

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Penney v. MacKenzie*, 2019 NSSM 40

Date: 20190806

Docket: SCCS 485367

Registry: Sydney

Between:

Charlene Penney

Claimant

-and-

Kate MacKenzie

Defendant

Decision

Written Submissions: June 18, 2019

Appearances: For the Claimant: Stephen Jamael
For the Defendant: Kaitlin MacKenzie, Advocate

Adjudicator: Tuma T. W. Young

Heard: May 22, 2019 at Sydney, Nova Scotia
(supplemental briefs filed June 18, 2019)

By the Court

1. This is a claim for a debt.
2. The claimant has claimed that the defendant owes in the amount of \$19,736.93 as a result of either a personal loan or a salary advance and has requested an order to stop the defendant from harassing the claimant personally and their business.

3. The defendant has filed a defence attesting that the amount claimed is inaccurate and has denied the harassment claim. Furthermore, the defendant has filed a counterclaim of lost wages, a demand for an issuance of a T4 slip and a claim for an order prohibiting future harassment.
4. The claimant is based and resides in Saint Lucia where the claimant operates Helpaws, a dog rescue and adoption shelter.
5. The defendant resides in Cape Breton and was employed by the claimant for a period of time in Saint Lucia at Helpaws. During this period of employment, the defendant became sick and had to return to Canada for treatment.
6. The defendant does not dispute that money was transferred to her but asserts that this was an advance on her employment salary and not a personal loan.
7. The first issue was whether the Court has jurisdiction to hear the matter. The defendant argued that this court does not have the jurisdiction to hear this matter because the claim relates to an employment contract that was agreed upon in Saint Lucia and not in Canada.
8. Counsel for the claimant referred the Court to section 19 of the *Small Claims Act*, RSNS 1989 and it states:
 - 19 (1) A claim before the Court shall be commenced in the county in which
 - (a) The cause of action arose; or
 - (b) The defendant or one of several defendants resides or carries on business,By filing a claim in the form prescribed by the regulations, accompanied by the prescribed fee, with the prothonotary of the Supreme Court in the proper county.
9. As this was a primary issue, the Court heard arguments from both sides and requested written submissions plus directed both sides to provide any cases on point in this matter. The written submissions were submitted on June 18, 2019 and no cases were filed by the claimant or by the defendant in support of their respective positions.
10. It is necessary to first make a determination of whether the Court has the requisite jurisdiction to hear the case.

11. I find that the Court has jurisdiction to hear the case based on the fact that the defendant is currently residing and was at all times, considered to be a resident of Nova Scotia. Thus, the Court has the requisite jurisdiction under section 19 (b) of the *Small Claims Act*.

12. The claimant was correct in filing the claim in Nova Scotia in accordance with the *Small Claims Court Act* and regulations.

13. Now to move to the next stage of the analysis of whether this claim is rooted in a personal loan or is a breach of an employment contract.

14. The claimant claims from the defendant the amount of \$19,736.93 and the defendant, in the exhibits tendered, claims the amount is actually \$1237.15.

15. Both the claimant and the defendant do not dispute that funds were transferred from the claimant to the defendant. What is at dispute is the amount owed by the defendant to the claimant.

16. There is no doubt that the defendant was employed by the claimant for a period of time and that the duties related to employment were done in Saint Lucia.

17. There does not seem to be a standard employment contract in place here. Part of this employment contract is a verbal contact while other parts are written in emails, and text messages. It is unfortunate that neither party took the time to clearly outline their responsibilities and undertakings prior to entering into this agreement. Often this type of loosely based agreement leads to misunderstandings of what constitutes the terms of the contract or agreement.

18. The evidence and testimony from both parties is that most of the funds were transferred as part of an employment contract. However, some of the funds advanced do not fit quite neatly into the employment contract model (medical expenses and claims for dog care).

19. However, the basic components of an employment contract are in place as between the parties (an offer, acceptance, consideration, etc.) but many of the work-related details, benefits and expectations were not clearly communicated to each other or not necessarily agreed upon at the time of reaching agreement. Thus, both parties now have a different understanding of what the provisions of this employment contract are.

20. It is clear from the evidence tendered and contained in the exhibits that the employment contract contained the following provisions:

1. Salary of \$1000 per month
2. An offer for housing was initially included in the original offer (Exhibit 5 page 9).
3. Meals were to be provided (Exhibit 5 page 13).
4. Use of a car for work related purposes.

21. When the parties first had difficulties in the agreed upon arrangement, the claimant tried to clarify through an email the claimant's understanding of the employment contract.

22. The defendant did work for the claimant from November 2017 to Sept 16, 2018 (a total of 10 months). I find that the defendant earned \$10,000 for this period.

23. The hospital bills incurred by the defendant were in the amount of \$7200.15 (Exhibit 3 page 19). The defendant states that the outstanding amount owing on the medical expenses is actually \$2857.15 and that the illness was contracted as a result of working with animals. (Exhibit 7, tab 5, page 1 to 3).

24. However other than the defendant's letter to the claimant, the defendant did not offer any support or proof of the reduced amount for the health expenses. I do find that the claimant was able to recoup the amount of \$4386.96 from a GoFundMe account that was set up by "Lisa". Thus, the medical expenses that are still outstanding and paid for by the claimant are in the amount of \$2857.15 (Exhibit 2, page 1) and confirmed by the defendant (Exhibit 7, tab 5, page 3). The claimant is entitled to a refund of these expenses, in the amount of \$2857.15, as this was not considered part of the employment contract for the claimant to provide health benefits to the defendant.

25. The defendant claims overtime expenses but concedes that there is no quantifiable method or record of any overtime, thus this is not to be considered part of the defence counterclaim (Exhibit 7, tab 5, page 2). The claim for any overtime is dismissed because of this concession by the defendant.

26. What was clear is the lack of proper record keeping and lack of clarity regarding the amounts that were purported to be advanced to the defendant for an additional year of work. Again, there was no signed contract, no provisions that

were written and agreed upon by both parties as to how this was to be done or executed upon.

27. There is mention of a 1-year commitment but again, no written employment contract was drafted and/or signed by either party. It is hard to uphold this provision in the absence of any such agreement or acceptance by the defendant.

28. The claimant claims from the defendant the cost of flights back to Canada in the amount of \$740 plus a cancellation fee of \$150. Since there was no written contract in place for this and in addition, there was a notation that the defendant's brother was going to pay, and also the e-transfer was not sent directly to the defendant (but rather to a Lory Mackenzie), I will dismiss this portion of the claim. The claimant has a credit of \$553.51 which can be used for a future flight.

29. The claimant changed some provisions in April of 2018 (Exhibit 1 page 1) to include a housing allowance (where previously it would appear that housing was included) of \$1200 EC (\$600 CD). I am not sure if this is meant for months beginning in April 2018 or to be backdated to September. The defendant acknowledges the housing allowance (exhibit 7, tab 5, page 2). There was an initial offer of housing thus I find this housing allowance was in place from April 2018 and reduce the claimant's claim by \$3600.

30. The harassment claims by both parties are dismissed as I found no harassment by either party, just ordinary communication or frustration with each other. Neither party engaged in deliberate harassment of the other. As for the future harassment claim by the defendant, I will dismiss this claim as there is no basis for it.

31. The defendant argues and relies on certain provisions on the Saint Lucia Labour Code (Exhibit 7, tab 5, page 1) but I am not convinced that even the defendant is entirely accepting of this argument. For that reason, I will dismiss this argument. For example, the defendant, refers to the work as "purported" and places the term "contract" in quotation marks (Exhibit 7, tab 5, page 2).

32. As for the expenses related to the care of the dogs, "Sasha and Jersey", I will dismiss these arguments. The claimant runs a dog rescue and since the defendant left Saint Lucia without a plan in place for the return of the dogs or any care agreement as between the two, I find that this would be akin to abandonment by the defendant and the claimant is free to rehome, adopt or send them back to

Canada to rehomed or to another shelter. Any costs borne as a result of this are the responsibility of the claimant.

33. Given the fact that the claimant is located in Saint Lucia, I am unable to order a T4 slip as requested by the defendant. The claimant may wish to issue the Saint Lucia equivalent to the defendant and the defendant is responsible for any and all taxes owing or entitlement to any deductions or refunds associated with the income.

34. In light of all the evidence submitted at trial, in exhibits and in supplementary submissions I find for the claimant in the amount of \$8059.72 calculated as follows: 19,736.53 minus salary of 10,000 plus medical expenses of 7200.15 minus go fund reimbursement of \$4386.96 minus airfare & cancellation fee of \$890.00 minus housing allowance of \$3600 = \$8059.72 .

Tuma T. W. Young
Adjudicator