

Claim No: 277909

Date: 20070727

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

**Cite as: Pereversoff v. Behie, 2007 NSSM 55**

**BETWEEN:**

Name Michael Paul Pereversoff Claimant

Name Terena Dawn Behie Defendant

Revised Decision: The text of the original decision has been revised to remove addresses and phone numbers of the parties on September 18, 2007. This decision replaces the previously distributed decision

**ORDER AND DECISION**

- (1) This proceeding was heard on June 12, 2007.
- (2) The Claimant, Michael Paul Pereversoff (Pereversoff), claims the sum of \$9,965.00 from the Defendant, Terena Dawn Behie (Behie), or the delivery of several items of personal property.
- (3) Behie disputes the claim, and in her Defence states the following:

“Fair exchange of family assets and debt”
- (4) Behie filed a Counterclaim, however, at the hearing, she indicated to the Court that she was not pursuing the Counterclaim.
- (5) The parties lived in a common-law relationship and had one child together.

- (6) During their cohabitation, they resided in a home owned by Pereversoff at Highway #1683, Lower East Chezzetcook, Nova Scotia.
- (7) In March or April 2006, Behie applied for an Emergency Protection Order and was given the exclusive possession of the home at that time.
- (8) The parties entered into an Interim Consent Order effective September 11, 2006, which was issued by the Supreme Court of Nova Scotia (Family Division) on October 20, 2006. The Interim Consent Order contained provisions whereby Behie's exclusive possession of the home would terminate as of November 1, 2006, and she was to vacate the home on or before that date.
- (9) The Interim Consent Order also provided that Pereversoff was to pay directly to the care giver the cost of child care required by Behie for purposes of her employment. Pereversoff was to pay the mortgage and various utility bills and an RESP payment for the child in lieu of interim periodic spousal support.
- (10) Reference was made in the evidence to a further Interim Consent Order which dealt specifically with a prohibition against disposing of any of the contents of the home in the interim period, however, it was not clear from the evidence whether this second Interim Consent Order was actually issued or was simply under discussion. A certified copy of any such second Interim Consent Order was not introduced into evidence, and this point is unclear from the evidence provided.
- (11) In any event, it appears to be common ground that Pereversoff was the legal title holder of the following personal property items in question in this proceeding, namely, a refrigerator, stove, washer, dryer, and shop vac.
- (12) The claim brought by Pereversoff concerns these personal property items, and he also advances a claim with respect to a bill for a water cleaner and day care expenses. There is no claim concerning any other property advanced in the Notice of Claim form, and therefore this decision does not deal with any other items of property between the parties, which may or may not be the subject of further proceedings.
- (13) The jurisdiction of this Court is found in the Small Claims Court Act, R.S.N.S. 1989, c.430. Under section 9 of that Act, a person may seek a monetary award in respect of any matter arising under contract or tort where the claim does not exceed \$25,000.00 inclusive of

general damages but exclusive of interest. Section 9 also permits the Court to order the delivery of specific personal property where the personal property does not have a value in excess of \$25,000.00.

- (14) The jurisdiction of the Small Claims Court is limited by the exclusions contained in section 10. Also, section 15 of the Act precludes the Court from proceeding with a claim where the issues in dispute are already before another Court unless that proceeding has been withdrawn or abandoned or transferred in accordance with section 19 of the Act.
- (15) The case of Wacky's Carpet and Floor Centre v. Maritime Project Management Inc. (2006) N.S.S.C. 353 (Nova Scotia Supreme Court) confirms that the Small Claims Court has jurisdiction under section 9 to grant relief based upon the principles of unjust enrichment. In other words, when considering contractual claims, the principles of the law of unjust enrichment can be applied in claims before the Small Claims Court where appropriate based upon the evidence before the Court.
- (16) The position of Pereversoff with respect to the return of the personal property items is simply that when Behie vacated the home on or about November 1, 2006, she took with her a refrigerator, stove, washer, dryer, vacuum cleaner, and shop vac, and those items were purchased by him and he seeks the return of those items or reimbursement for same.
- (17) I would summarize the evidence with respect to each item as follows:
  - (a) Refrigerator - This was purchased using Pereversoff's Visa card in or about the month of May or June 2005 for the sum of \$1,660.00;
  - (b) Stove - This was purchased using Pereversoff's Bay account on May 31, 2004, for \$1,369.58;
  - (c) Washer and Dryer - These were purchased on Pereversoff's Leon's account on August 5, 2004, for the sum of \$1,845.19;
  - (d) Vacuum Cleaner - This item is owned by Pereversoff's employer;
  - (e) Shop Vac - Pereversoff paid for this item using cash in January 2004, for the sum of \$300.00.

- (18) Behie's evidence was that she moved into an apartment, and she needed the appliances as she had the primary care of the child. She stated that she had put significant effort and made some financial contribution towards the home for which she had not been compensated. To the extent, however, that her Defence relates to any possible claim to the home, such a claim would be beyond the jurisdiction of this Court (Section 10 of the Small Claims Court Act).
- (19) She produced estimates of the current value of the washer and dryer at \$500.00 and refrigerator and stove at \$800.00.
- (20) According to the evidence, the parties used a joint bank account, and funds were deposited to that account and applied to the various bills, including the Visa bill, Leon's bill, and other accounts, and I conclude from the evidence that both parties made financial contributions to the extent that they could based upon their respective employment and incomes. The Court must consider both the direct and indirect financial contributions as well as non-financial contributions of both parties when determining the division of assets between common-law couples (see Pettkus v. Becker (1980) 2 S.C.R. 834 (Supreme Court of Canada)).
- (21) In Pettkus v. Becker, the Court used the doctrine of constructive trusts, which is based upon the principles of unjust enrichment, in a case involving the division of assets acquired during a common-law relationship.
- (22) I quote from paragraph 46 of the majority decision as follows:
- “46 I see no basis for any distinction, in dividing property and assets, between marital relationships and those more informal relationships which subsist for a lengthy period. This was not an economic partnership, nor a mere business relationship, nor a casual encounter. Mr. Pettkus and Miss Becker lived as man and wife for almost 20 years. Their lives and their economic well-being were fully integrated. The equitable principle on which the remedy of constructive trust rests is broad and general; its purpose is to prevent unjust enrichment in whatever circumstances it occurs.”
- (23) Applying these principles to the facts of this case, there is no question that this was a common-law relationship and that there was a combined effort, even though Pereversoff's

income appears to be substantially greater than Behie's according to the recitals in the Interim Consent Order and the relationship was not as lengthy in this case.

- (24) One other consideration here is that there is evidence that Pereversoff remains liable for various debts that are directly related to the acquisition of the property items.
- (25) Although there was a lack of specific evidence on this point, it does not appear to be disputed that Pereversoff continues to make debt payments which are related to the acquisition of the personal property items in question in this proceeding.
- (26) All of the personal property items in question are used items. When determining the current value of those personal property items, I have considered the cost of acquisition, the replacement cost, and the evidence of the appraisals. I have also taken into consideration that the appraiser was not available for purposes of cross-examination.
- (27) I find that a reasonable value for the refrigerator and stove is \$1,200.00 and for the washer and dryer, is \$800.00 and the shop vac is \$100.00.
- (28) I find based on the evidence and applying the relevant legal principles, that both parties contributed to the acquisition of the appliances by their respective financial and non-financial contributions, however, Behie's claim must be offset to some degree by the fact that Pereversoff continues to be responsible for debts associated with the acquisition of the assets.
- (29) Considering all of the legal principles and evidence in this case, it is ordered that Behie shall pay to Pereversoff the sum of \$1,600.00 for his interest in the aforesaid property items within 30 days from the date of this Order or, in the alternative, shall deliver the refrigerator, stove, washer, dryer, and shop vac which are the subject matter of this proceeding to Pereversoff, and Pereversoff shall, at that time, pay the sum of \$500.00 to Behie. This amount takes into account Behie's contribution towards these particular assets during the common-law relationship as well as the other factors outlined above.
- (30) I make no order concerning the vacuum cleaner as, according to the evidence, this asset is owned by Pereversoff's employer.

- (31) Pereversoff also put forward a claim in this proceeding concerning a bill for water cleaning services in the amount of \$81.40 which was incurred as regular maintenance for a water softener during a period of time when Behie was living in the home.
- (32) He also put forward a claim for \$250.50 in regards to day care expenses.
- (33) I dismiss both of these claims as it would appear that these are matters which are before the Supreme Court of Nova Scotia (Family Division). With respect to the water cleaner, this is intertwined with the issue of periodic support during a period of time when Behie was occupying the home and according to the evidence, the issue of spousal support had not yet been resolved on a final basis. The day care issue was raised in the Interim Application, and there are specific provisions dealing with that in the Interim Order and, also, presumably will be dealt with by the Supreme Court of Nova Scotia (Family Division) in the final disposition of issues between the parties arising from the breakdown of their relationship.
- (34) As both parties have been at least partly successful in this proceeding, I decline to award costs to either party. I reiterate that this decision does not deal with any assets acquired during the relationship of the parties other than the ones specifically dealt with herein.

Dated at Dartmouth, Nova Scotia,  
on July 27, 2007

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Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)