reached, the cost of board for a full sized horse was \$250.00 per month and \$150.00 per month for a miniature horse. This arrangement was never reduced to writing, but continued until August of 2008, when her friendship with Ms. LeRoy ended.

[15] In terms of the improvements to the farm, Ms. Atiyah testified that she provided the funds for the creation of nine new horse stalls, seven of which were in an addition to the existing barn; a 80 by 100 foot outdoor arena; a 16 by 40 foot run in shelter for pasturing horses; fencing and outdoor toilet facilities; Ms. Atiyah further testified that she provided financial assistance to support and improve the existing agri-tour business, including the purchase of animals and the development of promotional materials.

[16] Ms. Atiyah testified that the expansion of the boarding facilities commenced in the fall of 2005, and were completed by the spring of 2006. This was paid for by Ms. Atiyah, and to be offset against current and future boarding costs. In 2006, the newly renovated facilities permitted Ms. LeRoy to offer boarding services to others, who paid monthly boarding fees.

[17] In addition to the above expenditures, Ms. Atiyah testified she provided other significant financial contributions to Ms. LeRoy and the farm. Specifically, in 2007, three horses owned by Ms. LeRoy (Candy, her foal and Joe) were sold for a total of \$3500.00. These funds were all retained by Ms. LeRoy for various farm improvements, and \$1000.00 specifically went towards the purchase of a zebra.

[18] Ms. Atiyah also testified as to vehicles she provided for Ms. LeRoy's use at the farm. After Ms. LeRoy's farm truck was stolen in October of 2005, Ms. LeRoy

asked Ms. Atiyah to finance the purchase of a new vehicle, pending receipt of insurance proceeds. A 2004 Chev Silverado was financed by Ms. Atiyah, with title to the vehicle being placed in her name. When the insurance proceeds were insufficient to cover the cost of repaying Ms. Atiyah for the financed purchase price, Ms. LeRoy requested that the costs be included in the boarding arrangement. From January of 2006 to November of 2007, Ms. Atiyah paid the monthly financing cost of the vehicle in excess of \$600.00, and the costs of insurance. During this time frame, the truck remained at the farm and was used for farm purposes. The truck was ultimately taken from the farm in November of 2007 when Ms. Atiyah's husband became aware of the existence of the truck, and raised concerns about a vehicle registered to his wife, being used at the farm. It was taken from the farm by Ms. Atiyah, and sold at a loss of \$5000.00.

[19] In late 2007, and after the Chev Silverado was removed from the farm, Ms. Atiyah again agreed to provide a truck to the farm. This vehicle, a 2003 Ford, was purchased outright by Ms. Atiyah for \$18,000.00. Ms. Atiyah testified she understood this vehicle was for use at the farm, by Ms. LeRoy or Mr. Ginter. At trial, Ms. Atiyah understood the vehicle was still used at the farm, but presently registered in the name of Paul Ginter.

[20] Ms. Atiyah testified she purchased an all-terrain vehicle for the farm at a cost of \$3500.00. This was purchased at the request of Ms. LeRoy and used by many at the farm, including Noorah and other boarders. She made many other purchases of materials for the farm on a "cash" basis, and for which she does not have receipts.

[21] Ms. Atiyah also expended funds on the development of marketing materials for Twin Lighthouse Farm. Additionally, Ms. Atiyah testified she performed a great deal of physical labour around the farm, including construction of the boarding facilities, maintenance work, caring for the stables and assisting with agri-tour activities. Ms. Atiyah testified that she did not initially expect to get paid for her labour in this regard, but rather it was done to assist Ms. LeRoy with the development of her business, because they were friends, and because she enjoyed it. This labour was not part of the "trade-off" arrangement with respect to boarding fees.

[22] Ms. Atiyah is now claiming the value of the above expenditures, on the basis of unjust enrichment. In her evidence, Ms. Atiyah presented numerous invoices and corresponding banking documents purporting to show payment, asserting that these were directly for the farm and ultimately to the benefit of Ms. LeRoy.

[23] Ms. Atiyah acknowledges that she never directly paid board in relation to the horses kept at Twin Lighthouse Farm. She testified that the value of the boarding fees do not amount to \$46,200.00, the sum claimed by Joan LeRoy shortly after their “fall out” in August of 2008. At some point in the litigation, Ms. Atiyah was provided a breakdown prepared by Ms. LeRoy outlining the boarding fees owing. This document, entered by Ms. Atiyah into evidence, purportedly has a number of errors. By way of example, Ms. Atiyah testified that Ms. LeRoy’s tally appears to charge for the miniature horse Stardust for a year prior to it being purchased by Ms. Atiyah, and she was charged board relating to a zebra, which was not owned by her.

[24] Ms. Atiyah provided a breakdown of what animals she had boarded at the farm, and the resulting cost of board. This totaled \$32,509.00, and Ms. Atiyah acknowledges her claim should be offset by that amount.

[25] Ms. Atiyah denies that she, either alone or in conjunction with Paul Ginter, ever agreed tentatively or otherwise, to purchase Twin Lighthouse Farm. She denies that the various expenditures were in contemplation of or preparation for, purchasing the farm.

[26] Ms. Atiyah also testified as to the breakdown of her relationship with Ms. LeRoy in August of 2008, and various events which followed. She testified that in August, she and Paul Ginter became involved in a dispute. Mr. Ginter was a resident of Twin Lighthouse Farm and assisted with many activities both on the property for Ms. LeRoy, as well as in relation specifically with the Atiyah horses. Ms. Atiyah testified that like Ms. LeRoy, she and her children were very close to Mr. Ginter.

[27] Mr. Ginter became angry with Ms. Atiyah and advised that he was no longer prepared to assist in caring for, or transporting the Atiyah horses to various events. Shortly thereafter, Ms. Atiyah was advised by several individuals, that Ms. LeRoy had contacted them, alleging that she had not paid boarding fees for her horses and a significant amount of money was owed.

[28] In light of these developments, Ms. Atiyah decided it was prudent to have her animals and various personal belongings housed at the farm removed. She testified that despite involving legal counsel, writing numerous letters and obtaining a Recovery Order for her property, Ms. LeRoy would not return either her horses or her belongings. In the Recovery Order, Ms. Atiyah itemized as many of her personal belongings as she could recall, and placed a value of \$5772.87 on these items. She testified that she has spent \$6693.34 to the date of trial replacing

her tack. Ms. Atiyah testified that although Ms. LeRoy did express a willingness to turn over the horses, this was always conditional upon Ms. Atiyah paying her the sum of \$46,200.00, being the sum allegedly owing for past boarding fees. Ms. LeRoy further sought out the assistance of a collection agency, which in the fall of 2008 began contacting both Ms. Atiyah and her husband, seeking payment of these funds.

[29] Ms. Atiyah asserts that Ms. LeRoy was unreasonable in her demands, and ultimately wrongfully sold her horses and kept her other belongings. Ms. Atiyah seeks damages for the loss of her belongings, notably tack, saddles and a miniature cart which have never been returned to her. Although two of the three horses sold by Ms. LeRoy have been returned to her possession, one horse, Breeze, remains with the third party to whom she was sold in November of 2008. Ms. Atiyah seeks to have the horse returned, or in the alternative, damages for her loss.

### **Joan LeRoy**

[30] Joan LeRoy testified that she is the owner of Twin Lighthouse Farm. Following her retirement, Ms. LeRoy began to develop her property as a small agri-tour business. She described that she had a number of small animals including goats, rabbits, birds, and miniature horses. She offered her farm property for both organized groups, such as school class trips, as well as individual visitors.

[31] Gradually, Ms. LeRoy's agri-tour business expanded to include summer camps, organized children's birthday parties and a miniature horse club. It is through these activities that Ms. LeRoy had the occasion to meet Heather Atiyah and her children. Noorah in particular, took a quick interest in the miniature horses, and became involved in the club. Ms. Atiyah and the children began spending significant amounts of time at the farm.

[32] Ms. LeRoy testified that a friendship developed between her and Ms. Atiyah and she was very fond of both Noorah and her younger brother. Ms. LeRoy testified she would often pick the children up at school, and provided tutoring to them to assist in their transition from the Montessori school to public school.

[33] Ms. LeRoy testified that Heather Atiyah approached her about buying the farm, it being the plan that Heather and Paul Ginter, Ms. LeRoy's long term boarder, would be partners in the enterprise. They intended to develop a high end boarding stable for both miniature and full-sized horses. Ms. LeRoy testified that she agreed to sell the farm, and as such she began to gradually remove herself from

the operation of the farm, permitting Ms. Atiyah and Mr. Ginter to take over the management and development.

[34] In terms of the purchase price, Ms. LeRoy testified that this was dependent on what she left on the property in terms of equipment and animals. The more she left, the more expensive the farm would be to purchase. Ms. LeRoy testified that a firm price was never agreed to; although she had made Heather Atiyah aware she wanted a minimum of \$300,000.00 for the farm property itself. She further testified that as part of the agreement, she had the option of staying on the farm as a renter and still undertaking her agri-tour business. Ms. LeRoy would be like “a visiting guest”, free to come and go as she wished.

[35] On cross-examination Ms. LeRoy acknowledged that neither the agreement to purchase, nor any negotiations surrounding it were ever reduced to writing. Ms. LeRoy testified that this was because Ms. Atiyah wanted to purchase the farm without her husband’s knowledge. When asked when the agreement was put in place, Ms. LeRoy testified that she could not provide an exact date, as the agreement “started slowly”. She thinks the discussions regarding a potential sale started in 2004. Similarly, Ms. LeRoy testified that there was no end date specified as to when the property would be transferred to Ms. Atiyah and Mr. Ginter.

[36] Ms. LeRoy testified that on the basis of the agreement of sale, she permitted Ms. Atiyah and Mr. Ginter to undertake significant changes to the farm. Although she was aware of buildings being put up and construction materials arriving at the farm, this was at the direction of Atiyah and Ginter, and part of the development of their high end stables. Similarly, Ms. LeRoy testified that boarders began using the new facilities and paying monthly fees. Although Ms. LeRoy acknowledges collecting money from the various boarders, she did not retain the funds for her own purposes, rather rolled these funds back into the farm for Ms. Atiyah and Mr. Ginter’s benefit.

[37] Ms. LeRoy does not dispute that Heather Atiyah expended funds on a variety of items, such as farm trucks, an all-terrain vehicle, and provided funds for the purchase of animals – the zebra in particular. She asserts however, that these expenditures were part of readying the farm for the stable enterprise or were outright gifts to Paul Ginter. She further asserts that other improvements made to the property as claimed by Ms. Atiyah were unknown to her, such as the “surprise” deliveries of gravel. Ms. LeRoy testified people often made donations to the farm and it was not unusual to have materials dropped off without explanation.

[38] Ms. LeRoy testified that by August of 2008 she was becoming frustrated with the arrangement. She described being unhappy with Paul Ginter, who without notice, would bring large animals to the farm, including a zebra, yet the sale still had not taken place. She testified that she had a heated discussion with Paul Ginter about the issue and the next thing she knew, he was refusing to care for any of the animals, including Ms. Atiyah's horses. Ms. LeRoy testified this left her in a terrible predicament as she had a barn full of horses, and nobody to look after them. She needed to remedy the situation quickly.

[39] Ms. LeRoy testified that in the fall of 2008 she tried desperately to have Ms. Atiyah remove her animals from Twin Lighthouse Farm. Despite the efforts of two lawyers, Mr. Broderick and Mr. Nathanson, Ms. Atiyah flatly refused to remove her animals. Finally, Ms. LeRoy gave notice to Ms. Atiyah via correspondence from Mr. Nathanson that if she did not arrange to have her animals removed from the farm, that she would sell them. On November 1, 2008, Ms. LeRoy sold the horse Breeze to Mary Beaton Buchanan, and shortly thereafter, the horse Candy to Cindy Boutilier. Ms. LeRoy testified that because Ms. Atiyah effectively abandoned the horses, she had no choice but to get rid of them as she was having difficulty providing for their care.

[40] On cross-examination, Ms. LeRoy denied Ms. Atiyah's suggestion that the removal of the horses was contingent on Ms. Atiyah paying her the sum of \$46,200.00. Ms. LeRoy asserts she was anxious to have Ms. Atiyah remove the animals, and only sold them once Mr. Nathanson told her it was safe to do so as they were considered abandoned.

[41] Although a number of letters were entered into evidence regarding the communications between Ms. LeRoy's counsel and Ms. Atiyah's counsel, Ms. LeRoy testified that she had never actually seen a copy of Mr. Nathanson's letter sent to the Atiyah lawyers in mid-October, setting out a November 1st deadline for removal of the horses. She testified she knew this letter was sent by Mr. Nathanson because he told her it would be. When the horses were not removed from the property by November 1st, it is on the strength of this letter that Ms. LeRoy sold the Atiyah horses to third parties.

[42] Ms. LeRoy testified as to the \$46,200.00 debt she placed into collection against Ms. Atiyah and Dr. Atiyah. When the relationship ended in August of 2008 and it became apparent that the farm sale would not be proceeding, Ms. LeRoy wanted to recoup some of the money she had lost. She testified that she concluded that if she "pretended" that Ms. Atiyah was a boarder during the past

several years and calculated what she would have paid in board, that this would be a fair sum to resolve her losses.

[43] On cross-examination, Ms. LeRoy was pressed to break down how that amount was calculated. She advised that it included a number of expenses beyond just board, most notably \$7000.00 in relation to the loss of her farm tractor. Ms. LeRoy testified that she had purchased a used tractor from a neighbor, and was making installment payments on it. Because of the publicity in the community surrounding her dispute with Ms. Atiyah, Ms. LeRoy testified the seller demanded the remaining balance be paid forthwith. When she could not comply, he repossessed the tractor. She further acknowledged that she had fallen behind on payments prior to this demand being made. The claimed sum of \$7000.00 was for a replacement tractor. Ms. LeRoy testified the tractor was repossessed about “two years ago”, and that she had originally entered into the purchase arrangement for it in the fall of 2008 or 2009.

[44] Regarding the loss of Ms. Atiyah’s personal belongings, Ms. LeRoy testified that she does not have her belongings, nor is she aware of where they may be. Ms. LeRoy testified that the tack was kept by Ms. Atiyah and other boarders in the barn. Despite her asking for it to be secured, it was often left out in the open. People, including boarders and members of the public come and go in the barn freely, and would have ready access to the tack. Ms. LeRoy can’t be held responsible for it going astray.

[45] On cross-examination, Ms. LeRoy was questioned extensively about the tack and her knowledge of what was on her property belonging to Ms. Atiyah. Ms. LeRoy testified that the tack disappeared in “bits and pieces” but she tried to keep it as secure as possible. Ms. LeRoy acknowledged that tack had been placed in an outdoor toilet, and a saddle originally owned by Ms. Atiyah was sold by Paul Ginter to a Mr. Beaton. Ms. LeRoy testified that Mr. Ginter advised her that Heather Atiyah had given the saddle to him. Ms. LeRoy further acknowledged that this sale took place after the Recovery Order was in place, and that the particular saddle in question was included in the order. When asked why she would permit Mr. Ginter to sell the saddle, Ms. LeRoy then testified that she was uncertain as to whose saddle it was.

[46] Ms. LeRoy was questioned about the miniature cart Noorah used with Stardust, and whether it was at the farm. Ms. LeRoy testified there were three carts at the farm in August of 2008 and one could possibly have been Noorah’s. When asked where it was now, and why it had not been returned, Ms. LeRoy testified that two carts had been stolen from the farm, along with her bicycle on an

occasion when she was off shopping. So she could not return the cart, as it was gone. She testified that she reported this theft to the police, who came to the farm and took a statement.

[47] Upon further questioning, Ms. LeRoy testified she only told the police about the missing bicycle, not the carts. She testified she did not view their disappearance as being a theft. When she realized they were missing she “checked with lots of people” as to where they may be. Ms. LeRoy acknowledged the cart was listed in the Recovery order, but is unaware of whether it was on the farm when she was served with it.

[48] In addition to the \$46,200.00, Ms. LeRoy testified that she is seeking damages from Ms. Atiyah in relation to the damage done to her property and her agri-tour business. Ms. LeRoy testified that the changes undertaken by Ms. Atiyah and Mr. Ginter have been a detriment to her. She has converted the riding arena to a mini-putt golf attraction. Her hayfield has been destroyed by the pasturing of large horses. She has suffered business losses because people no longer make donations of goods and money like they used to, due to the very public conflict with Ms. Atiyah. Ms. LeRoy was unable to place a dollar figure on these damages, nor produced any compelling evidence, documentary or otherwise, in support of her assertions.

[49] Ms. LeRoy also asserts that her home now requires major renovations, and is much less attractive due to the changes she made in anticipation of the sale to Ms. Atiyah and Mr. Ginter. She removed her kitchen, and placed it upstairs, as part of her plan to live in an apartment once the sale took place.

[50] Ms. LeRoy acknowledged that there are still large horses being housed on her farm. Some belong to Paul Ginter, others are owned by third parties who do pay a modest rental fee. She is not running a boarding facility, but rather is forced to continue to house large horses because she needs the funds to return her property to its original condition.

### **Other Witnesses**

[51] Arielle Burke was called by Ms. Atiyah and testified that she boarded her horse at Twin Lighthouse Farm from the summer of 2008 until August of 2010. She had originally entered into a lease to own arrangement with Joan LeRoy for the purchase of the horse “Ashley”, and paid \$250.00 per month board. She testified she paid the board in cash to Ms. LeRoy. Later, she traded Ashley back to Ms. LeRoy and purchased “Skipper”, and boarded him as well.

[52] Ms. Burke testified that in the spring of 2010, Ms. LeRoy provided her with written notice that she would no longer be providing “boarding” services, effective March 1st, rather, rental of stalls. Ms. Burke testified that post March 1st, “everything stayed the same” in terms of the services provided by Twin Lighthouse Farm, although the fees increased to \$265.00 per month. She testified that there were a number of other boarders at the farm at the same time she was. Paul Ginter would feed the horses and muck out the stalls as part of the board arrangement.

[53] Ms. Burke testified that she did on at least one occasion pay Paul Ginter to trailer her horse. He used a red Ford truck, with a “Twin Lighthouse Farm” sign on the door, and a horse trailer. This vehicle was always on the farm, and used for various chores. Ms. Burke testified she could not recall ever seeing Ms. LeRoy drive the truck.

[54] On cross-examination, Ms. Burke testified that all of the boarders had their own tack, but sometimes they would share and borrow pieces. She testified she kept her tack in a box in the barn in order to keep it clean and organized. The barn was not locked, it was open for people, including members of the public, to come and go freely.

[55] Ms. Burke testified that she left Twin Lighthouse Farm when another boarder, Kathleen Hains opened her own facility. She confirmed that Ms. LeRoy was not upset about her leaving. On cross-examination, Ms. Burke acknowledged that if Ms. LeRoy was not on the farm, she would give board money to Paul Ginter, and asked him to pass it along to her.

[56] Betty Lou Aucoin was called to testify by Ms. Atiyah. She testified that she boarded a horse at Twin Lighthouse Farm from October of 2010 to May of 2011. Her rate was \$200.00 per month, but she was to muck out her own stalls and teach riding lessons. She testified she charged \$25 per lesson, and would give \$5 of that to Ms. LeRoy. At some point, the share given to Ms. LeRoy increased to \$10, as Ms. Aucoin had added a second horse to the boarding facility. In addition to the lessons, Ms. Aucoin testified she put on a March break camp, where she taught horse handling and Ms. LeRoy taught theory. They equally split the \$600 generated by the camp.

[57] Ms. Aucoin testified that she left Twin Lighthouse Farm in May of 2011 as she was becoming increasingly concerned with both Ms. LeRoy’s and Mr. Ginter’s behaviours. Specifically, she was pressured to be untruthful if asked about her arrangements with the farm – she was to advise that she was “renting” there, not

“boarding”. She understood that this was due to an ongoing lawsuit. She was also concerned about inconsistent information she was receiving from both Ms. LeRoy and Mr. Ginter, who worked in the barn with the horses. By way of example, Mr. Ginter advised her that Ms. Atiyah had stolen miniature horse carts and harnesses from the farm. Ms. LeRoy was present during this conversation. Later, Mr. Ginter advised her that he had hidden the carts at his brother’s home.

[58] On cross-examination, Ms. Aucoin testified she had witnessed other boarders paying full board, meaning the farm would provide hay, feed, muck out the stalls and turn out the horses. She testified she was the only horse owner in the barn who paid less board, and did her own work. Everyone else paid more, and had Paul Ginter care for their horses.

[59] Ms. Aucoin further confirmed on cross-examination that shortly before she left Twin Lighthouse Farm, Ms. LeRoy had asked her to sign “a waiver” and she refused to do so. She testified that the waiver purported to make her completely responsible for any injuries sustained by persons taking lessons on the farm. Ms. Aucoin testified she did not feel it appropriate for her to carry such blanket responsibility, but would have signed something accepting responsibility for her own actions.

[60] Cindy Boutilier was called to testify by Ms. Atiyah. She testified that in November of 2008 she purchased a horse “Nikki” from Joan LeRoy. She originally found out about the horse being for sale when she met Paul Ginter at a neighbouring farm. He told her about the horse and invited her to come to Twin Lighthouse Farm to see it. She did.

[61] Ms. Boutilier negotiated the sale arrangement with Paul Ginter, but made payments to Joan LeRoy, in cash. She paid in installments for a full purchase price of \$2500.00. The witness identified a sales agreement she signed, which had been prepared by Joan LeRoy.

[62] A short time following the sale, Ms. Boutilier heard through a co-worker that Heather Atiyah wanted to speak to her about Nikki. She contacted her and understood from that conversation that Heather Atiyah believed she owned Nikki, and that the horse had been wrongfully sold by LeRoy. Ms. Boutilier testified that she contacted Ms. LeRoy to discuss the situation, and was advised by her that she had the right to sell the horse and she should not give it back to Heather Atiyah. After some thought, Ms. Atiyah called Ms. LeRoy and advised her she did not want to get in the middle of an apparent dispute, and wanted to return Nikki.

[63] Ms. Boutilier testified that shortly thereafter, Joan LeRoy attended at her place of employment, and told her that she was not to return the horse to Heather Atiyah, and if she did, Ms. Boutilier would be “hearing from her lawyer”.

[64] On cross-examination, Ms. Boutilier acknowledged that she had experienced an injury with Nikki kicking, but that was not the reason for wanting to return it. She also confirmed that Joan LeRoy had given her Heather Atiyah’s telephone number, and had laughed at her when she asked about a refund of the purchase price, stating she could get that money from Heather Atiyah.

[65] Harold Nardocchio was called to testify by Ms. Atiyah. He formerly worked in sales and finance at Jim Sampson Motors. He recalls selling a truck to Heather Atiyah; however he understood it was for use on a farm. He recalls Joan LeRoy being present with Heather Atiyah, along with another gentleman, although he could not be certain Ms. LeRoy was present when the paper work for the sale was finalized.

[66] Kyle Beaton was called to testify by Ms. Atiyah. Mr. Beaton testified he had met Heather Atiyah in the fall of 2011 at Blackrock Stables where his horse was being trained. Mr. Beaton testified that he had earlier purchased a saddle from Paul Ginter for approximately \$200.00. He went to Twin Lighthouse Farm and was shown the saddle. It was being stored in an outside washroom, along with a lot of other tack, including he recalls, a child’s saddle. He identified the saddle purchased in a photograph presented to him by Ms. Atiyah.

[67] George Dunn was called to testify by Ms. Atiyah. He has known both Joan LeRoy and Heather Atiyah for a number of years. He is a former chair of the United Farmer’s Co-op, and knows both women from their visits to the Co-op store.

[68] Mr. Dunn explained how membership in the Co-op worked including benefits that derived through dividends. He testified that from 2005 to 2008, he was frequently in the store, both shopping and attending to Board business. He testified that he often saw Heather Atiyah and Joan LeRoy shopping together. He specifically recalls Heather Atiyah putting her purchases on Joan LeRoy’s membership account but paying for the items. He recalls asking Ms. Atiyah to open her own membership account.

[69] He recalls both Ms. Atiyah and Ms. LeRoy explaining that the items being purchased by Atiyah were for use at Twin Lighthouse Farm. He is certain of the

particular timeframe because he recalls discussing whether the women should have separate accounts with the then- manager.

[70] Wayne Brewster was called to testify by Ms. Atiyah. Mr. Brewster testified he knows Joan LeRoy from visiting at her farm, and it is there that he first came to meet Heather Atiyah.

[71] Mr. Brewster recalled the construction taking place at the farm, specifically remembering both Paul Ginter and Heather Atiyah working on the projects. He testified that he sold a number of horses to Heather Atiyah, starting with Nikki in the summer of 2005, to be followed by Candy and Penny. He also confirmed that he sold a horse to Paul Ginter, "Breeze", which he understood was for Ms. Atiyah's daughter. He was aware that although Mr. Ginter was doing the negotiating, that the purchaser of Breeze was Atiyah.

[72] Mr. Brewster testified he would bring his stallion to Twin Lighthouse Farm for breeding purposes, and would make bartering arrangements with Paul Ginter. He testified he always assumed Joan LeRoy and Paul Ginter to be a couple that owned and operated the farm together.

[73] Dr. Abdul Atiyah testified. He stated that he met Joan LeRoy through his wife. He has attended at Twin Lighthouse Farm on a few occasions, and at a number of horse shows to watch Noorah, but he has had no involvement with the farm or the activities being undertaken there.

[74] Dr. Atiyah testified he was not aware of his wife purchasing a truck for the farm, and was upset when he found out about the arrangement. He insisted on it being removed from the farm and sold. He had never discussed the purchase of the farm with his wife, nor would that be something he would entertain.

[75] The witness stated he became aware of the breakdown of the relationship with Ms. LeRoy, and quickly encountered problems. He testified about receiving notification from a collection agency in the fall of 2008 that he owed Ms. LeRoy \$46,200.00. This was upsetting, as he had no financial dealings with her at all.

[76] Further, in October of 2008, Dr. Atiyah testified he was met by Ms. LeRoy as he was leaving his home in the morning for work. Ms. LeRoy purportedly threatened to leave the horses owned by Ms. Atiyah in front of the hospital if suitable arrangements were not made to resolve the matters between herself and his wife. Dr. Atiyah testified he did not engage Ms. LeRoy in discussion, rather called Mr. Khattar and the police. He testified this encounter was upsetting because the

threat, if carried out, would result in a safety hazard to people and the animals, as well as being an embarrassment to him.

[77] Noorah Atiyah testified, and is currently 16 years of age. She testified about her activities at Twin Lighthouse Farm, and her involvement with Ms. LeRoy and Mr. Ginter. She testified as to her work and efforts training Breeze in particular.

[78] Noorah testified she and her mother would keep their tack in a particular place in the barn. From 2005 to 2008, she could not recall any problems with tack going missing. Noorah was not aware of any plan for her mother to purchase Twin Lighthouse Farm.

[79] Dale Stone was called to testify by Joan LeRoy. She lives in Baddeck and owns a horse ranch where she offers boarding. She testified she first met Ms. Atiyah when she and Paul Ginter came to her property to look at her arena. They were talking about building a riding arena at Twin Lighthouse Farm. Later, Ms. Atiyah also boarded horses at her ranch.

[80] In cross examination, Ms. Stone testified that she purchased a llama, donkey, paint mare and colt from Twin Lighthouse Farm. Paul Ginter delivered the animals to her.

[81] Ms. Stone also confirmed that Ms. Atiyah had contacted her to see if she could board a horse at her ranch that was arriving from Ohio. Ms. Stone testified that in terms of timeframe, August of 2008, "sounded reasonable", in terms of this contact. The witness did recall clearly that following Ms. Atiyah making this request; both Ms. LeRoy and Mr. Ginter arrived at her ranch to "warn" her about Heather Atiyah and encouraged her not to permit her to board at the ranch. They both told Ms. Stone that Ms. Atiyah did not pay her board at Twin Lighthouse Farm, and to not accept cheques from her, as they would "bounce".

[82] Ms. Stone testified that Ms. Atiyah ended up boarding several horses at her facility and she always paid her board.

[83] Kathleen Hains was called to testify by Ms. LeRoy. She testified that commencing January 15, 2010, she rented two box stalls at Twin Lighthouse Farm for her horses. The fee was \$100 per month, per stall. She did her own feeding, mucking out and turn out.

[84] She testified that while at the farm, she helped Arielle Burke work with her horse Skipper, who was a stallion. She testified Arielle was nervous with Skipper

and never rode him. Ms. Hains further testified that Arielle was not careful with her tack, and in fact, took a piece of Ms. Hains' tack when she left the facility.

[85] On cross examination Ms. Hains confirmed she was not boarding at the farm in the timeframe of 2005 to 2008, and could not comment on how things were run at that time. She confirmed she saw other boarders having Paul Ginter muck out their stalls and turn out their horses. She always paid Joan LeRoy cash for her rental fees. She left the farm on June 18, 2010 to start her own stables.

[86] Donna Burns was called to testify by Ms. LeRoy. She testified she had brought her children to Twin Lighthouse Farm for a variety of activities. Her daughter Abbey participated in the miniature horse club, but did not have to purchase a horse in order to do so. On cross examination Ms. Burns indicated that besides horses, there were a number of other animals at the farm, recalling ducks, rabbits, two donkeys and a zebra. She testified Joan LeRoy ran the activities and collected fees for the miniature horse club. Ms. Burns testified she gave monetary donations to assist with program fees for children who did not have the ability to pay.

[87] Ms. Burns testified she was friends with Heather Atiyah, having known her for over 30 years. The witness testified she had never heard or become aware of any plan for Ms. Atiyah to purchase Twin Lighthouse Farm.

[88] Paul Ginter was called to testify by Ms. LeRoy. He testified that he lives at Twin Lighthouse Farm, as a boarder. He has lived there for 20 years, and he "helps out" with the farm.

[89] Mr. Ginter testified that prior to Ms. Atiyah becoming involved at the farm, the agri-tour only dealt with small animals. Once Heather came to the farm, she first bought a miniature horse and then bought several larger horses. He and Ms. Atiyah became friends. They decide they would buy out Joan LeRoy and open a high end horse stables.

[90] On cross examination Mr. Ginter was asked about the alleged agreement to purchase the farm. He could not remember when the agreement with Joan was reached. He could not offer or advise of a purchase price, as Ms. Atiyah was discussing those details with Joan LeRoy. He testified the plan was that Ms. Atiyah would be putting in all the money to purchase, he would look after caring for the animals, and they would be equal partners.

[91] Mr. Ginter acknowledged that Ms. Atiyah paid for building materials for the farm and also she sometimes paid for hay. Mr. Ginter testified that he has a

Grade 3 education, and Ms. LeRoy assists him with reading and understanding mail and important papers.

[92] Mary Beaton Buchanan was called by Ms. LeRoy. She testified she is familiar with the horse “Breeze”, which she calls “Jasmine”. The witness testified she had purchased Breeze’s mother from Wayne Brewster and had the foal in her possession for six months. She returned Breeze to Mr. Brewster who then sold her. Ms. Beaton Buchanan testified she held a soft spot for Breeze and was aware she was owned by Heather Atiyah and located at Twin Lighthouse Farm. She had even approached Ms. Atiyah on at least one occasion and offered to buy Breeze, but Ms. Atiyah declined.

[93] In the fall of 2008, Paul Ginter called her and advised Breeze was for sale. Ms. Beaton Buchanan advised that she purchased the horse for \$2500.00 and paid the funds to Joan LeRoy. The witness further testified that when she first purchased Breeze, she was told that the horse had been abandoned. She later testified that she was initially prepared to sell Breeze back to Ms. Atiyah, and had in fact made this offer, which was declined. After working with the horse for a period, she was no longer willing to sell her.

[94] On cross-examination, Ms. Beaton Buchanan confirmed that she had been served with an Interlocutory Recovery order for the return of Breeze by the Sheriff’s department. She confirmed that she was aware that Heather Atiyah was seeking a return of the horse and in particular acknowledged receipt both of a note from Ms. Atiyah on November 4, 2008 requesting a return of the horse, as well as a letter from Ms. MacKinnon, solicitor for Ms. Atiyah advising that the lawfulness of Breeze’s sale was disputed.

[95] The witness confirmed that in light of the recovery order, she had posted a bond in order to retain possession of Breeze. Ms. Beaton Buchanan asserted she viewed the horse as being abandoned, and she had purchased it lawfully from Ms. LeRoy.

## **THE LAW**

[96] Because both parties are self-represented litigants, it may be helpful for their benefit to start with the most basic of propositions. A plaintiff bears the burden of establishing the merits of their claim, including the quantification of any damages sought, by admissible evidence adduced at trial. This equally applies to a defendant who makes a counter-claim.

[97] On a more case specific basis, there are two areas which are particularly relevant to the claim and counter-claim brought in this matter. Although Ms. Atiyah specifically pleads unjust enrichment, Ms. LeRoy's arguments give rise to similar considerations. Additionally, given that Ms. Atiyah specifically requests punitive damages, the availability of that particular remedy will also be considered.

#### a) Unjust enrichment

[98] Unjust enrichment is an equitable remedy which has been considered at length by the Supreme Court of Canada in a number of decisions. Two decisions of significance, **Garland v. Consumers' Gas Co. (Garland)**, 2004 SCC 25, and **Kerr v. Baranow (Kerr)**, 2011 SCC 10, addressed the application of the principles of unjust enrichment in two very different contexts, but together, create a comprehensive framework for considering the appropriateness of such a claim.

[99] In the recent decision of **Annapolis (County) v. Kings Transit Authority** 2012 NSSC 401, Warner, J. considered both decisions, summarizing the analytical framework arising from both as follows:

60 The analytical framework described in **Garland**, beginning at para. 28, and **Kerr**, beginning at para.31, is as follows:

1. Was the defendant enriched by the plaintiff? Enrichment connotes a tangible economic benefit conferred on the defendant. This analysis is devoid of moral or policy consideration. In **Kerr**, the Court clarified that the benefit may be positive or negative.
  
2. Was the plaintiff deprived? The **Garland** and **Kerr** courts do not analyze this step in any depth. Deprivation or detriment does not appear to have been in serious dispute in these cases. In **Garland**, the transfer of money was directly from the plaintiff to the defendant. In **Garland**, the Court described deprivation as involving a tangible, economic deprivation, devoid of moral or policy considerations. In **Kerr**, the Court clarified that the deprivation is a "corresponding" deprivation that may, in respect of a benefit to the Defendant, occur directly or indirectly.
  
3. While the **Garland** Court described the issue in para. 28 as: "Is there a juristic reason for the enrichment?", the analysis begins at para. 38 and clearly frames the third question as whether there is "an absence of juristic reason" for the enrichment. The answer to the question may require a two-step analysis. As noted above, in response to academic and judicial commentary, the Court described the first step as requiring the deprived party to prove that none of the established justifications for the benefit to apply. If it is successful, the evidential burden shifts to the beneficiary to establish a

juristic reason for retention, either by establishing a new category of juristic reason, or alternatively, that in the particular circumstances of the case (without establishing a new category) the retention is justified. Justice Cromwell amplified the juristic reason analysis at paras. 40 to 46 in **Kerr**.

4. Can the Defendant avail itself of any defence? **Garland** effectively sets this up as a fourth question (para. 28 and beginning of para. 62). In **Garland**, the defences advanced included the “change of position” defence, and the “regulated industry” or obedience to a statute defence. In **Kerr** the defences included the “mutual enrichments” defence.

5. What remedy, if any, should the court order? One of the features of equity is that equitable remedies are discretionary. The Supreme Court has not suggested, either in **Garland** or **Kerr**, that unjust enrichment has lost its equitable foundation such as to restrict the discretion of the Court in granting a fair remedy, or refusing any remedy.

[100] The above analysis will be applied to the factual findings reached by the Court in this matter in due course.

#### **b) Punitive damages**

[101] Ms. Atiyah claims punitive damages in relation to Ms. LeRoy’s conduct following the termination of their relationship, and most notably in relation to her retention and disposal of Ms. Atiyah’s property.

[102] The Supreme Court of Canada in **Fidler v. Sun Life Assurance Co. of Canada** 2006 SCC 30 revisited the availability of both mental distress damages and punitive damages for breach of contract. The Court describes the nature of punitive damages as follows:

61 While compensatory damages are awarded primarily for the purpose of compensating a plaintiff for pecuniary and non-pecuniary losses suffered as a result of a defendant’s conduct, punitive damages are designed to address the purposes of retribution, deterrence and denunciation: **Whiten v. Pilot Insurance Co.**, [2002] 1 S.C.R. 595, 2002 SCC 18, at para.43.

62 By their nature, contract breaches will sometimes give rise to censure. But to attract punitive damages, the impugned conduct must depart markedly from ordinary standards of decency – the exceptional case that can be described as malicious, oppressive or high-handed and that offends the court’s sense of decency: **Hill v. Church of Scientology of Toronto**, [1995] 2 S.C.R. 1130, at para. 196; **Whiten**, at para. 36. The misconduct must be of a nature as to take it beyond the usual opprobrium that surrounds breaking a

contract. As stated in **Whiten**, at para. 36, “punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment)”. Criminal law and quasi-criminal regulatory schemes are recognized as the primary vehicles for punishment. It is important that punitive damages be resorted to only in exceptional cases, and with restraint.

## **DETERMINATIONS AND CONCLUSIONS**

[103] The determinations to be reached by this Court will, at least to some extent, depend upon an assessment of credibility of both the parties and their respective witnesses. The Court in undertaking such an assessment is free to accept all, some, or none of the evidence offered by a particular witness.

[104] Because of the nature of the claims being made, the Court has found it helpful to consider the evidentiary conclusions and appropriate dispositions in accordance with two distinct timeframes; before and after August 2008.

### ***Matters up to August, 2008***

[105] The first and arguably most central determination to be made by this Court involves the nature of the arrangement, if any, between Heather Atiyah and Joan LeRoy. The documentation presented establishes that Ms. Atiyah expended funds on goods and materials used at, or for the benefit of Twin Lighthouse Farm. The question to be answered by this Court is “Why?”

[106] Ms. Atiyah asserts that the funds expended was done in lieu of boarding fees for her horses, and that this arrangement was reached when Ms. LeRoy expressed an interest in expanding her business to include the boarding of large horses. Ms. Atiyah agreed to provide the money to make the necessary changes and contribute towards expenses while the business grew, and in exchange, she would not be required to pay boarding fees. Ms. LeRoy asserts there was an agreement for the sale of the farm, and any funds expended by Ms. Atiyah were in furtherance of that sale eventually occurring. Her evidence in that regard is supported by Mr. Ginter.

[107] I reject the proposition that Ms. Atiyah either alone, or in conjunction with Paul Ginter, ever reached an agreement with Joan LeRoy to purchase Twin Lighthouse Farm. Clearly, there was no written agreement, as would be required for the sale of real property, but there was, even if the Court accepted the existence of an informal deal, no consensus ever reached as to price, what was included in the sale, or a final date of transfer. Although Ms. Atiyah may have involved

herself in the planning and implementing of the various improvements to the farm, I do not accept the evidence of Ms. LeRoy or Mr. Ginter as it pertains to the existence of a purported sale. I accept Ms. Atiyah's evidence that no such agreement, formal, tentative, or otherwise, was ever in place.

[108] Having determined there was no pending sale, why did Heather Atiyah make contributions, both financial and by virtue of her own labour, towards Ms. LeRoy's farm? The answer to that question may be more complex. I accept from the evidence that Ms. Atiyah and Ms. LeRoy were friends. I also find that Ms. Atiyah was interested in helping expand the farm's facilities both because she wanted to help Ms. LeRoy improve her business, but also because the improvements to the farm would provide the ability for she and Noorah, in an already familiar environment, to expand upon their equestrian pursuits.

[109] I find that Ms. Atiyah, in paying for the renovations to the farm, did not intend for these funds to be a gift to Ms. LeRoy, but rather would be recognized by way of a waiver of boarding fees. The existence of this informal agreement is supported by the fact that Ms. LeRoy did not collect fees from Ms. Atiyah for over three years, notwithstanding several horses being housed at the farm in that time frame. It is unfortunate that this agreement was not in writing, nor did either woman maintain a "running tally" of the quantum of the expenses paid or an accounting of the board fees which would have otherwise been generated. Much of the evidence at trial was mustered in an attempt to retroactively compile the value of expenditures made and calculated the boarding fees which would have otherwise been paid.

[110] Ms. Atiyah testified as to the funds she expended for the benefit of Ms. LeRoy. Many of these expenditures were supported by documentary evidence. I accept that Ms. Atiyah expended the following funds, as documented, in relation to expenditures at, or for the benefit of Twin Lighthouse Farm:

- a) \$10,730.77 at the United Farmers Co-op in relation to a variety of farm related expenditures;
- b) A total of \$18,441.26 in relation to materials such as gravel, lumber, miscellaneous building supplies and excavation services;
- c) A total of \$18,000.00, expended in November of 2007 in relation to the purchase of the Ford truck, originally registered to Joan LeRoy and presently in the name of Paul Ginter;
- d) Insurance expenses in the amount of \$2465.56 for 2006 and 2007 in relation to the truck utilized at and for Twin Lighthouse Farm;
- e) Advertising expenses in the amount of \$502.85;

f) Vet bills in relation to animals owned by Ms. LeRoy totaling \$446.44.

[111] The above items, supported by receipts or some other proof of payment, totals \$50,586.88.

[112] I am also satisfied that in addition to the Ford truck purchased outright by Ms. Atiyah in November of 2007, she had earlier financed a Chev Silverado, for use on the farm, for which she made the monthly payments. The truck remained on the farm and was used for farm purposes, until it was removed at the insistence of Dr. Atiyah and sold. The documentation and *viva voce* evidence provided by Ms. Atiyah is not clear as to the exact amount of the monthly payments made, or the exact timeframe that the truck was utilized at Twin Lighthouse Farm. I am satisfied, based on the evidence, that in excess of a year, Twin Lighthouse Farm had the use and benefit of the Chev truck, which was being paid for by Ms. Atiyah. It is this truck which Ms. Atiyah obtained in order to replace Ms. LeRoy's previous vehicle which had been stolen, and I find that Ms. LeRoy had asked for her to do so. I am satisfied that by virtue of providing the farm with this vehicle, Ms. Atiyah saved Ms. LeRoy the expense of purchasing or financing a vehicle within that timeframe.

[113] Ms. Atiyah asserts that she made a number of other financial contributions to Ms. LeRoy or her business for which she cannot produce receipts or other documentary proof. Most of these involved cash transactions of some form. Based on the evidence, I find that Ms. Atiyah made the following additional financial contributions:

- a) A cash purchase of an all-terrain vehicle for the farm - \$3500.00;
- b) Funds from the sale of Candy and her foal, owned by Ms. Atiyah, were retained by Ms. LeRoy in the amount of \$1200.00;
- c) Funds for the sale of Little Joe, owned by Ms. Atiyah, were retained by Ms. LeRoy in the amount of \$1000.00;
- d) Ms. Atiyah sold her horse Penny to Twin Lighthouse Farm for \$2500.00; however the payment was to go towards the boarding fee arrangement.

[114] There are a number of additional claims made by Ms. Atiyah which the Court declines to consider as either quantifiable or appropriate expenditures in terms of a claim against Ms. LeRoy. Although I accept that Ms. Atiyah paid \$1500.00 towards the purchase of the farm's "bumper trailer", her evidence was that this amount was set off against the board of the miniature horse Stardust in 2005. The "hay contribution" Ms. Atiyah claims in the amount of \$7200.00 was based upon her estimate of the amount of hay she likely purchased in the past

years, not sufficient in my view to award such a value. Absent a means of placing a more reliable value on this expenditure, the Court is unable to place a value on this claimed item. Ms. Atiyah also claims for the purchase of a variety of animals for the agri-tour. I am not satisfied that these purchases were intended to be part of the board exchange arrangement, it being just as probable that these were intended for gifts to the farm.

[115] Ms. Atiyah also claims the sum of \$27,300.00 in relation to her labour both physically at the farm, and in relation to her marketing efforts. At trial, Ms. Atiyah testified that it was never her intent that she would be paid or compensated for these efforts, either by way of board set-off, or otherwise. Although she was gratuitously and generously trying to assist Ms. LeRoy to improve her business through her efforts, this amount cannot be now added to the expenditures that the plaintiff seeks to recover from Ms. LeRoy. Further, the quantification relies upon Ms. Atiyah retroactively estimating the amount of hours she spend doing certain tasks and assigning a wage rate. The Court is reluctant to rely upon this analysis, done retroactively some years after the activities, and through the view of litigation.

[116] For the purpose of the analysis to follow, I am satisfied Ms. Atiyah has expended direct funds in the amount of \$60,000.00.

[117] I am further satisfied that the amount of board which Ms. Atiyah would have paid from 2005 to August of 2008 in relation to the horses maintained at Twin Lighthouse Farm amounts to \$32,509.00. Although Ms. LeRoy testified her claim of \$46,200.00 against Ms. Atiyah was a compilation of the board she would have paid, her evidence did not serve to support that calculation. In fact, Ms. LeRoy was unable to explain in a convincing fashion how that amount was derived. At one point Ms. LeRoy testified that \$7000.00 had been included in that sum due to the repossession of a tractor. Given that she engaged a collection agency in September of 2008 to collect \$46,200.00, and the tractor repossession did not occur until 2009 or 2010, the reliability of Ms. LeRoy's evidence is questionable.

[118] Ms. Atiyah provided a cogent and detailed breakdown of when her horses were boarded, and the applicable fee to be charged. This breakdown was not challenged by Ms. LeRoy in any material way.

[119] Ms. Atiyah claims the value of her contributions on the basis of unjust enrichment. Following the analysis as set out in **Annapolis (County) v. Kings Transit Authority, supra**, the first inquiry, whether the defendant was enriched

by the plaintiff, can be answered in the affirmative. Ms. LeRoy as the owner of Twin Lighthouse Farm, through Ms. Atiyah's established financial contributions, she has received substantial economic support, and significant material improvement to her property. Although Ms. LeRoy submits that the addition of 9 new stalls, an outbuilding, and arena are detrimental to her business, I reject this submission. The evidence simply does not bear out Ms. LeRoy's assertion of economic harm. Rather, I accept that from 2006 and continuing until present; Ms. LeRoy has had the opportunity to utilize these improvements for the boarding of large horses, and has generated income therefrom.

[120] As Ms. Atiyah has been deprived of her money, clearly the second inquiry in the analysis is met. The third inquiry considers whether there is a "juristic reason for the enrichment", or in other words some reason why Ms. LeRoy would be entitled to receive the benefits. There is not.

[121] The fourth inquiry looks to determine whether there is a defence to the claim. I have rejected Ms. LeRoy's evidence that there was an informal agreement to purchase; however, the boarding set off does constitute a valid consideration as it applies to a proper quantification of damages.

[122] As for quantification, the case law clearly established that the damages awarded are to be in the discretion of the Court. It is not as simple as undertaking a mathematical calculation of the funds expended, and deducting the boarding fees. The Court is mindful that for some of the expenditures, Ms. Atiyah also gained a benefit. The purchase or provision of farm vehicles is a good example, as not only did Twin Lighthouse Farm benefit from the acquisition of these items, Ms. Atiyah had them at her disposal for the transporting of her horses to various locations. The Court is also mindful that some of the expenditures, such as the creation of a horse boarding facility will have long lasting benefit to Ms. LeRoy in terms of business potential. Some of the expenditures made by Ms. Atiyah were clearly made, and were clearly beneficial to Ms. LeRoy, but are difficult or impossible to quantify.

[123] In consideration of all of the above, I find that Ms. Atiyah is entitled to damages in the amount of \$25,000.00 in relation to her claim of unjust enrichment.

*Matters following August 2008*

[124] The next issue to be addressed by the Court is whether Ms. LeRoy wrongfully retained or converted property belonging to Ms. Atiyah? If so, what is the appropriate remedy?

[125] Ms. Atiyah asserts that Ms. LeRoy wrongfully withheld her tack and also her horses, most notably Breeze. Ms. LeRoy submits that Ms. Atiyah abandoned her property including the horses, and she had every right to sell, or otherwise dispose of it. Further, Ms. LeRoy asserts that given the unsecured nature of the premises, she cannot be expected to keep Ms. Atiyah's personal belongings safe. If they have gone astray, it should not be found to be her fault.

[126] If Ms. Atiyah in fact abandoned her property this would give rise to a strong defence against her claims for compensation and recovery. I conclude that Ms. Atiyah did not abandon her property including both tack and horses, based upon the evidence and in particular the following findings:

- Ms. Atiyah following the breakdown of her friendship with Ms. LeRoy, quickly retained legal counsel who repeatedly advised Ms. LeRoy either directly or through her counsel, that she sought the immediate return of her property;
- Ms. Atiyah obtained an interlocutory Recovery Order, seeking the return of her tack and horses, and posted a personal cash bond in the amount of \$20,000.00 in the event the Sheriff's department were successful in executing upon the order;
- Through legal counsel, Ms. Atiyah continued to attempt to negotiate satisfactory terms for the return of her property with Ms. LeRoy.

[127] In my view, Ms. Atiyah could not have made it clearer that she wanted her property back. She had no intent to abandon it. A reasonable person in Ms. LeRoy's position would not interpret Ms. Atiyah's actions as being consistent with an abandonment of her property. Before leaving the issue of abandonment, the Court views it prudent to address a particular aspect of Ms. LeRoy's evidence.

[128] As noted earlier herein, Ms. LeRoy submits she sold Breeze and Candy in early November, 2008 after giving ample notice to Ms. Atiyah that it was her intent to do so if the horses were not removed by November 1, 2008. Ms. LeRoy asserts Mr. Nathanson sent a letter to Atiyah's legal counsel in mid-October to that

effect. Ms. Atiyah testified she had never been made aware of such a letter or demand being made on behalf of Ms. LeRoy.

[129] Notwithstanding the fact that ongoing pieces of correspondence between the Khattar law office and Charles Broderick, and later the Nathanson law office were entered into evidence, there is no letter meeting the description advanced by Ms. LeRoy. One would expect that such a key piece of correspondence would be introduced at trial, if it existed. I conclude that such a letter was not written from the Nathanson law office to the Khattar office giving advance warning of a sale. I conclude this not only on the strength of Ms. Atiyah's evidence that no such demand for removal of the horses by a date certain was ever made known to her, but Ms. LeRoy herself testified she had never actually seen such a letter, but believes it was sent because Mr. Nathanson told her it would be. Given the evidence further establishes that Ms. LeRoy did not retain the Nathanson law firm in relation to this dispute, it is difficult to accept Ms. LeRoy's evidence in this regard.

[130] I further accept that although Ms. LeRoy had, prior to November 1, 2008 expressed a willingness to release the horses to Ms. Atiyah, this was always on a conditional basis – on the basis of the payment of \$46,200.00 or Ms. Atiyah accepting possession of a number of farm animals which she did not own, or want.

[131] Having found Ms. Atiyah did not abandon her property, the Court must consider whether Ms. LeRoy's conduct should attract liability. I am satisfied that Ms. LeRoy was aware that Ms. Atiyah sought a return of her belongings. If that was not apparent from the letters from her counsel, being served with an Interlocutory Recovery Order should have made that clear beyond question. Ms. LeRoy's evidence relating to the Atiyah tack is troublesome. Her evidence about the horse carts being stolen was unconvincing and inconsistent, as was her testimony surrounding the sale of a saddle to Kyle Beaton.

[132] I do not accept that the Atiyah tack was stolen by third parties. Rather, it is much more probable that it was hidden away either by Ms. LeRoy herself, or with her knowledge, with the intent to not only deprive Ms. Atiyah of its use, but to sell it for profit. It is particularly noteworthy that when served with the Interlocutory Recovery order, Ms. LeRoy did not refute the tack (or horses for that matter) being in her possession, but posted a bond permitting her to retain the specified items until the conclusion of this litigation. If the tack was missing, or Ms. LeRoy could not ascertain what belonged to Atiyah as opposed to others, she should not have posted a bond as she did. Although it is possible that Ms. LeRoy did not, as a self-represented person, understand the purpose of the order and consequences of

posting a bond, it is much more probable in my view that she did, and her actions were calculated.

[133] In terms of remedy, the Court could order the return of the tack, as itemized in the Recovery order. I view this as neither adequate nor prudent in the circumstances of this case. Because of both the passage of time, and the fact that some of the items have undoubtedly disappeared, ordering a return would be inappropriate. In these circumstances, the Court finds that an award reflective of the replacement value of the tack is the more appropriate remedy. I accept Ms. Atiyah's evidence that most, but not all of the tack has been replaced, at a documented cost of \$6693.34. She is entitled to recovery of that amount.

[134] I now turn to the horse "Breeze". As it was sold wrongfully by Ms. LeRoy, Ms. Atiyah seeks its return. In the alternative, she seeks monetary compensation. At the outset, the Court has no hesitancy in stating that if Ms. Beaton Buchanan was a *bona fide* purchaser for value without notice of Ms. Atiyah's claim of ownership, it would be reluctant to order a return of the animal. Rather, the Court would assign damages for the wrongful conversion.

[135] Ms. Beaton Buchanan is not, in my view "equity's darling", and cannot claim to be a *bona fide* purchaser without notice. Although I find she in fact paid Ms. LeRoy for the horse, she knew or ought to have known when doing so on November 1, 2008, that the horse belonged to Heather Atiyah. Her own testimony supports that she knew the horse had been owned by Atiyah and kept at Twin Lighthouse Farm. Although Ms. LeRoy may have represented to her that Breeze had been abandoned, it was, based upon her actual knowledge of the horse's ownership incumbent upon her to inquire as to the accuracy of that proposition. She did not.

[136] Ms. Beaton Buchanan's evidence was not convincing in many regards. Specifically, she testified that she was willing to give Breeze back to Ms. Atiyah shortly after the purchase, and attempted to contact her in this regard. She asserts that Ms. Atiyah declined the return of the horse. I flatly reject the witness' evidence in this regard.

[137] Firstly, it became apparent in her subsequent testimony that Heather Atiyah had left a note, dated November 4, 2008 advising Ms. Beaton Buchanan that she wanted the horse back, and viewed the recent sale by Ms. LeRoy as unlawful. Ms. Atiyah did not decline the return of the horse – she was desperate for her safe return. Ms. Beaton Buchanan had no intention, early on or afterwards, of returning Breeze to her legal owner.

[138] Ms. Beaton Buchanan was served with a Recovery order by the Sheriff's department. As opposed to returning the horse as directed by the order, she instead posted a bond to retain it, pending the outcome of this litigation. In my view, in doing so she recognized the authority of the Court to enforce the order.

[139] I have already found Ms. LeRoy did not have the authority to sell Breeze. It was not her property; it had not been abandoned by Ms. Atiyah. Ms. Beaton Buchanan knew, or ought to have known at the time of sale there may be an issue with the horse's ownership. She failed to make inquiries which would have been reasonable, and required, given the circumstances of this case.

[140] Although certainly not common, in the unusual circumstances of this case, I am of the view that compelling the return of the horse, known as "Breeze" and renamed "Jasmine" by Ms. Beaton Buchanan is appropriate and warranted in the circumstances.

### *Punitive damages*

[141] The final aspect of Ms. Atiyah's claim is her request for punitive damages. As noted above, such an award is done only in exceptional cases. The types of conduct which attracts punitive damages are those which "depart markedly from ordinary standards of decency" and "offend the court's sense of decency" (**Fidler, supra**).

[142] Based on the evidence, I have no hesitancy in concluding that in several respects, Ms. LeRoy conducted herself in a malicious, highhanded and offensive manner. Notwithstanding that it was Ms. Atiyah who was exclusively involved in the financial dealings with LeRoy and Twin Lighthouse Farm, Ms. LeRoy saw fit to have a collection agency seek \$46,200.00 from Dr. Atiyah. Collection letters, initiated by Ms. LeRoy continued to be forwarded to Dr. Atiyah for several months and ultimately required the intervention of legal counsel. Involving Dr. Atiyah, and in particular putting the security of his credit into play, was more probably than not a calculated step aimed at prompting payment in an expedited fashion.

[143] During the same time frame, the early fall of 2008, Ms. LeRoy travelled to Baddeck to speak to Dale Stone. I accept Ms. Stone's evidence that Ms. LeRoy was attempting to dissuade her from providing boarding facilities to Ms. Atiyah. I further accept that Ms. LeRoy represented that Ms. Atiyah did not meet her financial obligations, and in fact was known to "bounce" cheques. This information was false. There is no explanation for Ms. LeRoy's conduct other than

her maliciously wanting to interfere with Ms. Atiyah's attempts to find new boarding arrangements.

[144] Despite being advised to stay away from the Atiyah residence, Ms. LeRoy approached Dr. Atiyah as he left for work early one morning. I accept his evidence that Ms. LeRoy threatened to release the horses in front of the Cape Breton Regional Hospital should the dispute with his wife not be satisfactorily resolved. I find that, like the referral to collections, this threat was an attempt on Ms. LeRoy's part to effect an expedited monetary settlement in her favour.

[145] The Court accepts Cindy Boutilier's evidence as it related to her purchase and subsequent return of the horse Nikki. When Ms. LeRoy became aware Ms. Boutilier was considering returning the horse to Ms. Atiyah, her response was to attend at Boutilier's place of employment, direct her not to return the horse, and threaten her with legal action. The Court is not certain whether this behavior was motivated by a vindictive desire to deprive Ms. Atiyah of the horse, or by some belief the return would impact negatively on the outcome of the present litigation. In either case, the behavior was undoubtedly malicious and high handed.

[146] This is an instance where punitive damages are warranted, in the amount of \$10,000.00.

#### ***Ms. LeRoy's counter-claim***

[147] Ms. LeRoy brought a counter-claim alleging damages to her business. Given the findings of fact made earlier herein, it should be apparent those claims have no merit. The counter-claim is dismissed.

#### **CONCLUSION**

[148] In conclusion, Ms. Atiyah is entitled to damages payable by Joan LeRoy in the amount of \$41,693.34 comprised as follows: damages for unjust enrichment - \$25,000.00; conversion of tack - \$6693.34; and punitive damages of \$10,000.00.

[149] Ms. Beaton Buchanan shall immediately turn over to Ms. Atiyah the horse "Breeze", also known as "Jasmine". The Sheriff's office shall facilitate this transfer in the event Ms. Beaton Buchanan does not co-operate with fulfilling the Court's direction.

[150] Funds in the amount of \$20,000.00 paid into Court by Ms. Atiyah in support of the Interlocutory Recovery Order shall be returned to her forthwith, with appropriate interest.

[151] The counter-claim brought by Joan LeRoy is dismissed.

[152] Anticipating the parties will be unable to reach agreement as to what costs, if any, should arise from this decision, I direct Ms. Atiyah to have any written submissions she wishes to make filed with the Court and provided to Ms. LeRoy on or before May 31, 2013. If she wishes, Ms. LeRoy may file written submissions in response no later than June 14, 2013.

Bourgeois, J.