

Claim No: SCCH 270599

Date: 20061120

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Wallace v. Watts, 2006 NSSM 60

BETWEEN:

Name Larry Basil Wallace Claimant

Name Karen Watts Defendants

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on June 3, 2008. This decision replaces the previously distributed decision.

Date of Hearing: October 17, 2006.

Date of Decision: November 20, 2006.

DECISION

Patrick Eagan, appeared for the Claimant.

Karen Watts appeared on her own behalf.

(1) This claim concerns the contract for the purchase of an automobile which has not been delivered. Certain of the facts are not in dispute.

(2) On or about June 2006, the Claimant contracted to purchase a 1970 Chevrolet Barracuda from one Kevin Buchanan. On prior occasions, he had contracted to purchase automobile parts from Mr. Buchanan's business, K & K Radical Muscle Cars ("K & K"), which he operates with

the Defendant, Karen Watts. The business name itself was not registered with the Registry of Joint Stock Companies. The cost of the vehicle was \$8500 with \$4500 to be paid by cheque to the Defendant, Karen Watts and the remainder to be paid in cash to Kevin Buchanan, personally. The vehicle was not delivered. In her defence, which she filed, the Defendant states only that she had returned the cheque to the Claimant which represents the extent of her direct evidence. Mr. Buchanan has not been named as a Defendant in this matter.

Issue

(3) The issue in this matter is straightforward, namely, was there a contract between the Claimant and the Defendant, such that she may be liable jointly and/or severally for the return of the funds?

The Evidence

(4) Larry Wallace testified that he lives at 1769 Cole Harbour Road in Dartmouth and he sells used cars. He indicated that he knew Karen Watts through business dealings with her boyfriend, Kevin Buchanan. In June 2006, he contracted with Mr. Buchanan to deliver a 1970 Barracuda automobile to be delivered in August 2006. The purchase price was \$8500 to be paid by way of a cheque for \$4500 payable to Karen Watts and \$4000 cash to Kevin Buchanan. I assume this was an oral contract as no written document was entered into evidence.

(5) The Claimant entered into evidence a bank statement showing a cheque cashed from his account for \$4500 ("Exhibit 1"). He also tendered a cheque payable to Ms. Watts dated July 6, 2006 ("Exhibit 3"). On the memo line, the word "Parts" is written. Her signature appears on the back on the line marked for endorsement. In his testimony, Mr. Wallace also acknowledged his signature on the back of the cheque that appears above Ms. Watts' signature. The bank record shows that the cheque was cashed on July 6, 2006. Notwithstanding the presence of his signature on the back of the cheque, he maintains that Ms. Watts had not returned it and cashed the cheque herself. I shall deal with that evidence later in this decision.

(6) Mr. Wallace has dealt with both Mr. Buchanan and Ms. Watts through K & K Radical Muscle Cars which occasionally places cars in the driveway of his business to sell.

(7) He testified that he attempted to contact Mr. Buchanan and Ms. Watts in August 2006 to check on the delivery of the Barracuda and was by advised by Ms. Watts that Mr. Buchanan had "disappeared". He later spoke with Mr. Buchanan on August 27, who apparently told Mr. Wallace that he had spoken with someone the day before who advised him the car would be delivered that afternoon at 2:30. The vehicle was not delivered. He had attempted to speak with Mr. Buchanan, he spoke with Ms. Watts who kept dismissing his calls. They had made several offers, such as Mr. Buchanan apparently offered to get a job and pay him back while Ms. Watts was going to give him their Sea Doo or a 1973 or 1974 Omega. In a subsequent conversation, Mr. Buchanan spoke to Mr. Wallace and apologized explaining that he took the money for drugs.

(8) He testified that in dealing with K & K he had dealt with both Kevin and Karen. Further, he provided a picture showing the company truck with "K & K Radical Muscle Cars" on the sides.

(9) Robert Todd testified that he is the owner and operator of Major Discount where K & K Radical Muscle leased two bays as recently as May and June of 2006. He indicated that both Buchanan and Watts conducted business with him stating that "wherever he was, she was". He testified that Ms. Watts often made payments for their bills on her personal VISA and Kevin made payments from a Master Card.

(10) Mr. Todd testified that according to "Dave", the owner of Snap On Tools, Ms. Watts had settled K & K's debts with that business personally, one in particular for \$1000. Ms. Watts had also asked Mr. Todd for billings to be for her personally, not K & K. He indicated that it could not be done.

(11) Ms. Watts advised him Mr. Buchanan was away to pick up engines in Ontario on August 24th. Apparently, there were deposits on their accounts including \$4500 for Karen's credit. Mr. Todd had apparently had a contract for engine parts to be delivered by K & K which were not delivered. He followed up with Ms. Watts who told him that Mr. Buchanan was returning with engine parts to be delivered the same time as the car would be delivered to Mr. Wallace.

(12) Mr. Buchanan spoke to Mr. Todd sometime in September to explain why "he did what he did", again indicating that he took the money for drugs. Mr. Buchanan acknowledged taking both \$4500 and \$4000 from Larry. He testified that he heard him promise to pay Mr. Wallace when he gets a job.

(13) Kevin Buchanan was subpoenaed to give evidence on behalf of the Claimant. He testified that he lives at 55 Highfield Park with the Defendant, Karen Watts. He testified that the Defendant is the other "K" in their business name. The business had been just a hobby until February/March of 2006 when they started running it on a full time basis. He described the business as a joint partnership rather than a limited company. Ms. Watts' role was to make phone calls, deliveries or do errands for K & K. Part of her duties included receiving money owed to the business.

(14) He testified that he had contracted with Larry Wallace to purchase a Barracuda for \$8500 and traveled to Ontario to pick it up. Under questioning from Mr. Eagan, he testified that he acknowledged that there was a car, but that he took the money to pay a drug debt instead. He also testified that he had received the money directly from Larry Wallace.

(15) During his testimony, he produced a hardcopy of an e-mail sent to his niece which states that he is looking for information about Mr. Buchanan's whereabouts. It states in part:

"i gave Kevin \$11,000 to buy a 1970 cuda which I think your husband had told him about it was suppose (sic) to arrive today at 2:30 pm" (*emphasis mine*).

(16) The Claimant submitted that the \$11,000 was for parts as well as the car.

(17) In his testimony, Mr. Buchanan acknowledged receiving two payments from the Claimant, namely \$4500 and \$4000. He testified that Ms. Watts was not aware of the dealings, and indeed, he had not told her that he had even received the money from the cheque. He acknowledged discussing the money with Mr. Wallace the money owed to him.

(18) Robert Wagner testified that he is the owner of All Ex Automotive. He indicated that when K & K purchased auto parts from his business, Ms. Watts conducted the transactions. His business maintains a credit account of his business which was entered into evidence. The last of those transactions was for items that were returned and credited to her credit card. He described a transaction for the purchase of a Chevrolet for which he paid but the vehicle was not delivered. Under cross-examination by Ms. Watts, there were considerable assertions by her about the ownership of certain parts for which both claimed ownership.

(19) Karen Watts testified on her own behalf. She attempted to cash the cheque but was told that without an account at that bank, they will not cash a third party cheque in excess of \$3000. She testified that she had in fact spoke directly with Mr. Wallace about it on that date and returned the cheque.

(20) Under cross-examination by Mr. Eagan, Ms. Watts testified that she was present in August or September when Mr. Wallace and Mr. Todd approached Mr. Buchanan for money. They did not ask for payment from her. She had been approached by numerous people for payment after Mr. Buchanan had disappeared. She acknowledged that K & K does buy and sell cars for a profit. It was her belief that Mr. Buchanan had gone to Ontario to speak with someone about a car.

(21) She had noticed \$4500 in an account with Mr. Wagner in June but was not aware of its origin. The money was not actually taken out of her account. With respect to Mr. Todd's evidence, she acknowledges that the parts were not delivered to him. She also told Mr. Wallace she would give him a Sea Doo and acknowledged that Mr. Buchanan had offered to pay him back over time.

(22) With respect to the cheque, she had thought the payment was for parts as noted on the cheque and not for a vehicle. She acknowledged that she always received the money for their transactions in her name, as Mr. Buchanan did not have a bank account. She did not know Mr. Buchanan received the cash prior to the date of the hearing. She also acknowledged that Mr. Buchanan indicated there was no car available for Mr. Wallace. She also confirmed Mr. Wallace's testimony of receiving a \$500 deposit for a Malibu which was not delivered.

Findings

(23) In reviewing the evidence, I find without hesitation that Mr. Wallace had made arrangements with Mr. Buchanan for the purchase of the Barracuda. As noted previously, the issue is whether Ms. Watts is also liable.

(24) There was a transaction for the purchase of a vehicle which was not delivered. The purchase price was \$8500 to be paid partly by cheque and partly in cash. I find that the cheque was returned by Ms. Watts to Mr. Wallace. The only logical conclusion I can draw, is that Mr. Wallace endorsed and cashed it on the same day, June 6, 2006 and delivered the money to Mr. Buchanan. This is consistent with Mr. Buchanan's comment that he received the \$4500 directly from Mr. Wallace.

(25) Mr. Wallace had testified that he had paid by cheque which was cashed by Ms. Watts. However, it is clear by the presence of Mr. Wallace's signature on the back that he had possession of the cheque after Ms. Watts attempted to cash it. Furthermore, I have no idea why he indicated in his e-mail to Mr. Buchanan's niece why he owed \$11,000 instead of \$8500 and then indicating it was for parts. Nevertheless, while I have serious concerns about this aspect of his testimony, I find that the evidence of Robert Todd and Robert Wagner, as well as Ms. Watts' and Mr. Buchanan's own testimony corroborates much of the material circumstances of Mr. Wallace's claim.

(26) There is plenty of evidence concerning the business affairs of Ms. Watts and Mr. Buchanan from the Claimant's witnesses. Also, I have to infer that the evidence is correct as Ms. Watts called no evidence to refute them, despite being given ample opportunity to do so. Each witness consistently testified that Ms. Watts often dealt personally on business matters.

(27) I find that part of the business of K & K was the purchase and resale of automobile for profit. I also find that many of their business transactions were conducted personally by Ms. Watts including payment of accounts and the issuance of invoices in her name personally. It may be that both the Defendant and Mr. Buchanan conduct their personal transactions in the same manner. In these circumstances, it would be difficult if not impossible for a person contracting with either of them to know exactly with whom they were dealing. I find on a balance of probabilities that this is a mutual obligation of Ms. Watts and Mr. Buchanan. Once she had accepted the funds personally, it was incumbent upon Ms. Watts to see the transaction through or terminate it. There is no evidence that she attempted to do either.

(28) She played a pivotal role in this transaction and should be liable for what amounts to a complete failure of consideration.

(29) I find on a balance of probabilities that she was aware of the transaction, and participated in it. If I am wrong in this finding, I also find that she has in her own personal name \$4500 which originated from Mr. Wallace to which she is not entitled. Consequently, I find she is liable to the Claimant for \$4500, however, in the circumstances, each party should bear their own costs.

(30) At the conclusion of the hearing, Mr. Eagan moved to amend the claim to \$8500. I denied

the motion, as it would be unfair to do so at this late date. Mr. Wallace could have sought an adjournment and amended the Claim at any time prior to the hearing. He is also still able to make a Claim against Mr. Buchanan if he chooses to do so.

Summary

(31) In summary, I shall order judgment in favour of Larry Basil Wallace against Karen Watts for \$4500 without costs.

Dated at Dartmouth, Nova Scotia,
on November 20, 2006.

Gregg W. Knudsen, Adjudicator

Original	Court file
Copy	Claimant (s)
Copy	Defendant (s)