

Citation: *Mainer v. Jepsen*, 2013 YKSM 1

Date: 20130228
Docket: 11-S0077
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: His Honour Chief Judge Cozens

BRENDA JEAN MAINER

Plaintiff

v.

KIM BOESEN JEPSEN

Defendant

Appearances:
Brenda Mainer
Kim Jepsen

Appearing on own behalf
Appearing on own behalf

REASONS FOR JUDGMENT

[1] The Plaintiff, Brenda Mainer, claims the amount of \$19,250.00 from the Defendant, Kim Jepsen. Ms. Mainer claims that she sold a 2004 Dodge Ram 3500 pickup truck (the "Truck") to Mr. Jepsen in 2009 for the agreed upon amount of \$31,000.00.

[2] According to the Plaintiff's ledger of payments between June 10, 2009 and February 24, 2011, Mr. Jepsen paid a total amount of \$11,750.00. He has not made any payments since that date.

[3] The Defendant's position is that, while the Truck was appraised at a value of \$31,000.00, he and the Plaintiff agreed upon a purchase price of \$13,000.00,

to be paid by bi-weekly installment payments of \$250.00. Mr. Jepsen claims that Ms. Mainer agreed to sell him the Truck at a greatly reduced price because of his friendship with the Plaintiff's now deceased son, John, to whom the Truck had belonged, and his favourable position in the family, as the partner at the time of Ms. Mainer's daughter, Lisa Mainer.

[4] The Defendant states that after his relationship with the Plaintiff's daughter ended, he was no longer so favourably viewed and the Plaintiff decided to renege on the purchase price agreed to. He states that he was not informed of the Plaintiff's change of position until one and a half months after he made his final payment in February, 2011.

[5] The Defendant's position is that he has paid the entire \$13,000.00 and he has provided his Bank statements and his own ledger in support of his position.

Documentary Evidence

[6] The following documentary evidence was filed by the Plaintiff:

- A Bill of Sale dated October 6, 2009. This Bill of Sale is signed by the Plaintiff only and indicates a purchase price of \$31,000.00. The Defendant's position is that this price was placed on the Bill of Sale for insurance purposes only and does not reflect the actual price agreed to.
- A letter dated July 19, 2011 that the Plaintiff wrote to the Defendant's father, Leif Jepsen, in which she advises him that the Defendant still owes her the balance of the \$31,000.00 purchase price.
- A note from Lisa Mainer, the Plaintiff's daughter, stating that she was present when the Plaintiff and the Defendant agreed to a purchase price of \$31,000.00 for the Truck.

[7] The following documents were filed by the Defendant:

- The Defendant's banking statements which he states show that he has paid a total of \$13,000.00 for the Truck.
- A note dated May 2, 2012 from Leif Jepsen stating that he had a telephone conversation in the summer of 2009 with the Defendant in which he was told that the Defendant had purchased the Truck for \$13,000.00.
- A note dated April 11, 2012 from Steve Jepsen, the Defendant's brother, stating that he had a conversation with the Defendant in November 2010 during their annual hunting trip, in which he was told that the Defendant had purchased the Truck for \$13,000.00.
- A note dated May 7, 2012 from Luke Wadley, a co-worker of the Defendant in the summer of 2009, stating that he had numerous conversations with the Defendant that summer in which the Defendant advised him that he had purchased the Truck for "a very good price that made it hard to turn down", even though he already had a truck.
- A note dated April 27, 2012 from Jim Strelloff, a friend of the Defendant, stating that he had a conversation with the Defendant in the summer of 2009 in which the Defendant bragged about purchasing the Truck for \$13,000.00.
- A note dated May 7, 2012 from Geoff Fletcher, a friend of the Defendant, stating that he asked the Defendant what he had paid for the Truck and being told that the purchase price was \$13,000.00.

[8] The Plaintiff did not object to the above notes being adduced as evidence by the Defendant at the trial and declined to exercise her right to request that the authors of these notes be made available for cross-examination.

Evidence of the Witnesses at Trial

[9] The Plaintiff testified that after her son died in an ATV accident, the Defendant expressed an interest in buying the Truck. She said that in a discussion between her, the Defendant and Lisa Mainer, it was agreed that the

Defendant would purchase the Truck for \$31,000.00, based upon an estimate received from Metro Chrysler. She denied ever agreeing to a \$13,000.00 purchase price. The Plaintiff provided a spreadsheet showing payments in the amount of \$11,750.00 made by the Defendant towards the Truck purchase price.

[10] Lisa Mainer testified that the Defendant indicated in the spring of 2009 that he wanted to purchase the Truck. The Plaintiff wanted an estimate from the Dodge dealer. She was present when the discussion took place between the Plaintiff and the Defendant where it was agreed that she would act as an intermediary to receive payments in the amount of \$250.00 bi-weekly made by the Defendant to the Plaintiff.

[11] The Defendant testified that the purchase price agreed upon was \$13,000.00. On the day the agreement was made, he said that his work shift was 7:30 a.m. to 2:45 p.m. He came home from work and went to the Plaintiff's home next door at approximately 3:00 p.m. No-one else was present. The Plaintiff told him at that time that she would sell him the Truck for \$13,000.00.

[12] The Defendant assumed that the Plaintiff sold him the Truck at such a low price for several reasons. He was a good friend of the Plaintiff's deceased son, he was in a relationship with her daughter, and he helped out the Plaintiff quite a bit. He said he was considered to be the "perfect son-in-law".

[13] The Defendant proffered as evidence in support of his position that he had also been given the boat belonging to the Plaintiff's son. He stated that the boat was worth approximately \$10,000.00, but was given to him at no cost.

[14] The Defendant stated that he told several individuals about having purchased the truck for \$13,000.00:

- His father, Leif Jepsen, in a telephone conversation on a Saturday night shortly after purchasing the Truck;
- His brother, Steve Jepsen, the following year when he (the Defendant) drove down from Whitehorse;
- His friends, Jim Strelloff and Geoff Fletcher shortly after purchasing the Truck, while in Whitehorse; and
- His co-worker, Luke Wadley, while they were on the Atlin road.

[15] The Defendant stated that the Bill of Sale was written out as \$31,000.00 for insurance purposes only and did not reflect that actual agreed upon purchase price. He drove the Truck under the Plaintiff's insurance policy until her insurance ran out at which time he purchased his own insurance.

[16] The Defendant moved out of the Yukon shortly after making the final payment in February 2011.

Analysis

[17] With respect to the Claim, the burden of proof lies with the Plaintiff. She must, through the evidence adduced, establish on a balance of probabilities her position that the agreement between her and the Defendant was that the Truck would be sold to the Defendant for a purchase price of \$31,000.00.

[18] The Plaintiff testified that the price agreed on was \$31,000.00. Clearly, the Truck was worth \$31,000.00. Clearly, the Bill of Sale, prepared after the fact, shows that the Plaintiff had received the amount of \$31,000.00 from the Defendant in exchange for the Truck. Lisa Mainer states that she was present

when the price of \$31,000.00 was agreed to.

[19] The Defendant, however, testified that the agreed upon price was \$13,000.00. He provided several statements from family members, friends and co-workers wherein they stated that he had told them that he had purchased the Truck for \$13,000.00 or, in one case, for such a good price that he could not pass it up. He provided bank statements that appear to indicate payments of the \$13,000.00 to the Plaintiff through Lisa Mainer.

[20] Based upon their testimony in court, there was little to choose between the witnesses that would assist in assessing their credibility. The demeanour of each witness was unremarkable.

[21] While it does not accord with common sense that the Plaintiff would sell a \$31,000.00 vehicle for \$13,000.00, common sense is not the legal test. I must consider all the evidence to determine whether the Plaintiff has proven her case. This includes the evidence provided by the Defendant that he had told several individuals, including shortly after purchasing the Truck, that he had purchased it for \$13,000.00. This evidence is uncontradicted and cannot be disregarded. This evidence supports the Defendant's position. The Defendant had bank statements supporting his version of events with respect to how he paid for the Truck and ceasing payments upon the \$13,000.00 being paid. His version of events is equally capable of being believed.

[22] I find that I cannot disbelieve the evidence of the Defendant or choose the evidence of the Plaintiff above that of the Defendant. As such, the Plaintiff has

not discharged her burden and I dismiss her claim.

[23] With respect to the Counterclaim filed by the Defendant, I am not satisfied that there is any merit in this Counterclaim and dismiss it.

[24] I decline to award costs to either party.

COZENS C.J.T.C.