

SUPREME COURT OF NOVA SCOTIA

(Family Division)

Citation: Darlington v. Moore, 2015 NSSC 124

Date: 20150420

Docket: SFHMCA 068167

Registry: Halifax

Between:

Michelle Darlington

Applicant

and

David Paul Moore

Respondent

and

2012

Hfx. No. 407388

Between

David Moore and Sand, Surf & Sea Limited, a body corporate

Plaintiffs

and

Michelle Darlington

Defendant

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Judge: The Honourable Associate Chief Justice Lawrence I. O'Neil

Hearing: October 15, 16, 17 & 21, 2013; June 10 & 11, 2014 and
September 8, 9, 10 & 11, 2014 in Halifax, Nova Scotia

Issues:

1. Whether there has been an unjust enrichment of either party?
2. If there has been an unjust enrichment of one party, what is the value of the compensation to the other party?
3. Whether post separation (disability) income should be considered when spousal/partner support is calculated?

Summary: The parties were a common law couple for more than eighteen years. The applicant sought one half of the assets accumulated over the course of the parties' relationship, including one half of her partner's pension(s).

The Court found a joint family venture, an unjust enrichment and some compensation of the Applicant was ordered.

The Court, however, did not order an equal division of the assets. The Court did not divide the Respondent's Canada Pension,

severance or RCMP pension. The Applicant received a share of the Respondent's RRSPs, ongoing spousal support and a one half interest in the 'matrimonial' home.

The Court held that the increase in disability income coincidental with and following separation should not be treated the same as an increase in post separation income that can be traced to the parties' relationship. As a result, spousal support below the low end of the spousal support guidelines was set.

A related proceeding in the General Division of the Supreme Court was consolidated with the proceeding in the Family Division of the Supreme Court. That proceeding is referenced as Hfx. No. 407388. It is a claim by a small corporation, Sand, Surf & Sea Limited and Mr. Moore as Plaintiffs against Ms. Darlington. The claim is based on unjust enrichment and an alleged failure to repay money purportedly advanced to her and Mr. Moore by the corporation. The claim was dismissed.

Keywords: Unjust enrichment; common law property rights; spousal support; post separation income; joint family venture; pension division

Legislation: *Partition Act*, R.S.N.S., c.333, s.8
Vital Statistics Act, R.S.N.S. 1989, c.494
Matrimonial Property Act, R.S.N.S. 1989 c.275
Judicature Act, R.S.N.S. 1989 c.240
Federal Spousal Support Guidelines
Spousal Support Advisory Guidelines
Maintenance and Custody Act, R.S.N.S. 1989 c.160

Cases Considered: *Moore v. Darlington*, 2012 NSCA 68
Darlington v. Moore, 2013 NSSC 103
Darlington v. Moore, 2014 NSSC 358
Soubliere v. MacDonald, 2011 NSSC 98
Sand, Surf and Sea Ltd. v. Nova Scotia (Minister of Transportation and Public Works) (2005), 236 NSR (2d) 201
Kerr v. Baranow, 2011 SCC 10
Walsh v. Bona, 2002 SCJ 325
Quebec (Attorney General) v. A., 2013 SCC 5
Kerr v. Baranow, 2009 BCCA 111
Kerr v. Baranow, 2012 BCSC 1222
Thompson v. Thompson, 2013 ONSC 5500
James v. Government of Canada, 2013 TCC 164

Text/Articles Considered: McInnes: The Canadian Law of Unjust Enrichment and Restitution, LexisNexis Canada 2014
34 C.F.L.Q. 35, December 2014, Carswell

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