

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Reid-Tomlinson v. Reid*, 2017 NSSM 41

BETWEEN:

VALERIE REID-TOMLINSON

Claimant

- and -

GARNET REID

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on July 25, 2017

Decision rendered on August 9, 2017

APPEARANCES

For the Claimant

Jonathan Hughes
Counsel

For the Defendant

self-represented

BY THE COURT:

[1] This is a tale of two sisters. Each one says that the other owes her money in an amount close to or even exceeding the monetary jurisdiction of this court. They cannot both be right.

[2] The two sisters are originally from Jamaica. The Claimant is slightly older than the Defendant. They both have grown children.

[3] The Claimant immigrated to Canada first, in 2008. Over the next few years she tried, and eventually succeeded in convincing the Defendant also to move to Canada. The Defendant has been in Canada more or less permanently since 2013.

[4] In her claim, the Claimant says that she loaned her sister, the Defendant, significant sums of money. She says that her sister agreed to pay her back, and has partly done so, with the result that she is still owed in excess of \$25,000.00. She abandons any excess in order to bring the case within the jurisdiction of the Small Claims Court.

[5] The Defendant says that she loaned her sister a large sum of money in 2007, and other moneys in later years. The Claimant denies this allegation outright.

[6] I listened closely to the parties' evidence to assess their credibility. Overall I found the Claimant to be more credible than the Defendant, who appears to have a selective memory. Even so, the Claimant's evidence was not easy to follow and her record keeping was extremely poor.

[7] There is not much in the way of documentation that unequivocally supports one theory over others. There are “moneygrams” and e-transfers, but all they show is money moving between the parties. There is an email in which the Defendant appears to acknowledge that she owed the Claimant money, but there is nothing else surrounding that email that would suggest what amount she was referring or admitting to.

[8] All of this is not surprising given the previously close relationship of the parties to each other. As I have noted, there is documentation showing money being exchanged between them (in both directions), but what is most obviously missing is any document that describes any of the money paid as a loan, or as repayment of a loan. Some of it may well have been gifts, and a certain amount of money was paid by the Defendant to the Claimant as contribution to living expenses during a time that the Defendant was living in the Claimant’s home. There was also money paid by the Claimant for the Defendant to travel, which is just as consistent with a gift as with a loan.

[9] In order to enforce a loan in this court, a party must prove that a loan was intended. Normally this is not so difficult, as the law is suspicious of gifts and will presume that an advance is meant as a loan. But with the back and forth of money between these two sisters, the picture is muddy.

[10] One aspect of the Claimant’s claim does have some traction. The Defendant owns a home in Jamaica that was being extensively renovated in 2012 and 2013. The documents show that the Claimant was sending money to Jamaica regularly during this time frame, directly to contractors and suppliers.

The precise amount is difficult to arrive at, because the documentation is confusing and because some of the money was denominated in Jamaican dollars. I will return to that later.

[11] At the time the house was being worked on, the parties' mother was living in this property. Since the mother has died, it is now occupied by the Defendant's two daughters.

[12] The Defendant takes the position that this was to be a "family home" and that the Claimant's contributions to the cost were not loans to her. She also claimed to be mostly unaware that her sister was sending so much for the construction.

[13] The reality is that there is no goodwill between the parties, and the Defendant has a home that is valuable and which she gets the benefit of. In my view, there is a good case to be made that the Defendant has been unjustly enriched at the expense of the Claimant. The amount of that unjust enrichment is the amount that the Claimant contributed to construction of the property.

[14] The evidence in support of these payments is sketchy, to say the least, and could have been so much better organized by the Claimant so the court can understand it. Nevertheless, extracting from the package of documents in Exhibit 2 the amounts that can be directly traced to construction appear to total \$6,000.00 in \$ CDN. and \$439,233.57 in \$JMD which at exchange rates during the relevant time (\$83.5 JMD to \$1 CDN) would translate the \$439,233.57 JMD to \$5,260.00 CDN.

[15] As such, I believe the Claimant has established that she has contributed \$11,260.00 to the value of the Defendant's house in Jamaica, and she can recover same on the basis of unjust enrichment.

[16] As for the rest of the claim for repayment of loans, these are dismissed, as is the counterclaim.

[17] The Claimant shall also recover her filing cost of \$199.35.

Eric K. Slone, Adjudicator