



Arbutus
LAW GROUP LLP

MEMORANDUM

DATE: May 27, 2019

RE: Summary of the decision [Droit de la famille - 19338](#), 2019 QCCS 754

Context and important facts

On February 15, 2019, Justice Pierre C. Bellavance from the Superior Court of Quebec (hereafter the “Court”) rendered a decision applying the concept of unjustified enrichment within the context of an unmarried couple that separated after 17 years of living together.

The following are the relevant facts of the case:

- The couple was unmarried and were *de facto* spouses (i.e. common-law partners) for 17 years until the separation;
- The couple has one child and have shared custody;
- Ms. contributed significantly to the enrichment of Mr. allowing him to purchase the family home while she took care of all regularly occurring household expenses;
- The family residence is located on reserve and the land was provided by the Band Council to Mr. as a member of the First Nation.
- The arrangement in place between the couple was that the net worth of the property would be shared by both spouses, even if there were special rules applying to the acquisition and the financing of a property on the reserve;
- If there had not been specific rules applicable to the properties located on the territory of the reserve, Ms. would have seen her rights in the residence recognized as per the discussions and arrangements she made with Mr.
- The value of the residence is estimated to be, at the time of the separation, \$251,500 excluding the value of the land base which remained the property of Band Council.

Position of the Parties

Ms. mentions that during their relationship, the couple shared household expenses equally. She assumed most of the expenses that did not produce long term value, such as electricity, groceries, clothing for the child, etc. Mr. was paying the expenses that were related to the residence.

www.arbutuslaw.ca



Thus, according to the position of Ms., Mr. enriched himself through the value of the family residence. She is asking the Court to recognize her right, based on unjust enrichment, to half of the value of the residence occupied by the family until the separation of the couple. She is using the provisions on unjust enrichment from the *Civil Code of Quebec* (hereafter “CCQ”) to justify her demand to the Court.

Ms. testified that, at the time of the acquisition of the residence, Mr. recognized that she contributed to the expenses of the household. She reports that Mr. told her, in 2013 when the *Family Homes on Reserves and Matrimonial Interests or Rights Act* was adopted, that he would take steps to obtain documents from the Band Council recognizing her rights in the residence.

Mr. refused to recognize any contribution by Ms. with regards to the payment of the residence, and he also denies any enrichment in his favour.

Applicable Test

To determine whether there was unjustified enrichment between *de facto* spouses and to evaluate the resulting compensation, the Court must go through a similar approach to the one developed in the field of compensation in the context of a married couple. In fact, the same legal criteria must be used with the objective of justice and equity. The elements to be established by the person claiming the unjust enrichment are the following:

- 1) Personal contribution;
- 2) The enrichment of the other spouse's assets (excluding the family patrimony);
- 3) The causal link between the two;
- 4) The impact of the contribution that led to the enrichment;
- 5) The concomitant impoverishment of the person claiming the unjustified enrichment; and
- 6) The lack of justification for enrichment.

In addition to these six criteria, the judge must not, in his analysis, seek to rebalance the assets of former spouses.

The trial judge may use presumptions in his analysis of all the criteria set out above. In fact, the Supreme Court of Canada recognized that two presumptions may arise from a long-term union. One can assume, on the one hand, the existence of a correlation between enrichment and impoverishment and, on the other hand, the lack of justification for this enrichment.

Decision

Unjust Enrichment



In the present case, Justice Pierre C. Bellavance uses these two presumptions and concludes that there is no evidence to rebut the presumptions of the Supreme Court of Canada regarding the correlation between the enrichment of Mr. and the impoverishment of Ms. In addition, there are no reasons that justify such enrichment.

In the present case, the judge did not retain the position of Mr. claiming that Ms. had already been compensated for her contributions by the fact that she enjoyed certain benefits living with him on the reserve (i.e. lower-priced gasoline or education grants for their child). The Court concludes that these advantages are not because of him, but rather they exist because of the law.

In conclusion, the Court finds that Ms. is entitled to compensation for her contribution to the sole asset of the couple, namely the residence built on the reserve. The Court believes that Ms. demonstrated that she has the right to receive half of the net value of the property acquired by Mr. in 2012.

Family Homes on Reserves and Matrimonial Interests or Rights Act

In addition to the provisions of the CCQ, Ms. used the *Family Homes on Reserves and Matrimonial Interests or Rights Act* to justify her unjust enrichment claim. The parties discussed the applicability of this act in front of the Court.

Given that the Court concluded that in any event Ms. was entitled to compensation for unjust enrichment, it was not necessary to engage further in the debate on the application of the *Family Homes on Reserves and Matrimonial Interests or Rights Act* which would not have given Ms. greater advantage.

Claim based on article 342 of the Quebec Code of Civil Procedure (hereafter “CPC”)

Mr. claimed compensation for his legal fees - asserting that Ms. did not provide him with the right documents in time for the hearing. He mentioned that he obtained all the documents the day before the hearing and that some information was missing. Article 342 CPC permits the court to punish substantial breaches noted in the conduct of the proceeding by ordering a party to pay another party an amount that it considers fair and reasonable to cover the professional fees of the other party’s lawyer.

In the present case, the Court does not accept such an argument to the extent that the production of these documents does not seem to have prevented Mr. from arguing his position to the tribunal.

Determination of value to be paid

The value of the house was determined by an expert - \$251,000 in 2015. From this amount, the Court deducted the \$118,000 down payment paid by Mr., which can come an inheritance received in 2000. The Court also deducted the hypothec, valued in 2015 at \$117,000. Therefore, the equity in the house amounted to \$16,500, which was divided between the two parties, leaving \$8,250 for Ms.