

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Gau v. Richardson*, 2004 YKSC 22

Date: 20040316
Docket No.: 02-A0069
Registry: Whitehorse

Between:

MIKE GAU

Plaintiff

And

LEAH RICHARDSON

Defendant

Appearances:

Emily R. Hill
Leah Richardson

For the Plaintiff
On her own behalf

Before: Mr. Justice L.F. Gower

REASONS FOR JUDGMENT

Introduction

[1] Mr. Gau claims Ms. Richardson owes him for certain loans he made to her during the course of their domestic relationship of approximately 16 months. The two lived together for about 12 months of that time. Ms. Richardson admits responsibility for some of these debts, but not all.

Issues

[2] The issues in this case are as follows:

1. Was there an agreement/contract (or agreements) between Mr. Gau and Ms. Richardson relating to these loans?

2. What amounts are owing from Ms. Richardson to Mr. Gau, if any?

Facts

[3] Mr. Gau began dating Ms. Richardson in March 2000. He moved in with her during the months of February and March 2001. He then moved out from April to August 2001. He resumed co-habitation with Ms. Richardson from September 2001 to June 2002, when their relationship ended.

[4] Ms. Richardson came into the relationship with an outstanding student loan owing to the Government of the Northwest Territories, as well as a number of credit card and other debts.

[5] In December 2001, the couple became aware that Ms. Richardson was in arrears on her student loan.

[6] The couple got engaged on December 25, 2001.

[7] During or about January or February 2002, Mr. Gau and Ms. Richardson discussed Ms. Richardson's debt situation and decided it would be prudent to obtain a line of credit to pay off her student loan. Ms. Richardson initially applied for a line of credit, but her application was turned down. Then, both Mr. Gau and Ms. Richardson applied together for a joint line of credit, but that application was also turned down. Eventually, on February 27, 2002, Mr. Gau was successful in personally applying for a line of credit at the Canadian Imperial Bank of Commerce, with a limit of \$22,000.00. Interest on that line of credit was charged at the prime rate plus 2.5%.

[8] While the parties agree that Mr. Gau obtained this line of credit for the purpose of paying off Ms. Richardson's outstanding debts, Ms. Richardson says that was not the only reason. She maintains that it was also intended to be used for consolidation of other joint debts and the financing of their upcoming wedding. It is not clear whether Mr. Gau disputes that allegation. His evidence seems to suggest the credit line was exclusively for the payment of Ms. Richardson's debts. In the end, however, not much turns on this difference.

[9] The other point of disagreement between the parties is whether and how Ms. Richardson agreed to repay Mr. Gau for paying off her student loan and her other debts. Mr. Gau says they agreed that Ms. Richardson, while she was working part-time, would initially repay him by paying half the monthly payments ($\$600 \times 1/2 = \300) to the bank on the line of credit. Then, when she began to work full-time, she would make full monthly payments until she repaid the total amount of the loan from Mr. Gau. Ms. Richardson acknowledges that she agreed with Mr. Gau to make half of the monthly payments on the line of credit, but denies that she said she would pay the amount in full at any time, even if she became employed full-time. On the other hand, Ms. Richardson acknowledges that she is responsible for most of the debts which were paid off by Mr. Gau through the credit line.

[10] During the course of the relationship, there were a number of other expenses incurred and separately paid for by Mr. Gau, and for which he seeks reimbursement. These are disputed by Ms. Richardson. She says they were either gifts or were expenses which should be shared equally between them. Both gave evidence that,

during the relationship they agreed, with some exceptions, that each would pay their own personal expenses and one half of the shared joint or household expenses.

[11] After the relationship ended, Ms. Richardson stopped making her share of the payments on the line of credit and has not paid anything further to Mr. Gau since that time.

Analysis

[12] Mr. Gau pleaded in his Statement of Claim that he loaned certain monies to Ms. Richardson and that she agreed to repay the loan plus interest at the rate of 6.75% per annum. Thus, his claim is based on contract.

[13] In her Statement of Defence and Counterclaim, Ms. Richardson says that she is willing to pay her share of the line of credit, but only after there has been a full accounting from Mr. Gau. She acknowledged in her Statement of Defence and her Affidavit that the line of credit was obtained in part to pay certain of her debts, as well as other joint debts.

[14] Mr. Gau brought this matter before me on an application for summary judgment and, alternatively, for a summary trial, pursuant to Rules 18 and 18A respectively. At the hearing on January 26, 2004, the parties agreed that they would proceed on the basis of a summary trial application and each submitted to cross-examination on their Affidavits. At the conclusion of the hearing, I queried whether Mr. Gau might also have a claim in equity, either in the alternative to or arising from his claim in contract. However, as this

was not specifically pleaded or argued by Mr. Gau's counsel, I reserved my decision to consider the matter further.

[15] During her cross-examination, Ms. Richardson admitted responsibility for the debts outlined in paragraph 23 of Mr. Gau's Affidavit, with the exception of the \$1,689.00 used to pay Ms. Richardson's overdraft on her Royal Bank account. The remaining debts Ms. Richardson admitted she owes to Mr. Gau total \$15,824.93.

[16] It is critical to note here that the alleged agreement to repay is not disputed by Ms. Richardson. The differences in the evidence of Mr. Gau and Ms. Richardson over the discussions between them relating to the line of credit are largely irrelevant, given Ms. Richardson's admission that she owes Mr. Gau the majority of what he is claiming. The fact that the parties initially agreed that Ms. Richardson would only repay Mr. Gau at the rate of \$300.00 per month does not provide Ms. Richardson with any defence. In paragraph 55 of her Affidavit, Ms. Richardson referred to paragraph 19 of Mr. Gau's Affidavit and deposed that she never stated that she "would be paying the amount in full [that is, the monthly payment] at any time", even if she obtained a full-time job. The reason being that she could not afford the full \$600.00 loan payment along with her other expenses. However, Ms. Richardson did not specifically deny the allegation by Mr. Gau, in paragraph 19 of his Affidavit, that she promised to repay Mr. Gau the total debt he incurred under the credit line. Rather, she quibbles about whether she agreed to make the full monthly payments. Whether that is so or not does not contradict Mr. Gau's expectation, at the time the loan was advanced, of being repaid in full. In other words, she agreed to repay Mr. Gau sooner or later, depending on the amount of the monthly payments.

[17] It is possible that the parties might have made other arrangements for the repayment of the debt, had they married and continued to live together as husband and wife. Indeed, over time Mr. Gau might have forgiven the debt. However, that is pure speculation. The bottom line is, now that the relationship has ended, Mr. Gau relies upon Ms. Richardson's promise to repay him and Ms. Richardson freely admits that she is responsible for certain of these debts.

[18] As for Ms. Richardson's request or demand that Mr. Gau provide a full accounting, I find that he has done so in his Affidavit, as well as in his answers to Ms. Richardson during the summary trial hearing.

[19] I therefore have no difficulty in finding that there was a contract between Mr. Gau and Ms. Richardson, pursuant to which Mr. Gau obtained the line of credit from the Canadian Imperial Bank of Commerce and paid off certain of Ms. Richardson's debts in exchange for Ms. Richardson's commitment to fully repay the credit line in due course, inclusive of interest.

[20] What remains is to deal with the specific additional claims discussed in the Affidavits and testimony of the parties:

- **The NMI Mobility Account** – Mr. Gau said he paid for this account while the couple were living together, but that Ms. Richardson had exclusive use of this cell phone. Ms. Richardson says the cell phone was not activated until June 3, 2002. Mr. Gau says that all the calls recorded in the last statement of account were made after he terminated the relationship. Indeed, the account shows the calls were made over the period from June 19 through July 15, 2002,

totalling \$58.25, plus \$2.80. Those charges appear to have been rolled into the “Current Charges” on the account dated July 22, 2002, subtotalling \$58.10 (after various credits were applied). However, that same statement of account refers to “Previous Charges” from the last bill in the amount of \$118.90. That amount has not been explained or accounted for. It is difficult to understand how there would have been an amount due from a previous bill if the phone was only activated on June 3, 2002 and all the calls are detailed in the account. On the basis of the evidence tendered, I am unable to find on a balance of probabilities in this summary trial, that Ms. Richardson owes Mr. Gau the full amount for this item. I reduce Mr. Gau’s claim from \$177.00 to \$58.10.

Ms. Richardson implicitly agreed that she was responsible for her use of the phone after Mr. Gau moved out. This is evident from her admitted intention to change the NMI contract into her name after the relationship terminated. Therefore, Ms. Richardson should pay for those charges.

- **The Mastercard charges** – Mr. Gau says he loaned Ms. Richardson his Mastercard credit card during a trip to Vancouver in May 2002, but that Ms. Richardson agreed she would repay him for whatever expenses she incurred on that card. Ms. Richardson said that Mr. Gau handed her his Mastercard and said that it was okay to use it. She denies that she ever agreed to repay him for the costs incurred on that credit card. She says that many of the purchases she considered to be gifts for herself and her daughter. She acknowledged that she continued to use the credit card after she returned to

Whitehorse from Vancouver. According to the Mastercard statement in evidence, those charges were incurred over the period from May 21 to June 8, 2002, which was during the term of their relationship. On the basis of the evidence tendered in this summary trial, I am unable to find on a balance of probabilities that the total amount claimed by Mr. Gau of \$1,533.24 is a debt owing to him from Ms. Richardson. Rather, I find that these expenses fall into the category of joint or household expenses incurred during the term of the relationship, which the parties agreed to share equally. I therefore reduce Mr. Gau's claim for this item from \$1,533.24 to \$766.62.

- **The dog** – Mr. Gau says he purchased a dog for Ms. Richardson as a pet in November 2001. The cost of the dog and related supplies was \$692.78. The dog has remained with Ms. Richardson since the termination of the relationship. Ms. Richardson said in her Affidavit that Mr. Gau purchased the dog as a gift for her daughter. However, on cross-examination, she acknowledged that the purchase of the dog was a “family expense”. I therefore find that the expenses associated with the dog fall into the category of joint or household expenses, which the parties agreed to share equally. Accordingly, I reduce Mr. Gau's claim for this item from \$692.78 to \$346.39.
- **The Royal Bank overdraft** – Unfortunately, there is little information about this particular debt in Mr. Gau's Affidavit. In paragraph 21 he seems to have referred to the amount he paid to cover the overdraft on the Royal Bank account as \$468.77. However, he says he made that payment by providing Ms. Richardson with two cheques totalling \$4,500.00. He says those were to

pay off the amounts outstanding on her Royal Bank Visa (\$2,741.97) and the Royal Bank overdraft (\$468.77). Obviously, the two latter amounts do not total \$4,500.00. Even if you deduct the amount of \$2,741.97 (for the Royal Bank Visa) from the total of \$4,500.00, you end up with a difference of \$1,758.03. That does not match the amount claimed by Mr. Gau in paragraph 23(d) for the Royal Bank overdraft, being \$1,689.00. Further, Ms. Richardson says that this overdraft was used in part for household expenses during the time the couple lived together. Accordingly, she asks that it be shared as a debt jointly with Mr. Gau. Given the uncertainty about the amount of this debt in Mr. Gau's evidence, I am left with accepting the evidence of Ms. Richardson that the amount in paragraph 23(d) of Mr. Gau's Affidavit is apparently correct, but that it should be treated as a joint or household expense. Accordingly, I reduce the amount of Mr. Gau's claim for this item from \$1,689.00 to \$844.50.

- **Credits to Ms. Richardson** – Mr. Gau acknowledges that Ms. Richardson made payments to him in the amount of \$300.00 per month for March, April and May 2002, totalling \$900.00. Ms. Richardson has also claimed a setoff for expenses relating to a computer which the couple obtained in March 2002, for Mr. Gau's benefit. Mr. Gau took the computer with him upon the termination of the relationship. Ms. Richardson claims to have paid one half of the lease payments for the computer for March, April and May 2002. She does not specifically ask for a credit for that amount, presumably because it falls into the area of shared household expenses. However, she says she paid a total of \$81.92 for the computer before Mr. Gau moved out and would like that

deducted from what she owes him. Although Ms. Richardson's evidence on this point is skimpy, the setoff claimed by her was not disputed by Mr. Gau in his "Outline" prepared for the summary trial hearing. I am therefore prepared to credit Ms. Richardson for that amount, bringing her total credit to \$981.92.

[21] I therefore grant judgment in favour of Mr. Gau for the total amount of \$16,858.62, broken down as follows:

a) Ms. Richardson's debts paid off by the line of credit:	
• Admitted debts	\$15,824.93
• Payment of Royal Bank overdraft	<u>844.50</u>
	\$16,669.43
• Credit due to Ms. Richardson	< <u>981.92</u> >
SUBTOTAL	\$15,687.51
b) The NMI Mobility account	58.10
c) The Mastercard charges	766.62
d) The dog	<u>346.39</u>
TOTAL	\$16,858.62

[22] On the balance due under the line of credit, Mr. Gau is also entitled to pre-judgment interest on the sum of \$15,687.51 at the rate of 6.75% per annum from February 27, 2002 to the date of this judgment. Pre-judgment interest on the remaining amount of the judgment is awarded pursuant to s. 35 of the *Judicature Act*, RSY 2002, c. 128. Further, Mr. Gau is entitled to post-judgment interest on the sum of \$15,687.51

until payment, pursuant to s. 36(8)(b) of the *Judicature Act* at the rate of 6.75% per annum, and at the rate provided for in s. 36(2) on the balance.

[23] Finally, Mr. Gau is entitled to his costs for this application.

GOWER J.