

2019

SCC No. 484749

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

**Citation: *Katikos v. Crane*, 2019 NSSM 73**

**BETWEEN:**

**ARIANA CHRISTENE KATIKOS**

**CLAIMANT/DEFENDANT  
by COUNTERCLAIM**

and

**CHRISTOPHER JUSTIN CRANE**

**DEFENDANT/CLAIMANT  
by COUNTERCLAIM**

**REASONS FOR DECISION**

**BEFORE:**

A. Robert Sampson, Q.C., Adjudicator

**DATE OF HEARING:**  
2019

Hearing held at Sydney, Nova Scotia on May 8,

**DECISION RENDERED:**

June 12, 2019

**APPEARANCES:**

**For the Claimant:**

Self-Represented

**For the Defendant:**

Self Represented

**Witnesses:**

Mrs. Rose Crane - For the Defendant

**BY THE COURT:**

1. This Claim was commenced by Notice of Claim filed with the Court on February 1<sup>st</sup>, 2019 and heard on May 8<sup>th</sup>, 2019. A Defence and Counterclaim was filed on Feb 19<sup>th</sup>, 2019.

2. This is a claim arising out of a contract between the parties relating to the sale of a 1996 Chevrolet Camaro. The principal claim of the Claimant is that the contract they entered into was breached by the Defendant, namely that the full balance of the agreed upon purchase price has not been paid. In response the Defendant, Claimant by Counterclaim, filed a detailed Statement of Defence and Counterclaim pleading relief under a number of Statutes including the *Sale of*

*Goods Act*, R.S.N.S., c. 408, s. 1., *Consumer Protection Act*, R.S.N.S., c. 92, s. 1., based on the condition of the vehicle after sale, as well as the *Limitation of Actions Act*, S.N.S., 2014, c. 35, s. 1, alleging the claim is outside the limitation period and therefore should be denied. The amount of the counterclaim is stated to be \$4500.00 for repair costs incurred, plus costs.

3. At the outset the Court reviewed the general procedure to be employed in hearing the claim, the role of each party and how evidence was to be received including the opportunity of both parties to provide their “side of the story”, that each would be afforded a chance to question the other and any witnesses and further that at the end of the evidence, each would be afforded a chance to sum up their positions based on all the evidence presented. Both parties, who were not represented by counsel, were placed under oath at the outset as is the practice of this Court when dealing with self-represented parties and each were advised that any comments made by them at any time throughout the proceeding would be considered information given “under oath”.

4. The Court is appreciative to both parties for the organized manner in which the documents relating to each of their positions was presented to the Court. In addition to the court file materials which included the pleadings of the Claimant, Defence/Counterclaim by the Defendant and service documents, there were thirteen (13) exhibits in total (some of which contained multiple pages/pictures) tendered to the Court which will be referred to throughout this decision. If a specific exhibit is not referenced in this decision that does not mean the Court has not reviewed and considered the same.

5. Finally, from the Court’s introductory summary of this matter, based on the pleadings of the parties and the evidence and exhibits received by the Court this matter can clearly be identified as a “contract dispute”. Although this hearing was lengthy and extensive with evidence given by both sides, the evidence confirmed that each participated in the discussions and communications that led to the creation, by the Defendant, of a written contract document, signed by both parties, dated the 28<sup>th</sup> day of June 2016 and that both parties relied on the document as representing the terms of their “contract”. This document was tendered to the Court under Exhibit 2.

6. Essentially each party was claiming the other “breached” their contractual obligation which represents the foundation of their claim, Defence and Counterclaim. In the case of the Claimant, her position is essentially that she did not receive all of the proceeds of sale she was promised. She is requesting payment of \$3050.00 or the return of the vehicle. In the case of the Defendant, he states that

after purchasing the vehicle he learned that it had been significantly damaged in the past and felt this ought to have been disclosed to him and further that he was required to expend significant monies readying the vehicle so it could be inspected and made roadworthy. The value of his Counterclaim is stated to be \$4500.00.

7. It is worthy of note at the outset that seldom in dealing with disputes of this nature is anything simply black or white. While many aspects of the evidence of both sides remains undisputed and/or confirmed by a document, clearly in the end the Court is called upon to assess issues of credibility of each party not only as it relates to the actual evidence that each has presented to the Court but also an assessment of their ability (or willingness at times) to recall with accuracy what may have taken place, when, where and what, if anything, may have been said, understood and agreed to.

### **Preliminary Issue - *Limitation of Actions Act* (NS)**

8. The Defendant has pleaded the *Limitation of Actions Act* (NS) (“the *Act*”) stating the claim is out of time and should be dismissed. The evidence confirms that the date of the written contract is June 28<sup>th</sup>, 2016. The date in which the formal claim was filed is February 1, 2019. The limitation period under the *Act* at present is two (2) years and therefore, at least on its face, it would appear the claim falls outside the limitation period. However, the *Act* provides and directs the means upon which one is required to calculate the time to determine whether this status is applicable having regard to the evidence presented.

9. In order to determine this particular issue one needs to turn to the provisions of the *Act* itself. The *Act* was revised in 2015 and the current *Act* was proclaimed in August 2015 and came into force on September 1<sup>st</sup>, 2015. Having regard to the date of the contract (2016) I am satisfied that no transition rules apply. The applicable provisions required to be used to determine the start of the limitation period is Article 8 which I have reproduced below together with Article 9 dealing with the required burden. Other than the fact that this relief has been pleaded in the Defence, neither party addressed this issue through their evidence or submissions other than the Defendant highlighting this pleading to the Court and referencing the period of time between the date of the contract and the date in which the claim was filed. As I had noted above, having regard to the two year limitation period, on its face it would appear this claim was filed outside of the permitted limitation period.

### **GENERAL LIMITATION PERIODS**

## General rules

**8** (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of

- (a) two years from the day on which the claim is discovered; and
- (b) fifteen years from the day on which the act or omission on which the claim is based occurred.

(2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
- (c) that the act or omission was that of the defendant; and
- (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.

(3) For the purpose of clause (1)(b), the day an act or omission on which a claim is based occurred is

- (a) in the case of a continuous act or omission, the day on which the act or omission ceases; and
- (b) in the case of a series of acts or omissions concerning the same obligation, the day on which the last act or omission in the series occurs.

## Burden of proof

**9** (1) A claimant has the burden of proving that a claim was brought within the limitation period established by clause 8(1)(a).

(2) A defendant has the burden of proving that a claim was not brought within the limitation period established by clause 8(1)(b).

10. With reference to the provisions of the *Act*, the limitation period commences once the claim is “discovered”. In order to determine the “discovered” date, the *Act* further provides in Article 8(2)(b) that the claim is discovered (b)...that the injury, loss or damage was caused by or contributed to by an act or omission.

11. The evidence tendered by the Claimant confirms that the last payment she had received towards the outstanding loan amount was on March 28, 2018. A receipt was tendered (Exhibit 3). In addition, the evidence of Mrs. Crane, the Defendant’s mother, confirmed that she had made this payment to the Claimant albeit the evidence was less than clear on her part as to the reason for such payment. I am satisfied that this partial payment was made towards the outstanding monies owed under the contract on the date noted and therefore that would reflect the discoverable date whereby the clock would begin running thereafter so as to allow sufficient time over the ensuing two year period for the Claimant to realize the balance of the debt owing to be paid or otherwise take formal action. The Court is satisfied that the claim has been filed within the allowable time having regard to the evidence and therefore the *Act* is not applicable to the Claim before the Court.

## **SUMMARY OF EVIDENCE**

12. The evidence confirmed that the parties met through a dating site in June 2016 and began dating. The Claimant testified that she had originally purchased the car back in 2014 and had been used mainly by a former boyfriend who remained in possession of the vehicle until sometime in May 2016. She confirmed that the vehicle was in an accident back in 2014 shortly after it was purchased and suffered extensive damage. She testified that her former boyfriend had been caught driving the vehicle in May 2016 and it was impounded. She tendered a receipt (Exhibit 1) where she had paid \$902.00 to have the car released to her as it was registered in her name.

13. The Claimant confirmed that shortly after commencing dating the Defendant she had inquired with him whether he knew anyone interested in purchasing the vehicle. She testified that the Defendant stated “he was a car guy” but could not afford to pay the asking price. Through their discussions she confirmed that she was prepared to accept \$4000 but for certain no less than \$3000 and if the Defendant purchased it she would take \$200 per month until paid in full. She confirmed in her evidence that she told the Defendant everything she knew about the car and in particular of the fact that it had been in a serious accident back in 2014.

14. The Claimant testified that the Defendant showed up at her residence where the car was kept to inspect it and take it for a test drive. She again confirmed that she told the Defendant she wanted \$4000 but if he didn't think it was worth it she would accept \$3000.00 but nothing less. After the test drive the Defendant confirmed he would take the deal and produced a written contract (Exhibit 2) which he had prepared. The Defendant's sister was present and witnessed the signing of the contract between the parties. The contract identified the vehicle, the promise to pay \$4000 by way of \$200 per month commencing on the 29<sup>th</sup> day of June 2016 and each month thereafter. Exhibit 3 shows five separate receipts, each for \$200 payments, dated June 29, July 29, August 28, October 28, 2016 and March 28, 2018.

15. The terms of the contract document were brief but complete. It appeared to be a form document of sort with the specific details penned in. Of specific note is Article 4 which states:

**No Warranties or Guarantees:**

**The seller gives no warranty or guarantee other than those specified in 2.1 and 3.1.**

Both of these related to the vehicle being free from all encumbrances, liens or outstanding penalties against the vehicle's registration.

16. The Defendant in his evidence indicated that he thought this wording simply meant there would be no liens on the vehicle. Otherwise the Defendant readily acknowledged that he had produced and signed the contract and received title and possession of the vehicle.

17. The Claimant stated that the Defendant's Employment Insurance ran out in September 2016 and he later obtained a job in Sydney in October 2016 for a short period which had allowed him to make a further payment (see Exhibit 2 - October receipt). The evidence was that through the balance of 2016 into the spring of 2017 there had been little contact between the parties and no payments. The Claimant confirmed she has assisted the Defendant to secure employment in Baddeck in the spring/summer of 2017 but he was later fired in August 2017.

18. Exhibits 4, 5 and 6 were tendered by the Claimant representing a text message exchange she had with the Defendant in late December 2017 (Exhibit 4) and again in mid-January 2018 (Exhibit 5). In fact, in Exhibit 4 the picture attached to the Defendant's text messages is that of the Camaro he had purchased. In the December texts the Defendant appears to be trying to make contact with the Claimant, complaining that her contact information had changed and that he had the payment for her but it was too late. It concluded by the Defendant saying he would pay in January. In Exhibit 5 text messages the Claimant had reached out to the Defendant in January 2018 but his response was hostile towards her essentially saying he was not intending to pay. In late March 2018 (Exhibit 6) the Claimant exhibited a series of text messages she had exchanged with her friend, Travis Hill, advising of the fact that the Defendant's mother had come by on March 28, 2018 to her home and paid \$150.00 towards the money her son, the Defendant, had owed her. She stated she was left with the impression that she would continue to pay \$150.00 per month towards the amount owing.

19. Finally, Exhibits 7 and 8 were tendered showing further text messages where the Claimant is again messaging Mr. Hill on or about April 27, 2018 advising that the Defendant's mother had not shown up with the payment as promised. At this point she indicates her intention to take the Defendant to Court. The Claimant stated that it had taken her several months to speak with a lawyer and she had attended a free clinic in February 2019 after which time she completed and filed her claim now before the Court. She confirmed that there had been several attempts to effect service on the Defendant but she believed he was avoiding the same.

20. Much of the Defendant's evidence was not in conflict with the Claimant's. His main point of Defence appeared to be his position that the Claimant had not told him of the extent of the damage to the vehicle prior to his purchase. He stated that the provision in the contract that stated "no encumbrances" he believed to mean "no accidents". He tendered Exhibits 9 and 10, being a series of pictures of the vehicle both as it presently exists/restored, when it was purchased back in 2016 and several from when it was damaged back in 2014 that he had obtained from the internet. The Defendant also tendered Exhibits 11, 12 and 13, each representing a series of receipts he confirmed represented various parts he was required to purchase in connection with his restoration of the vehicle. In addition his evidence was that he had expended the sum of \$3000.00 to obtain a new paint job for the vehicle however he acknowledged that he knew the car needed to be painted at the time of purchase. He confirmed he had purchased upwards of 6-7 vehicles since he was 16 years old (he is now 26 years old) and was familiar with vehicles and the cost of repairs.

21. The Defendant stated that he had found out in October 2016 that the vehicle had been smashed and the Claimant ought to have known he was not going to pay for it.

22. The Defendant presented his mother, Mrs. Rose Crane, to provide evidence. She confirmed that she had been contacted by the Claimant at her place of work and first learned of the money she was owed. She confirmed that she had given the Claimant the sum of \$150.00 in late March 2018 to pay on her son's loan balance. She also confirmed that she never told her son that she made this payment until after he was served with the Court papers to respond to this present matter. She said she was aware that her son had bought the car from the Claimant but was not aware of any of the terms, what had been paid or what was owing. The main point of her evidence was to say that she gave the Claimant the payment so she would stop bothering her at her place of work.

## **DECISION**

23. The Court has reviewed all of the evidence, some of which is reproduced above. The Court is satisfied that a contract was entered into between the parties. The contract document, signed by both parties and witnessed, appears clear on its face. The consideration and terms of payment are clear as are the goods sold. Delivery occurred in June 2016 when, after the vehicle was inspected and test driven, the contract was signed and the registration for the vehicle was signed over to the Defendant. Subsequently, payments were made in accordance with the

contract. The only issue is whether there had been any misrepresentation on the part of the Claimant at the time of sale and specifically whether she misled and hid from the Claimant an important fact about the vehicle having been involved in a prior accident resulting in extensive damage. In this regard, the Defendant seeks protection under both the *Sale of Goods Act* (NS) and the *Consumer Protection Act* (NS).

24. The Court is satisfied that the sale of the vehicle falls within the definition of a “sale” under the *Sale of Goods Act*. However, this was a direct sale whereby the goods were inspected and transferred at the time of the sale contact. Further, there is no evidence that the buyer (Defendant) was relying on any promises or expertise of the seller associated with the goods sold. Finally, while the *Sale of Goods Act* sets forth under Article 15 certain conditions of “Implied Conditions and Warranties” and Article 17 “Quality or Fitness for Particular Purpose”, having regard to the evidence I find that neither are applicable in this case. Similarly, I have reviewed the provisions of the *Consumer Protection Act* and find, based on the evidence received, that there were no breaches of any terms and conditions of this protection legislation.

25. The Court’s findings as to the non-applicability of either consumer statute noted above as well as to the claim and counterclaim itself rests principally with the testimony given by the parties. The Court accepts the evidence of the Claimant over the Defendant mainly for the following reasons:

- (a) The Defendant, by his own admission, was experienced in purchasing vehicles, inspected the vehicle and prepared the contract document which specifically provided that there were to be no “warranties or guarantees” (Article 4 - Exhibit 2).
- (b) The car at the time of inspection clearly required a finished paint job. The Defendant knew this and this fact alone would have placed any buyer on notice that certain repairs had been made to the vehicle.
- (c) I accept the evidence of the Claimant that she fully explained the prior condition of the vehicle as result of the accident and while she may not have had photos to show the extent of the damage and repairs, such would have placed the buyer on notice of the honest description of the goods being sold.
- (d) The parties continued communicating through to late spring/summer 2017 and at no time was anything ever said by the Defendant to the



Claimant of his dissatisfaction with the deal or that he did not intend to pay her.

(e) During the specific text exchanges as exhibited to the Court that took place in late 2017 and early 2018, again at no time did the Defendant allude in any manner to any issues about the car. By his own evidence he states he learned of the damage to the vehicle back in 2016.

(f) In the late 2017 text exchange the Defendant was acknowledging that he owed outstanding payments to the Claimant.

(g) The Defendant's mother acknowledged she was making a payment towards her son's car loan owing to the Claimant in March 2018 and while her evidence was that she did not know all the details, her payment is satisfactory to confirm that she knew the Defendant owed the Claimant monies for the car.

26. Based on the foregoing, the Court hereby awards the Claimant and directs the Defendant to pay the amount of her claim in the amount of \$3050.00, plus service costs in the amount of \$100.00, plus filing costs in the amount of \$99.70 for a total of **\$3249.70**. The Court notes that the Claimant on her claim form added the following "and I would like to recover the vehicle". Based on the evidence of the additional work the Defendant has carried out on the vehicle since purchasing it together with the passage of time since this debt payment became outstanding, the Court believes the initial remedy requested for payment of the balance owing is the appropriate means of resolving this claim.

**DATED** at Sydney, Nova Scotia this 11<sup>th</sup> day of June, 2019.

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