

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Barager v. Bent, 2008 NSSC 207

Date: 20080702

Docket: SP 280020

Registry: Pictou

Between:

Barry Mahlon Barager

Plaintiff

v.

Susan Elaine Bent

Defendant

Judge: The Honourable Justice C. Richard Coughlan

Heard: April 18, 2008, in Pictou, Nova Scotia

Written Decision: July 2, 2008

Counsel: Terrance G. Sheppard, for the plaintiff
Jill Graham-Scanlan, for the defendant

Coughlan, J.:

[1] “Them that works eats.” That is part of Susan Elaine Bent’s philosophy. Ms. Bent and Barry Mahlon Barager cohabited from June 1, 2003 until early February, 2006. Mr. Barager claims a constructive trust on property in the name of Ms. Bent acquired during the time they cohabited. In the alternative, Mr. Barager claims damages equal to one half the value of the assets. Ms. Bent counterclaims against Mr. Barager for damage to her property, as well as the return of her items in his possession. It appears Ms. Bent’s personal property in Mr. Barager’s possession was returned to her at the time of trial.

[2] Mr. Barager and Ms. Bent met in November, 2002 while in a training program at Convergys, a call centre. On June 1, 2003, Mr. Barager began cohabiting with Ms. Bent at her home in Piedmont, Pictou County, Nova Scotia. Ms. Bent’s two sons, then fourteen and twelve years of age, resided with them.

[3] Mr. Barager testified he was living in a common law relationship with Ms. Bent. They and Ms. Bent’s sons were living as a family. He was totally committed to the family. All his money went to the family. Ms. Bent controlled the money and paid the bills. He was supposed to pay the telephone bill but sometimes Ms. Bent paid the bill. Mr. Barager did what Ms. Bent told him to do.

[4] The evidence establishes during the period of cohabitation not all of Mr. Barager’s money went to the family. Mr. Barager and Ms. Bent maintained separate bank accounts. Mr. Barager’s pay from Convergys, other employment or Employment Insurance benefits were deposited into his bank account. Mr. Barager stated Ms. Bent told him every second day she could not provide for him. Ms. Bent testified she told Mr. Barager she was responsible for herself and her two sons, and he (Mr. Barager) must pay his expenses. Mr. Barager did pay for some groceries and some other expenses incurred in connection with living at the Piedmont residence.

[5] Mr. Barager’s income was in 2003 \$27,380.00, in 2004 \$17,510.61 and in 2005 \$11,235.00.

[6] In describing the work he performed during cohabitation, Mr. Barager stated when he arrived Ms. Bent had two horses, the first year they had a small vegetable garden and the second and third years they had two gardens. Ms. Bent did most of

the household chores and he and the boys were supposed to do the outside chores. Mr. Barager stated he did most of the outside chores.

[7] They raised pigs and chickens. Mr. Barager testified he did everything concerning the pigs and chickens. The first year they raised pigs, they had six pigs - sold five and kept one for themselves. The second year they raised ten pigs and kept two for their own use. Mr. Barager stated Ms. Bent paid to purchase the pigs. By the end of cohabitation, they had up to 250 chickens.

[8] Mr. Barager stated Ms. Bent planted the gardens. He and the boys did the weeding and everyone was involved with harvesting. He used a Bush Hog heavy duty lawnmower to clear the land.

[9] Mr. Barager testified he rewired the basement of the house, the shed and did some rewiring in the barn. He ran fence lines for the horses and pigs. Mr. Barager thought he was doing good work and nobody complained to him. In cross-examination, he stated it did not matter if he was working or not - Ms. Bent complained he did not do enough. He was constantly told by Ms. Bent it was "my way or the highway".

[10] Mr. Barager did not give evidence of the number of hours he worked around the property.

[11] Ms. Bent testified she purchased her real property at Piedmont in 1979. She renovated the house herself, with the exception of a few items she hired a person to do. At one time she kept fourteen horses, including a stallion for breeding, and maintained the farm without any help. She fed herself from her vegetable gardens, kept a goat and laying hens. The year her father died - 2002 - she did not have a garden.

[12] Ms. Bent testified when she became cohabiting with Mr. Barager, she had two horses. She stated the farm chores took about twenty minutes. At first, Mr. Barager followed her and asked her to give him something to do. Within days or weeks of cohabitation, he began to assist with the chores. Mr. Barager was never in charge of outside chores. She showed Mr. Barager how to run fence posts. Mr. Barager and the boys worked on the area for the pigs, and he helped to feed the pigs. Ms. Bent and her niece ran some electrical fencing. Mr. Barager did some wiring. He put a pot light in the barn and installed a motion detector. Mr. Barager

did the wiring and most of the construction of an area in the basement of the house used to brew beer.

[13] Ms. Bent testified Mr. Barager's work was not a benefit, but cost her money. He did not do the chores properly. He tethered the goat too close to some small trees and the goat ate them. He backed a vehicle into a tulip tree, damaging the tree. He improperly swept the barn, raising dust which affected her gelding, requiring the horse to be put down. The wiring in the basement had to be redone as it was improperly installed and a fire hazard. The wiring was the wrong grade. Ms. Bent rewired the basement herself. Mr. Barager got the Bush Hog hung up on a stump and it had to be repaired.

[14] As a result of litigation arising from employment he had prior to meeting Ms. Bent, Mr. Barager received a settlement of approximately \$51,000.00. He deposited \$40,000.00 in Ms. Bent's account. Mr. Barager explained he put the \$40,000.00 in Ms. Bent's account as he thought he may have to give some of the settlement funds to his former wife. Ms. Bent agreed the \$40,000.00 was Mr. Barager's money.

[15] A motor home was purchased from the settlement funds. The purchase price was \$12,000.00, paid by deposit of \$1,000.00, cheque for \$6,600.00 and cash of \$4,400.00. Payment by way of cheque and cash was to allow a lower purchase price to be reported when registering the vehicle. Approximately \$1,000.00 was paid to Highland Ford for work to the motor home. Mr. Barager testified approximately \$5,000.00 was spent buying accessories for it. Ms. Bent testified approximately \$1,740.00 was spent buying accessories. The motor home was registered in Ms. Bent's name in order to obtain cheaper insurance. Ms. Bent acknowledges the motor home belongs to Mr. Barager. An appraisal of the motor home dated May 30, 2006 gives a value of \$5,000.00.

[16] The Bush Hog was purchased from the settlement funds for \$3,999.70. Mr. Barager says it was his idea to purchase the Bush Hog. He used it to clear Ms. Bent's land. He did not intend it to be a gift to Ms. Bent. Ms. Bent testified she was to be the owner of the Bush Hog.

[17] Ms. Bent's Canadian Tire Master Card account in the amount of \$4,494.46 was paid from the settlement funds. Mr. Barager testified the card was used for household purposes.

[18] Debts owed to Mr. Barager's mother, Elizabeth Boutilier, in the amount of \$9,000.00, and his stepfather, Arthur Boutilier, in the amount of \$2,125.00, were paid from the settlement funds. Mr. Barager testified he thought \$6,000.00 of the debt to his mother was incurred before he began cohabiting with Ms. Bent and \$3,000.00 incurred after cohabitation began. Ms. Bent testified both debts were incurred prior to cohabitation between herself and Mr. Barager.

[19] Debts owed to Ms. Bent's sons were paid from the settlement funds - \$708.19 to Ms. Bent's son, Aaron, and \$784.78 to her son, Sean. Mr. Barager testified except for \$230.00, the debts were incurred prior to cohabitation. Ms. Bent testified she and Mr. Barager borrowed from her sons' accounts when money was tight and the payment to the sons' accounts was to reimburse funds withdrawn during cohabitation.

[20] Settlement funds of \$2,000.00 were deposited into Ms. Bent's son Aaron's bank account and \$1,000.00 into her son Sean's bank account. Ms. Bent testified Mr. Barager gave the money as gifts to her sons because he could not give it to his sons. Mr. Barager did not remember why the payments were made.

[21] The requirements to establish a claim for unjust enrichment were set out by McLachlin, J., as she then was, in *Peter v. Beblow*, [1993] 1 S.C.R. 980 at p. 987 as follows:

The basic notions are simple enough. An action for unjust enrichment arises when three elements are satisfied: (1) an enrichment; (2) a corresponding deprivation; and (3) the absence of a juristic reason for the enrichment. These proven, the action is established and the right to claim relief made out. ...

[22] Has Mr. Barager established his claim for unjust enrichment?

[23] First, dealing with the settlement funds deposited in Ms. Bent's account. The funds were deposited into the account at Mr. Barager's request. He directed the use made of the funds.

[24] Motor home - the motor home was purchased from Mr. Barager's funds and, with his approval, registered in Ms. Bent's name. Ms. Bent agrees the motor home

belongs to Mr. Barager. There is no enrichment. The motor home belongs to Mr. Barager and is to be registered in his name.

[25] Bush Hog - the Bush Hog was purchased for use on Ms. Bent's property. It was used on her land. Ms. Bent has been enriched by the \$3,999.70 used to purchase it. Mr. Barager has been deprived of the money. There is no juristic reason for the enrichment.

[26] Ms. Bent's Canadian Tire Master Card debt of \$4,494.46 was paid from the settlement funds. Mr. Barager stated the card was used for household purposes. The payment was made on June 28, 2004 - more than a year after cohabitation began. The debt was Ms. Bent's liability. Ms. Bent was enriched. However, as the card was used for household purposes, Mr. Barager did not suffer a deprivation. The payment was a contribution toward household expenses and Mr. Barager was part of the household. There is no unjust enrichment of Ms. Bent.

[27] Ms. Bent was not enriched by the payment of the debts to Mr. Barager's mother in the amount of \$9,000.00 and his stepfather of \$2,125.00. Mr. Barager stated he thought \$6,000.00 of the debt to his mother was incurred before cohabitation and \$3,000.00 after cohabitation began. Mr. Barager did not testify as to when the debt with his stepfather was incurred. On the balance of probabilities, I find Mr. Barager has not established any of the debts owed to his mother and stepfather was incurred during cohabitation.

[28] The only evidence concerning the gifts of \$2,000.00 and \$1,000.00 to Ms. Bent's sons is that of Ms. Bent, that they were gifts from Mr. Barager.

[29] I find the repayment of the loans to Ms. Bent's sons was repayment of monies borrowed by Ms. Bent and Mr. Barager from the boys during cohabitation.

[30] Ms. Bent was enriched by the \$3,999.70 she received from Mr. Barager to purchase the Bush Hog.

[31] Mr. Barager exaggerated the work he performed and his financial contribution during cohabitation. Not all of his money went to the family. Both he and Ms. Bent maintained separate bank accounts. He did not do most of the outdoor chores. Even Mr. Barager stated Ms. Bent complained he did not do enough.

[32] A common law spouse does not have a duty to perform work or services for his or her partner. McLachlin, J. said in *Peter v. Beblow, supra*, at p. 991:

This Court has held that a common law spouse generally owes no duty at common law, in equity or by statute to perform work or services for her partner. As Dickson C.J., speaking for the Court put it in *Sorochan v. Sorochan, supra*, at p. 46, the common law wife “was under no obligation, contractual or otherwise, to perform the work and services in the home or on the land”. So there is no general duty presumed by the law on a common law spouse to perform work and services for her partner.

[33] Mr. Barager did perform work on the property, including: weeding, sweeping the barn, constructing and maintaining fence lines, wiring in the basement of the house, shed and the barn, constructing the beer room. The quality of his work left much to be desired. He exaggerated his work and gave no estimate of the time he spent doing the work. However, Mr. Barager is to be compensated for the value of his work. Considering the evidence as a whole, I find Mr. Barager is entitled to the sum of \$3,000.00 for the farm chores performed and renovations to the residence and other buildings on the property.

[34] In determining the value of the work Mr. Barager performed, I took into consideration the dubious quality of his work. The evidence does not establish Mr. Barager willfully, recklessly or negligently damaged property belonging to Ms. Bent or that Mr. Barager incurred debt that Ms. Bent will be called upon to pay. Ms. Bent’s counterclaim is dismissed.

[35] A monetary award is adequate to compensate Mr. Barager and, therefore, I do not have to determine if there is, in this case, a link between the services rendered by him and Ms. Bent’s property for a constructive trust to arise.

[36] In conclusion, Mr. Barager has established his claim for unjust enrichment and will have damages in the amount of \$6,999.70, being the amount of funds he provided for the purchase of the Bush Hog, farm chores made and the value of the renovations to the residence and other buildings on the property he made.

[37] If the parties are unable to agree, I will hear them concerning the issues of prejudgment interest and costs.

Coughlan, J.