Claim No: 436173

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: *Cook v. Brophy*, 2015 NSSM 25

BETWEEN:

TAYLOR COOK

Claimant

- and -

JACQUIE BROPHY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on March 25, 2015

Decision rendered on March 30, 2015

APPEARANCES

For the Claimant	Self-represented
For the Defendant	Self-represented

BY THE COURT:

1[] The Claimant and the Defendant were a couple, and the parents of two children, when they separated in about early 2011.

2[] One of the issues they faced was what to do with a recently-purchased car, a 2006 Mazda 3. This car was registered in the name of the Claimant, but they were jointly responsible for the loan of some $18,000.00. It was agreed that the Defendant would continue to use the car, keep up the insurance and make the regular bi-weekly payments of $219.61.

3[] What happened next is a bit mysterious (to me). The Claimant testified that, several months later, he received a call from the RCMP to the effect that the car was sitting (possibly abandoned) by the side of the road near Truro, and that it was being investigated as possibly having been used in a crime. The Claimant also learned, then or soon thereafter, that the car was not driveable and he would eventually be told that it was a write-off. The Defendant says he was allowed to see the car for the sole purpose of retrieving some personal contents.

4[] The Claimant made a claim on the insurance. The claim was classified as "comprehensive/theft." The insurer valued the car at $12,331.83 as a total write-off, which amount was sent to the lien holder, Scotia Dealer Advantage. The problem was that this was not adequate to pay off the loan, which was significantly in arrears with interest mounting at a high rate. The amount still owing was about $6,800.00. The lender eventually offered the Claimant a deal whereby if he paid $4,800.00 immediately, the balance would be forgiven. The Claimant paid this amount, in order to try and repair the damage that had already been done to his credit.

5[] It is this $4,800.00 that he seeks from the Defendant.

6[] The Defendant testified that the car broke down while she was driving near Truro. She says she abandoned it, and got a drive home. She says that she informed the Claimant about it, and that the Claimant said “I will look after it.” She says that she never heard anything further about the money that is now being claimed, despite the passage of four years during which the parties were in constant contact, as they share custody of their children. She says that it is suspicious that the Claimant is only coming after her now, since she has recently started a court proceeding to claim child support.

7[] The Defendant claimed not to have a good recollection of what happened back in 2011, because of the passage of time. She entirely denied being involved in criminal activity, although she acknowledges that she was charged with some offences along with her cousin. The charges against her were eventually withdrawn.

8[] I have a great deal of difficulty with the Defendant’s selective memory. I would have expected her to remember what happened to the car that she was driving. Most people would not just abandon one’s mode of transportation without following up. It is curious that she would not know that the car was so badly damaged or deteriorated that it would have to be written off, and that the insurance company would consider a claim based on theft. I have serious doubts that she is being truthful in her testimony.

9[] Even so, the issue is that of financial responsibility for the car loan. The car could have been involved in an accident and had to be written off, and the result would have been the same. It is unfortunately the case that many vehicles, both new and used, are worth less than the loan used to buy them, almost as soon as they are driven off the lot. It is also true that the interest on loans extended to people with poor credit can seriously inflate the amount owed.

10[] In my opinion, the Claimant was behaving responsibly by making the insurance claim and then settling the balance for about a $2,000.00 saving. He was protecting his credit, and fulfilling his financial responsibility.

11[] To me, the right question to ask, which virtually answers itself, is whether it is right that the Claimant should pay the $4,800.00 and the Defendant get off scot free. The answer to that is clearly “no.” The Defendant was jointly responsible for the loan, and it was she who was there when the car either broke down or was otherwise mysteriously rendered a write-off. There is an argument to be made that she should be responsible for the $4,800.00. However, I have concluded that she should only be responsible for one-half - namely $2,400.00.

12[] The agreement when they separated was rather vague and incomplete. The Defendant would drive the car and make the payments. But it is likely that the car was already worth less than the loan against it. It was more of a liability than an asset. The Claimant and Defendant never really put their minds to the question of how that liability would be shared.

13[] Given that they were jointly and severally responsible to the lender, it follows that, in law, they would each be responsible for one half.

14[] It is accordingly the court's order that the Defendant pay to the Claimant the sum of $2,400.00 plus his costs of $96.80.

15[] The Claimant concedes that part of his motivation for seeking this money has to do with the Defendant's recent pursuit of child support. From this court's point of view, it is irrelevant why someone pursues or chooses not to pursue a valid claim.

Eric K. Slone, Adjudicator