

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Connors v. Mood Estate*, 2017 NSSC 89

**Date:** 20170331

**Docket:** Hfx. No. 344381

**Registry:** Halifax

**Between:**

Stephan Joseph Connors

Plaintiff

v.

The Public Trustee of Nova Scotia, personal  
representative of the Estate of June Shirley Mood

Defendant

**Judge:** The Honourable Justice M. Heather Robertson

**Heard:** January 23, 24, 25 and 26, 2017, in Halifax, Nova Scotia

**Decision:** March 31, 2017

**Counsel:** J. Brian Church, for the plaintiff  
A. Lawrence Graham, Q.C., and Andrew P. Nicol, for the  
Defendant

**Robertson, J.:**

[1] The plaintiff Stephan Connors is 47 years of age and is in receipt of a disability pension from the Department of Community Services in Nova Scotia; in the amount of just over \$700 per month. This pension was conferred on Mr. Connors by reason of his medical diagnosis, of depression (a chemical imbalance) and alcoholism that rendered him unable to work. Mr. Connors testified as to his background, early work history, and his living arrangement with June Mood, now deceased (August 18, 2010).

[2] Mr. Connors became a boarder of Ms. Mood sometime after 1996 and resided with her at her home at 73 Kings Road on Lake Wellington, in Halifax Regional Municipality until her death, where he then remained until his eviction in July 2011.

[3] Although unable to work and receive employment income as a condition of his disability pension, Mr. Connors asserts that he was a handyman for June Mood, as well as her common-law partner. He seeks reimbursement from the Public Trustee, who is administrating her estate, for his years of service to Ms. Mood based on the remedy of *quantum meruit*.

[4] Mr. Connors makes no claim as common-law spouse as there was no written registered co-habitation agreement outlining the terms of their relationship.

[5] Ms. Mood was diagnosed with a brain tumor in 2010 and later hospitalized in July until her death.

[6] On July 7, 2010, the Public Trustee of Nova Scotia received notice under the *Hospital's Act* (Exhibit 2, Tab 1) that Ms. Mood was incapable of managing her affairs. The Public Trustee assumed that responsibility. Ms. Mood died intestate just over one month later.

[7] Before being hospitalized, June 12, 2010, Ms. Mood signed an application dated under the *Residential Tenancies Act* seeking an order to evict the plaintiff and payment of unpaid rent (Exhibit 2, Tab 5). The Public Trustee continued this application before the Director of Residential Tenancies and was granted the order for eviction, then appealed by Mr. Connors to the Small Claims Court (appeal disallowed) and the Supreme Court of Nova Scotia, from which the order for eviction was confirmed on July 11, 2011.

[8] Mr. Connors is a bad alcoholic. By his own admission, he could be a nice guy when sober and a bad guy when drinking, consuming between 1-2 bottles of Triple X sherry a day. He testified that June Mood bought him his sherry and kept him supplied daily, and that when buzzed his productivity as a handyman increased. He also testified that he turned his disability cheque over to June Mood each month and she cashed it for him, only retaining \$300 of the agreed \$500 monthly rent and also giving him the balance of the \$200 and earmarked for his personal expenses allowance. So, of the \$700 plus he received monthly, Ms. Mood by his admission retained only \$300. He also testified at discovery that she had volunteered to pay him a salary for his work as a handyman.

June would offer to pay me like a salary but I didn't, I didn't figure I had the reason to. I mean, I was well looked after. I never had to worry about anything in terms of life, in terms of food or booze or whatever.

[9] Mr. Connors bears the burden of proving that he rendered services to the deceased, the value of the services and that he did so without adequate compensation.

[10] Section 45 of the *Evidence Act*, R.S.N.S. 1989 c. 154 provides that on an action against an estate, the plaintiff shall not obtain a verdict, judgment, award or decision on his own testimony alone with respect to his dealing with the deceased, unless such testimony is corroborated by other material evidence.

[11] Mr. Connors brought three witnesses before the court to collaborate his claim. They were: Ms. Patricia Wiswell – a superintendent of Ms. Mood's two properties on Kencrest Avenue in Halifax, who testified as to his constant accompaniment of Ms. Mood and his work as a handyman; and Mr. and Mrs. Ward – neighbours who lived next door to Ms. Mood's residence at 73 Kings Road, Wellington, Nova Scotia, who were also able to testify to his work around this residence and his constant companionship to Ms. Mood.

[12] Defence counsel call four witnesses: Ms. M. Estelle Theriault – the Public Trustee at the time of Ms. Mood's death; Mr. Yvon Blanchard – a caretaker designated by the Public Trustee's office to look after Mr. Mood's properties (listed on Exhibit 1); Ms. Pamela Hipson – a customer service representative for W.C. Bald Insurance, who dealt personally with Ms. Mood with respect to her home and auto insurance; and lastly Ms. Fiona Imrie – a solicitor with the Public Trustee's office who had carriage of the estate administration of Ms. Mood.

[13] A claim in *quantum meruit* requires that the party making the claim, the plaintiff must prove an unjust enrichment or benefit to the deceased by virtue of his labors, that there was a deprivation to the claimant and that there is no juristic reason for the defendant to retain the benefit without compensating the plaintiff. In an analysis of juristic reason, the exercise is for the court to focus on the narrow question of fairness between the parties.

[14] In this proceeding, counsel for both parties acknowledge that the deceased Ms. Mood and Mr. Connors had a relationship, that at the very least was one of constant companionship. This was also acknowledged in the findings of the Adjudicator David T.R. Parker of Small Claims Court and Justice Simon J. MacDonald, in decisions related to Mr. Connors's eviction (Exhibit 2, Tabs 13 and 14).

[15] Although not bound by these decisions, I would agree with these findings. On all the evidence before me I have concluded:

1. Mr. Connor was a tenant of Ms. Mood, a friend and companion, but not a common-law spouse, as evidenced by her income tax returns, Exhibit 2, Tab 10; the evidence of Ms. Hipson who remembered June Mood telling her Mr. Connors was "like a brother to her, like family" and Mr. Connors's own conversation with the Public Trustee M. Estelle Theriault, to whom he spoke in July 2010, explaining he was her renter for 14 years, that they were not "involved" but "she was like a sister to me." Ms. Theriault's notes of the call are found at Exhibit 7. I agree with defence counsel that it is more than likely someone advised Mr. Connors to claim he was a common-law spouse to bolster his claim.
2. Mr. Connors's duration as a tenant/boarder is 14 years not 16 years or longer. Ms. Mood had been in a common-law relationship until May 1996 as evidenced by the consent order and attached documents (Exhibit 11), which settled \$80,000 on Mr. George Colin MacDonald at the end of their relationship. Mr. Connors moved in after this date and I therefore set his tenancy at 14 years. This is also evidenced by Mr. Connors's own affidavit (Exhibit 4).
3. Mr. Connors did perform odd jobs and maintenance man duties for Ms. Mood, such as snow removal, mowing lawns, replacing tile and carpet in rental units, painting and did some very basic general handiwork. Ms. Mood called professional plumbers and electricians

when required. Mr. Connors has successfully corroborated his claim that he provided the services of a handyman.

4. To establish if he worked 20 to 40 hours a week or more is difficult to determine from Mr. Connors's often confused stream of evidence. From all of the evidence before me I will calculate his work commitment at 40 hours per week. This is possibly a generous calculation as Mr. Connors did not leave the house with Ms. Mood much before 1 p.m. (his own testimony) and although they were on the road visiting her rental properties and dealing with errant tenants, this was not a daily occurrence. Often by Mr. Connors's testimony, Ms. Mood would take him to their favourite eateries, in the evening and pay for all meals. I recognize that he also assisted with the care of their 22 cats, one dog and many geese.

[16] From the evidence before me it is clear Ms. Mood did not keep up any of her 10 rental properties or her residence and little significant maintenance was done. Mr. Yvon Blanchard and Ms. Imrie testified to the shocking state of her residence and other properties and the problems that arose as the Public Trustee eventually sold these assets.

[17] Recognition of Mr. Connors's work at the level of a minimum wage and maximum of 40 hours per week during his tenancy is generous recognition of this contribution and his skill sets, given his personal challenges, particularly his constant daily drinking.

[18] The defence will successfully defend this claim if in the balancing of benefits and deprivation as between the parties, it is shown that Ms. Mood did look after Mr. Connors in a manner that reimbursed him for his maintenance duties that he undertook for her.

[19] Mr. Graham, counsel for the defendant, prepared a tally of the benefits Mr. Connors enjoyed and also those sums that he ought to account for by reason of his having taken funds, without any permission. Mr. Church, counsel for Mr. Connors, agrees that it is difficult to be precise as to this weighing of benefits and deprivation, but I have calculated these numbers, having reflected on all the evidence before me. They are as follows.

## **Rent**

[20] Mr. Connors's rent was set by Ms. Mood at \$500 or \$600 per month (Leases – Exhibit 2, Tabs 3 and 4) but according to Mr. Connors' testimony she only kept \$300 per month and gave the balance to him, conferring a benefit to him for \$4800 for the first two years he was resident there.

[21] His evidence continued and claimed that he lost the rent allowance portion of his disability claim from year two forward, which would result in Mr. Connors living rent free for 12 years at \$500 per month = \$72,000. There is no corroborative evidence here, but for the leases (Exhibit 2, Tabs 3 and 4) signed in 2005 and 2008. In one part of his rambling testimony Mr. Connors did seem to allude to a reinstatement of the rent benefit, follow a visit from Community Services to 73 Kings Road. He testified:

I don't know why they reinstated – or gave rent again?

[22] So, for the purposes of this rent benefit calculation I will assume Mr. Connors did receive the rental portion of his allowance from 2005 onward, reducing Mr. Graham's calculation of the benefit (\$500 per month x 12 years = \$72,000) to 7 years i.e. \$42,000. By Mr. Connors's own admission to Ms. Theriault, he stated he did owe \$473 for July 2010, when the Public Trustee took over Ms. Mood's financial affairs.

## **Food and Alcohol**

[23] By Mr. Connors's own admission (Exhibit 13), Ms. Mood paid for all his food and alcohol which he calculated to be \$20 per day for food and \$20 per day for alcohol. In 14 years that would amount to \$204,000.

## **Cash Payments**

[24] By Mr. Connors's own testimony, he explained that Ms. Mood was very generous and gave him cash all the time. He estimated it at \$6,000 - \$7,000, see his discovery (Exhibit 13, Tab 3). I set this amount at \$6,500.

## **Reward for finding funds**

[25] Mr. Connor received \$1,000 for finding monies of Ms. Mood he had misplaced (Exhibit 13, Tab 2).

[26] Funds taken from Ms. Mood's home by Mr. Connors by his own admission (Exhibit 13, Tab 2) \$7,000.

### **Eviction Bonuses**

[27] By his own admission, Ms. Mood paid him \$100 when he assisted with tenant evictions. I have calculated this at about 5 per year over 14 years - \$7,000 although the figure may have been greater.

### **Clothing**

[28] Mr. Connors testified that Ms. Mood bought him his clothes and he estimated it at \$300 - \$400 per year which I set at \$4,200.

### **Medications**

[29] Mr. Connors testified Mr. Mood paid \$15 per month toward his medicine for a total of \$2,520 over 14 years.

### **Credit Card Use**

[30] By Mr. Connors's testimony Ms. Mood gave him a credit card for his use, which she paid off monthly. He estimated this benefit to have been about \$2,000.

### **Piano**

[31] Mr. Connors sold/traded Ms. Mood's piano to his neighbour Mr. Ward. Mr. Connors said it was worth \$300. He traded it for a sofa. He did not have permission to sell any of Ms. Mood's belongings, but did so, as evidenced by his own yard sale (Exhibit 5). He owes her estate a minimum of \$300 for the value of the piano.

### **Damage Deposit**

[32] Mr. Connors rented an empty unit at 81-83 Kings Road to a tenant and kept a cash damage deposit of \$344. The Public Trustee upon discovery had to evict the tenant and settle the matter.

**1988 Sunbird – Value \$2,000**

[33] I have not calculated this possible gift as a benefit as Mr. Connors's evidence here is in conflict with his earlier discovery and there is no other information on this asset.

**Rent Arrears**

[34] Post-death as fixed by the order of the Nova Scotia Supreme Court - \$4,274.

[35] Accordingly, the benefit to Mr. Connors over the 14 years he lived with Ms. Mood is in excess of \$285,938.

[36] With respect to his claim for lost wages, I would set these at the various minimum wage rates (Exhibit 3) prevalent over the 14 years he resided with Ms. Mood and credit him with working a 40-hour week on her behalf. This totals \$178,860.48.

[37] By my calculations, Mr. Connors is almost \$100,000 to the good, on the benefits he received while living with Ms. Mood.

[38] I accept it was a great loss for Mr. Connors when his friend Ms. Mood died. He was hurt and angry and he had no future plan. This left him distraught and in a sorry alcoholic state. This loss may have led him to believe he deserved more from Ms. Mood or her estate. However, the reality is Mr. Connors cannot succeed in a claim for unjust enrichment against her estate as Ms. Mood looked after him well during her life, by his own admission.

[39] The defence has successfully defended this action and it is dismissed.

[40] I will be happy to hear submissions on costs in writing failing any agreement between the parties.

Robertson, J.