

Claim No: 326734

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Robichaud v. Mahaney, 2010 NSSM 39

BETWEEN:

JOEL ROBICHAUD

Claimant

- and -

ELIZABETH MAHANEY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 11, 2010

Decision rendered on May 12, 2010

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] This claim arises out of a domestic relationship. The Claimant seeks the return of some items of personal property as well as a monetary order to compensate him for some bills which he says were the responsibility of the Defendant.

[2] Like many cases of this kind, the evidence was of a “he said, she said” variety, with huge differences between the two versions. Furthermore, both parties were fairly emotional, although it was the Defendant who seemed much more so in this case. Accusations of bad conduct were made by both parties.

[3] I am left to try and make a dispassionate decision. This involves partly trying to decide who is telling the truth, and partly applying legal principles to the known facts.

[4] One matter that is not in dispute is a dresser owned by the Claimant, which both parties agree is in the possession of the Defendant but was only intended to be so temporarily. The Defendant agrees that it should be returned. The challenge has more to do with the mechanics of that return, as there is a peace bond preventing the two parties from being in contact with each other. In court the parties arranged that the Defendant’s sister would act as a go-between to facilitate the return of this dresser. My order will simply direct its return, and if the parties cannot cooperate it will be up to the sheriff to make the arrangements.

[5] This leaves essentially two matters: a laptop computer claimed by the Claimant, and money for cell phone and Nova Scotia Power bills. I will deal with them in turn.

The laptop

[6] The Claimant produced an invoice showing that he bought an Acer TM7720-6807 notebook computer bearing a particular serial number¹. The purchase date was in early 2008, being several months before he and the Defendant began cohabiting.

[7] This is sufficient to establish that the computer legally belonged to the Claimant when they entered the relationship. Given that the parties did not marry, it would have remained his property unless there was some explicit agreement to the contrary.

[8] The reason it is in the Defendant's possession is that the Claimant says that he allowed the Defendant to use it after they separated, because they were still on reasonable terms and she liked to watch movies on its large screen. This was expected to be a temporary arrangement.

[9] The Defendant testified that she traded the laptop for a leather motorcycling suit that she had bought but never used, and which remains in the possession of the Claimant. She says that the leather suit was worth \$800.00.

[10] Given the presumptive rights of an owner of property to retain that property, the onus is on the Defendant to convince me that the Claimant parted with his property in that computer. On this point she has not satisfied me. While I can never know for sure what went on between these people, on balance I

¹LXTMQOZO117490BD5720

found the Claimant's evidence just slightly more credible. His claims to this court were very specific and measured, and I found no evidence of exaggeration in his testimony.

[11] The Defendant theorized that the Claimant only wanted the computer back because it had compromising photos of her on it. The Claimant testified, and I accept, that he had already proposed to the Defendant that the computer have its hard drive professionally reformatted so that no such material would be retrievable.

[12] I do not accept that there is any improper motive on the part of the Claimant. He just wants his computer back. Indeed, he acknowledged that he had a smaller and older laptop belonging to the Defendant, which he brought to court and handed back to her unconditionally.

[13] I am ordering the return of the Claimant's laptop.

Expenses

[14] The Claimant seeks reimbursement for a cell phone bill run up by the Defendant. Because the Defendant had poor credit, her cell phone was on the Claimant's family plan. Within days of their separating, a charge of \$652.44 was put through the Claimant's bank account for this phone. The Claimant seeks this money, along with \$360.00 which he says was the fee for having her cell phone removed from his plan.

[15] The Defendant claims that she gave the Claimant several large sums of cash just before she moved out. The Claimant denies this, saying that the

Defendant was actually saving all of her cash for a trip to Las Vegas that she took just as they were separating. He also says that any cash she did give him before they separated had related to earlier and other bills, and this cell phone bill was not even known yet.

[16] I am more inclined to believe the Claimant on this point. I am not satisfied that the Defendant paid this bill, which was admittedly her responsibility.

[17] I am not satisfied, however, that she should be responsible for the \$360.00 cancellation fee. It appears that there could have been an orderly transfer of the cell to the Defendant's own name, but that plan went awry after a confrontation that resulted in the Claimant breaking the Defendant's phone. The Claimant has not satisfied me that this should be the responsibility of the Defendant.

[18] The Defendant concedes that she also owes a \$106.92 Nova Scotia Power bill.

Conclusions

[19] The Defendant will accordingly be ordered to deliver up to the Claimant the dresser (a Trademaster 1360-1 Havenridge) and the laptop as earlier described. She also shall pay to the Claimant the sum of \$759.36 (\$652.44 plus \$106.92) plus \$89.68 in costs.

Eric K. Slone, Adjudicator