Claim No: 418618

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Boutin v. McKenzie, 2013 NSSM 49

BETWEEN:

ALLYSON RENEE BOUTIN

Claimant

- and -

COREY ANTHONY McKENZIE

Defendant

REASONS FOR DECISION

BEFORE: Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 12, 2013

Decision rendered on November 14, 2013

APPEARANCES For the Claimant self-represented
For the Defendant self-represented

BY THE COURT:

[1] The Claimant is suing the Defendant for certain financial obligations arising out of their former domestic relationship, and its apparently tumultuous end. Specifically, she claims:

a. $8,106.23 for car loan obligations
b. $1,133.59 for cell phone bills
c. $357.98 for damage to a closet door, and
d. $83.62 for a parking ticket run up by the Defendant.

[2] The Defendant has counterclaimed for certain items which will be discussed below.

[3] The parties cohabited for less than a year, between some time in December 2011 and September 2012. The evidence does not suggest that they integrated their finances to any degree. As such it is possible to deal with these financial obligations on their own terms.

The 2005 Dodge Magnum

[4] Early in their relationship, a 2005 Dodge Magnum car was bought in the Claimant's name for the Defendant to use. The Claimant says that it had to be done this way because the Defendant had bad or no credit. The Defendant disagrees that he had no credit and suggested that the Claimant wanted it to be done this way. That makes no sense. I accept the Claimant's version.

[5] The Defendant drove the vehicle and made all the payments before they split up. As the separation was happening, the Defendant signed an agreement with the Claimant that he would continue to pay the car loan until it was paid in full. At that time, the balance stood at over $10,000.00.

[6] In August 2013, many months after the separation, the Defendant simply dropped the car off at the Claimant's home and announced that he was not prepared to take any more responsibility for it. The car was damaged as a result of a collision in a parking lot, and had mechanical problems. The Claimant says that it currently will not even start.

[7] The Defendant has no good excuse for what he did other than the fact that he was tired of the Claimant bugging him for payments. He also appears to be questioning whether the agreement he signed was valid, in part because it was not witnessed.

[8] In my view, the contract is valid and he has breached it with no excuse. The Claimant has put the car in storage and is making payments, to protect her credit. She says, and I accept, that she cannot afford to keep doing this.

[9] The amount owing on the loan to T-D Auto Finance at the time the Defendant stopped making payments was $6,905.02. If the Claimant pays all of the payments to the end of the loan, she will have paid $8,106.23, including interest. This is the amount she is claiming.

[10] In my view, the Defendant is clearly responsible for the $6,905.02, and more. If he would have paid that in August, some of the interest charges might

have been avoided, so I am not satisfied that he should pay the entire $8,106.23. That potentially overcompensates the Claimant, as she would have the use of the Defendant's money.

[11] There is also the issue of what should be done with the car. It has some value. It would be unjust to allow the Claimant to keep it assuming she received all of the money from the Defendant. The calculation of precisely what the Defendant should be paying is complex and subject to many questions. Accordingly, I will attempt to fashion a remedy that achieves rough justice.

[12] I will include in my order the following provisions respecting the car:

a. The Defendant is indebted to the Claimant in the amount of $8,106.23.

b. Should the Defendant pay the Claimant the sum of $7,500.00 on or before December 15, 2013, he shall be entitled to have the car's registration signed over to him and shall be provided access to the vehicle to have it removed, at his own expense, and no further amount shall be payable to the Claimant respecting the automobile.

c. After December 15, 2013, the Claimant shall be at liberty to dispose of the vehicle and apply the net sale proceeds against the debt of $8,106.23 .

Cell phone

[13] The Claimant and Defendant had a joint cell phone plan. After they separated, the Defendant kept his phone and forced the Claimant to make payments on his behalf. He has no credible defence to this claim. He owes the Claimant $1,133.59.

Closet door

[14] In a fit of rage, the Defendant kicked in and smashed a closet door. This was a pricey wood door with glass inserts. The Claimant produced documents indicating that the cost to purchase and install a replacement would be $357.98. I allow this amount.

Parking ticket

[15] The Claimant was forced to pay $83.62 for a parking ticket run up by the Defendant, because the car was in her name. This debt is clearly owed.

Counterclaim

[16] The Defendant claims that the Claimant slashed his tires in a fit of rage, which cost him $187.16 to repair. The Claimant does not dispute the facts. This amount will be credited to the Defendant.

[17] The Defendant also claims that the Claimant pawned her engagement ring, and that she ought to have applied the proceeds against his cell phone bill. The Claimant admits that she pawned the ring for $200.00, but does not concede that she has to credit this amount to the Defendant. The Defendant says that it was the Claimant who broke off the relationship, and that she ought to have returned the ring. He also suggested that she is either lying about the amount received, or that she accepted a small fraction of its value.

[18] The law concerning engagement rings appears to be that it is a conditional gift. If the donor breaks off the engagement, the recipient may keep the ring. If the recipient breaks off the engagement, the ring must be returned.

[19] The only evidence before me was to the effect that the Claimant broke off the engagement. As such, she ought to have returned the ring. She did not. As such she ought to be accounting for its fair value. The problem is that there was no evidence before me of what it cost, or what it would be worth as a used item. The only evidence is the Claimant's testimony that she received $200.00. As such, the best I can do is order her to credit the Defendant with $200.

[20] Both parties have had some success and are entitled to their costs of issuing the claim and counterclaim respectively.

[21] There will accordingly be an order stating the following, apart from the order concerning the vehicle:

amount due to the Claimant for cell phone bills	$1,133.59
amount due to the Claimant for door	$357.98
amount due to the Claimant for parking ticket	$83.62
amount due to the Defendant for slashed tires	($187.16)
amount due to the Defendant for ring	($200.00)
Cost of claim to be recovered by Claimant	$193.55
Cost of counterclaim to be recovered by Defendant	($64.10)
Total due to Claimant	$1,317.48

[22] To summarize, there will be an order in the terms set out above respecting the car, and a money judgment in favour of the Claimant for $1,317.48.

[23] Either party shall be entitled to ask that the matter be placed on my docket for a further hearing, in order to resolve any issues that may arise as the parties work through the logistics of this order.

Eric K. Slone, Adjudicator