

**SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation: *Parker v. Colp*, 2021 NSSM 58**

**Date:** 20211025  
**Docket:** SCCH 505701  
**Registry:** Halifax

Between:

Dwight Donald Parker

*Claimant*

- and -

Amber Colp

*Defendant*

**Adjudicator:** Eric K. Slone

**Heard:** September 10, 2021, in Halifax, Nova Scotia via zoom

**Appearances:** For the Claimant, self-represented

For the Defendant, self-represented

**BY THE COURT:**

[1] The Claimant is a seafood broker and part-time pirate re-enactor residing in Dartmouth, Nova Scotia. The Defendant is a real estate agent of some (now) six years of experience with Royal LePage Atlantic in Halifax. Their spheres collided in 2019 when Mr. Parker was selling his former house in Dartmouth and Ms. Colp showed his property to some prospective buyers. Mr. Parker contends that Ms. Colp was negligent in the performance of her duties, leading to the otherwise unexplained loss of some valuable items from his house. He seeks compensation for this loss in the amount of \$4,700.00, plus costs.

[2] The trial of this case was held on September 10, 2021, via zoom videoconferencing. Each of the principals testified on their own behalf. No other witnesses were called.

[3] Many of the basic facts are not in dispute. Mr. Parker had listed his home for sale with Dartmouth realtor Christine Pinsent. As is common, the property was accessible on the MLS system, which allowed other agents to show the property to prospective purchasers. To facilitate showings, a lock box was affixed to one of the door handles containing a key by which agents could gain access.

[4] The key contained in the lock box opened both the front door and one of the locks on the same side door where the lock box was located. That side door also had an in-knob lock which the key did not open.

[5] On the day in question, April 9, 2019, and perhaps on other occasions, Mr. Parker had decided that he wanted all agents and their clients to enter via the sidedoor. To discourage use of the front door he placed a heavy exercise bike as a barrier to prevent the front door from opening completely.

[6] There were two showings scheduled for that day, one at 5:00 p.m. and one at 6:00 p.m. As such, Mr. Parker arranged to be out of the home for most of the late afternoon and evening. The front door was locked. Very likely, while exiting through the side door he accidentally locked it with the in-knob lock as well as with the dead bolt. As a result, the only viable entry with the lock box key was through the front door, as the side door was double locked.

[7] It appears that the agent for the earlier showing took the hint. When he found the side door locked, he tried the front door but did not try to squeeze by the exercise bike. He locked up and left, accepting that his showing would have to be rescheduled.

[8] Ms. Colp, with her clients in tow, also discovered the locked side door. She also went to try the front door, and found it partly blocked. However, she did not so easily give up. She was able to squeeze by the bike and gain entry. She then walked through the house to the side door and opened it to allow her clients to enter through the side.

[9] What appears to be more likely than not, is that she closed but did not lock the front door.

[10] The showing by Ms. Colp was a second one for these clients. She had

shown the property to her clients a few days earlier, and they were quite interested. They wanted to go back to see it again with their two children (a teen and a pre-teen) and some other family members, for a total of seven people. This was the entourage who went through the home on April 9, 2019.

[11] Ms. Colp testified that the home was difficult to navigate because of the many piled boxes and other items. She said that in some rooms it was barely possible for more than one or two people to enter at a time.

[12] Ms. Colp testified that her clients went through the property and were respectful, not touching any of Mr. Parker's belongings and leaving everything as they found it. They left at approximately 8:00 p.m.

[13] Mr. Parker returned home at 11:30 p.m. and immediately noticed some irregularities. The following morning, he listed them in an email to Ms. Pinsent, his broker:

- 1) Front door unlocked & open. Viewers obviously unlocked & opened the door and did not push it enough for the door to securely latch.
- 2) Personal items in bedrooms were handled & moved.
- 3) Drawers in dressers in bedroom & cabinet in bathroom were opened & gone through.
- 4) Items in music room were removed & not put back
- 5) Electrical panel doors were left open
- 6) Basement door left open
- 7) Four lights left on in basement
- 8) Doors to bar area, which are tied close with leather lace to prevent entry as I have mentioned to you previously, were tampered with & retied. I do this due to previous handling of alcohol bottles & collectable items in this area being found on the floor as in previous showings. People should get the hint when entry doors are secured that they are not welcome in that area. There is no need for them to be back there as they can clearly see all aspects of this area.
- 9) Personal & business materials on my desk were examined & misplaced.

10) 3 pictures on the walls on the first floor were off kilter.

[14] He went on to add that he did not yet know if anything was missing from the home. He observed in his email that this was the sixth or seventh time that his things had been disturbed (during a showing), and indicated that he would be filing a complaint against the responsible agent with the Nova Scotia Real Estate Commission.

[15] A minor flurry of emails between Mr. Parker and Ms. Pinsent followed. Ms. Colp was identified as the agent for the later showing the previous evening. Ms. Pinsent reported back to Mr. Parker that she had spoken to Ms. Colp who said that she thought that she had locked the front door. This is consistent with what Ms. Colp has said throughout this proceeding. She is not sure that she did lock the front door. Based on all of the evidence, I believe it is fair to conclude that she did not. I have no trouble accepting the general thrust of Mr. Parker's evidence about how he found the property on his return home that evening, and most particularly the fact that the front door was not only unlocked, but also partly open.

[16] Mr. Parker did follow through with his complaint to the Nova Scotia Real Estate Commission. That body investigated and eventually produced a report, such as it was.

[17] Meanwhile, as that process was progressing, Mr. Parker made a discovery that something was missing that he had not noticed previously. It is the loss of this item that underlies this claim.

[18] By way of background, Mr. Parker - like many people in this day and age - did a lot of his work on a computer. As mentioned, he is a seafood broker, and he does his ordering and invoicing on his home computer. For his sideline as a pirate-re-enactor, he also used the computer for invoicing and scheduling events. In the weeks or months prior to the incident in question, his laptop computer was seriously acting up and he had to rely on a loaned desktop computer as a temporary replacement. Before recycling the laptop, he transferred all of his data to four thumb drives which he kept together on a lanyard that he typically kept on his desk close by the computer. He did not transfer all of this data to the temporary computer but worked off of the thumb drives when he needed to access his stored data.

[19] He admitted that he did not use any cloud backup system for his data.

[20] It was these thumb drives, tied together on a lanyard, that were discovered to be missing when he next needed to access his data on April 24. He says that he looked everywhere for them, and that the last time he had seen them was before Ms. Colp and her clients had been in for the April 9 showing.

[21] Mr. Parker immediately contacted Ms. Pinsent, who in turn contacted Ms. Colp to ask if anyone had seen these thumb drives. She reported back that no one had seen them, and that no one had touched (let alone taken) them.

[22] Mr. Parker explored the possibility of trying to retrieve his laptop from the recycling facility but was told it was much too late. It would have been like looking for a needle in a haystack, he was told.

[23] The four thumb drives were organized by subject matter, and contained the following:

1. **Seafood business** (client information, packing specifications, videos of food safety procedures, pictures of product, invoicing, Canadian Food Inspection Agency documents and more.
2. **Pirate re-enactment activity** (invoices, photographs, travel and accommodation information)
3. **Files for tax and accounting**
4. **Legal documents**

[24] Mr. Parker testified that the drives contained six or seven years of information, and that in the two plus years since they went missing, he has spent hundreds of hours trying to reconstruct this data. He estimates that he is still only about 50% there.

[25] Eventually the Nova Scotia Real Estate Commission issued a decision following its investigation. It was mildly critical of Ms. Colp for moving a few items, leaving lights on and for entering via the front door when she ought to have appreciated that it was blocked for a reason. In the end, it did little to

satisfy Mr. Parker, in part because the Commission has no authority to order financial compensation. Nor had he sought financial compensation, at the time.

[26] It does not appear that Mr. Parker did anything until March of 2021 to pursue his grievance. This can be explained by his preoccupation with illness in his immediate family and then the pandemic which put a lot of things on hold. In any event, the next thing that Mr. Parker did was to send a demand letter to RoyalLepage Atlantic, Ms. Colp's employer. For what was the apparently first time, he set out the amount of money that he was seeking, which is the same amount (\$4,700.00) that is sought in this claim.

[27] His basis for coming up with this number is slightly opaque. He estimated that it would have cost him \$20,000.00 at minimum wage to hire someone to put this data together, although I suspect he would agree that an outside person would not have an easy time reconstructing information that was mostly in his own brain. Nevertheless, he never hired an outside person; instead, he has spent hundreds and maybe as much as a thousand hours of his own time, reconstructing his data. He says he has suffered a loss of income as a result of devoting so much time to this and he says he was assessed late filing fees for his 2019 taxes, though he did not back these claimed losses up with any documentation.

[28] This claim was filed with the court on April 20, 2021. His was just under the two-year mark from when he discovered the loss of his thumb drives. As such, the limitation period does not apply.

### **Credibility**

[29] The credibility of Ms. Colp is not really in issue. She has candidly admitted that she may have left the door unlocked. She states that her clients were well behaved and did not disturb any of Mr. Parker's belongings. I have no reason to question her honest belief that this is true. It is also true that she did not have the entire entourage in her sight lines at all times, but I accept that the two children were not left alone without adult supervision.

[30] As for Mr. Parker, his credibility is somewhat mixed, but not in the sense that I believe he was being untruthful. I simply do not consider his theories about what happened to be all that plausible. He spent a good deal of his time and energy placing blame on Ms. Colp's clients, and in particular the two children

who he suspects may have picked up his thumb drives because of their supposed value to kids in this day and age. He seemed to treat this as Theory A, with Theory B being that someone from outside came into the house after Ms. Colp and her clients had left.

[31] With due respect, I believe that Theory B is much more likely. That is because only it explains some of the other things he observed. As stated earlier, these were the things he noted:

- Front door unlocked & open
- Personal items in bedrooms were handled & moved.
- Drawers in dressers in bedroom & cabinet in bathroom opened & gone through.
- Items in music room were removed & not put back
- Electrical panel doors were left open
- Basement door left open
- Four lights left on in basement
- Doors to bar area ... tampered with & retied.
- Personal & business materials on my desk were examined & misplaced.
- 3 pictures on the walls on the first floor were off kilter.

[32] While it is possible that Ms. Colp's clients did a few of these more innocent things, such as leaving lights on, and moving some items to access the electrical box, it seems much more likely that someone entered the house and did things such as not closing the front door completely, opening drawers and knocking pictures off kilter.

[33] I find Mr. Parker to be quite credible in his report of what he found upon his return home. I allow for the possibility that he might have been mistaken about where he had left some of his things. In one instance, he insisted that a pair of fancy pirate boots was moved from one room to another. Ms. Colp testified that they were seen and remarked upon, exactly where they were noted to be. But for the most part, his response to what he saw (and believed) was immediate and as such his written report is convincing. It is essentially a contemporaneous note of what he observed. Any minor error in his recollections (such as the location of his boots) does not detract from the general thrust of what he observed.

[34] On a balance of probabilities, someone entered his home through a door that was only unlocked because Ms. Colp forgot to lock it. I regard this as more

likely than the theory that Ms. Colp favours, which is that Mr. Parker simply misplaced his thumb drives. Had it been one thumb drive, I might have felt differently. But four thumb drives tied together with a lanyard would not so easily be misplaced.

[35] It is only natural to wonder why anyone would take these thumb drives, and not take other items of greater obvious value. That is a mystery that may never be solved. But the fact remains that someone did apparently enter his home and take his thumb drives as well as leave a few things out of place.

### **Theory of liability**

[36] The case is framed in negligence. Ms. Colp, as a real estate professional entrusted with a key for very specific purposes, owed a duty of care to secure Mr. Parker's property. And by leaving the front door unlocked, as I find that she must have done, she breached that duty and is responsible for any resulting, foreseeable loss.

[37] Mr. Parker similarly is accountable for any fault attributable to him, by virtue of the *Contributory Negligence Act*:

### **Apportionment of liability**

3 (1) Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

[38] I believe that Mr. Parker can be faulted for lax computer security. By 2019 it had become common for people to back up their data to the cloud, or at least to more than one source. There are many available options, including but not limited to Google's cloud service. I believe that someone as dependent on his computer as Mr. Parker was at the relevant time, would and should have been aware of the frailty of having all of his data stored so precariously on these thumb drives.

[39] I hold Mr. Parker 50% contributorily liable for his own losses.

### **Damages**



[40] Mr. Parker has claimed \$4,700.00 in losses. He did not back up this figure with any documentation, which he might have done to prove an income loss or tax penalties.

[41] But his claim that he has spent hundreds of hours reconstructing his data is credible. The figure that he claims is not outlandish and may even be on the low side. I did not get the impression that Mr. Parker was overreaching.

[42] I am prepared to assess his damages at \$4,700.00 and apportion 50% liability to Ms. Colp. I find her responsible for \$2,350.00.

[43] I am also prepared to award Mr. Parker his costs of issuing the claim (\$99.70), serving the claim (\$115.00) plus \$25.00 for miscellaneous other expenses. The total is therefore:

Damages	\$4,700.00
Less contributory negligence	(\$2,350.00)
costs	\$239.70
Total	\$2,589.70

**Eric K. Slone, adjudicator**