SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Doucette v. Hache, 2010 NSSC 299

Date: 20100727
Docket: SFHMCA-062907
Registry: Halifax

Between:

Marie Sylvia Doucette

Petitioner

v.

Joseph Yvon Hache

Respondent

Judge:	The Honourable Justice Mona M. Lynch
Heard:	April 9 & June 29, 2010 in Halifax, Nova Scotia
Counsel:	Richard Bureau, for the Applicant Kim A. Johnson, for the Respondent

By the Court:

BACKGROUND:

[1] The parties were in a common law relationship for approximately eight and one-half years. The parties began living together when Marie Doucette moved into the premises rented by Yvon Hache. The parties lived in the rental premises for approximately five years at the beginning of the relationship. The parties separated on June 1, 2008.

[2] Both parties worked and both were self employed during the relationship. Yvon Hache worked as a contractor and Marie Doucette by cleaning houses. Yvon Hache's income during the latter part of the relationship (2005-2008) ranged between $12,097 per year to $57,772. Marie Doucette's income ranged between $5,646 and $13,881 during the same period.

[3] During the relationship the parties maintained separate bank accounts and separate credit cards. Yvon Hache paid all of the bills and most months Marie Doucette contributed money towards the general household bills. The parties shared the daily household tasks equally.

[4] During the relationship the parties purchased lottery tickets. They usually purchased the tickets separately. On some occasions, when a relatively minor amount of money was won, joint tickets were purchased or the money was used to purchase a joint meal. In May of 2004 a ticket purchased by Yvon Hache and scratched by Marie Doucette won $50,000. Both parties travelled to Moncton when the prize was claimed. A promotional cheque was made out in both parties' names but the actual cheque was payable solely to Yvon Hache. The prize money was used to pay income tax for both parties and the remainder of the prize money was placed in a joint bank account. The money in the account was to be used to purchase a house that both parties would live in.

[5] In November of 2004 the parties found a house and adjoining lot to purchase. The closing for the purchase of the house and lot was in January 2005. The down payment required to purchase the house and lot came from the lottery winnings, Yvon Hache's bank accounts and the credit cards of both parties. There was a mortgage placed on the house property with Yvon Hache as mortgagor and Marie Doucette as guarantor. There was no encumbrance on the vacant lot. The

title to the house property was placed solely in Yvon Hache's name and the title to the vacant lot was placed solely in Marie Doucette's name.

[6] The parties lived in the house for three and one-half years until they separated.

[7] In February 2009 Marie Doucette applied for spousal maintenance and a division of assets and debts under the **Partition Act** and a claim of constructive and resulting trust based upon unjust enrichment and *non est factum.* Yvon Hache responded to Marie Doucette's application requesting relief that the vacant lot be transferred to him by way of constructive or resulting trust arising from unjust enrichment. After an interim hearing Yvon Hache was ordered to pay Marie Doucette interim spousal maintenance in the amount of $600 per month commencing February 13, 2009 and continuing on the first day of every month. Yvon Hache paid Marie Doucette $1,800 at the end of April 2009. He has made no further payments.

ISSUES:

[8] (a) How should the conflicting evidence of the parties be resolved?

(b) Were the lottery winnings a joint asset?

(c) Would Yvon Hache be unjustly enriched if he retained the property containing the house which is registered solely in his name?

(d) Should the court hear Yvon Hache's application despite his failure to comply with the interim spousal maintenance order?

(e) Was a resulting trust created when the title to the vacant lot was placed in Marie Doucette's name?

(f) Would Marie Doucette be unjustly enriched if she retained the vacant lot which is registered solely in her name?

(g) If there is unjust enrichment what is the appropriate remedy and how should the remedy be quantified?

(h) Should there be continued spousal maintenance paid by Yvon Hache to Marie Doucette and if so, in what amount?

ANALYSIS:

(a) How should the conflicting evidence of the parties be resolved?

[9] There were definite and identifiable problems with the evidence of Marie Doucette. Her evidence revealed that she had memory problems as a result of a car accident. She testified that the period of her memory problems was from June to November of 2004. Under cross-examination she extended the period of memory problems to March of 2005. It is clear that her memory was not reliable during other periods of time.

[10] Marie Doucette clearly stated in her affidavit filed March 5, 2010 that, "The actual cheque issued by the Atlantic Lottery Corporation was made payable to both of us as we had agreed". When Marie Doucette was shown a copy of the actual lottery cheque which was made payable to Yvon Hache, she testified that she had assumed it was made out to both of them but her memory was not clear. The lottery winnings were not during the period of time she had memory problems. Her testimony that it was an assumption is in stark contrast to the definitive statement in her affidavit.

[11] In the same affidavit Marie Doucette was very clear that she had received no payments whatsoever from Yvon Hache on the interim spousal maintenance order. She clarified that and indicated it was a mistake in her affidavit and she had actually received $1,800 from Yvon Hache but it was in the form of a cheque made payable to her lawyer. This was later shown to be incorrect. The April 2009 money order from Yvon Doucette payable to Marie Doucette in the amount of $1,800 was entered in evidence at the trial.

[12] Marie Doucette also stated in her affidavit that Yvon Hache was on an undertaking to have no contact with her. The trial on the charge which formed the basis for the undertaking had been held more than one month prior to the swearing of her affidavit. Yvon Hache had been found not guilty. Yvon Hache was not on an undertaking when Marie Doucette swore to the truth of the contents of her affidavit.

[13] These are only three examples of the difficulties with Marie Doucette's evidence. There were many, many times that Marie Doucette responded to questions by saying that she could not recall or remember. Yvon Hache provided

the court with much clearer evidence. Where the evidence of the two parties is in conflict, I accept the evidence of Yvon Hache.

(b) Were the lottery winnings a joint asset?

[14] The evidence on the lottery ticket winnings was clear. Yvon Hache purchased the ticket. Marie Doucette scratched the ticket and discovered the win. Both parties went to Moncton when the winnings were collected. Yvon Hache signed all of the paperwork for the Atlantic Lottery Corporation. While the promotional cheque contained both parties' names, the actual cheque was made payable only to Yvon Hache. After paying some income tax bills for both parties the remainder of the winnings were placed in a joint bank account. This account was set up with the intention that both parties would continue to contribute to it for the down payment on a house. Neither party contributed any more money to the account. The money in the account was moved to another joint account at a different bank and was then used to purchase the house property and the vacant lot.

[15] Marie Doucette did not contribute any money to the joint account nor did she remove any money from the joint account. Marie Doucette testified that she was not allowed to remove money from the account without Yvon Hache's signature. She had been told this by Yvon Hache. Marie Doucette was not even aware of the location of the joint account. Yvon Hache treated the lottery winnings as if they were his own.

[16] The parties had shared some minor winnings previously when a $20 win was used to purchase other tickets or to purchase a joint meal. However, I do not find that there was an express or implicit agreement that any lottery winnings of one would be shared equally with the other party.

[17] The parties are not married and there is not a presumption that the lottery winnings or any other property is joint (**Nova Scotia (Attorney General) v. Walsh,** 2002 SCC 83). The only evidence which could lead to the conclusion that the remaining lottery winnings were meant to be joint is the fact that they were placed in a joint bank account.

[18] Both parties have provided cases where lottery winnings were at issue at the end of a relationship. In **Nisbet v. Nisbet,** 2002 BCSC 596 the parties were married and had joint bank accounts. On numerous occasions during their marriage the parties purchased lottery tickets from their joint bank account or their personal accounts. During a separation the parties and another couple won a lottery draw of over one million dollars from a particular number combination they had used for a number of years. The husband had received the winnings when the parties were separated and he placed them in an account controlled by him. The parties reconciled and separated again. There was a dispute regarding the remaining money from the lottery win. The winnings were found to be joint and not analogous to an inheritance. The **Nisbet** case is distinguishable from this case as the parties were married, they purchased lottery tickets jointly and they had played the winning number combination for a number of years.

[19] In **Thompson v. Haley,** 2000 SKQB 24 the parties lived together for approximately four years. The judge found that the male party had purchased the lottery ticket. The judge also found an agreement between the parties to equally share the proceeds of any lottery ticket and ordered that the winnings be shared equally. The appeal of the decision was dismissed (2000 SKCA 70). Again the

case is distinguishable from the present case as I do not find there was an agreement between the parties to share any lottery winnings.

[20] In **Cao v. Le,** 2007 BCSC 499 the male party purchased a lottery ticket which won ten million dollars. The judge found that the parties were married and not separated in a manner with legal significance at the time of the lottery win. Money was given to the children and the remainder was divided between a joint account and an account solely in the male party's name. The winnings in the joint account were agreed to be a family asset. The winnings in the male party's account were found to have been used for family purposes such as the purchase of a new family home. The onus was on the male party to show that the lottery winnings had not been used for a family purpose. The present case is distinguishable as the parties are not married and Yvon Hache maintained control over the winnings. Also, the onus is on Marie Doucette to show that the winnings are joint and not as in **Cao** on the party seeking to exclude them as a family asset.

[21] In **Barkacin v. Wasiak,** 2008 CanLII 70847 (ON S.C.) the parties were married for approximately seven years and continued to reside together for many years after they were divorced. The male partner purchased a lottery ticket. The

female party discovered that it was a winning ticket, claimed the one million dollar prize and deposited into a bank account in her name. She gave the male party $300,000 but refused to give him another $200,000. The female party claimed gift or abandonment. The judge found that the male party owned the ticket but his behaviour was consistent with an intention to share the proceeds equally. In the present case the only evidence of an intention to share the proceeds equally was the placement of the winnings in the joint account. However, Yvon Hache retained control over the account and Marie Doucette understood that she was not permitted to use the account.

[22] In **Fumich v. Babic,** 2005 BCCA 552, the parties were in a seventeen year common law relationship. The parties had always kept their finances separate. Both bought lottery tickets with their own money. The male party hid his lottery tickets from the female party. The female party had a winning ticket of $500,000. The male party accompanied her to the lottery office to collect the winnings. She deposited the money in a bank account in her name. The female party gave the male party $86,000 when he expressed a need for that sum. The trial judge found no gift, no intention to share the winnings and no presumption of advancement. The Court of Appeal dismissed the appeal and found that the presumption of

advancement has not been broadly recognized in common law relationships. I find in this case no gift and no presumption of advancement. Yvon Hache's maintaining control over the joint bank account and placing the house property in only his name negates an intention to share the winnings.

[23] In the present case, the winning ticket was purchased by Yvon Hache and there was not a general agreement to share any lottery winnings. There was not a specific agreement to share the winnings of $50,000. Yvon Hache made a gift to Marie Doucette by paying her income tax with the winnings. After paying his own taxes, Yvon Hache placed the remaining lottery winnings in a joint bank account to be used to purchase a house. With the exception of this joint bank account, the parties always kept their bank accounts and credit cards separate. Yvon Hache retained control over the bank account. Marie Doucette clearly knew that she was not to access the money in the joint account because she was told so by Yvon Hache and because she was not even aware of the location of the joint account. The lottery winnings were not a joint asset of the parties. The winnings were owned solely by Yvon Hache.

(c) Would Yvon Hache be unjustly enriched if he retained the property containing the house which is registered in his name?

[24] An outline for analysing a claim for unjust enrichment was recently set out by the British Columbia Court of Appeal in **Wilson v. Fotsch,** 2010 BCCA 226 at paragraph 11 as:

> The basic outline for that analysis can be summarized this way:
>
> 1. Benefit/Enrichment
> 2. Detriment
> 3. Absence of a juristic reason for the enrichment
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> a. Established categories
>
> i. Contract
>
> ii. Disposition of law
>
> iii. Donative intent
>
> iv. Other valid common law, equitable, or statutory obligations
>
> b. Reason to deny recovery
>
> i. Public policy considerations
>
> ii. Legitimate expectations
>
> iii. Potential new category
>
> Defences

Change of position; estoppel; statutory defences; laches and acquiescence; limitation periods; counter-restitution not possible

Choice of Remedy

a. Is a monetary remedy sufficient?

b. Is a constructive trust required (or equitable damages for the value of the trust interest)?

Quantification of the Remedy

a. Value received (*quantum meruit* basis)

b. Value survived (proportionate share basis)

Set-Off (equitable and legal)

Pre-judgment interest

[25] In the present case the parties began their relationship in late 1999 or early 2000 and the relationship ended on June 1, 2008. The house and vacant lot were purchased in early 2005. The parties both participated in the selection of the properties to be purchased. The funds to purchase the home and lot were comprised of :

Lottery Winnings	$ 38,000
Yvon Hache's Visa	$ 6,000
Yvon Hache's business account	$ 5,000
Yvon Hache's personal account	$ 22,000

Mortgage	$145,000
Marie Doucette's Visa	$ 3,000

Yvon Hache was the mortgagor and Marie Doucette was the Guarantor on the mortgage. The property containing the house was placed solely in Yvon Hache's name and the vacant lot was placed solely in Marie Doucette's name. The parties have agreed that the value of the property containing the house is $205,000 and the value of the vacant lot is $56,000 for a total of $261,000. The balance of the mortgage agreed upon is $134,000.

[26] After the parties moved into the property they began renovations. Yvon Hache purchased most of the materials and provided most of the labour for the renovations. Marie Hache purchased some paint and some plants for the yard. She contributed to the renovations by painting, staining and cleaning during the renovations. Yvon Hache placed many of the expenses for the renovations on his credit cards and he has been solely responsible for those debts.

[27] The parties equally shared the chores and day to day running of the house. Marie Doucette did most of the cooking and cleaning. Yvon Hache did most of the

repairs and general upkeep. Yvon Hache did the lawn mowing and snow blowing. He contributed equally to the laundry and dishes. The parties raked and shovelled together.

[28] Marie Doucette contributed money towards the household bills but not to the extent that she asserted. I find that she contributed an average of $245.00 a month towards the bills such as the mortgage, utilities and taxes. She contributed an average of $182.00 a month over the period of cohabitation towards groceries. Marie Doucette contributed an average of $15.00 a month towards renovations or upkeep expenses for things such as paint and perennials. Her total average contribution for household bills a month was $442.00. The mortgage payment and taxes were over $1,000 a month.

[29] Yvon Hache paid all of the household bills. He paid the mortgage, utilities, taxes, truck payment and most of the truck repair costs. Yvon Hache contributed to the purchase of groceries. Yvon Hache made all of these payments from his own accounts with the contribution from Marie Doucette. Yvon Hache purchased all of the household appliances. Marie Doucette purchased household items which she retained on separation.

[30] Yvon Hache has remortgaged the property and Marie Doucette has been removed as Guarantor. Marie Doucette was a joint borrower on a truck which she used during the relationship for her work. Yvon Hache has kept the truck and has made all of the payments on the truck both during the relationship and after it ended. Marie Doucette's ability to obtain credit was affected by her being a Guarantor on the mortgage and by being on the truck loan.

[31] It is clear from the evidence that Marie Doucette provided both monetary contribution and services which were a benefit and enrichment to Yvon Hache and the property which is solely in his name.

[32] It is also clear from the evidence that Marie Doucette suffered a deprivation as she has nothing to show for the contributions that she made to the property.

[33] When considering the absence of juristic reason the Supreme Court of Canada in **Garland v. Consumers' Gas Co,** 2004 SCC 25 said at paragraphs 44-46:

> First, the plaintiff must show that no juristic reason from an established category exists to deny recovery. By closing the list of categories that the plaintiff must canvass in order to show an absence of juristic reason, Smith's objection to the Canadian formulation of the test that it required proof of a negative is answered. The established categories that can constitute juristic reasons include a contract *(Pettkus*, supra), a disposition of law (Pettkus, supra), a donative intent *(Peter, supra)*, and other valid common law, equitable or statutory obligations (*Peter, supra*). If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis.
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> 45 The *prima facie* case is rebuttable, however, where the defendant can show that there is another reason to deny recovery. As a result, there is a *de facto* burden of proof placed on the defendant to show the reason why the enrichment should be retained. This stage of the analysis thus provides for a category of residual defence in which courts can look to all of the circumstances of the transaction in order to determine whether there is another reason to deny recovery.
>
> 46 As part of the defendant's attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations.

I have no evidence of a contract between the parties or any of the other juristic reasons set out in **Garland.**

[34] In **Wilson v. Fotsch**, supra at paragraph 26, the British Columbia Court of Appeal finds that "love and affection do not ground a 'donative intent'". The Court also reviews at paragraphs 28-32 whether reciprocal benefits or equitable set-off are a juristic reason for the defendant to retain the enrichment:

The receipt of reciprocal benefits does not have the same juridical force as a contract, a disposition of law or a donative intent. In most family cases reciprocal benefits will not be specifically pleaded, either by way of a counterclaim or as a defence (they were not in this case). Technically, equitable set-off (when not pleaded as a counterclaim) is a defence. Any reciprocal benefit qualifying for the application of equitable set-off should be treated as such in an unjust enrichment analysis and brought into account after the enrichment has been valued.

[29] Nor do attempts to balance benefits passing between the parties fit easily into the second step of the juristic reason analysis where the relevant factors are the parties' expectations and public policy considerations. In *Garland*, Iacobucci J. commented about this residual category at para. 46:

> [46] ... It may be that when these factors are considered, the court will find that a new category of juristic reason is established. In other cases, a consideration of these factors will suggest that there was a juristic reason in the particular circumstances of a case which does not give rise to a new category of juristic reason that should be applied in other factual circumstances. In a third group of cases, a consideration of these factors will yield a determination that there was no juristic reason for the enrichment. In the latter cases, recovery should be allowed. The point here is that this area is an evolving one and that further cases will add additional refinements and developments.

[30] Whether seen as a proposed new category of juristic reason or as flowing from legitimate expectations of the parties, too narrow a focus on reciprocal benefits in the juristic reason analysis has the potential to blend the existence of enrichment with the question of its extent. While a court should be justifiably concerned with protecting a defendant from an excessive award where he or she has provided the plaintiff with benefits over the course of the relationship, that is not the question being asked at the juristic reason stage. The juristic reason analysis is intended to establish whether there is a reason for the defendant to retain a proven enrichment, not to determine its value or off-set reciprocal enrichment by the plaintiff. The issues of quantum and set-off are for the quantification of the award following a finding of unjust enrichment. By interposing the issue of extent into the juristic reason stage, the full unjust enrichment analysis is short-circuited.

> [31] The result of finding that the defendant had a juristic reason for the enrichment is a declaration that any enrichment was not unjust. To permit such a result at the second step of the juristic reason analysis where the other preconditions are present is to deny the existence of an unjust transfer of wealth which, from the perspective of the plaintiff, is patently unfair because it does not recognize his or her contributions. The receipt of benefits by a plaintiff from a defendant does not mean ipso facto that the defendant has not been unjustly enriched. That is the point the Supreme Court made in *Peter*.
>
> [32] A defendant can be preserved from any unfair effect of an unjust enrichment award by careful consideration of the value of the enrichment at the assessment phase, with appropriate deductions made for the benefits the defendant provided to the plaintiff. The finding of unjust enrichment itself does not need to be disturbed.

There is nothing in the evidence before me that would provide a reason to deny recovery based on public policy considerations or to establish a new category to deny recovery. The parties kept all of their finances separate with the exception of the one joint account. On the evidence there is a *prima facie* case of unjust enrichment which was not rebutted by Yvon Hache.

[35] There have been no defences to unjust enrichment established on the evidence. I find that Yvon Hache was unjustly enriched by the contributions made by Marie Doucette to the house property which is solely in his name.

(d) Should the court hear Yvon Hache's application despite his failure to comply with the interim spousal maintenance order?

[36] With the exception of $1,800 paid in April of 2009, Yvon Hache has not paid the spousal maintenance required by the interim order. He is currently $9,000 in arrears. Yvon Hache asserts that he is unable to pay the interim spousal maintenance. The evidence shows that he is in a better financial position than was presented to the court at the interim application. The evidence shows that in late 2009 Yvon Hache refinanced the house and used money from that refinancing to pay his bills. Yvon Hache has steadfastly refused to pay the spousal maintenance ordered by the court.

[37] In **Dickie v. Dickie,** 2007 SCC 8, the Supreme Court of Canada agreed with the reasons of Laskin J.A. in relation to the authority to refuse to entertain the appeal. In **Dickie v. Dickie**, 2006 CanLII 576 (ON C.A.), Laskin J.A. says at paragraphs 83 - 87:

> [83] I begin with these two points. First, I propose to adjourn Dr. Dickie's appeal, not to dismiss it. Second, this is not a case where an appellant is being deprived of his right to appeal because of impecuniosity. On the record before us, Dr. Dickie has the means to satisfy the orders of Greer J. Certainly, he has filed

no evidence to suggest otherwise. He has chosen not to comply. Once he does comply, he will have his day in this court.

[84] Juriansz J.A. recognizes the general rule that a court will not hear a litigant who has wilfully breached a court order until the litigant has cured the breach. However, my colleague says that the rule is subject to an exception where, as in this case, "the appellant seeks to attack the jurisdiction of the court below to make the contempt order and impose a sentence against him."

[85] In my view, neither principle nor precedent supports this limitation or exception. First, principle. The general rule against granting an audience to a contemnor who has failed to purge the contempt reflects the exercise of the court's discretion. That discretion is grounded in the inherent jurisdiction of the court to control its own processes and, in Ontario, in s. 140(5) of the *Courts of Justice Act*, which gives the court express power to stay or dismiss a proceeding as an abuse of process. The rationale underlying this exercise of discretion is that a court will not allow a litigant to abuse the court's processes, or to impede the course of justice, or to undermine the court's ability to enforce its own orders.

[86] This rationale argues not for carving out categorical exceptions to the exercise of the court's discretion, but for a flexible approach to the exercise of this discretion. If needed to meet its underlying rationale, the court will exercise its discretion, apply the general rule, and refuse to entertain an appeal until the wilful breach is cured.

[87] The exercise of the court's discretion to refuse to hear the appeal of a litigant who has not cured a wilful breach of a court order obviously applies when the order appealed is the very order the litigant has refused to obey. But the court's discretion may also be invoked when the order appealed is closely connected to an order or orders wilfully breached. See *Innovation and Development Partners/IDP Inc. v. Canada reflex*, (1994), 114 D.L.R. (4th) 326 at 330 (F.C.A.). And, similarly, the court's discretion may also be invoked where an appellant seeks to attack a contempt order on the ground that the trial court had no jurisdiction to make it. To preclude altogether the exercise of the court's discretion in such a case would make a mockery of the rationale for the general rule. Instead, in each case the court must consider whether hearing the appeal before the breach is cured would abuse the court's process or impede the course of justice.

[38] In the present case, the order that Yvon Hache is willfully failing to comply with is an order requiring him to pay spousal maintenance for his former common law spouse. The order for spousal maintenance is relief sought as a result of the breakdown in the relationship. In the same proceeding Yvon Hache is seeking relief from unjust enrichment. I find that the two matters are closely connected and I could exercise my discretion to adjourn Yvon Hache's claim for relief until he has complied with the interim order for spousal maintenance. However, because the unjust enrichment claims of the parties are inter-related I have exercised my discretion to hear Yvon Hache's application. To refuse to hear Yvon Hache's application would be unfair to Marie Doucette as it would retain the financial ties between the parties. I do not find that hearing the application before the breach is cured would abuse the court's process or impede the course of justice.

(e) Was a resulting trust created when the title to the vacant lot was placed in Marie Doucette's name?

[39] Yvon Hache argues that a resulting trust was created when the title to the vacant lot was placed in Marie Doucette's name. The vacant lot was purchased at the same time as the house property. The parties planned to develop the property and resell it. The title to the property was placed in Marie Doucette's name because she had the lower income and would have lower tax consequences in relation to any capital gain. Yvon Hache testified that if the property had been sold during the relationship that the proceeds would have been used to pay debts for both parties. Marie Doucette's contribution to the purchase of the vacant lot was the $3,000 she paid for all of the funds necessary to purchase both properties. There was and is no encumbrance on the vacant lot. The vacant lot is valued at $56,000.

[40] In **Pecore v. Pecore,** 2007 SCC 17, the Supreme Court of Canada said at paragraph 20:

> A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner...

And at paragraph 21:

> Advancement is a gift during the transferor's lifetime to a transferee who, by marriage or parent-child relationship, is financially dependent on the transferor...

Further at paragraph 24:

> ...where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended...

To establish a resulting trust a gratuitous transfer is necessary or a common intent for the parties to share in its ownership (**Kerr v. Baranow,** 2009 BCCA 111 paragraph 62). As the parties are not married the presumption of advancement or gift does not apply (**Kerr,** supra, paragraph 39).

[41] The transfer of the vacant lot to Marie Doucette was not totally gratuitous and it has not been established that there was a common intention to share in the ownership of the vacant lot. The vacant lot was placed in Marie Doucette's name to obtain a favourable tax benefit. I do not find a resulting trust.

(f) Would Marie Doucette be unjustly enriched if she retained the vacant lot which is registered solely in her name?

[42] There is no doubt that Marie Doucette would be enriched if she was to retain the vacant lot. There is also no doubt that Yvon Hache would suffer a detriment if she retained the vacant lot. As above there is no juristic reason for the enrichment and no defences. Marie Doucette would be unjustly enriched if she was able to retain the vacant lot.

(g) If there is unjust enrichment what is the appropriate remedy and how should the remedy be quantified?

[43] When looking at the choice of remedy for unjust enrichment:

> After unjust enrichment has been established and any defences have been addressed, a court's next task is to determine whether a monetary award is adequate or whether a proprietary interest is merited. Only if a monetary award is inadequate and there is a "sufficiently substantial and direct" contribution to the acquisition, preservation, maintenance or improvement of the property in which the trust is claimed, may a proprietary interest be considered: *Pettkus* at 852. A minor or indirect contribution is insufficient: *Peter* at 997.
> (**Wilson v. Fotsch,** supra, paragraph 46)

The contribution made by Marie Doucette to the house property was minor and a monetary award would be adequate to compensate her for the unjust enrichment. Both parties worked and both parties contributed equally to the day to day chores of the house. Marie Doucette's monthly contribution to the bills was about $245 a

month and a total of $442 a month when groceries and renovation materials are considered. Marie Doucette's contributions to the property can be compensated with a monetary award.

[44] What would be the value of the benefit received by Yvon Hache from services, money and other contributions made by Marie Doucette? She contributed $442 a month for the approximate 42 months that the parties lived in the house. However, some of the financial contributions by Marie Doucette are not recoverable by her. She could not expect to live expense free for 42 months. I estimate the value to Yvon Hache and the property would be approximately $10,000 for the services, money and other contributions by Marie Doucette. Marie Doucette's monetary contribution to the purchase of $3,000 will be taken into account in relation to the vacant lot.

[45] In relation to Yvon Hache, a monetary award would be inadequate. His contribution to the purchase of the vacant lot was direct and substantial. He contributed all of the funds to purchase the property with the exception of the $3,000 from Marie Doucette. The remedy necessary to compensate Yvon Hache is by way of a constructive trust.

[46] In **Snow v. Marsh,** 2004 NSCA 155 the court reviewed **Peter v. Beblow.** [1993] 1 S.C.R. 980 and said at paragraph 11:

> Both the majority and concurring minority in **Peter v. Beblow** favour the "value survived" approach as the more equitable method for determining the quantum of a claimant's share in family cases, particularly where a constructive trust is found at pp. 996 and 999...

For Yvon Hache the "value survived" approach is the proper method for determining the quantum of his claim to the vacant lot. The lot is worth $56,000 and all but $3,000 of the funds used to purchase the vacant law were his. Yvon Hache's contribution to the purchase price was approximately 92% and Marie Doucette's contribution was approximately 8%. The only way to compensate Yvon Hache is to transfer the title in the vacant lot to his name and compensate Marie Doucette in the amount of $4,500 for her initial 8% contribution based on the current value of the vacant land.

[47] Now that the claims of both have been quantified I must consider the set-off for a reciprocal benefit (**Wilson v. Fotsch,** supra, paragraphs 65-88). Here, the parties lived together for approximately eight and one-half years. During the period

of cohabitation Yvon Hache earned more than Marie Doucette in most years. Yvon Doucette paid all of the living expenses for both parties with the exception of the approximate $442 a month from Marie Doucette. Yvon Hache made the payments on the truck which Marie Doucette used 90% of the time. Yvon Hache used some of his lottery winnings to pay Marie Doucette's income tax. Yvon Hache was left with all of the debts from the renovations. Yvon Hache was left with the mortgage which he refinanced and removed Marie Doucette as Guarantor. The parties only lived in the house for three and one-half years.

[48] Marie Hache earned less money but also contributed less to the living expenses than if she was living, as she currently is, in an apartment. For $442 a month she lived in a renovated house with utilities, had groceries and a new vehicle to use for her work. The mortgage, taxes and truck payment combined were over $1,600 a month.

[49] Marie Doucette received over $51,000 as damages from a motor vehicle accident. The evidence was not clear if this money was received before or after the separation. It is clear that none of the $51,000 was shared with Yvon Hache.

[50] Taking into account Marie Doucette's limited contribution to the household living expenses, benefits received during the relationship and the payment of her taxes, I am going to reduce her award to $10,000.

[51] Marie Doucette should also receive pre-judgment interest from the date of separation in the amount of 5% per annum for a total of $11,000.

[52] Marie Doucette is to execute a deed transferring the title of the vacant lot to Yvon Hache.

(h) Should there be continued spousal maintenance paid by Yvon Hache to Marie Doucette and if so, in what amount?

[53] Marie Doucette and Yvon Hache were in an eight and a half year common law relationship. They both worked during the relationship. Currently Yvon Hache's yearly income is approximately $60,000. Marie Doucette's line 150 income for 2009 was approximately $16,000, with a gross business income of

$28,683. Marie Doucette deducted expenses from her business income including $2,100 in rent. Marie Doucette rents an apartment and there was no evidence of an actual expense incurred by Marie Doucette for the deduction. I find that Marie Doucette's income for spousal maintenance purposes is $18,100 a year.

[54] The interim order required Yvon Hache to pay spousal maintenance in the amount of $600 a month commencing in February 2009 and continuing each month thereafter. Yvon Hache paid $1,800 and the arrears on the order are $9,000.

[55] Marie Doucette's income has increased steadily over the years, both during the relationship and since separation. Marie Doucette's evidence that her income was lower in 2010 was based on limited information and I find her yearly income for 2009 a more reliable indication of her income. Yvon Hache's income has increased as well, mostly as a result of him moving from self-employment to employment by others. Yvon Hache was not successful in showing that Marie Doucette earned more income that she has reported.

[56] The factors I am to consider and the obligations on Marie Doucette are set out in the **Maintenance and Custody Act,** R.S.N.S. 1989, c. 160, s. 4 and 5. The

parties both worked during their relationship. I find there is no express or tacit agreement that Yvon Hache would maintain Marie Doucette. There is no agreement to consider. There are no children of the relationship. Marie Doucette is employed and there is no evidence that she contributed to Yvon Hache's education or career potential. Yvon Hache has the ability to pay spousal maintenance.

[57] Marie Doucette has had expenses as a result of the breakdown in the relationship. She has had the expenses of moving, finding a new place to live and purchasing or leasing a new automobile.

[58] This was a relationship of medium duration. Marie Doucette had a higher standard of living when she was in the relationship with Yvon Hache and spousal maintenance would be necessary to help with the financial consequences and hardship of the break-up of the relationship. I do find a need for transitional maintenance for Marie Doucette for a period of two years after separation. The spousal maintenance will be $600 a month for 24 months.

[59] Based on Yvon Hache's failure to pay the interim spousal maintenance and to facilitate a clean break between the parties, I am going to award the remaining

maintenance be paid in a lump sum. Accounting for the $1,800 paid on that order, the current arrears are $9,000 for the eighteen months of the interim order. Yvon Hache owes a further six months of spousal maintenance or $3,600. The total amount owed in spousal maintenance is $12,600.

CONCLUSION:

[60] There were problems with Marie Doucette's evidence both in relation to her credibility and her memory.

[61] The lottery winnings are not a joint asset.

[62] Yvon Hache would be unjustly enriched if he retained the property containing the house which is registered solely in his name.

[63] Yvon Hache's application is heard despite his willful failure to pay the spousal maintenance ordered in the interim order.

[64] A resulting trust was not created when title to the vacant lot was placed in Marie Doucette's name.

[65] Marie Doucette would be unjustly enriched if she retained the vacant lot registered solely in her name.

[66] The appropriate remedy to Marie Doucette is damages in the amount of $11,000 including pre-judgment interest.

[67] Marie Doucette is to execute a deed transferring title in the vacant lot to Yvon Hache.

[68] Marie Doucette is entitled to spousal maintenance in the amount of $600 a month for two years from the separation as transitional spousal maintenance. Yvon Hache owes arrears and ongoing spousal maintenance in the amount of $12,600.

[69] Either party may request a one hour hearing in relation to costs. The party seeking costs will file their brief on costs two weeks prior to the hearing date and the party responding will file a brief on costs one week prior to the hearing date.

Lynch, J.