

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Myatt v. Benjamin*, 2022 NSSM 11

Date: 20220414

Claim: No. 505760

Registry: Antigonish

Between:

Donald T. Myatt

CLAIMANT

And

Ashley Benjamin (per style of cause; noted in evidence as Ashleigh Benjamin) and
Jacob Cameron

DEFENDANTS

Adjudicator: Raffi A. Balmanoukian, Adjudicator

Heard: February 9, 10, and 23, 2022, by Teams hearing

Counsel: Donald T. Myatt, self-represented Claimant
Ashleigh Benjamin and Jacob Cameron, self-represented
defendants

Balmanoukian, Adjudicator:

[1] Dogs have owners. Cats have staff.

[2] This case is about Fluffy, also known as Black Puss, Black Foot, and Mr. Puss, depending on whom you talk to, and in what context. I will for ease of reference and of sensibilities, refer to the feline protagonist in these proceedings simply as “the cat.” The issue is who, if anyone, “owns” the cat.

[3] The claimant, Mr. Myatt, owns a multi-unit property at Williams Point, Nova Scotia, referred to by the parties as “the Point.” I will use that terminology as well. At one time he resided there. There is no dispute that originally, the cat was his (or was procured by him for his young daughter for her sixth birthday). When he left, the cat stayed.

[4] The defendants were tenants of Mr. Myatt. They say that they took care of – which is to say were essentially “adopted by” - the cat. When they moved, they took the cat (or, as they would have it, the cat went with them), asserting that Mr. Myatt essentially abandoned the cat. To their thinking, it was either theirs by Mr. Myatt’s permission, or by it being “nobody’s” at the point of the defendants’ departure.

[5] I heard this case over three evenings – although most evidence was adduced in the first evening, I convened on the second to determine if giving the parties some time to discuss the matter in an attempt to resolve it would be fruitful. They agreed that I should do so; however, those efforts were unsuccessful and it falls to me to dispose of the matter. On the third evening, that was made known to me and the parties presented their argument. This was in addition to several pre-hearing conferences and exchanges presided over by Adjudicator Hatt from mid-2021.

[6] On both the second evening and in my concluding comments in the course of reserving decision, I made it clear to the parties that although we are dealing with a sentient being, a cat is property and its ownership is a matter of property law. Although some jurisdictions have or have contemplated “best interests” legislation, that is not the case here. Aside from animal protection legislation¹, the issue is not who is the better “cat parent,” but who in law is its owner.

[7] I reiterate those comments at this time so as to be clear that I am not deciding on the quality of care or affection for the cat. It is manifest from this litigation that both have strong feelings towards the feline, although at times the feelings for the animal mixed with feelings of animus.

¹ E.g. *Animal Health and Protection Act*, RSNS 1989, c. 15; *Animal Protection Act*, SNS 2018 c. 21. No such legislation was invoked in this case.

[8] Against that background, I turn to the evidence.

Jennifer DeCoste

[9] Ms. DeCoste is Mr. Myatt's cleaner. She testified that when the defendants left, they "took off" with the cat, and although it was her understanding the defendants claimed to have left food and water bowls, she didn't see any. She testified that "everyone gives treats to that cat" and many people looked after it.

[10] She said the parties got on well until the defendants vacated the property. The cat greeted everyone, including both parties, and the cat "comes and goes as it pleases," but was "never considered a stray."

[11] On cross examination, she testified that Mr. Myatt was at the property every day, including after he moved.

[12] On re-examination, she said that although the defendants took care of the cat, Mr. Myatt left it but did not abandon it.

Meghan Myatt

[13] Meghan Myatt, age 13, testified on a promise to tell the truth. I was not satisfied she appreciated the nature of testimony under oath.

[14] She reviewed a number of text messages between the parties that were presented in evidence, and said that she thought it was wrong to take the cat without asking anyone; and that she trusted the defendants.

[15] On cross-examination, she testified that Mr. Myatt took the dog when he moved from “the Point,” but not the cat. The dog, apparently, was owned by her stepmother, not Mr. Myatt.

[16] On re-direct examination, she said that it was agreed that the “community cat” would stay at “the Point” but trusted the defendant Ashleigh Benjamin to take care of it.

Donald Myatt

[17] Mr. Myatt affirmed that he had previously had a good relationship with the defendants. He claimed he paid all veterinary bills, either directly or by e-transfer. He referred to certain texts in this regard.

[18] He further testified that he was at the property daily, and the “cat was always around.” His reasoning in leaving the cat behind when he moved was that “we were going through hard times” and that he “would never give away [his] daughter’s cat.”

[19] At the end of the tenancy, the relationship between the parties had something of a breakdown. Again, the texts suggest a comparatively amiable parting at first, but Mr. Myatt testified that he found out the defendants were at the property at tenancy's end with no power (using flashlights), did not clean the unit, and most importantly for current purposes, insisted that they never took the cat. It was only after Mr. Myatt put up notices on Facebook that he found out via a third party that the cat was with the defendants, who had by now moved.

[20] Cross-examination focused (despite my efforts otherwise) on the end of the tenancy rather than issues relevant to cat ownership. What I got out of it was that Mr. Myatt moved in 2019 (no tenants from that period remained at "the Point" at the time of trial so as to speak to the chain of events since then), leaving the cat because his new accommodations and work schedule would not be conducive to the cat moving with him. Specifically, the new Myatt house would be vacant during the day and there are wolverines around his current residence.

Nolan Myatt

[21] Nolan Myatt, 15, testified under affirmation. He testified that taking the cat was "not right" and that he saw it at "the Point" any time he was there; that the cat went to every apartment; and that there was "no harm" in leaving the cat at the

Point since he had a place to stay and was always well fed. Different tenants would engage to different levels (e.g. some wouldn't let the cat in but would give it treats). He testified that the defendants were "not primary caregivers."

Jacob Cameron

[22] Mr. Cameron, co-defendant, testified that when the defendants moved in at the start of their six-year tenancy, they had a good relationship with the claimant. He said that the claimant told them the cat needed a place to stay and they were charged with "looking after" the cat. He said that Mr. Myatt "favoured dogs over cats," and refused to pay two veterinary bills – one when the cat was soiled by oil, and one when it was hit by a car. In addition, they claim that the cat had been attacked by a fox or dog and, now being in middle age, needs to be indoors.

[23] Although, according to Mr. Cameron, Mr. Myatt would "visit for an hour or two while at the apartments," the cat's presence or absence was effectively happenstance. His testimony was that the cat had adopted the defendants, sleeps on their bed (photos were introduced to this end), and that the cat is "happy."

[24] On cross-examination, Mr. Cameron was asked why he denied knowledge of the cat's whereabouts after the end of the tenancy. He replied that the cat had left "for a week or so" and "came back later" when he was at the house. He said that

he did not inform Mr. Myatt of that latter development because he had been accused of taking the cat. Further, he said that by that point the parties' relationship had deteriorated and "I was pissed off and didn't really care."

[25] He denied knowing who took the food and water bowls.

[26] In this context, I reviewed the texts in evidence between "Jake and Ashley [sic]" and the claimant. It is not clear which of the defendants was texting, but they clearly establish that the defendants either did not know where the cat was at the time the tenancy came to an end, or wanted the claimant to think so. The first text in evidence was October 17 and the last, October 24.

[27] On re-direct, Mr. Cameron testified that the RCMP had become involved, but after seeing the cat did not pursue any criminal investigation and that "it would be up to the Courts to decide." I interpret this to mean that the police considered it a civil dispute, precisely the matter that I have before me.

Eric Benjamin

[28] Eric Benjamin lived at the Point from July 2015 to June 2016. He testified that the defendants were primary caregivers to the cat, even when Mr. Myatt lived at the premises. The cat would "visit" his apartment and he would feed it treats.

Tammy Benjamin

[29] Tammy Benjamin testified that the cat was “very loving,” and that on at least one occasion tried to jump in her car when she pulled in the driveway. She testified that the defendant Ashleigh Benjamin “always had a cat” and loves them. She was not involved in the alleged “catnapping” and considered it a “community cat.”

Steven Benjamin

[30] Steven Benjamin testified that when Mr. Myatt moved, “Puss was abandoned” and that the defendants “spoiled” it as its “primary caregiver.”

[31] On cross-examination, he was asked about a comment in response to Mr. Myatt’s Facebook post, which comment was that he “hoped the cat would be found.” When asked about the discrepancy between this comment and his knowledge of the cat’s whereabouts, he testified that “I think that was in the first week” (that is to say, before Mr. Cameron acknowledges moving the cat from the Point to their later residence).

Case conclusion

[32] Ashleigh Benjamin did not testify. She was reminded that her “statement” presented to the Court would not be evidence, and would not be considered, if she was not prepared to testify or be cross-examined. She confirmed her election.

[33] There were several other “witness statements” from persons who did not testify; for the most part, these were cumulative and spoke to “who did what” or the care bestowed upon the cat. Although hearsay rules do not apply in this Court, I accord them no weight. They did not add to the property issues at hand, except in a cumulative fashion.

[34] The cat was not exhibited to me, although all parties had video capabilities.

[35] The cat did not testify.

Argument

[36] The defendants say that the claimant, having left the cat behind (while taking the dog), considered it abandoned and “ours now,” having taken care of it for the last 3-4 years. They said they did not consider themselves “baby sitters,” and since they could have taken care of it or not, their adoption (or the cat’s adoption of them) makes it theirs in law.

[37] The claimant says he made it clear to the defendants that it was his daughter's cat, and that was leaving it behind "until we could get it." He reiterated that the dog was not his to take or leave, and that the cat was a "member of the community." He pointed out that Mr. Cameron also left the cat behind, at first, when they moved, apparently taking it about a week later. He argued that given the date of power disconnection and the notice of termination, the defendant must have taken the cat somewhere in that interval.

Analysis

[38] I listened to the parties, and read the admitted documentary evidence carefully. I have observed the witnesses and the demeanour in which they presented their evidence. And, to the best of my ability, I have integrated this evidence with the law.

[39] I have considered carefully whether the cat was "abandoned." Put briefly, it was not. Abandonment must be more unequivocal than in this instance, manifest (by act or omission) of an intention to divest oneself of all incidents of ownership.

[40] In this instance, there was evidence – unadmirable as it may be – that Mr. Myatt, having moved but remaining owner of the Point, left the cat deliberately. His reasons and analysis may be questionable, but it did not manifest a divesture of

ownership (either for himself or on behalf of his infant daughter). His testimony was that the cat was more appropriately “placed” at the Point, albeit in the somewhat cavalier fashion that the tenants could take care of it, or not², and there was conflicting evidence of who paid for what, including veterinary care. Be that as it may, the evidence remains that Mr. Myatt was frequently (apparently daily) on the property and was in a position to observe the cat and to interact with it.

[41] It was also evident to me that much if not all of this dispute is grounded in the animus that surrounded the end of the tenancy. Mr. Cameron testified that he was “pissed off” and, whatever the circumstances by which the cat was left behind or not taken when they moved, he did nothing to put Mr. Myatt’s understandings aright when the cat was relocated. Even if the defendants asserted ownership by that point, they in effect took it upon themselves to do so without notice to the claimant. I find that this was surreptitious, motivated by the dislike that had evolved between the parties, and inconsistent with a belief by the defendants that Mr. Myatt had disgorged any interest in the cat.

[42] I also note Tammy Benjamin’s testimony that the cat attempted to jump into her car at least once, and this is consistent with Mr. Cameron’s statement that “the

² Although in fairness to Mr. Myatt, it appears to me that he did not simply leave the cat to its fate but instead assured himself that the tenants, or at least some of them ‘had its back’ at least when he was not present himself.

cat came back,” or at least was amenable to going with him, some time after they had moved but when he was back at or about the Point.

[43] Ultimately, I find that the defendants took the cat which was, in law, still the property of the claimant and in which the claimant (either for himself or on behalf of his daughter) had not relinquished or abandoned ownership.

[44] The cat is to be delivered up to the claimant forthwith, in its current state of wellbeing. If the parties are not able to arrange for the logistics of this in a civil and practicable fashion, I remain seized to set the terms thereof.

[45] I also order the costs of filing, and service, if particulars are provided to me by claimant’s affidavit within ten days of release of this decision.

Balmanoukian, Adj.