

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Judge Dennis Schmidt

Barbara Hare
Administrator for the Estate of Donald Miller

Plaintiff

v

Diane Graham

Defendant

Appearances:

Barbara Hare
Diane Graham

Appearing on her own behalf
Appearing on her own behalf

REASONS FOR DECISION

[1] The claimant in this case is the daughter of the deceased Donald Miller. She obtained Letters of Administration for the estate of her father from the Supreme Court.

[2] In reviewing her father's papers she found a Promissory Note between her father and his step daughter, the defendant Diane Graham. The note had attached the cheques, which were issued to create the debt, together with some receipts which were also part of the principle amount of the debt. The note had initialed notations by Donald Miller noting payments that were made on the debt.

[3] The claim on behalf of the estate is for the difference between the initial debt and the payments noted by the deceased.

[4] In spite of the notation of payments the bank records of the deceased do not reflect the two \$1000.00 payments. The Defendant says those payments were made in cash as requested by the deceased.

[5] The Defendant further says she made an additional \$3500.00 payment in cash on January 18, 2008.

[6] There is a considerable amount of animosity between the daughters of the deceased and the defendant step daughter. This animosity pre-existed the

illness and death of the deceased. None of that is relevant to the three issues in the trial.

These issues are:

- Whether money was lent to the defendant by the deceased;
- What amount, if any, was paid back;
- Whether any of the debt was forgiven by the deceased.

[7] Exhibit One in these proceedings is the Promissary Note and the attached cheques & receipts which were found in the deceased home. The defendant acknowledges that she wrote the Promissary Note to evidence the loan to her and that the total of the money she borrowed is the amount recorded in the note of \$6629.45.

[8] The Defendant also affirms the notations by the deceased for repayment of \$1000.00 December 14, 2007 and \$1000.00 February 2, 2008. According to the notations \$4629.45 remains owing.

[9] The Defendant further says that these payments were made in cash as noted earlier and that a further \$3500.00 payment was made in cash on January 18, 2008. The only evidence of that is a statement from the Canadian Revenue Agency that they issued her a cheque for \$3980.00 on January 18, 2008 and a notation in her diary that she paid \$3500.00 on that day. The diary was one she kept to chronicle the deceased illness and care in order to try and keep a record for the Doctors, who were having some trouble making a diagnosis.

[10] The Claimant says that, if the defendant had made the payment she says she made, her father would have noted it as he had done on the other two payments. It is curious that he would not have made a note if a payment had in fact been made, as a later payment was noted.

[11] In this regard, however, it is noted that the Claimants' sister Anne Marie also borrowed money from the deceased. While there was no Promissary Note prepared, the deceased kept the cheques and made a record of the repayments in a book.

[12] In earlier court proceedings Anne Marie filed an affidavit to say she had paid everything back, even though the notations by the deceased do not reflect

that. This has been accepted by the Claimant with respect to her sister, but it has not been accepted with respect to the Defendant.

[13] If the deceased failed to note the bulk of the repayment from his daughter, it is also possible that he failed to note repayments by his step-daughter.

[14] When the Claimant demanded repayment on behalf of the estate, as she was obligated to do as administrator and with the knowledge that she had at the time, the Defendant replied, and, after detailing the said sad state of affairs in the family, acknowledged that she had not paid back the last \$1000.00. She did not admit the amount of the debt demanded by the Claimant and her response was consistent with her evidence in court supported by her diary and Canada Revenue Agency Statement.

[15] The Claimant has no knowledge of the repayments other than what the deceased noted. The defendant says that she repaid all but \$1129.43. She offers her diary and statement from the Canada Revenue Agency as records made at the time to support her evidence. In addition she responded to the demand advising that only \$1000.00 remained owing.

[16] The court notes that the deceased records can not be relied upon to verify repayments of loans to his family. The Claimant has no evidence to contradict the evidence or repayment offered by the Defendant.

[17] With the evidence before me and on the balance of probabilities the court finds that a payment of \$3500.00 was made and the debt is reduced to \$1129.43.

[18] The court is not satisfied that the amount of \$1129.43 was forgiven. While the deceased refused to take the payment when it was offered, it was not clear to the defendant at the time, that the debt was being forgiven rather than payment postponed. It is only later that she thought he may have been trying to forgive the loan. His intentions remain unclear.

[19] Consequently judgment is granted in the amount of \$1129.43. This amount to be paid within 60 days together with costs in the amount of \$150.00.