

SMALL CLAIMS COURT OF NOVA SCOTIA

Date: 2019-09-16

Docket: 489802

Registry: Halifax

Between:

Mariam Aminzada and Alice Evans

Claimants

- and -

Mohd Harife Rahimi

Defendant

Adjudicator: Eric K. Slone

Heard: in Halifax, Nova Scotia on September 3, 2019

Appearances: For the Claimants, self-represented

For the Defendant, self-represented

BY THE COURT:

The Parties

[1] The Claimant, Mariam Aminzada (“Ms. Aminzada”) came to Canada as a refugee from Afghanistan in 2015. She resides in Halifax with her three daughters who, I believe, are all teenagers (or thereabouts). She speaks very little English, and it is apparent that she is unfamiliar with many local customs and legal processes.

[2] Ms. Aminzada’s husband remains overseas, currently in Russia, and Ms. Aminzada has been desperately trying to arrange for him to join the family in Canada.

[3] The Claimant Alice Evans is a friend of Ms. Aminzada. They have in common the fact that they both have a child with a disability. Ms. Evans has

been helping Ms. Aminzada since she became aware of some of her circumstances, and in particular the facts that concern her relationship with the Defendant Mohd Harife Rahimi (“Mr. Rahimi”).

[4] Ms. Evans does not really have a personal financial stake in the matter, and the eventual order will reflect that fact. I appreciate that her only intention in naming herself as a Claimant was to be helpful.

[5] Mr. Rahimi is a man who originated in the same part of the world as Ms. Aminzada, but he has been in Canada for about twenty-five years and is either a Canadian citizen or permanent resident. They met shortly after Ms. Aminzada arrived in Halifax and he presented himself as someone who could help her in various ways.

The Claim

[6] Ms. Aminzada contends that she gave Mr. Rahimi in excess of \$9,000.00 to arrange for a sponsorship of her husband’s refugee claim to come to Canada, which process never came to anything. She also says she advanced Mr. Rahimi \$850.00 to help him buy a car for her, which car never materialized and which money she says he never repaid.

[7] Mr. Rahimi’s defence is a complete denial that he took any money from her for the sponsorship application. He claims that this is a complete fabrication. As for the \$850.00, he says that Ms. Aminzada actually gave him partial payment for a car that he bought for her at a car auction in New Brunswick, and that she later refused to take the car and he was forced to sell it at a loss. He also claims that Ms. Aminzada has taken financial advantage of him, to his considerable financial detriment.

[8] Both parties claim that the other has engaged in harassing behaviour, and both parties have involved the police in their dispute. There is apparently, or was at one time, a peace bond that prohibits or limits contact between the parties.

The evidence

[9] I will say at the outset that the evidence was not easy to follow. Ms. Aminzada’s testimony was given in her native Farsi, translated by her

daughter Hasdi (who speaks reasonable English, but is not a trained translator). Ms. Aminzada's account was somewhat confused, which I attribute mostly to her unfamiliarity with how things are done in Canada.

[10] The narrative was made more coherent by the fact that Ms. Evans became a confidant of Ms. Aminzada and she managed to get something of a grip on what had apparently happened. Ms. Evans's testimony enabled the court to understand the narrative better, though some of what Ms. Evans stated was hearsay. However, she also insinuated herself into the situation and obtained first-hand evidence that greatly assisted the court.

[11] Mr. Rahimi's initial efforts to help Ms. Aminzada appear to have been mostly innocent. Ms. Aminzada had brought with her to Canada all of the family's life savings (in cash) and had the need at times to send money to her husband and to other relatives overseas. Mr. Rahimi offered to help her send wire transfers, and did so in his own name on more than a dozen occasions over a period of more than two years. He told her that because she was receiving government income support, she could not legally send money overseas. While I am unsure of the details, I suspect that there is some truth (or at least perceived truth) to the advice that Ms. Aminzada should not be seen to have large sums of money, given her standing with the government authorities. I am willing to accept that Mr. Rahimi was acting in good faith in this respect. He had nothing to gain financially from helping Ms. Aminzada in this way, although there might have been some perceived value to him in ingratiating himself to her.

[12] Sometime in 2016, according to Ms. Aminzada, Mr. Rahimi told her that he could help her to sponsor her husband to come to Canada. He told her that the total cost would be \$30,000.00. She said that she had \$6,000.00 in US cash and a further \$3,000.00 in Canadian funds, which he said that he could accept and that "his company" would put up the balance of funds required. She was unclear in her understanding but believed that this money was to be paid to the government as the fee for the sponsorship application. Ms. Aminzada believed that Mr. Rahimi was an employee of FedEx, which according to Mr. Rahimi is not the case. As to why Mr. Rahimi's employer would put up money to help her, Ms. Aminzada did not profess any understanding, but she simply accepted that this was what was happening.

[13] Ms. Aminzada testified that Mr. Rahimi drove with her to a "tall building" in downtown Halifax and had her wait in the car while he started the

process. He later came back to the car and said that he had to return with “two cheques” and they proceeded back to his house to get those cheques, and then returned downtown. She says that Mr. Rahimi told her the process would take less than a year, and she believed that everything was in motion.

[14] I take judicial notice of the fact that the cost to make a sponsorship or refugee application in Canada is relatively nominal, measured in the hundreds rather than the thousands of dollars.

[15] Ms. Aminzada testified that after about two years, she became concerned that there was no apparent progress. With the benefit of Ms. Evans’s advice, she asked Mr. Rahimi to stop the process and arrange for a refund of her money. She testified that Mr. Rahimi told her that the process had been stopped, and that the return of her money would be forthcoming. This money was never returned to Ms. Aminzada and this forms the bulk of her claim.

[16] In the meantime, in 2017 she testified that she accompanied Mr. Rahimi to a car auction in New Brunswick. She testified that Mr. Rahimi took \$850.00 from her and told her that he would buy her a car. She says that she never got any car, nor a refund of her money.

[17] Ms. Evans testified that she became involved in about October 2018 when Ms. Aminzada confided in her all that had been going on with Mr. Rahimi. She said that she became sceptical that Mr. Rahimi had actually commenced any type of immigration application on behalf of Ms. Aminzada’s husband, and she set about trying to get concrete evidence to that effect. With Ms. Aminzada’s concurrence, she told Mr. Rahimi that she had given Ms. Aminzada \$9,000.00 on the basis that she would get reimbursed by Mr. Rahimi. She drew up a document dated November 8, 2018 which she had Mr. Rahimi sign, which stated:

“If you give Mariam Aminzada the \$9,000 (or part of this money) I owe her from Canada Immigration I will repay you by Dec 1, 2018.”

[18] The document was signed by Mr. Rahimi and also contained a copy of his driver’s licence.

[19] Ms. Evans also engaged in text conversations with Mr. Rahimi where she

attempted to draw out admissions that he⁵ had taken Ms. Aminzada's money and was indebted to her. I will not directly quote the somewhat fractured conversation, but observe that Mr. Rahimi appears in those exchanges to admit that he was waiting for money from Canada Immigration and that when it was received, he was planning to turn it over to Ms. Evans. More significantly, nowhere in those exchanges is there any form of denial, which one might expect if Mr. Rahimi was being asked for money that he did not owe.

[20] Ms. Aminzada's daughter Hasdi (or Hasti) testified that she had several phone conversations with Mr. Rahimi about the money, which she recorded on her phone and then transcribed. One such conversation (October 2, 2018) was as follows:

Mohd (Mr. Rahimi): Tell your dad to call me on my phone.
Hasti: Then when can we ... because my dad needs money
Mohd: Mhmm
Hasti: His sponsorship
Mohd: He needs to talk to me
Hasti: When can we get it so we can send it to him? Because he needs it.
Mohd: When the cheques are going to come back to me. My money is there too. Not just his. When they release the cheque and they send me I'm going to send him the money.
Hasti: How much was it?
Mohd: \$30,000
Hasti: How much of that was our money that we give?
Mohd: Yours was \$9,000.

[21] I note that this was before Ms. Evans advised Mr. Rahimi that she had advanced the money to Ms. Aminzada.

[22] Ms. Evans admitted that she had made up the story about advancing the money to Ms. Aminzada. In some instances, the fact that a witness has lied might give me pause concerning their credibility. Here, on the other hand, I appreciate that Ms. Evans felt it necessary to create a ruse to draw out an admission from Mr. Rahimi, and I do not count it against her credibility. On the contrary, I found her to be utterly credible.

[23] The evidence of Mr. Rahimi was that the story about the immigration sponsorship was a total fabrication; it never happened. The document he signed

for Ms. Evans, he says, is a “fraudulent document.” He tried to explain some of the text messages with Ms. Evans by saying that it wasn’t him, that Ms. Aminzada had borrowed his phone from time to time and it could have been her texting with Ms. Evans. As for the transcribed phone call, he appeared to be suggesting that he merely told Hasdi what she wanted to hear. I cannot accept his version of events.

[24] Mr. Rahimi further testified that he spent a great deal of money on Ms. Aminzada, such as by buying her an expensive television and a carpet. He says that he did buy a car for Ms. Aminzada at the auction, a 2006 Mazda Tribute, which cost him a total of \$2,355.20. He says that Ms. Aminzada gave him \$850.00 toward the purchase and owed her the rest. He says that when they got the car back to Nova Scotia, Ms. Aminzada decided that she did not want it, and he was forced to sell it at a loss.

[25] Mr. Rahimi claims that Ms. Aminzada and her family have been relentlessly harassing him and that he has complained to the police. He claims that Ms. Aminzada took advantage of him, rather than the other way around.

[26] Mr. Rahimi’s wife, Shikeba Begum, testified on her husband’s behalf. She stated that her husband spent a great deal of time with Ms. Aminzada and her children, and that he was under constant pressure to do things for them. She also stated that she and her husband were being harassed by Ms. Aminzada and her family.

[27] Ms. Begum did not have any direct knowledge, one way or another, about the alleged moneys given to Mr. Rahimi for the immigration matter, although she insisted that he never took money from Ms. Aminzada. My observation is that Ms. Begum resented the amount of time that her husband was spending with Ms. Aminzada, which was no doubt considerable.

Credibility findings

[28] I have already stated that I found Ms. Evans to be totally credible. Overall, I find that the story told by Ms. Aminzada and her daughter has the ring of truth, and the denials by Mr. Rahimi ring hollow. The documents are consistent with the position of the Claimants and utterly inconsistent with Mr. Rahimi’s story. It is my conclusion that Mr. Rahimi took financial advantage of Ms. Aminzada, and all of his communications with Ms. Evans and Hasdi were

simply efforts to buy time and avoid having to come up with the money.

[29] Ms. Begum's evidence was of little value, given her lack of direct knowledge, and the fact that she was clearly biased in favour of her husband.

[30] Mr. Rahimi may well have had some altruistic motives mixed in with his financial chicanery, and he may even believe that the scales are somewhat balanced, but it is not my place to psychoanalyze him. In the end, I do not believe anything that he has testified to, and I accept the testimony of the Claimants' witnesses in full.

[31] I find that Mr. Rahimi took first \$9,000.00 (\$6,000.00 US and \$3,000.00 Cdn.) and then \$850.00 from Ms. Aminzada under false pretences. I am accordingly awarding Ms. Aminzada a return of these sums. The \$6,000.00 in US funds is worth approximately \$7,945.00 Cdn. at current exchange rates, so I am adding \$1,945.00 to the \$9,850.00 that I otherwise order. Although this amount was not specifically claimed on the face of the claim, it was mentioned in the narrative attached to the claim and it cannot come as a surprise to the Defendant that he could be held responsible for the difference in exchange rates. To the extent that an amendment to the claim is needed, I allow it.

[32] I note that Mr. Rahimi attempted during his testimony to advance a counterclaim in the amount of \$468.63 against Ms. Aminzada for some damage to his car's mirror that he says she had done in October 2018 when she borrowed his car. I reject this counterclaim because Mr. Rahimi did not make such a counterclaim at the time of filing his defence, and moreover I find that he has not proved that Ms. Aminzada caused any such damage. She denies it, and I find her credibility to be superior to that of Mr. Rahimi.

[33] In the result, there will be an order that Mr. Rahimi pay to Ms. Aminzada the sum of \$11,795.00 plus \$199.35 in costs.

Eric K. Slone, Adjudicator