

IN THE SUPREME COURT OF NOVA SCOTIA  
Citation: *McAleese v. Buchanan*, 2006 NSSC 390

Date: 20061228  
Docket: S.P. 259959  
Registry: Pictou

Between:

Marina Lynn McAleese

Plaintiff

v.

Bryan Buchanan

Defendant

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: October 12, 2006, in New Glasgow, Nova Scotia

Final Written  
Submissions: December 6<sup>th</sup> and December 12, 2006

Written Decision: December 28, 2006

Subject: ***Constructive Trust***

Summary: Parties met June 9, 2000 and commenced a relationship with resulted in common law cohabitation from August 2000 to October 24, 2005 in home owned by Mr. Buchanan. Ms. McAleese was going through divorce proceedings when they met and ended up with a property settlement \$12,000 of which went to pay down the mortgage on Mr. Buchanan's home during their cohabitation. A series of payments from the balance of her settlement determined the extent of \$4,075 represented a capital contribution by virtue of paying down loans at the Credit Union. Ms. McAleese's severance pay from employment of \$10,117.78 claimed as capital contribution and also claim relating to furniture. Overall, Ms. McAleese claimed constructive trust for all her capital contributions.

**Issues:**

1. **Resulting trust?** - Answer "no". Discussions with respect to marriage and although Ms. McAleese purchased a wedding dress, etc., never any actual commitment to marriage by Mr. Buchanan.

**2. Was there unjust enrichment to Mr. Buchanan and, if so, have the other prerequisites of constructive trust, namely a corresponding deprivation and an absence of any juristic reason for the enrichment been established? - Answer “yes”**

**3. What is the appropriate assessment of unjust enrichment? - Finding that severance pay already disposed of by Ms. McAleese prior to entry into cohabitation and further that furniture loss very minimal. Additionally, Ms. McAleese spent funds, embarking on a “hobby farm” project, desired wedding, etc., etc.. In addition, she received some benefit in residing in Mr. Buchanan’s home. The fact that the indebtedness on his home at the time of separation exceeded the indebtedness at the time of entering cohabitation is not decisive.**

Result: Decided the level of unjust enrichment assessed at \$13,000 and order for Mr. Buchanan to pay that amount forthwith.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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