

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Somers v. Jamieson*, 2018 NSSM 49

SCC SN No.470705

BETWEEN:

JANET L. SOMERS

CLAIMANT

and

DIANA WARD JAMIESON

DEFENDANT

Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held at Sydney, Nova Scotia on March 21, 2018

DECISION RENDERED: March 23, 2018

APPEARANCES:

For the Claimant: Self-Represented

For the Defendant: Self-Represented

SUMMARY OF CLAIM/DEFENCE

1. The Claimant sues for “money owing” in the amount of \$25,000.00. The reasons set forth in the claim filed simply state “Bills not Paid”. The Claim was dated and issued the 27th day of November 2017 and originally scheduled for hearing on February 12, 2018. Through a series of adjournments, it was brought before me on March 21, 2018. No

written Defence was filed but the Defendant appeared and made representation at the hearing in person.

2. The Court took time to introduce the parties to the Court process, how documents would be introduced, and how evidence would be given, opportunity for each to question the other on their evidence provided to the Court and at the end an opportunity by each to provide their summary of the evidence to support their respective positions. Both parties were placed under oath at the outset and advised that anything they said during the process would be considered information or statements given under oath. Finally, the Court impressed upon the Claimant that the amount of the claim was substantial and therefore it remained her responsibility to provide sufficient evidence to support both the reasons for and amount of her claim.

THE CLAIMANT'S EVIDENCE

3. The Claimant, Janet Somers, provided her direct evidence under oath. At the outset, she tendered to the court documents she wished the Court to receive in support of her Claim. This amounted to seven (7) exhibits in total, each of which was marked. These will be referenced in the following summary of her evidence.
4. Exhibit 1 included 3 pages. The first was a copy of a cancelled cheque drawn on the account of Edwina Martin payable to the Defendant in the amount of \$1,998.00. The reference written on the check was "board for horse". The cheque was dated October 3rd, 2015. Page 2 was identified as the endorsement of the cheque signed by Diana Jamieson (the Defendant). Page 3 was an email dated October 25th, 2017 from Kim Magistro to Janet Somers confirming the fact that she paid board for her horse, Ben, in amount of \$400.00 per month for the period September 12th, 2012 to May 14th, 2015. Overall these exhibits were tendered to show that revenues were being paid to Diana

Jamieson associated with boarding fees for horses that were being boarded at the property owned by Janet Somers at which both the Claimant and Defendant resided.

5. When questioned by the Court to obtain some background information so such evidence could be placed into context, the Claimant only then realized that the information contained in the exhibit dated from a time when she and the Defendant resided together and, therefore, this evidence served no purpose in supporting any aspect of her claim. Through questioning by the Court, the following information was learned that places into context the Claimant's remaining evidence.

6. The Claimant confirmed that she and the Defendant lived together as a couple for approximately six (6) years and resided in a property owned by the Claimant situate at [Claimant's property address removed]. She confirmed that the property housed a barn where she and the Defendant kept horses, both horses owned by them as a couple as well as several horses they boarded for others. The Claimant confirmed that the Defendant during this time principally looked after the horses, feeding, cleaning, etc., but the Claimant confirmed she also regularly provided assistance. The Claimant confirmed that the Defendant owned the neighboring property situate at [Defendant's property address removed] which she purchased in and around 2010-2011. She confirmed that after the Defendant acquired this property, they proceeded to fix it up together by completing renovations in the basement apartment and elsewhere. She confirmed that the Defendant's parents had moved in as tenant and that the long-term plan was to keep the property, then eventually sell it and use the proceeds for their retirement. Each held title to the respective properties on their own and each property was mortgaged. There was essentially no evidence from the Claimant as to how they conducted their finances (i.e.: who paid what) in relation to their cohabitation. Finally, the Claimant confirmed that she and the Defendant parted ways on May 13, 2016 and thereafter resided separate and apart with little contact.

7. The Claimant tendered Exhibit 2 which was an excerpt of her mother's Visa statement dated October 2015. She highlighted two charges which she said were incurred by the Defendant with the understanding that the Defendant would re-pay these amounts but did not. One was a charge of \$500.73 for "Steeped Tea" purchased by the Claimant for a small start-up business she had become involved with associated with selling a specific type of tea. The second charge was \$349.00 for a payment to Tamarind Optical for eye glasses that had been purchased by the Defendant. Included with this exhibit was a receipt from Tamarind dated September 1, 2015 confirming a total purchase of \$949.00, a prior payment of \$600.00 and the balance payment on Visa of \$349.00. There is no name on the invoice indicating to whom it was issued. The Claimant's position was simply that her mother had given her Visa to her to use and in turn the Claimant allowed the Defendant to use it for this purpose, with the understanding that the amount would be re-paid. This related to both the tea purchase and the eye glasses purchase.

8. The Claimant tendered a purchase agreement relating to a truck that had been purchased in December 2011. She stated this vehicle was purchased by both her and the Defendant for the Defendant's use. She confirmed that the loan taken out for the purchase was in both of their names. The purchase agreement appears in both names. However, she confirmed that the registration of the truck was placed in the Defendant's name only and that she had never owned a new vehicle before. Also included was a Royal Bank document submitted to show the payout amount of the loan as at May 2016 in the amount of \$11,049.02. She confirmed that it was her understanding that the truck was sold at this date. She believed the re-sale value of the truck to have been substantially more and her position was that she ought to be entitled to receive some of the excess proceeds. She was not aware of the amount. When questioned by the Court, she indicated that she felt she should have at least received \$4,000.00 because she shared in making the loan payments throughout the term.

9. The next exhibit from the Claimant was a series of five pages, each representing a “payment order” confirming amounts paid to CIBC Bank. The Claimant testified that the Defendant’s mortgage held against her property at [Defendant’s property address removed] had fallen behind in early 2015 to the point that they had received “lawyers’ collection letters” threatening foreclosure action if the arrears were not paid. The Claimant’s evidence, supported by these exhibits, was that she paid, in February 2015, to CIBC on behalf of Defendant, the following amounts: \$340.70, \$900.00 and \$1,000.00. This exhibit further confirmed that additional payments were required to be made on the Defendant’s mortgage in April 2016 in the amounts of \$3800.00 and \$1009.75. She confirmed that these payments were made by her in response to a further letter the Defendant received from the bank’s lawyers threatening foreclosure proceedings. These alleged letters were not exhibited to the court. The Claimant’s position was that this property was solely owned by the Defendant, that she was aware that these payments were made on her behalf and that the payments were required to be made to stave off foreclosure proceedings. The Claimant’s position was that since she and the Defendant had separated and, as a result, their plans to have this property as part of their retirement financial planning no longer existed, she should be entitled to be reimbursed.
10. Exhibit #5 was an invoice from Taylor Flooring dated December 2011. The Claimant confirmed this was for flooring she had purchased for the Defendant’s home shortly after she acquired the home. The invoice was in the amount of \$3799.99. She felt that since they were now parted she should be entitled to be re-paid this amount because the Defendant’s property received the benefit of these goods.
11. Exhibit 6 was tendered to support the claim for re-payment of an account in the Claimant’s name with Scotia Propane. This exhibit showed an invoice in the amount of \$4821.93 for the purchase of a hot water heater and installation. The exhibit also included the summary of the “propane account” for supply of propane from the period

of December 2011 through to September 2017, evidencing the ongoing charges and payments on account. These payments and remaining outstanding charges totaled \$3589.37. The account was in Janet Somers' name and delivery address was [Defendant's property address removed]. The Claimant's position was that these payments were made for benefit of the Defendant's parents who were residing at [Defendant's property address removed] and for the initial water heater installed in the Defendant's property.

12. Finally, Exhibit 7 was tendered to show an invoice in the name of the Claimant from Island Well Drilling in the amount of \$451.03. She testified that this was for repair work required to be carried out on the water system at the Defendant's home. The invoice was dated November 2015. The Claimant claims repayment.

13. The Claimant testified that the outstanding accounts noted in Exhibits 5 (Taylor Flooring), 6 (Scotia Propane) and 7 (Island Well Drilling) all remain unpaid. Further, the Claimant advised the Court that several months ago, through a Trustee in Bankruptcy, Rita Anderson, she had submitted a formal consumer proposal to her creditors. She said she was somewhat confused as to whether this may have turned into an official bankruptcy. She did have in hand what I understood to be copies of the proposal that had been prepared on her behalf but did not wish to tender it to the Court. The Court made her aware of the potential concern that if some or all of the accounts being claimed as part of this Court process were included in the consumer proposal, the outcome/acceptance of any type of consumer proposal would have a direct bearing on the status of these outstanding accounts and whether they still remained payable. There was some further discussion about a second credit card that may not have been disclosed to her Trustee but she confirmed that it had no bearing on her Claim before the Court.

THE DEFENDANT'S EVIDENCE

14. The Defendant, having been sworn in, confirmed she did not have any specific questions for the Claimant. She confirmed that she and the Claimant had been living common-law for six (6) years or so prior to their split in May 2016. She confirmed that she tried to speak with the Claimant several months before she left but the Claimant would not discuss anything. She confirmed that once she left on May 13th, the Claimant changed all the locks on the property, posted no trespass signs and would not allow her back onto the property, either to continue looking after the horses or to obtain some of her personal belongings.

15. The Defendant confirmed that she had been the principal caregiver of the horses and that the Claimant looked after the financial affairs both relating to the barn operation/horses as well as their living together. She testified she used to work at a laundromat operation which the Claimant owned until it burned down several years ago, then received employment insurance for a period of time and then commenced working at one of the local call centers. She confirmed that before coming to court she had absolutely no idea what this claim was about. She further confirmed, regarding each of the items/amounts claimed, that this was the first time she received any notification or claim by the Claimant suggesting she felt she was owed these monies. She did acknowledge, after this claim was issued but before the Court hearing, that there had been some information posted on Facebook by the Claimant's sister but this was general comments with no details. Finally, before providing her response to each of the individual items/amounts claimed, overall her position was that she and the Claimant had lived together and conducted their affairs as a couple. She alluded to the fact that when she left she simply walked away from everything and felt she could have claimed one-half. She said in the late 1990's when she sold her trailer for approximately \$30,000.00 these monies were used for a host of different items including the Claimant's property which they both shared or intended to share.

16. The Defendant's position as to each of the Claims represented by the exhibits tendered by the Claimant was as follows:

- (i) Exhibit 1 - payment for horse board. This occurred during the period in which they resided together and was in the ordinary course of how they conducted their affairs. Money was used to purchase horse feed, hay, shavings. She confirmed that for most part all funds collected for board of horses was used directly to purchase feed and supplies for horses.
- (ii) Exhibit 2 - as for Steeped Tea claim, she says she had a party for purposes of introducing the tea and orders were received at that time. Recalls having received approximately \$250.00 in cash and Claimant requested that she take the cash and place order with mother's credit card. She acknowledged doing this and once sales completed had paid back the full balance to the Claimant, including the initial cash. As for the eye glasses charged, also confirmed she had paid the amount charged back to the Claimant in full.
- (iii) Exhibit 3 - Purchase of truck, loan and sale. Confirmed the truck was bought and loan was in both names. Truck was for her use and Claimant had a vehicle. She testified that she had made the payments on the loan. She testified that after she parted with Claimant she was required to start paying rent and therefore could no longer afford to make payments on the truck. She testified she sold it several months after they split for a sale price of \$15,500.00 and used the monies to pay off the loan and retained the balance for living expenses.
- (iv) Exhibit 4 - deals with Mortgage payments made by the Claimant on Defendant's mortgage with CIBC against her property. In response, she initially referenced the home "they" purchased. She did not deny that these payments had been made by the Claimant but again explained that when they were together they operated as a team, so to speak, whereby they considered all of their assets as one. Therefore, she did not think there was anything unusual about the Claimant stepping up. She explained when the mortgage was originally taken out and her parents' rent amount determined, it fell short approximately \$60.00 per month and that is what caused the arrears to accumulate.
- (v) Exhibit 5 - Taylor Flooring account—Defendant did not deny these charges but again said that the Claimant wanted to carry out this work for upgrades required to the home she had purchased.
- (vi) Exhibit 6 - Scotia Propane expense – The Defendant did not deny this work was carried out. Again, her position was that this work was carried out shortly after

she had purchased the home. She further testified, as it related to ongoing propane expense that the Claimant insisted that she wanted to pay this account for her parents who were residing in the home at [Defendant's address removed]. The invoices continued long after they separated however she had not been aware that the account was not being kept current.

- (vii) Exhibit 7 - Island Well Drilling account – the Defendant did not deny that this work was required to be carried out and said, as with the other work done, they completed this work as a couple and the Claimant managed the financial affairs while they resided together.
17. The Defendant confirmed that her property was finally sold in 2017. She testified that prior to closing, the Claimant entered the residence and removed the fridge, washer and pellet stove. She testified that this created serious problems with closing and gave rise to significant additional expenses. She stated that she lost approximately \$9,000.00 on the sale of her property and this included the need to have her lawyer hold the sum of \$6,000.00 in trust to cover off extra expenses incurred by the buyers because of the items removed from the home by the Claimant. She also testified that it was her understanding that before her home was sold her father had given to the Claimant a movable shed which she owned and valued at approximately \$800.00.
18. In summation and response to the Defendant's evidence, the Claimant confirmed the following points:
- (i) Shed was still owned by her father and although now on her property was full of father's personal property;
 - (ii) She stated that she owned the fridge, washer and pellet stove and pellet stove did not work and she only used it for parts;
 - (iii) Closing was delayed as a result of her parents not being able to re-locate on that day and not because of anything Claimant did. She noted the Defendant had called the police to attend at the property on day of closing although no details as to why were provided.

REASONS FOR DECISION BY THE COURT

19. I find the nature of this claim similar to one which would be found in Family Court arising from the breakup of a married couple, only in this instance the parties were living with each other in a common-law relationship. However, not unlike most common-law relationships, parties often choose to live as one, so to speak, whereby they both contribute towards their daily lives and living expenses in accordance with decisions they often mutually make regarding who will contribute what towards their living environment and the corresponding assets and expenses. More often than not a couple's earnings are not equal but the intention is to treat each other as equals in their ownership of property and living expenses.

20. The evidence in this case confirms that the parties lived together and chose to operate a barn and to own and house both their own horses and board others. The evidence is that the Claimant had a day job elsewhere and the Defendant took on the responsibilities of managing the horses, home etc. I note this because I believe it is significant in determining the ownership of the various debts, what the intentions of the parties likely were and ultimately who should be responsible to pay. As it relates to the various debts, their evidence with respect to some is in direct contrast to each other. In relation to some of the other debts, there appears to be little dispute on either side that the debt had been incurred in connection with the Defendant's property but was done so or incurred in the Claimant's name with an expectation that they essentially owned their properties together and hoped someday to sell the Defendant's property to realize funds for "their" retirement. For that reason, I believe the Defendant when she testified that the first she had heard of these claims was before this court hearing. I further believe that on the part of the Claimant there would never had been an expectation to claim any share of these debts from the Defendant had they not split because she

believed that these expenses were made for the benefit of both. Finally, on this point, as noted to the Claimant during this court proceeding, I do question the timing of this Claim being advanced (November 2017), some 18 months after they separated, and several years after some of the expenses had been incurred. This does raise some suspicion for the Court as to the motive of the Claimant. The Court also has some very real concern about the fact that the Claimant had entered into some formal proceeding under the *Bankruptcy Act* but would not share with the court any details of those proceedings, what debts may have been included in any consumer proposal and most importantly the outcome of that proposal.

21. Based on the evidence as to the background of the parties' relationship during the period in which these debts were incurred, regardless of who I believe, if I had "all" the required evidence before me, my tendency would be to simply consider everything equal, including the debts and assets. However, unfortunately all of the required evidence has not been presented, particularly evidence of the asset base of the Claimant which would include the value of her property and assets. Therefore, it makes it difficult for me to judge this claim by the Claimant where she essentially claims a form of unjust enrichment because of her contribution to the Defendant's assets -- such as the work and materials expended by her for the benefit of a property in the Defendant's name, the truck in the Defendant's name and so forth. The evidence of the Defendant was that she sold her mobile home back in 2008-09 and realized upwards of \$30,000.00 which she stated she contributed towards the Claimant's property and other assets they enjoyed together but essentially no details were provided.
22. I am satisfied that until the parties separated and, as it appears, for quite some time after, clearly neither had any expectation of anything being owed by one to the other. Again, there is insufficient evidence for me to determine what, if any, amount of the loss suffered by the Defendant during the sale of her home may have been caused by the Claimant's actions. What does appear certain is that in the end, upon completion of the

sale, there was no equity. In fact, the evidence was that there was a \$9000.00 loss. If, as the evidence suggests, the parties intended that the benefit of this property was something they would share equally, then it would not be fair, in the face a loss being realized by the Defendant, for the Court to allow the Claimant to cherry pick so to speak and attempt to claim specific expenses she had contributed towards this property. Clearly, had a profit been realized then the court would most likely take a different view in determining this matter but that is not the case. Therefore, as it relates to the several expenses claimed associated with the property including the accounts of Island Well Drilling, Scotia Propane, Taylor Flooring, the mortgage payments to preserve the property, I find these are expenses incurred by the Claimant, with the acknowledgement of both parties and with the expectation that the payments were for the benefit of both parties. However, with this said, I also find that if it was the intention of both parties to share equally in any benefits that may have been derived from the property at [Defendant's address removed], then they must be prepared to share in the losses. Therefore, I find that the Defendant shall be entitled to a credit of 50% of the final loss incurred by the Defendant.

23. Regarding the ongoing propane charges, I am satisfied that the Claimant had openly accepted to pay these ongoing expenses for the benefit of the Defendant's parents and she shall remain responsible for the balance of these charges outstanding.
24. Regarding the Visa charges for Steeped Tea and eye glasses, I am prepared to accept the evidence of the Defendant that these amounts were paid back directly to the Claimant as promised.
25. As for the truck, I accept the evidence that the vehicle was purchased for the sole use of the Defendant. Title was placed in her name and she accepted responsibility for the monthly loan payment. I have no doubt that there may have been times that boarding revenues received may have been used to assist in making the loan payment but I also

accept that the truck was used by the Defendant in connection with the small stable business they operated together. As well, I accept the evidence of the Defendant that the two horses they owned jointly were left with the Claimant and there would be some value attributed to these. There is simply not enough evidence before me to have any sense as to the value of the truck other than the evidence presented confirming the sale price and balance of loan. As I had noted at the outset, this claim was for a substantial amount of money and the basic onus to establish not only a claim but also its value rests with the Claimant. From the evidence, it appears the equity in the truck at time of sale was approximately \$3500.00. I find that this truck was intended to be the personal vehicle/asset of the Defendant, she had made the payments on the loan and therefore would be entitled to any equity realized. I assume the Claimant would take the same view with regards to her own vehicle.

26. The evidence was that, throughout most of their relationship, the Defendant did have some form of income and therefore one can reasonably assume that she would have contributed some assets and monies towards their joint living expenses. I accept the Defendant's evidence, undisputed by the Claimant, that she had realized approximately \$30,000.00 from the sale of her former home after which she began to reside full time with the Claimant. I accept that at least some of these monies were contributed towards assets owned by the Claimant of which she has been able to retain the benefit after separation.

ORDER

27. Based on the foregoing and having heard all of the evidence of the parties, the particulars of the Court's determination of this Claim are as follows:
- | | | |
|------|----------------------|------------|
| i) | Taylor Flooring | \$3,799.00 |
| ii) | Scotia Propane | \$4,821.93 |
| iii) | Island Well Drilling | \$451.03 |

iv)	CIBC Mortgage payments	<u>\$7,050.45</u>
	Total Contribution: \$16,122.41/50% =	\$8,061.20
	Loss on sale of Property [Defendant's property address removed] \$9,000.00/50% =	<u>\$4,500.00</u>
	Excess amount paid by the Claimant	\$3,561.20

28. Based on the foregoing, I hereby order that the Defendant shall pay to the Claimant the sum of \$3,561.20 together with her costs for filing the Claim in the amount of \$199.35 for a total of \$3,760.55.

DATED at Sydney, Nova Scotia this 23rd day of March 2018.

A. ROBERT SAMPSON, Q.C.

Adjudicator