

## Jurisdictional Limits on Small Claims Court Orders?

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Under section 23 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (*CJA*), the Small Claims Court has a limited jurisdiction. The *CJA* provides that the Small Claims Court has jurisdiction in any action for the payment of money or for the recovery of possession of personal property up to a value of \$25,000. The recent Newfoundland decision in *Baker v Harmina*, 2018 NLCA 15 deals with a similar jurisdiction in a curious case involving the ownership of a dog. The Court of Appeal held that the Small Claims Court could not deal with the issue of a constructive trust.

In *Baker*, a couple had a dog Mya which they looked after together for a couple of years. Mya bonded with both parties but after the couple split up there was litigation over who was entitled to possession of Mya. The case started in the Newfoundland Small Claims Court but was appealed all the way to the Court of Appeal of Newfoundland and Labrador. The case has an interesting analysis of the right to possession of a pet but for immediate purposes the comments of the court on small claims jurisdiction are most relevant.

The Court of Appeal ruled that the Small Claims Court was unable to rule on the issue of a constructive trust. Basically the claim was for an order that Mya be shared between the parties, and the Court ruled that such order was beyond the power of the Small Claims Court. The Court of Appeal held, in para 33:

Even if a constructive trust was appropriate, the small claims judge had no jurisdiction to impose one. A constructive trust is not an order for “debt”, “damages”, “specific performance of an agreement”, or the “recovery of personal property” under [section 3\(1\)](#) of the [Small Claims Act, RSNL 1990, c. S-16](#). Instead, it is an equitable remedy changing the ownership of personal property.

Ontario caselaw suggests that the Small Claims Court does have equitable jurisdiction but only so as to grant a money judgment or return of personal property. *Grover v Hodgins*, [2011 ONCA 72 \(CanLII\)](#), 103 O.R. (3d) 721, a decision of the Court of Appeal for Ontario, concluded that the Small Claims Court does have jurisdiction to award legal or equitable relief where the relief requested is a monetary payment under the limit of \$25,000 or the return of personal property valued within that limit.

The Newfoundland Court of Appeal also found that the Small Claims Court could not adjudicate the matter as it trenched on division of property in a matrimonial case. The Court of Appeal held, at para 34:

If the [Small Claims Act](#) did authorize a constructive trust, I would have serious doubts about its constitutionality. In *Re: B.C. Family Relations Act*, [1982 CanLII 155 \(SCC\)](#), [1982] 1 S.C.R. 62 at 88-89, Laskin C.J.C., for the majority on this point, struck down a provision allowing a provincial court to grant exclusive possession of a matrimonial home because “adjudicating on proprietary rights” and “the disposition of family assets” is “more conformable to [the jurisdiction] exercised and exercisable by a s. 96 [superior] court than that which may be vested in a Provincial Court”.

Some disputes between couples living together can be dealt with in Small Claims Court, but division of family property - and Mya was such - must be dealt with by a superior court: *Matteau v. Johnson*, 2012 ONSC 1179.

The take away is that complex orders arising in equity, if available at all, must be sought in superior court.