

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Cite as: Regan-Cottreau v. Blackburn, 2014 NSSM 47**

Claim No: 428390

**Between**

**Caitlin Regan-Cottreau**

**Claimant**

-and-

**Dave Blackburn**

**Defendant**

**Adjudicator: David TR Parker QC**

**Heard: June July 24 2014**

**Decision: September 29, 2014**

**Counsel:** Ezra Van Gelder represented the claimant

The defendant was self-represented

**DECISION**

1. This matter came before the Small Claims Court on July 24 2014 and written submissions were provided to the court on August 18 both by the claimant and defendant.

**Facts:**

2. The claimant and defendant entered into a purchase sale agreement on March 8, 2014 with respect to property at 83 Roy Crescent in Halifax.
3. The claimant in this action was acting on behalf of her and her in-laws husband Jonathan Cottreau who all owned the property together and executed the agreement with the defendant
4. All conditions of the purchase sale agreement were met.
5. Closing of the transaction was to occur on April 28, 2014
6. The claimant's real estate agent heard from the defendant's real estate agent that the deal would not be going through as the defendant's military transfer had been canceled. Him him him him him him
7. As a result the claimant's realtor asked for confirmation by email of his conversation with the defendant's real estate agent that the defendant did not get posted and will not be going through with the deal.
8. The claimant's real estate agent requested this confirmation as he wished to receive other offers for the property.
9. the defendant's real estate agent on April 4, 2014 confirmed by email that the military transfer had been canceled for the defendant and that he would draft a termination
10. The defendant contacted the claimant's realtor on April 4, 2014 by email asking the claimant's realtor to inform the claimant that he was sorry of what happened.
11. The defendant's real estate agent on April 5, 2014 emailed the claimant's realtor and asked if the claimant could consider to stop the offer for a certain amount of money and if yes how much?
12. The claimant on April 5, 2014 entered into a purchase sale agreement with a previously interested purchaser, Stephen Arsenault. The closing date was set for June 5, 2014.
13. On April 10, 2014 the defendant's real estate agent sent an email stating in part *"the last few week we had tried so many time to have a termination with your seller and NEVER had any response. My Buyer are still firm on 83 Roy, we never had agreed on MLS form form NSAR BOARD TO TERMINATED THE DEAL. My buyer will close on this deal. Now this morning the 83 Roy showing conditional pending and we had a sold sign on that property! Doug I strongly you double check with your lawyer before proceed the way it looks like this morning on MLS!"*
14. The claimant is now seeking all costs associated with the closing being changed from April 28, 2014 when it was to occur with the defendant to the time it eventually closed with the subsequent purchaser and that being June 5, 2014.
15. The question before this court is; was there a termination of the contract by the defendant resulting in damages to the claimant.

16. The defendant through his agent and through his own email terminated the agreement the defendant had with the claimant.
17. The purchase sale agreement states:” it is understood and agreed that if the buyer does not complete this Agreement in accordance with the terms thereof, the buyer will forfeit the above deposit in addition to any other claim which the seller may have against the buyer for the buyer’s failure to so complete....”
18. The deposit in this case was \$1000.00
19. The defendant through its agent tried to settle with the claimant as a result of the defendant not wanting to complete the sale due to his military non-transfer.
20. The difference between the purchase price in the defendants offer and the purchase price in the subsequent offer by Mr. Arsenault was \$2000.00. This loss would not have occurred if the defendant had completed the sale. I also note here that there was no tendering of money by the defendant notwithstanding he said he was prepared to complete the sale.
21. The claimant in her submission to the court indicated that she and her husband had purchased a condominium earlier that spring. The purchase of the condominium was scheduled to close on April 16, 2014 and was not conditional on the sale of their property located 83 Roy” Crescent.
22. There is no other information on that condominium sale including the purchase sale agreement, closing documentation, what occurred during the negotiations or anything other than what was stated in counsel’s submissions on behalf of the claimant
23. In the claimant’s testimony she stated “the mortgage was conditional on our house being sold.”

### **Analysis and The Law:**

24. In this case, the defendant through his agent and on his own, advised the claimant that he would not be purchasing the home. The claimant’s agent sought and obtained confirmation through the defendant’s agent that the defendant would no longer be purchasing the home. The claimant’s agent advised the defendant’s agent that he wanted this confirmation so that he could proceed with trying to sell the home to another person. In other words, the attempt was made right away to mitigate the losses of the claimant.
25. The defendant argued that there was no termination form as put out by Nova Scotia Realtors Commission to indicate the agreement was terminated.
26. No such form has to be entered into in order to repudiate and terminate an agreement of purchase and sale.
27. The claimant in this case has the option of either suing for specific performance, that is to say, enforce the contract or as the claimant chose to do try to sell the home and sue

for any reasonable losses that might occur as a result of the defendant repudiating a contract or as provided under a purchase sale agreement entered into between the parties.

28. The defendant is going to be responsible for any anticipated reasonable costs that flow from the defendant's breach of contract.
29. I reference the following case law involving repudiation of contract and the results that flow therefrom: **Whalen v. Murphy** [2011] NSJ No. 156; **Canada Egg Products, Limited v. Canadian doughnut Co.**[1955] 3 DLR 1;**Kamlee Construction Limited v. Oakville(Town).** 26 DLR (2d) 166; and **Pompeani v. Bonik** [1997] OJ No. 4174
30. The purchase price that the defendant agreed to pay the claimant's was \$290,000.00. The property ultimately sold for \$288,000.00. The defendant would be responsible for the difference and that is \$2000.00.
31. Mortgage carrying costs of the claimant from the date that the transaction was to close to the date that the transaction ended up closing was \$1472.01
32. Cost of utilities, on the claimant's home from April 28 to June 5, 2014 was \$205.03
33. Home insurance costs incurred on the claimant's home claimant was from April 28 to June 5, 2014 was \$103.43
34. The claimants were also claiming a line of interest costs of \$75.94 related to the condominium and I believe would be too remote and inappropriate.
35. Therefore, the total amount of reasonable losses flowing from the breach of contract by the defendant would be \$3780.47 which I shall allow. There is also a \$1000.00 being held in trust by the realtors involved and that should be paid to the seller/claimant and be part of the \$3780.47
36. With respect to the defendant and claimant by way of counterclaim, which is more particularized in the defendant's affidavit. I have already dealt with the deposit and there is no basis or support for any other part of the counterclaim and that will be dismissed against the claimant

**It Is Therefore Ordered That** the defendant paid the claimant's the following sums

\$3,780.47

\$ 212.20 costs

**\$3992.67 total**

**It Is Further Ordered That** the counterclaim against the claimant be dismissed with no order as to costs.

Dated at Halifax NS, on September 29, 2014

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David T.R. Parker QC  
Adjudicator of the Small Claims Court of Nova Scotia