

2018

Claim No. 478957

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation: *Levangie v. MacDonald*, 2018 NSSM 108**

**BETWEEN:**

**CALLISTA ANN MARIE LEVANGIE**

**CLAIMANT**

and

**LAWSON MITCHELL MACDONALD**

**DEFENDANT**

**REASONS FOR DECISION**

**BEFORE:**

A. Robert Sampson, Q.C., Adjudicator

**DATE OF HEARING:**  
24, 2018

Hearing held at Sydney, Nova Scotia on October

**DECISION RENDERED:**

November 15, 2018

**APPEARANCES:**

**For the Claimant:**

Self-Represented – Ms. Levangie

**For the Defendant:**

No Appearance

**BY THE COURT:**

1. This claim is stated to be for payment of \$2002.58, the majority of such sum representing the balance owing by the Claimant and Defendant under a certain loan agreement they jointly entered into in connection with the purchase of a swimming pool. The Claimant was self-represented and upon opening of the court there was no appearance by or on behalf of the Defendant. The court satisfied itself that there was a proper affidavit of service in the court file which confirmed the Claimant personally served the Defendant with her Notice of Claim on the 7<sup>th</sup> day of August 2018 at her residence at [...], Sydney. The Claimant in her evidence re-confirmed this to the court.

**SUMMARY OF CLAIMANTS EVIDENCE**

2. The Claimant confirmed that she and the Defendant had been together as common-law partners for approximately nine years. She confirmed that during this time they resided together at [...], Glace Bay, NS. She confirmed that the deed to

the property on [...] was in the Defendant's name, however, stated that she had been on the mortgage. No evidence as to ownership or mortgages was tendered to the court. The Claimant stated that she and the Defendant separated in 2012 and since then have lived separate and apart.

3. The essential elements of the Claimant's claim pertains to matters arising from their decision to jointly purchase a swimming pool back in 2010 which was installed at the residence. The evidence was that this above-ground pool was purchased back in 2010 for \$7312.23. The Claimant tendered as Exhibit 1 (hereafter referred to as "Loan Agreement") a copy of a TD Financing Services Agreement which she represented as the finance contract she and the Defendant entered into to secure the money to acquire the swimming pool. As a matter of note, the borrowers are described in this Loan Agreement as Lawson MacDonald and Callista Courtney. Although no information was provided to the court confirming that Callista Courtney and Callista Ann Marie Levangie (the Claimant) are one and the same, given that the Claimant tendered this Exhibit 1 to represent her and the Defendant's original loan obligations, the court reasonably assumes they are one and the same person.

4. The Claimant confirmed that the borrowed monies under the Loan Agreement were used to purchase the pool and in the summer of 2010 the pool was installed on their property on [...] Glace Bay. The Claimant confirmed that their relationship ended in 2012 and they no longer resided together in the property. The Defendant remained in the property and the pool remained.

5. The Claimant confirmed that since their separation the Defendant had made all payments associated with the Loan Agreement except in August 2018 when she was required to make a payment in the amount of \$128.45. She testified that she believed the Defendant sold the pool in 2014 but was not aware to whom or for what amount it was sold. The Claimant stated in her written claim that the pool was sold and the monies were not applied to the Loan Agreement. In her testimony, when asked by the court she acknowledged that she had no firm proof of what the pool was sold for or whether any monies had been applied to the balance of the loan. She tendered Exhibit 2 (hereinafter referred to as the "Payment Schedule") representing the payment history on the Loan Agreement dating back to January 2017 forward, together with the estimated balance owing. It confirmed the \$128.45 payment made on August 2, 2018 arising from and corresponding to an earlier "NSF" payment recorded in July 2018. Otherwise, this Payment Schedule confirms the balance owing as at October 23, 2018 was \$1842.01.

6. Exhibit 3 was tendered which represented a written letter from “FINANCEIT” to both Claimant and Defendant confirming the above-noted balance owing and providing payment directions and so forth. Finally, Exhibit 4 was tendered representing confirmation from the Royal Bank that a payment was made by Visa to FINANCEIT Canada Inc. on August 22<sup>nd</sup> in the amount of \$128.45. The Claimant represented this as confirmation of the payment she was required to make on the Loan Agreement.

7. The Claimant’s overall concern was with the threat that her personal credit rating will be negatively affected if this loan, which remained in both her name and the Defendant’s name, continually falls into arrears. She explained that her children are entering university years and it is critical, in her view, that she be able to maintain good credit as she anticipates the need to assist them financially. Further, she does not feel she has to pay for a pool that remained with the Defendant which he later sold and he would have received whatever sale proceeds were realized. For these reasons she seeks a judgment representing the amount of the loan balance together with the payment she was required to make in August and any other bank or interest charges that may accrue before final pay-off of the loan or somewhat in the alternative (based on her written claim) an order directing that the Defendant pay off the balance of the Loan Agreement.

## **SUMMARY OF EVIDENCE AND DECISION**

8. For the following reasons I find, having regard to the evidence and representations of the Claimant there is no basis for this court to make an order against the Defendant to pay to the Claimant an amount equal to the balance of the Loan Agreement or to direct the Defendant to pay off the Loan Agreement. I do find that the Defendant shall pay to the Claimant the amount of \$128.45 being the payment the Claimant had made on the Loan Agreement in August 2018 as referred in the Claimant’s evidence.

9. The contract presented to the court was the Loan Agreement (Exhibit 1). This is a contract between TD Finance and “both” the Claimant and the Defendant. The loan proceeds were given to them both in exchange for certain promises and obligations which they both continue to share. More directly, regardless of what agreements may have been made between the Claimant and Defendant as it relates to their respective obligations under this Loan Agreement, neither can release the other from their commitment to the lender without the Lender’s agreement. As

such, based on the evidence it would appear to the court that upon the parties separating back in 2012, through their own agreement, the Defendant assumed all obligations for both himself and the Claimant under the Loan Agreement. There is no evidence of any other conditions other than that the Defendant continue to honor their joint commitment to the Lender. The evidence suggests that from 2012 to July/August 2018 the Defendant continued to honor this commitment. While Exhibit 2 only provides a partial payment history dating back to January 2017, it confirms consistent payments were made, albeit it identifies several NSF payments which presumably were later caught up by the Defendant.

10. In order to find a contractual breach one must first find the terms of a contract, in this case between the Claimant and Defendant. The evidence was, at the time of the court hearing, that the loan payments appeared to be up to date and continuing to be made by the Defendant other than the August 2018 payment. While I do find sufficient evidence that there was an agreement between the parties whereby the Defendant had agreed to accept full responsibility to continue to honor the terms of the Loan Agreement, I cannot find any evidence which suggested that the Defendant was or is under any obligation to “pay out” the Loan Agreement in full at any point in time. His commitment to the Claimant and more directly to the Lender is to make the payments in accordance with the original joint promise and provided he continues to do so he has not breached his agreement with the Claimant. There was no evidence before the court that the Lender was demanding any payment or pay out.

11. However, as noted above and based on the evidence, the court finds that the Defendant did breach his contractual arrangement with the Claimant back in July/August 2018 which required the Claimant to make good on a payment amount owing under the Loan Agreement. To that extent I find that the Claimant is entitled to be reimbursed for the amount of \$128.45. I further find that there is sufficient evidence by virtue of the Defendant’s actions in having assumed and made the continued payments on the Loan Agreement that he had agreed to assume this obligation and in effect, indemnify the Claimant against any claim that may be advanced against her by the Lender. While this finding has no bearing on their continued “joint obligation” to the Lender as originally made, the Defendant should be aware that if there is any continued breach(s) under the Loan Agreement which causes any out-of-pocket expense to be paid by the Claimant, she shall be entitled to full reimbursement from the Defendant. Otherwise the Defendant is entitled to continue honoring the commitments in accordance with the Loan Agreement.

## **CONCLUSION**

12. I hereby order that the Defendant shall pay to the Claimant the sum of \$128.45 plus costs of these proceedings.

DATED at Sydney, Nova Scotia this 15<sup>th</sup> day of November, 2018.

**A. ROBERT SAMPSON, Q.C.**  
**Adjudicator**