IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Lepper v. Henderson*, 2021 NSSM 11

Date: 20210422
Claim: No. SCP 502643
Registry: Pictou

Between:

Lindsay Ellen Lepper

CLAIMANT

And

Duncan Keith Henderson

DEFENDANT

Adjudicator: Raffi A. Balmanoukian, Adjudicator

Heard: March 24, 2021, in New Glasgow, Nova Scotia by teleconference

Counsel: Lindsay Ellen Lepper, Claimant, personally
Duncan Keith Henderson, Defendant, personally

Balmanoukian, Adjudicator:

[1] William Congreve was right. Heaven hath no rage like a love to hatred turned.[1] This case encapsulates the timelessness of that observation.

[2] The claimant and defendant are former domestic partners. They have two mutual children (the claimant has three in all). They met in 2010, rented for a time, and continued to rent while the house the defendant purchased in 2015 underwent renovations and repairs. They moved into it in mid-2017, and parted company in late 2018. The financial shakeout of that relationship, at least insofar as it pertains to the house purchased and mortgaged by the defendant alone, has landed the parties in this Court.

[3] While the nature of the claim was in many ways and at certain times indistinct, it boils down to this: the claimant says she paid for labour and materials, and household expenses, during the parties' cohabitation and seeks reimbursement. In addition, she says she incurred expenses and made purchases that were house-specific and wants to be paid for those as well.

[4] The defendant does not deny that the claimant "has money in the house." However, he disputes the quantum and says much if not all of it is offset by items

[1] His subsequent sexist observation about hell's fury and scorn has no place in modern discourse.

removed by the claimant, ongoing mutual obligations for their children, and probably most significantly, boarding and forage for the claimant's horses for about a year after separation.

[5] As may be expected, at times during the hearing emotions and sentiments ran raw; there was some bickering and recriminations about the character and conduct of each other, and some of their friends. These form no part of my deliberations, although I do have a concluding comment about it. That said, I am grateful for the general restraint and respect shown by both towards each other, and to the Court, in the circumstances of the relationship and the virtual forum in which the hearing was conducted.

[6] It is also worth noting at the outset that this is not a claim for an interest in real property, or for the respective rights and obligations of the parties under applicable family law. It is a claim for compensation pertaining to the property, its furnishment, and the operating costs thereof; and for how much, if anything, should be set against that to account for benefits derived by the claimant during and after cohabitation.

[7] I will review the evidence of each witness, followed by my analysis and disposition.

Lindsay Lepper

[8] Ms. Lepper testified that when the house was purchased in 2015, she invested her savings and borrowed from her parents; the amounts were not specified. She testified that she paid for the electrician and drywaller, giving the defendant cash money with which he paid the contractors - friends of his, for whom her assessment varied considerably. She also testified that she paid for used cupboards, as well as flooring. The cupboards were installed by one Joseph White, and the flooring was installed by the defendant and his friends. She also purchased appliances and furniture, which formed a considerable part of the testimony. It appears that the kitchen appliances are still in the home, and the household furniture which the claimant financed in her own name was all or mostly removed when the parties parted ways.

[9] The home itself needed considerable renovations, and the parties continued to rent while these were done. The claimant did some of the physical labour, including paint, cleaning, and ripping up carpet. She did not seek to exaggerate the magnitude of this work.

[10] The apparent agreement – or at least what was supposed to be the agreement - between the parties was that the claimant would pay for satellite, television,

Internet, all food, childcare, and part of the power bill. The defendant was to pay the mortgage, line of credit, his car insurance and expenses, and house insurance and taxes. There was some dispute over the power bill, as it appeared to be a combination of an old bill as well as for utilities consumed on these premises.

[11] In addition, the claimant owned horses, which were kept in the barn on the premises during the parties' cohabitation and for approximately a year thereafter. There was a dispute over the source of and payment for hay, and who had their primary care for the year after cohabitation. The claimant indicated that there is no power or water in the barn, and there was a dispute over how the claimant obtained water for the horses. The claimant's testimony is that it now costs $400 per month to keep her horses at her premises. Prior to moving to the premises, the horses were homed at the defendant's parents' residence; another horse, owned by the claimant's oldest child, was boarded before the move.

[12] There was considerable discussion over different washing machines. One had been supplied by the claimant's parents, another was in the house at the time of purchase. There was some dispute about what was where and their functionality. As will appear, I place no weight in this dispute. It does, however, serve to illustrate the triviality of some of the points of contention between the parties.

[13] On cross-examination, the defendant focused on much of this minutiae, as well as the household operating expenses and by whom they were borne. Again as will appear at its proper station, a detailed analysis of this is not necessary for disposition of this case.

[14] The claimant submitted a bundle of documents and bank statements, including for the kitchen cabinets and counter, appliances, furniture, and flooring. In addition, she provided a summary which is in the form of a letter/brief, and which was reinforced by her verbal testimony.

Duncan Henderson

[15] Mr. Henderson is the other half of the domestic equation. His direct testimony was that he paid for the installation of cabinets and appliances, helping with the installation. He complained that the selections were “high end” and items that they did not need. While he admitted that he picked out the furniture, he couldn’t see how his decision was final, and claimed that he provided cash to the claimant to help towards these purchases. He said that he did not know how much cash he gave her. As such, it is not proof of anything for the purposes of these proceedings, any more than an unspecified contribution of “savings and parental borrowings” are proof of contribution by the claimant.

[16] Again, there was considerable discussion around the washing machines (plural) and their functionality and use. I will cycle back to this.

[17] He admitted that he gave cash to the tradespeople, but asserted that the amounts are incorrect and that Ms. Lepper either provided the money directly, or was present when the payments were made.

[18] He admitted that the claimant paid for the flooring, but that he "paid" for installation. This included three people, including himself. He purported to create/provide an invoice (exhibit F) for this installation – *including himself in the account* purported to be rendered for the installation in his own home, and noted as "paid by Duncan Henderson."

[19] He also purported to create an invoice for the horses, at $300 per horse per month, for sixteen months . He claimed to have done the yeoman's work for their boarding after the time of separation, including watering in the morning and ensuring that they were turned out to pasture.

[20] He also included an invoice for a throttle cable and mechanical fee, totaling $190, for repairs for Ms. Lepper's son's dirtbike.

[21] Lastly, he included a lengthy medical insurance printout, listing Ms. Lepper and her son. Although this is included in the defendant's employment package, he

says that it provides proof that he is a “good guy” by including these people on his plan. This coverage extends into 2021.

Billy Joe Doucette

[22] Mr. Doucette is a friend of the defendant, and the drywaller who worked on the premises. He denied that he was given $2500 in cash, saying that the claimant gave him $1000 herself. He could not place a date on this. He said that there were no other funds “that I recall.” When asked if he and the defendant are best friends, he said that he thought that the claimant was a good friend too and that he and the defendant are “close enough.”

John Matheson

[23] Mr. Matheson is a neighbour of the defendant. He testified that the defendant had primary care of the horses after separation, helped in making hay and cleaning out the stalls, and that the two of them had responsibility to put the animals in. On cross-examination, he said that his observations were mostly in the evening.

Analysis

[24] At its core, this case is a claim for compensation for money and money's worth expended by the claimant, for which the defendant has a corresponding enrichment. In other words, in law this is a constructive trust case. In addition, there are various although at times muddled claims over various goods purchased, and whether they would have been purchased but for the relationship or the insistence of the other party. Finally, the claimant asserts that she incurred these expenses and labours on the basis that the property was to be their "forever home," and this general proposition was not contested in principle.

[25] I begin with what I will refer to globally as collateral issues: the furniture and non-kitchen appliances, including the infamous washing machines. As I have said, in many ways this occupied a disproportionate amount of time at the hearing, and bordered on pettiness if not immateriality. In law, the issue is easily disposed of. The claimant purchased, financed, and ultimately removed the furniture. It is hers, and she has it. While the defendant did have some use of it during their cohabitation, this is offset by other matters that I will discuss in turn; I don't need to decide if one person sat in a particular chair 51% of the time. As for the washing machines, I ultimately accept the defendant's assertion that these are necessary given that they continue to share custody of their children. It is of as much benefit to one as to the other.

[26] I place extremely limited weight upon the so-called invoices presented by the defendant. I would place no weight at all, except that they show a level of self-serving and convenient understandings on the part of the defendant. An example of this is the *ex post facto* invoices for the horses, laying of flooring *including by himself*, and the labour and materials for the dirtbike for Ms. Lepper's oldest child. The listing of Ms. Lepper and her son as beneficiaries under his health plan, is not an illustration of him being a "good guy," except that it would be the height of juvenile vexatiousness to omit to do so, if it was no – or little - skin off his nose.

[27] Turning next to the household expenses. There was at best garbled and inexact evidence over how the parties allocated their affairs, and whether this was proportionate to their own consumption and needs. There was no evidence that one party was unfairly treated by the other, in all of the circumstances. Although there were bank statements and receipts in evidence, there was limited evidence of the parties' income, and how this was fairly distributed in the household. In any event, the allocations that I have listed above do not sound manifestly unfair. Both parties were living in the household, and had been together for some seven years when they began living in the property in question. The burden is on the claimant to establish on a balance of probabilities that she is owed compensation, net of the

benefit she derived for living in the property. She has not done so insofar as these *operating* expenses are concerned.

[28] The acquisition, preservation, and enhancement of the property is another matter, however. The defendant has not denied that the claimant has "money in the house." It is a question of the evidence as to how much. It is also a question of whether these expenditures, if proven, are reasonable in the circumstances or incurred only because the claimant insisted upon them.

[29] I accept that the kitchen cabinets, kitchen appliances, and flooring are all reasonable expenses that have enriched the defendant (through enhancement of the property) to the claimant's corresponding deprivation. I say this despite the dispute over the quality of the cabinets and whether they were needed. The fact is they are on site and part of the real property owned by the defendant. In addition, I am prepared to accept for current purposes that the claimant drew out $2500 to be paid towards renovations. I make no finding as to whether or not all of this made its way to the drywaller, was pocketed by one or more persons, or faced some other disposition. The claimant says that an additional $800 was paid for an electrician, and there was a $5000 withdrawal on March 13, 2017. I note that there was a $5476.60 transfer from another account on the same day. There is no other explanation as to where this $5000 went. Again, the burden is upon the claimant.

Ultimately, I accept that it is reasonable to infer that $3300, at a minimum, was made available by the claimant for labour and materials. I accept this, with some qualms, as a fair number for the purposes of calculating this award.

[30] In round numbers then, the cabinets, kitchen appliances, flooring, and accepted cash amounts to slightly over $14,000.

[31] Against that, I must take into account the time and benefit that the claimant derived during the time of cohabitation; in law, a constructive trust requires an enrichment and a corresponding deprivation. It also requires a lack of a juristic reason to preclude compensation. One such reason may, when appropriate, be an offset for value obtained by the claimant, such as use and occupation over time. One can be offset against the other and a net balance obtained. By necessity, this will be an inexact exercise at the best of times. This is even more so where, as here, the gaps in the evidence were considerable.

[32] Ms. Lepper testified that it now costs her approximately $2000 a month to live (mortgage, utilities, loan payment) plus $400 to keep her horses at her place. Ultimately, she derived at least as much benefit during the year and a half that she lived in the house as she may have expended over and above the amounts I have accepted in the above figures. While there is a certain element of ballpark justice to

this analysis, on the evidence it is the best I can do. To put it another way, to the extent that I have not captured the full cost of living incurred by the claimant at the premises, both before and after occupancy, it is at least absorbed by the fact that she did indeed live on the premises and derived that benefit. The defendant, of course, was also living there and during that time had his own costs and benefits.

[33] I apply a different analysis however, to the horse care after the parties ceased cohabitation. I do not allow anything for the time that they were together, for the reasons I have set out above. It is - I hope I may be pardoned the expression - a horse of a different colour after the parties went their separate ways. Clearly, the claimant obtained a benefit by having a place to board her horses after the move.

[34] That said, I do not accept the *ex post facto* invoice (item D) created by the defendant (including HST!) for boarding. Instead, I accept that a more reasonable measure of benefit is the $400 a month now being incurred by the claimant. Allowing a period of one year, that equates to $4800[2].

[35] Setting the $14,000 figure against the $4800 offset yields a balance of $9200. Although again I emphasize that at points I am faced with inadequate or

[2] It may have been slightly shorter or longer. Again, given the vagueness of various dates, I do the best I can. Having found the "invoices" by the defendant to be self-serving in the extreme, I cannot draw any reliable inference for his claim of sixteen months' "room and board." Some overholding post-separation was likely inevitable. I accept that 12 months' offset is reasonable.

unsatisfactory evidence, on a balance of probabilities I find that this is fair and reasonable net ballpark compensation to the claimant for her contribution of money and money's worth to the household, which has not fairly been compensated for by her own use and enjoyment during their cohabitation, or the presence of the horses after cohabitation.

[36] Both parties attempted to present evidence of negotiations, or a verbal "agreement" that was later "taken off the table." None of these came to fruition. I accord them no weight.

[37] The claimant's filing was for the $25,000 maximum of the Court's jurisdiction. The defendant, conversely, admitted that he had some responsibility, but there was nothing concrete as to by what means or to what extent this would be discharged. In my view, neither party was reasonable in their position, particularly when it degenerated into creating invoices or arguing over dirtbike repairs, or who paid for the bread, eggs, and milk. In my discretion, I award neither prejudgment interest or costs.

[38] I will issue an order directing the defendant to pay the claimant the net sum of $9200.

[39] I have no magic wand by which I can order these litigants to play nice. They struggled to, and mostly but not entirely succeeded, do so before the Court. By way of conclusion, I return to comments made by both in the course of these proceedings. They have two young children between them; it is obvious that both care about that immutable fact. Their progeny's exposure to, knowledge of, and influence by continuing acrimony will be inevitable should that be how they choose to persist in their personal and financial intersects. They will continue for some years. I hope both bear that in mind.

Balmanoukian, Adj.