

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Gallagher v. Stewart, 2007 NSSM 82

Between:

ROBYN LEE GALLAGHER

CLAIMANT

-and -

TARA ANGELINA STEWART

DEFENDANT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: January 9, 2007

Decision: January 22, 2007

Counsel: The Claimant was self-represented.
The Defendant was represented by Counsel, Joseph M. J. Cooper, Q.C.

The pleadings of the Claimant in essence state the Defendant owes him money as a result of an agreement where the Defendant used a credit card of the Claimant and the Defendant agreed to pay on the credit card but did not.

The Defendant in her pleadings denies the claim and then counterclaims against the Claimant and stated, if there is any amount owed to the Claimant then it more than sets off monies owing to the Defendant by the Claimant.

The counterclaim states that when the parties separated in 2002, all existing debts were divided equally. There were two debts in their joint names and they were to pay off these debts monthly on an equal basis.

The Defendant stated in her pleadings she paid all her obligations except the Bay credit card and she also made all payments on the two outstanding debts that were to be shared equally.

The Defendant goes on to state the two debts to be shared equally were a personal loan with the Defendant's parents and a BOM Master Card which had \$6,500.00 outstanding at the time of separation.

The Defendant stated she has paid \$1,200.00 on the family loan and therefore claims a set off of \$600.00 on that loan. Further, she states she paid \$6,500.00 on the Master Card and claims \$3,250.00 from the Defendant.

The facts that I have been able to determine have been primarily gleaned from consistencies in the parties' evidence and/or the business type documents provided.

The Claimant gave the Defendant permission to use the Bay Card to make purchases which card was in the Claimant's name. The Defendant promised to make payments on the card and she did for some time after the parties separated. She stopped using the card and making payments on the card as of July 2006. There remained \$1,313.56 on the account. The Defendant owes the Claimant that money to pay off the card. I assume the Claimant has cancelled the card at this

stage.

The parties agreed to share equally on the Master Card debt which the Claimant believed was around \$3,000.00 at the time they split company, as it were. The Defendant provided statements to show it was \$5,823.29 at the time of separation not the \$6,500 referenced in her pleadings. This Master Card was in the Defendant's name and her mother's name. The amount that the Claimant would be responsible for would be \$2,911.64.

The Claimant contended there was a CIBC Visa card which had the same amount owing on it as the Master Card which he said was \$3,000.00 on each. As it turned out, the Master Card was twice that amount and the Claimant was unable to show an invoice or statement on any Visa card. He said he had it but not in Court. The Defendant refutes this.

With respect to the loan from the Defendant's parents, the Defendant said she did "not have evidence of Mom's and Dad's debt of \$2500.00 that [she said] was recollection on my part". The Defendant thought the parents lent them six or seven hundred dollars but that it was not part of their agreement when they separated.

The Claimant was not able to, or at least did not provide any evidence to support there was a CIBC Visa card claim. He said the Defendant agreed to accept half of payment on the amount outstanding.

I believe the parties were to split their obligations on the Master Card. There is no

evidence before me that a CIBC Visa card even existed and therefore I cannot determine any amount to be split, if any at all.

The Claimant will succeed against the Defendant on his claim respecting the Bay Card. The Defendant, and Claimant by counterclaim, will succeed in her claim respecting the Master Card. The Defendant will not succeed on her family loan as it was not clear what the amount was that was provided to them during their time together. I am also not satisfied that this was a common debt that they agreed would be paid to the parents. Both will have their costs.

IT IS THEREFORE ORDERED that the Claimant shall pay to the Defendant the following sums:

	\$2,911.64	Master Card share of Claimant
	\$ 53.00	Court Costs of Defendant
	\$ 68.40	Service Costs
Less	\$1,313.56	Bay Card debt owed by Defendant
Less	\$ 80.00	Court Costs of Claimant
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	\$1,639.48	

Dated at Dartmouth, this 22nd day of January, A.D., 2007.

David T.R. Parker
Adjudicator of the Small Claims
Court of Nova Scotia