Claim No: 408336

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Francheville v. Levasseur, 2013 NSSM 6

BETWEEN:

ANDREA FRANCHEVILLE

Claimant

- and -

LUCIE LEVASSEUR

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 4, 2012

Decision rendered on January 15, 2013

APPEARANCES

For the Claimant	self-represented
For the Defendant	Suzanne Robichaud Counsel

BY THE COURT:

[1] The Claimant and the Defendant lived in a common law relationship between sometime in 2009 and about April of 2012. The Claimant believes she is owed money and the return of some property.

[2] The biggest ticket item by far is a claim to one half of approximately $14,000 in an RRSP account that is held in the sole name of the Defendant. I will deal with this first.

[3] The theory of the Claimant is that the couple lived on a “joint budget” and that everything that they bought or acquired was therefore joint property. It is admitted that the couple never married, nor did they enter into any form of registered domestic partnership or cohabitation agreement.

[4] The evidence was that the Defendant had a significantly higher income than did the Claimant, approximately $78,000 for the Defendant vs. $43,000 for the Claimant. It appears that when they first started cohabiting, the Claimant became the one primarily responsible for paying bills, and for deciding how expenses would be paid. They never opened any form of joint account; however, it appears that the Claimant (at least some of the time) had access to the Defendant’s passwords and could arrange for payments out of her account.

[5] At some point, money began to be funnelled out of the Defendant’s account into an RRSP. One of the motivations was to have money available to be used as a down payment on a house, taking advantage of a government first time home buyer’s program. According to the Claimant, the reason that the

RRSP was placed in the Defendant's name was that the Claimant had once owned a house, and would not be eligible as a first time buyer.

[6] According to the Defendant, while purchasing a home was a possibility, the reason that the RRSP is in her name is because all of the money came out of her earnings. She admits that they did look into some real estate, but never went as far as making an offer on anything.

[7] On the evidence, the so-called joint budget was something largely devised and administered by the Claimant. There appear to have been three main reasons why this occurred as it did:

a. The Defendant travelled a great deal for her work, while the Claimant did not, making it inconvenient for the Defendant to attend to some of these tasks;

b. The Claimant had a particular aptitude for this; and

c. The Defendant has a more passive personality and was simply content to allow this to be done.

[8] The Supreme Court of Canada in *Kerr v. Baranow* [2011] 1 S.C.R. 269 has made it perfectly clear that the determination of claims such as this must be undertaken within an unjust enrichment framework.

[9] The elements of an unjust enrichment claim are:

a. first, whether the defendant has been enriched by the plaintiff

b. second, whether the plaintiff has suffered a corresponding deprivation, and

c. third, that the benefit and corresponding detriment must have occurred without a juristic reason.

[10] As stated at para 38 and 39 in *Kerr*, to establish an enrichment “the plaintiff must show that he or she gave something to the defendant which the defendant received and retained.” To establish a corresponding deprivation, the claiming party must “establish not simply that the defendant has been enriched, but also that the enrichment corresponds to a deprivation which the plaintiff has suffered.”

[11] As for the absence of a juristic reason:

> 40 ... To put it simply, this means that there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiff, making its retention "unjust" in the circumstances of the case .....
>
> 41 Juristic reasons to deny recovery may be the intention to make a gift (referred to as a "donative intent"), a contract, or a disposition of law ..... The latter category generally includes circumstances where the enrichment of the defendant at the plaintiff's expense is required by law, such as where a valid statute denies recovery ...... However, just as the Court has resisted a purely categorical approach to unjust enrichment claims, it has also refused to limit juristic reasons to a closed list. This third stage of the unjust enrichment analysis provides for due consideration of the autonomy of the parties, including factors such as "the legitimate expectation of the parties, the right of parties to order their affairs by contract ...

[12] The Court went on to provide a further framework for resolving unjust enrichment claims in a family context, cautioning that in not every case has a family been engaged in a “joint family venture” that would support the kind of division that is sought here:

> 87 My view is that when the parties have been engaged in a joint family venture, and the claimant's contributions to it are linked to the generation

> of wealth, a monetary award for unjust enrichment should be calculated according to the share of the accumulated wealth proportionate to the claimant's contributions. In order to apply this approach, it is first necessary to identify whether the parties have, in fact, been engaged in a joint family venture. In the preceding section, I reviewed the many occasions on which the existence of a joint family venture has been recognized. From this rich set of factual circumstances, what emerge as the hallmarks of such a relationship?
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> 88 It is critical to note that cohabiting couples are not a homogeneous group. It follows that the analysis must take into account the particular circumstances of each particular relationship. Furthermore, as previously stated, there can be no presumption of a joint family venture. The goal is for the law of unjust enrichment to attach just consequences to the way the parties have lived their lives, not to treat them as if they ought to have lived some other way or conducted their relationship on some different basis. A joint family venture can only be identified by the court when its existence, in fact, is well-grounded in the evidence. The emphasis should be on how the parties actually lived their lives, not on their ex post facto assertions or the court's view of how they ought to have done so.

[13] In the case before me, there are some elements of a joint family venture, but in my view they do not suffice to establish that all income earned and assets accumulated during the cohabitation were to be jointly owned for all purposes.

[14] Some of the facts that I regard as significant are these. The relationship was of relatively short duration. Neither party made any particular economic sacrifices for the sake of the relationship. There were no children involved. I am not persuaded that the Defendant agreed, implicitly or explicitly, that her greater income - and the savings vehicle into which some of it was placed - would become jointly owned by the Claimant by virtue only of their cohabitation. The so-called joint budget was a convenience apparently initiated by the Claimant, which benefited the Defendant to an extent, but I do not see that it necessarily became a full-fledged pooling of assets. It was a way of organizing the payment of joint expenses.

[15] While it is true that the Claimant was involved in the decision to funnel some of the Defendant's earnings into an RRSP, I am not persuaded that this suffices to give the Claimant a real interest in that asset. Utilizing the unjust enrichment analysis, it is arguable, at best, that the Defendant can be said to have been "enriched" by the acquisition of the RRSP. Had there been no RRSP, where would the money have gone? It was not needed for common expenses. It was simply the Defendant's own money, earned by her and taxed by the government.

[16] Even if arguably the Defendant was enriched, I do not see that the Claimant has been deprived of anything. This was never her money. She paid for some of the expenses out of her income, and the Defendant contributed to expenses out of her income. There is no evidence that the Claimant paid more than her share of expenses in order that the Defendant could divert money into the RRSP.

[17] Even if the there could be said to have been an enrichment and a deprivation, which I have expressly not found, there is a sufficient juristic reason for the Defendant to retain the RRSP. The money came entirely out of her income. There was no mutual understanding that the money would belong to the Claimant. At most, there was the possibility that the money would be used to buy a home, which would then have required the parties to consider how title should be taken and how ownership would be organized. It is far from established that the parties would necessarily have taken joint title to any property acquired; indeed, probably the opposite is true.

[18] There are further issues that contribute to the juristic reason. The moneys are in an RRSP. At the time they were invested, the Defendant would have received some tax benefits that very likely benefited the Claimant as they were still cohabiting. At this point, to force the Defendant to collapse the RRSP, in whole or in part, would create tax liabilities for her. Assuming that a financial remedy were appropriate, and that this court had full jurisdiction to consider it, the correct amount would have to be discounted significantly - as is routinely done in the case of matrimonial property.

[19] In the result, this element of the claim is disallowed.

Other claims

[20] The Claimant seeks the following additional items:

a. $240.00 taken from her credit card for an oil bill after she had vacated their jointly tenanted home;

b. $344.00 which is one-half the anticipated refund from the Landlord for the purchase of a fridge;

c. $325.00 which is one half of the damage deposit on the home;

d. Return to her of certain furniture, namely a living room chair, love seat, hutch, table and chairs, TV mount and some fencing.

e. She concedes that she holds one-half of a refund of their Costco membership ($53.50) for the Defendant.

[21] **$240.00 oil bill:** The Defendant was silent on this item, and I find that the charge should not have been made to the Claimant. She is entitled to recover $240.00 from the Defendant.

[22] **$344.00 refund for fridge**: The Defendant's evidence was that this was paid for out of her money (on her credit card, actually), and that she has not yet received any refund. Consistent with my decision on the RRSP funds, I find that the interest in this item belongs to the person who paid for it, i.e. the Defendant. Should she ever receive anything from the Landlord, this will only place her in the position as if she had never bought it. I do not see that the Claimant has established any interest in these as-yet-unpaid funds. There has been no enrichment and no deprivation.

[23] **$325.00 damage deposit:** The Defendant testified that she paid the first month's rent and damage deposit in full to the Landlord. The Claimant bases her claim on the "joint budget" theory. Consistent with my earlier comments, I do not believe that there is any enrichment and corresponding deprivation here. Moreover, the money has not been paid to the Defendant and, for all we know, may never be recovered by her. This claim is disallowed.

[24] **Return to her of certain furniture:** This claim appears to be based on discussions (text and email) about who would take what, closely on the heels of the separation. The Defendant appears to have been willing to consider handing over certain items, under the pressures of the moment, but later she

appears to have changed her mind. As it now stands, the Defendant has the couch, chair and loveseat while the Claimant has a different couch. The Defendant also appears to have a dining room hutch, table and chairs which the Claimant now wants.

[25] Part of the difficulty is that this court does not have the same kind of jurisdiction to divide personal property as would have the Supreme Court of Nova Scotia. If a party can establish ownership of property, this court can order that property be returned to the owner. And if a party has taken property that does not belong to him or her, this court can order monetary damages based upon the tort of "conversion" measured by the value of the property unlawfully taken, and as a remedy to avoid an unjust enrichment.

[26] The evidence is strongly suggestive that the Defendant has retained more of the jointly owned property than would be her fair share, and - having taken that without legal justification - she should account for it. The challenge is to arrive at a fair amount. We are, after all, dealing with used furniture that would have significantly depreciated from its original cost. Some of it was not new when purchased. Based on all of the evidence, the best I can do is come up with a very rough estimate of the disproportion, which I place at $500. My order in this regard will be that the Defendant will either pay the Claimant this amount, or she may propose to return certain property to the Claimant in lieu of payment. The option will be the Claimant's whether to accept the money or the furniture.

[27] The Claimant's request for one half the value of the TV mount is included in this global amount.

[28] **Return to her of fencing:** This fencing consists of certain used fencing materials taken from the home of the Claimant's parents, and attached to fence posts purchased while the Claimant and Defendant were together. The fence is still in place in the backyard of the home where the Defendant lives.

[29] I am disallowing this claim. I do not believe that the Claimant's parents had any expectation of ever receiving this fencing material back. It was in the nature of a gift. And I find that the small amount paid for the fence posts was an expense. I find that the fence has little value, and the Claimant has no proprietary interest therein. Moreover, it is attached to the land and has become a fixture which, technically, belongs to the landowner.

[30] I am prepared to allow the Claimant the cost of issuing the claim of $182.94, notwithstanding her recovery is much less than she sought.

Summary of claims

[31] In the result, the Claimant shall have an order for the following:

Reimbursement for oil bill	$240.00
Value of furniture (subject to receiving items)	$500.00
Credit for Costco membership	($53.50)
Cost of issuing the claim	$182.94
Total	$869.44

Eric K. Slone, Adjudicator