

Claim No: 335234

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Pettit v. Murchy, 2010 NSSM 73

BETWEEN:

SUSAN PETTIT

Claimant

- and -

CHRIS MURCHY and
MIA TURLINGS

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 19, 2010

Decision rendered on October 25, 2010

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] This case involves a friendship gone sour resulting in anger, resentment and, sadly, this claim and counterclaim.

[2] The Claimant was a friend of the Defendants. When she had need of a place to live, the Defendants took her into their home in a loose arrangement whereby she paid \$700.00 for room and board. She had her own small bedroom as well as the use of most of the rest of the house.

[3] The Claimant's two cats came with her as part of the bargain, and unfortunately their behaviour and habits became a huge irritant.

[4] The Claimant's case is actually pretty straightforward and is largely uncontested. In December of 2009 she lent the Defendants \$14,000.00 to allow them to purchase a new vehicle. The money was drawn down by the Claimant from a personal line of credit with Royal Bank. The agreement amongst them was that the loan would be repaid at the rate of \$300.00 per month, accomplished by reducing the rent otherwise payable from \$700.00 to \$400.00. The Defendants also undertook responsibility to pay interest at the same rate as applied to the line of credit, namely 6%.

[5] Each month, when rent was due, the Claimant took \$300.00 and paid it towards her line of credit. She kept copies of the deposit slips to evidence the payments.

[6] Because the Claimant used her line of credit for other purposes, knowing what was owing on that line of credit at any given time would not have been very

informative to the Defendants. Unfortunately, they seem not to have understood that very well, as we shall see.

[7] The relationship appears to have gone sour in the summer of 2010, in large part because the Claimant's two cats had become accustomed to doing their business elsewhere than in the litter box. They also appear to have had a habit of soiling some of the Defendants' carpets and scratching up some of the furniture. They also appear to have damaged a bearskin rug.

[8] According to the Defendants, as well as to a witness called by them, the house often stank of cat urine because the litter boxes were infrequently changed.

[9] When the situation became intolerable for the Defendants, in August of 2010 they asked the Claimant to leave. They gave her a month's notice.

[10] By then communication was extremely strained. The Defendants testified that they asked the Claimant to give them a statement of what was owing, which never was actually provided. They say that all she gave them was a set of copies of the deposit slips which showed the nine payments of \$300.00 that had so far been made, and which showed her line of credit balance as it existed from time to time. They say that they actually went to the Claimant's bank to ask the manager if he know what amount they owed the Claimant, but were told that it was a private matter between the Claimant and them - having nothing to do with the bank.

[11] They say that they would have paid her the amount owing if they had known what it was.

[12] The Claimant testified that she was never asked for a statement of what was owing.

[13] The amount that the Claimant says is owing is \$14,000.00, plus \$854.00, being one year of interest at 6%, minus \$2,700.00 for the nine payments, for a total of \$12,140.00. In fact, if the agreement was to compensate the Claimant for interest accrued on her line of credit, the interest calculation that the Claimant has provided is wrong - in two respects. First of all, it has only been just over ten months since the money was advanced. Secondly, the interest should properly be calculated on a declining balance and not on the original principal amount of the loan.

[14] In her Claim filed with the court, the amount sought is \$13,100.00 which was said to consist of the amount owing on the loan, plus court and travelling costs. The travel costs arise because the Claimant moved back to Ontario after being forced to vacate the Defendants' home. This claim was in fact issued and served shortly before she had left the Defendants' home.

[15] One of the questions which I must try to answer, if only to consider whether the claim for travel expenses is legitimate, is whether or not this claim was necessary to hold the Defendants to account. If the Defendants are to be believed, all they lacked was the precise information as to how much they owed.

[16] Unfortunately, the claim itself was not as informative as it might have been. The figure \$13,100.00 bears little relation to the debt. In fact, properly speaking, any costs associated with the claim (such as filing fees and travel expenses) are not part of the claim itself, and should be shown separately. Indeed the online

versions of the claim form make that clear, but the older printed forms available at the court offices do not make any mention of costs, so someone filling out the form (such as here) might not appreciate the distinction.

[17] Even so, the Defendants could easily have figured out approximately what they owed. They knew that they had borrowed \$14,000.00 and that they had made nine \$300.00 payments. So they owed at least \$11,300.00. They might have reasonably been unsure of what interest they owed, but there was nothing to stop them from paying the \$11,300.00 and saying to the Claimant that they would top up the payment with interest upon being told the correct amount.

[18] I find it hard to believe that the Claimant would have refused to provide this information, had she believed that this was all that stood in the way of payment.

[19] There is evidence suggesting that the Defendants hoped to delay or even evade payment. The Claimant's sister in law, Susah Jacques, testified to a conversation that she had with the Defendant Turlings after the Claimant had left Nova Scotia. She said that Ms. Turlings said that because the Claimant had left the province, the money was "going, going, gone." Ms. Turlings denied any such conversation.

[20] I find as a fact that such a conversation did occur. I found Ms. Jacques to be a completely reliable witness, who despite her obvious allegiance to the Claimant appeared to have no axe to grind and was testifying to the best of her recollection. On this point, at least, I found Ms. Turlings to be deceptive at worst, or to have a faulty memory, at best.

[21] As such, it is inescapable that the Claimant acted reasonably in commencing this action as she had no reasonable expectation of being paid without some coercive process.

[22] Even after receiving the claim, the Defendants could have made a substantial payment and stopped the claim in its tracks. They chose not to do so. Instead, they counterclaimed for various items of damage that they say the Claimant - or more accurately the Claimant's cats - did to their property.

[23] Quite apart from the merits of the Defendants' counterclaim, there is a significant procedural problem that must be addressed. The Claimant served the claim personally on the Defendants before she left for Ontario. On the claim form she clearly showed her municipal address in Wallaceburg, Ontario. By the time the Claimant travelled from Ontario and attended court for the trial, she had never seen any Defence or Counterclaim.

[24] The claim was issued on August 31, 2010 and served on September 13, 2010. There is a Defence and Counterclaim in the court file, filed on September 27, 2010. When questioned as to whether or not they had served it on the Claimant, the Defendants indicated that they had sent it by registered mail to an address in New Brunswick and that it had been returned by the post office. They stated that this address in New Brunswick was what they believed to be the Claimant's last known address. Apparently the Claimant's brother either lives or lived there.

[25] The Defendants are not unintelligent people, but it is hard to understand why they chose to send the document to New Brunswick when there was clearly shown on the face of the claim an address in Ontario.

[26] The Claimant objected strongly to being forced to respond to the counterclaim when she had not had any advance warning that she might have to respond to these issues. She stated that she might have been able to produce photographs or other documents that would show the Defendants' claims to be false or exaggerated.

[27] It is the policy of this court to be lenient in matters of procedure, given that most litigants are self-represented. Often, defendants show up without having filed a written defence, and in such situations I attempt to find out whether there is any actual prejudice to the Claimant. If there is none, we continue. If there is, I will give the Claimant the option of continuing or having an adjournment.

[28] In the situation here, with the Claimant and her sister-in-law having travelled at considerable expense from Ontario, an adjournment was not an option. I elected to hear the evidence and decided in my own mind to decide afterward whether or not there was actual prejudice, and if so how it should be accounted for.

[29] The evidence in support of the counterclaim consisted of numerous photographs and several written estimates for the cleaning, repair or replacement of carpets and furniture items.

[30] The theory of liability is that over the course of more than a year, the Claimant's cats systematically damaged or destroyed these items.

[31] This theory is not without problems. The Defendants knew that the Claimant had cats when they took her into their home. If damage was being

done along the way, they had a responsibility to take steps to mitigate the losses rather than simply allowing the damage to continue and worsen.

[32] The photographic evidence is mostly equivocal. I find it hard to detect any damage on most of the photos.

[33] The evidence is that the chairs allegedly damaged were old and had not been re-upholstered for perhaps 20 years, leading to the conclusion that they were already in some need of re-upholstering. There is a handwritten note from Easy Care Carpet Cleaners to the effect that certain rugs could not be cleaned because the colours would run. I would have a lot of trouble accepting this as the last word on the subject, given that the author of this note was not called to testify, and given that the Claimant had no opportunity to seek out other opinions.

[34] In short, the evidence on the counterclaim was rather weak, especially when considered in light of the fact that the Claimant had no advance warning that such a counterclaim was being brought.

[35] I am certainly prepared to believe that the Claimant's cats were an irritant and they probably did some damage. I believe the Claimant, like many pet owners, had something of a blind spot as concerned the behaviour of her pets. She could and should have been more careful and attentive.

[36] Even so, I find that the counterclaim is exaggerated and under the circumstances, I find that the Defendants have not sufficiently mitigated their damages. I am only prepared to allow a nominal amount of \$500.00 for all of the counterclaimed items. This is the best that I can do given the evidence.

[37] In the result, the Claimant is entitled to succeed on her claim, with a \$500.00 deduction for the counterclaim.

[38] As for the actual amount owing on the claim, as I have indicated the interest calculation is flawed. The claim is for interest for ten months, not twelve, and it should be calculated on a declining balance. According to my calculation, the interest owing is \$632.50.¹

[39] The Claimant is entitled to her filing fee of \$179.35 and fee for process server in the amount of \$109.25.

[40] The question of travel expenses is within my discretion. Section 15 of the *Small Claims Court Forms and Procedures Regulations* provides:

15 (1) The adjudicator may award the following costs to the successful party:

- (a) filing fee;
- (b) transfer fee;
- (c) fees incurred in serving the claim or defence/counterclaim;
- (d) witness fees;
- (e) costs incurred prior to a transfer to the Small Claims Court pursuant to Section 10;
- (f) reasonable travel expenses where the successful party resides or carries on business outside the county in which the hearing is held;

¹The simplest and most correct calculation would be ten months of interest (which works out to 5%) on the balance owing at the midpoint; i.e. after half of the payments were made: $(\$14,000 - \$1,350) \times .05 = \$632.50$

- (g) additional out of pocket expenses approved by the adjudicator.

[41] In the circumstances here, the Claimant had no option but to press this claim and, having been forced to leave Nova Scotia with little notice, she was forced into travelling back at considerable expense for the trial.

[42] The decision to bring Ms. Jacques as a support and possible witness was also reasonable. The Claimant is by her own admission someone with vulnerable mental health and facing the Defendants in a court room could have been an intimidating experience if faced alone. Also, the evidence of Ms. Jacques was of some value, in that it cast serious doubt on the credibility of the Defendant Ms. Turlings.

[43] The cost must be reasonable. Unfortunately, as explained, it was not a simple matter for the Claimant to travel to Nova Scotia. She needed to take a train as well as a plane, and had to arrange for a car rental and hotel while here. The total claimed for the Claimant and Ms. Jacques is \$1,785.00. This includes the car rental and accommodation for several days, during which she hoped or expected to wrap up this matter with a court decision in hand. I explained to her that she could not expect a decision that quickly.

[44] While it is far from an exact science, I am inclined to reduce the travel claim slightly to a more reasonable level, which I find to be \$1,400.00.

[45] In the result, the claim is allowed, a small amount is allowed on the counterclaim, with the following net amount to the Claimant:

Debt	\$11,300.00
interest on debt	\$632.50
Filing cost	\$179.35
Service cost	\$109.25
Travel cost	\$1,400.00
Less counterclaim	(\$500.00)
net to Claimant	\$13,121.10

[46] The Claimant shall have judgment for \$13,011.85.

Eric K. Slone, Adjudicator