

Claim No: 400579

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Matheson v. Baker, 2012 NSSM 49

BETWEEN:

PAUL E. MATHESON

Claimant

- and -

TANYA MARIE BAKER

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on August 21, 2012

Decision rendered on August 27, 2012

APPEARANCES

For the Claimant self-represented

For the Defendants self-represented

BY THE COURT:

[1] The Claimant sues for \$1,581.32, which was the cost of an air-conditioner and an Apple iPad, with accessories, that he purchased for the Defendant approximately one year ago. He says that there was a verbal agreement that the Defendant would reimburse him for these purchases over time, when she had the funds. He believes that full payment should have been made by now.

[2] The Defendant says that the items were a gift to her, and that she never agreed that she would pay for them. She also testified that had she actually wanted or needed these items, she had more than ample funds to pay for them at the time. She added that she was more than willing to return them to the Claimant if he wanted them back.

[3] I suggested to the parties that this might be a good result, given that there was some uncertainty as to what I would do vis-à-vis the claim. The Claimant appeared to reject this option, although I left it open and indicated to the parties that if the court had not heard from them reasonably soon to the effect that they had settled their differences, I would make a decision.

[4] Not surprisingly, the evidence revealed a much more complicated situation than a mere reading of the claim would have one believe. The Claimant and the Defendant had been in a romantic relationship for approximately four years, ending in or about December 2009. They appear to have remained friendly, although it also appears that the Claimant may have continued to wish that they could resume the romantic relationship. The Defendant filed in evidence a number of e-mails and text messages between the parties dating from

December 2011 and April 2012. A fair reading of those messages makes it obvious that the Claimant still has a lot of affection for the Defendant, and it is possible that he is still pursuing the relationship.

[5] In cases of domestic relationships, the court looks for clear evidence when one of the partners seeks to recover money from the other on the basis of an alleged oral agreement. Experience has shown that, more often than not, people in such relationships buy things and give them to the other without an expectation that they will be paid for. As such, the context typically determines who would bear the onus of proof. In a transaction between strangers, the presumption would be that there is an expectation of repayment rather than being a gift. That is because people typically do not make expensive gifts to strangers. In the case of an intimate relationship, the presumption is precisely the opposite. People make gifts to their loved ones all the time.

[6] I recognize that the parties in this matter were no longer in an intimate relationship, but had separated approximately 18 months prior to the purchases in question. Even so, I believe that their friendship and the undisguised wishes of the Claimant to elevate the relationship to something more like it had been, creates a context similar to that of an ongoing intimate relationship. In other words, I believe that the proper inference to draw from the bare facts is that the items in question were a gift.

[7] I am reinforced in this view by my impressions of the individuals. To the extent that a finding of credibility is necessary, I believe the Defendant. I accept wholeheartedly her statement to the effect that she did not really need these items, and her offer to return them to the Claimant seemed entirely genuine.

[8] As such, I find that there was no agreement to repay any money. The items were gifts. The Defendant is free to do with these items whatever she wishes. She can return them or keep them. That is entirely her decision.

[9] In the result, the claim is dismissed.

[10] It should be mentioned that the Defendant launched a counterclaim, in response to the claim. In that counterclaim she sought the value of items which she says she left behind at the end of the relationship and has never been able to recover from the Claimant.

[11] There was a procedural problem with this counterclaim. It appears that the Defendant mailed it to one of the two addresses which the Claimant had listed on the claim form. For reasons unknown, it was returned to the Defendant by the post office. As such, the Claimant arrived in court without ever having seen either the defence or the counterclaim. The Claimant indicated that he was not prepared to answer the counterclaim on the hearing date, as he had not brought with him any of the material that he might've needed as evidence.

[12] I indicated that I was prepared to adjourn the hearing and hear the evidence relating to the counterclaim on a future date. The Defendant stated that she was prepared to waive her counterclaim on the basis that she really wanted this matter to be completed on this date. As such, I am treating the counterclaim as having been withdrawn and the order will so reflect.

Eric K. Slone, Adjudicator