

Claim No: 302063

Date:20090109

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

**Cite as: Shelley v. King, 2009 NSSM 24**

**BETWEEN:**

Name William Shelley Claimant

Name Vanessa King Defendant

**Revised Decision:** The text of the original decision has been revised to remove addresses of the parties on July 3, 2009.

**DECISION**

**BACKGROUND**

- (1) The Claimant, William Shelley, claims the sum of \$13,000.00 from the Defendant, Vanessa King, plus costs.
- (2) The Defendant admits that she owes some money to the Claimant but does not agree that she owes as much as \$13,000.00.
- (3) The parties did not reside together but entered into a relationship with one another commencing in or about the month of June 2007. The relationship terminated in May 2008, although there were some efforts to revive the relationship during the months of June and July 2008.
- (4) In the month of September 2007, the Claimant transferred various amounts into the Defendant's bank account. Of those amounts, \$8,211.31 was applied directly to credit cards or debt payments which the Defendant had previously incurred on her own. A further sum of \$1,494.50 was also transferred into her account that month.

- (5) On October 1, 2007, the Defendant commenced paying the sum of \$321.00 towards the Claimant's line of credit. Similar amounts were paid in the months of November and December 2007 and in the months of January, February, and May of 2008.
- (6) There were subsequent transfers from the Defendant's line of credit to the Claimant's bank account. On October 12, 2007, the sum of \$4,000.00 was transferred. On October 29, 2007, the sum of \$3,000.00 was transferred. On December 10, 2007, the sum of \$200.00 was transferred.
- (7) On May 26, 2008, the Claimant signed an Amending Agreement to his Line of Credit Agreement. At that time, two separate lines of credit were established, one in the amount of \$13,000.00 and one in the amount of \$7,000.00 as his line of credit had reached approximately \$20,000.00.
- (8) These arrangements were done through Lynn Boudreau at TD Canada Trust. Ms. Boudreau was not called to testify in this proceeding.
- (9) At that time, both parties authorized the amount of \$312.12 to be deducted from their respective bank accounts each month towards payment of the \$13,000.00 line of credit. During the months of June and July when reconciliation attempts were being made, no deductions were made from the Defendant's account. The parties separated for the final time around the end of July 2008. Again, no deductions were made from the Defendant's account after that. The Defendant then contacted Lynn Boudreau and canceled the preauthorized payment. She gave as the reason for doing so that, although there was an effective start date of the preauthorized payment, namely, June 20, 2008, there was no end date on the document.

### **ISSUE**

- (10) The issue is whether the amounts transferred from the Claimant's line of credit to the Defendant or for her benefit were by way of a loan or a gift.

**ANALYSIS**

- (11) I find that the total amount of \$8,211.31 was directed from the Claimant's line of credit to credit cards or bills in the Defendant's name in September 2007. Further transfers totaling \$8,694.57 were made from the Claimant's line of credit to the Defendant's bank account between September 2007 and December 2007.
- (12) In each of the months of October 2007 to February 2008, inclusive, and in May 2008, the Defendant paid the amount of \$321.00 towards the Claimant's line of credit balance.
- (13) The last transfer into the Defendant's bank account was on December 10, 2007. The Defendant made \$321.00 payments in January and February 2008 and a payment in May 2008, as well. This evidence is consistent with the amounts being paid towards the Defendant's bills or into her bank account being a loan not a gift as there was a schedule of repayment that had been established between the parties.
- (14) There had been some discussions between the parties of the relationship becoming permanent, however, that did not transpire. The Claimant became concerned about whether the amounts he had advanced to the Defendant would ever be repaid.
- (15) The parties attended at TD Canada Trust and two separate lines of credit were established. I accept the Claimant's evidence that there was discussion at that time that the reason that two separate lines of credit were established was that the sum of \$13,000.00 represented amounts paid to the Defendant through the Claimant's line of credit from which she benefitted and the \$7,000.00 were amounts which the Claimant benefitted from.
- (16) This is consistent with the fact that \$8,694.57 of the amounts deposited to the Defendant's bank account were not applied directly to bills or credit cards but were generally used by both the Claimant and Defendant during the terms of their relationship for various expenses.
- (17) I accept the Claimant's evidence that it was agreed that the payments towards the \$13,000.00 line of credit would be made by the Defendant.
- (18) The Defendant's position is that she received the amounts from the Claimant by way of gift and that she was making the payments towards the Claimant's line of credit as a form of gratitude for his generosity to her but only while they were in a relationship together.

- (19) I find that the Defendant directly benefitted from all payments made towards her outstanding credit cards or bills. I find, as well, that the parties equally benefitted from all amounts not applied directly to the Defendant's credit cards or bills but deposited to the Defendant's bank account.
- (20) On balance, therefore, I accept the Claimant's version of events as being more credible than the Defendant's. The actions of the parties are consistent with the payments into the account being a loan and not a gift.
- (21) I accept the Claimant's position that any payments made by the Defendant prior to the two lines of credit being established were taken in account when assessing the \$13,000.00 amount as being appropriate. I find that the Defendant understood and agreed to these arrangements.
- (22) In the circumstances, therefore, and on a balance of probabilities, I find that there is sufficient credible evidence to support the Claimant's position that he made a loan of \$13,000.00 to the Defendant and that, as of this date, no part of the loan has been repaid by her to him.
- (23) I, therefore, find that the Defendant owes the Claimant the sum of \$13,000.00. I also order the Defendant to pay the Claimant his proven costs of \$243.13.

Dated at Dartmouth, Nova Scotia,  
on January 9, 2009.

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Patrick L. Casey, Q.C., Adjudicator

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

