

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

Cite as: Bump Baby & Beyond Inc. v. Liu, 2011 NSSM 46

BETWEEN:

BUMP BABY & BEYOND INC. and NICOLE MacHATTIE

Claimants

- and -

IVY LIU and FLUFFY BABY BOTTOMS

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on June 21, 2011

Decision rendered on June 29, 2011

**APPEARANCES**

For the Claimant            Nicole MacHattie

For the Defendant        Ivy Liu

**BY THE COURT:**

[1] The Claimant Nicole MacHattie (“MacHattie”) operates a business called Bump Baby & Beyond Inc., (“BBBI”) which is a store in Bedford offering a variety of products for pregnant women, new parents and their babies. One or the other of the Claimants owns the building in which the store is located.

[2] The Defendant Ivy Liu (“Liu”) operates “Fluffy Bottom Babies” as a proprietorship, selling cloth diapers and other baby products.

**The Facts**

[3] MacHattie and Liu met in late 2010. Initially MacHattie bought cloth diapers through Liu’s online store, to sell in her own store. At some point Liu held a workshop in MacHattie’s classroom space in the BBBI building. The two become friendly and MacHattie learned that Liu had an interest in opening a retail store to complement her online business. There was a vacant space in the BBBI building which appeared to fit the purpose, and eventually a lease agreement was signed for a 10½ month period from February 15, 2011 to December 31, 2011, with an option to renew on a yearly basis.

[4] It is clear on the evidence that MacHattie did not initially regard Liu or her business as any type of threat. She expected that Liu would be mostly selling cloth diapers and saw the relationship as mutually beneficial as each store would attract people which might ultimately benefit both stores.

[5] Liu moved in and opened her store. There were irritants as far as MacHattie was concerned, although these in themselves would probably not

have fractured the relationship. Liu brought her toddler-aged daughter to the store many days and sometimes the child would run into the BBBI store and be disruptive. Also Liu herself did not appear to respect the boundaries between the two stores and at times spent more time in the BBBI store than MacHattie would have welcomed, sometimes apparently getting into long conversations with MacHattie's customers. But so long as the two were on friendly terms, these irritants probably could have been tolerated.

[6] More significantly, from MacHattie's point of view, it appeared to her that Liu was trying to build her own business in a way that would have competed with BBBI and potentially harm her business. MacHattie learned that Liu had been talking to some of her suppliers about trying to order products that MacHattie believed she had exclusive rights to sell. MacHattie believed that Liu only knew about these products because she saw them in BBBI. When confronted, Liu insisted that she only wanted these items to sell through her online store. At trial Liu also insisted that she was familiar with the products and had learned of these suppliers and hoped to do business with them long before she met MacHattie. Whatever may be the facts, MacHattie began to understand that what she had believed to be primarily a cloth diaper business that was compatible with her business was, in fact, something that could potentially become a competitor.

[7] Even as MacHattie was grappling with this developing issue, on about March 31, 2011 Liu came to her in a distraught state saying that her Husband was taking a full-time job and her in-laws were moving away, all of which meant that she would no longer have transportation to and from the store and also would have less available childcare. Because she could not afford paid childcare and could not bring the child to work all of the time, she believed that she would have to move home and could not afford to operate a retail store any more.

MacHattie took pity on her and suggested that she would be willing to let her out of the lease, so she could take her business back to be operated out of her home.

[8] Initially Liu said she would vacate a month later, on or before May 1, which was acceptable to MacHattie.

[9] Several days later, MacHattie received calls from some of her distributors which gave her even greater cause for concern about Liu's intentions. One of these distributors indicated that if she did not place an immediate order, they would consider granting some distribution rights to Liu.

[10] On April 8, 2011 there was a further incident involving Liu's child, and MacHattie sent Liu a memo insisting that Liu stay within her own space. She also placed a restriction on Liu's use of the classroom in the building which, up to now, she had been freely able to use.

[11] Soon thereafter MacHattie began to hear rumours that Liu was telling people that MacHattie was not allowing her to bring her child to work. It also appeared that inaccurate information was being disseminated through emails and on Facebook that was disparaging of her (MacHattie), and finally MacHattie had had enough. She asked Liu to move up her date for vacating to April 15.

[12] Liu did manage to vacate on that day. MacHattie subsequently learned that within two weeks Liu had opened a retail store only 4.2 kilometres away from BBBI, in which store Liu was offering much more than cloth diapers - including many products that are in direct competition to BBBI.

[13] MacHattie claims that she was duped into allowing Liu out of the lease, and claims that Liu should be held liable for the balance of rents payable under the said lease namely \$5,325.00.

[14] Liu's version of the events is that it was always a bit of a hardship for her to travel from her home to the store, because she does not drive a car and would have to take a bus when she could not get a drive from her Husband. She how difficult it was to take the baby and a stroller on the bus in wet or wintry conditions. With her Husband taking on a new job, it appeared that she would be taking the bus daily. Also, with her in-laws moving away the availability of free childcare was disappearing.

[15] Liu testified that she had no intention to open up a new store right away, but when she was forced to leave the BBBI space on such short notice she had to find a space to store the inventory that she had acquired. Coincidentally she met a woman who was about to vacate a retail space right across the street from where she lives, and this led quickly to a decision not only to store inventory there but also to open it up as a retail space.

[16] Liu insists that it was always her intention to expand beyond merely cloth diapers. She testified that 65% of her business is still cloth diapers, and that most of her customers for other merchandise are online customers who could be anywhere in Canada, and that as such she does not really compete with MacHattie's business which is more geographically bound to Bedford.

[17] Liu also insisted that she did not take unfair advantage of MacHattie but rather that they each did favours for each other, as one would expect with friends and colleagues.

[18] Liu also testified that she believed she was signing a month to month lease. She said that English is not her first language.

[19] Her bottom line was that she asked to get out of her lease for legitimate personal reasons, and that she was not deceptive or dishonest with MacHattie. She also denied spreading any rumours.

### **Findings and decision**

[20] It is my impression that Liu is a shrewd and ambitious businesswoman who conceals something of her nature behind a diminutive stature and demure demeanour. I believe that MacHattie became threatened when she realized that Liu had the potential to become a formidable competitor.

[21] I do not believe that Liu was deceptive. To the extent that she may not have revealed all of her business intentions, I believe this can be explained in part by cultural differences. I am not willing to characterize Liu's behaviour as dishonest. I rather believe that MacHattie did not know her very well at the beginning and ultimately came to understand Liu better and recognized that she might actually pose a threat as a competitor.

[22] I believe that MacHattie knew everything of significance when she released Liu from the lease. She already understood that Liu was a potential competitor. While she may have believed that Liu's business would be mostly if not exclusively over the internet, she did not extract any type of promise from Liu to the effect that she would not compete at the retail level.

[23] The only viable legal theory that could hold Liu responsible under the lease for additional rent would be fraud; i.e. inducing MacHattie to release her from her lease obligations by way of fraudulent misrepresentations. Fraud is a difficult case to prove, and the evidence here falls far short of fraud. The reasons given by Liu were essentially true, although perhaps (again) Liu did not reveal all of her intentions.

[24] I am also of the view that MacHattie took a calculated course of action in asking Liu to leave on short notice. She chose to protect her business from potential competition from Liu, and in so doing offered up the early termination of the lease. Nothing that happened later changed the fact that she chose a course of action that she had deemed to be in her best interest.

[25] In the result, I am of the view that the claim cannot succeed and should be dismissed.

**Eric K. Slone, Adjudicator**