

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Goddard v. Hambleton, 2004 NSSC 237

Date: 20041202

Docket: S.T.07392(191619)

Registry: Truro

Between:

Charles Goddard

Plaintiff

v.

Myrna Hambleton

Defendant

Judge: The Honourable Justice C. Richard Coughlan

Heard: August 23, 24, 25 and 26, 2004 in Truro, Nova Scotia

Written Decision: December 2, 2004

Counsel: Philip W. Whitehead and Anthony D. Nicholson (articled clerk), for the Plaintiff
Nicolle A. Snow, for the Defendant

Coughlan, J.:

[1] Charles Goddard claims a constructive or resulting trust on the proceeds Myrna Hambleton, formerly Myrna Hedden, received from the sale of real property she owned at Milford, Nova Scotia. In the alternative, Mr. Goddard claims damages against Ms. Hambleton for unjust enrichment for the value of the monies he invested in the real property and the value of the renovations and construction he performed on the property.

[2] Myrna Hambleton and Charles Goddard met in February, 1994, when she replied to an advertisement he had placed. Mr. Goddard had separated from his second wife. Ms. Hambleton and Mr. Goddard began a relationship. At the time, Mr. Goddard was living at Sheffield Mills, Nova Scotia and Ms. Hambleton at Nine Mile River, Nova Scotia. Mr. Goddard's wife returned home in July, 1994 to attempt a reconciliation. Mr. Goddard called Ms. Hambleton, needing a place to live and she invited he and his son to stay with her. They moved into her residence at Nine Mile River.

[3] It had been a dream of Ms. Hambleton to operate a cat kennel business. Before meeting Mr. Goddard, she had been looking for a property in which to operate the business. She also looked at properties after meeting Mr. Goddard while he lived in Sheffield Mills. Ms. Hambleton spoke to Mr. Goddard about properties in which to operate the business. In August, 1994, they looked at the property in Milford she eventually purchased. Ms. Hambleton contacted Margaret Naugler, a real estate agent, who arranged a viewing of the property. It met the requirements to operate the cat kennel business. Ms. Hambleton entered into an agreement of purchase and sale. The transaction was completed and Ms. Hambleton, Mr. Goddard and his son moved in on October 4, 1994.

[4] Mr. Goddard received funds from the division of matrimonial assets from his first marriage. He gave Ms. Hambleton \$12,000.00 to deposit in her bank account, which he told her to use towards the purchase of the property at Milford. Ms. Hambleton used \$11,400.00 of Mr. Goddard's money in purchasing the property. The remaining \$600.00 was used to pay a legal fee owed by Mr. Goddard. Ms. Hambleton provided the balance of funds used to purchase the Milford property. She paid the deposit, arranged and paid for the inspection of the property prior to closing. Title to the property was taken in Ms. Hambleton's name. She mortgaged the property to Scotia Mortgage Corporation, for which she

had been pre-approved. Ms. Hambleton arranged and paid for insurance on the Milford property.

[5] When Ms. Hambleton knew she and Mr. Goddard would be living at Milford, she calculated the monthly living expenses and they each paid one half of the expenses.

[6] Ms. Hambleton wished to renovate the property to allow the operation of the cat kennel business. Mr. Goddard offered to build the kennels and said renovations would be finished by Christmas. Renovations started in November, 1994 and were not completed until September, 1995. Both Mr. Goddard and Ms. Hambleton worked on the renovations.

[7] The roof of the residence was repaired by Klaas Penner. Ms. Hambleton paid Mr. Penner. Electrical work was done in the residence by George Pickford, whose bill was paid by Ms. Hambleton. She purchased the vast majority of the materials used in the renovations.

[8] Mr. Goddard made various renovations to the property, including: plumbing for the washing machine, constructing a trap door over the basement stairs, installing an outside door in the north side of the kitchen, installing a French door into the hallway, performing maintenance on the eaves of the roof, moved and rewired the stove, and constructed a sign on the barn for the business.

[9] Mr. Goddard tightened the end of the barn and put a window in it. The barn was used to store his airplane and as a place to work on the plane. He constructed kennels in the woodshed attached to the residence.

[10] While operating the kennel business, Ms. Hambleton worked at the Halifax International Airport. Mr. Goddard was not involved in the kennel operations. On occasion she hired Mr. Goddard's son to help with the kennel operation.

[11] In 1996, the relationship between Mr. Goddard and Ms. Hambleton was deteriorating. She discovered a lump in her breast - there is a history of breast cancer in her family. She told Mr. Goddard about the lump. Mr. Goddard said they should have wills. Ms. Hambleton testified she did not want to make a will, but she did. She said Mr. Goddard was included in her will to reimburse him for the money he had given her.

[12] In March, 1997, Mr. Goddard and Ms. Hambleton took separate bedrooms. Approximately the end of March, 1997, she asked him to leave the residence. In April, 1997, Mr. Goddard's contribution to the household expenses decreased. He moved out on July 1, 1997.

[13] I find Mr. Goddard and Ms. Hambleton lived in a common-law relationship from July, 1994 until March, 1997. Thereafter, they lived in the same residence until Mr. Goddard left the residence on July 1, 1997.

[14] In April, 1997, Ms. Hambleton entered into an agreement with Pussy Pause Motel Inc. to purchase its client list, together with certain equipment and supplies used in its business for the sum of \$25,000.00.

[15] In the summer of 1997, Ms. Hambleton engaged Blunden Construction (1995) Ltd. to construct twelve kennels for cats in the barn on the property. The cost of the construction was \$15,613.00, plus H.S.T. of \$2,341.95, for a total of \$17,954.95. Mr. Goddard was aware of the proposal from Blunden Construction to renovate the barn, but did not recall ever seeing the quote.

[16] In August or September, 1998, Ms. Hambleton began cohabitating with Ross MacLeod. They were married October 19, 1999. After they began cohabitation they remodelled the kitchen, including replacing the kitchen floor, removing loose bricks around the flue and gyprocking the kitchen. They had insulation blown into the house. They also changed the well system, installed a submersible pump and replaced the interior water tank.

[17] Mr. Goddard testified he had total involvement with the cat kennel business and the purchase of the Milford property, and that if he had not given Ms. Hambleton the \$12,000.00, she would not have purchased the property. He said Ms. Hambleton was able to open the business because of his expertise. He said he was involved in negotiations to purchase the property and in setting up the business.

[18] As with much of his evidence, I find Mr. Goddard exaggerated his role. Ms. Hambleton testified she had been actively looking for a property before meeting Mr. Goddard. It had been her intention to purchase the property before receipt of the money from Mr. Goddard. She dealt with Scotia Mortgage Corporation to

arrange for the mortgage on the property. Mr. Goddard was not involved in dealing with Scotia Mortgage Corporation. Mr. Goddard was not a party to the agreement of purchase and sale, was not a party to the mortgage, was not a grantee on the deed and Ms. Hambleton paid all the costs involved in purchasing the property, with exception of the \$11,400.00 she received from Mr. Goddard. Mr. Goddard says he did not take legal title because of concerns of a possible claim by his second wife.

[19] Ms. Hambleton testified she attempted to discuss the possibility of a cohabitation agreement with Mr. Goddard, but Mr. Goddard refused to discuss such an agreement. He testified Ms. Hambleton had not raised the issue of a cohabitation agreement before December, 1996, but then acknowledged it could be Ms. Hambleton wanted an agreement, but he would not discuss it as he considered a cohabitation agreement an acknowledgment the parties are going to separate. It is unlikely a man who testified, as Mr. Goddard did, he was not prepared to move into a home owned by a partner or spouse and told Ms. Hambleton he was not going to live in a home owned by his spouse, would not have his interest in the residence clearly documented. This evidence by Mr. Goddard is not believable given his two previous marriages and his expressed views of living in a home owned by a spouse.

[20] Margaret Naugler Hines, formerly Margaret Naugler, a realtor, testified she represented Ms. Hambleton in the purchase of the Milford property. She first met Ms. Hambleton in the early 1990's, prior to Ms. Hambleton's relationship with Mr. Goddard. The first time she met Ms. Hambleton she was told it was Ms. Hambleton's dream to open a cat hotel and a property with proper zoning was required. Ms. Naugler Hines dealt solely with Ms. Hambleton in connection with the purchase. Ms. Naugler Hines knew Mr. Goddard was in the picture, but her strongest recollection of him was after the purchase was completed.

[21] I find Mr. Goddard was not a party to the purchase of the Milford property. Ms. Hambleton purchased the property and she happened to be living with him in a common-law relationship at the time of the purchase.

[22] I find Mr. Goddard was not involved in the cat kennel business. He acknowledged Ms. Hambleton conducted the day-to-day operations of the kennel. She looked after the books. The declaration pursuant to the *Partnership and Business Names Registration Act* sworn October 25, 1994 by Ms. Hambleton

stated Ms. Hambleton, then Myrna Diane Hedden, was not associated in business with any other person. I accept Ms. Hambleton's evidence that Mr. Goddard was not involved in the kennel business.

[23] In 1994, Mr. Goddard applied for group life insurance through his employer, naming Ms. Hambleton as beneficiary and describing her as "business partner". It is strange he did not describe her as his "common-law spouse" as he did in his 1995 income tax return. Ms. Hambleton testified when Mr. Goddard refused to discuss a cohabitation agreement and said he was doing work for her, she told him she was investing her future in the kennel business and the business was hers. The first couple of times she said that to him, Mr. Goddard nodded and later responded "we will see". It appears Mr. Goddard may have been establishing a basis to make a claim to an interest in the property and business.

[24] Has Mr. Goddard's claim of unjust enrichment been made out? The requirements to establish such a claim 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. ..."

[25] In this case, Mr. Goddard has established his claim for unjust enrichment. Ms. Hambleton has been enriched by the \$11,400.00 Mr. Goddard gave her to use in the purchase of the Milford property. In addition, she was enriched by the renovations made by Mr. Goddard to the residence, construction of the kennels in the woodshed and the other improvements he made to the property. Mr. Goddard had a correspondent deprivation in being deprived of the funds given to Ms. Hambleton, as well as the time he spent completing the renovations and construction, and the cost of the materials he purchased for the project. There is no juristic reason for the enrichment. A common-law spouse does not have a duty to perform work or services for his or her partner. As 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.

[26] Once an unjust enrichment has been established, in order for a constructive trust to arise, monetary compensation must be inadequate and there must be a link between the services rendered and the property in which the trust is claimed.

[27] Can Mr. Goddard be adequately compensated by a monetary award? In his evidence, he stated he valued his labour for the renovations and construction he performed on the Milford property at \$63,000.00 based on a pay rate of \$20.00 per hour. This is another example of Mr. Goddard's exaggeration in giving his evidence. \$63,000.00 divided by \$20.00 an hour equals 3,150 hours. The total period Mr. Goddard lived in the Milford property was from October, 1994 to July, 1997. During that time, Mr. Goddard was employed at the Youth Centre in Waterville, Nova Scotia. He testified the construction of the kennels lasted from November, 1994 until the summer of 1995, when the kennels opened. He worked on the barn from the summer of 1995 until December, 1996. In addition, there were the renovations to the residence and other buildings on the property which he performed. Ms. Hambleton testified Mr. Goddard was a putterer - through the entire time he was at the Milford property he did things around the house. Mr. Goddard arrived at the \$63,000.00 figure by saying he worked on the property during his vacations, weekends and after work. Considering the length of cohabitation, Mr. Goddard's work commitments and the work performed, calculation of 3,150 hours is ridiculous. I find Mr. Goddard's valuation of his labour at \$63,000.00 is a gross exaggeration.

[28] Mr. Goddard then said, when going through his records he purchased materials and supplies of the value of \$8,000.00 for the renovations and construction. He did not produce evidence of the purchase of materials and other expenditures in connection with the property anywhere near the \$8,000.00 claimed. Although having the burden of establishing the quantum of damages to which he is entitled, Mr. Goddard has not provided any reliable evidence on the amount to which he is entitled.

[29] He is entitled to recover the \$11,400.00 he gave Ms. Hambleton to be used toward the purchase of the property. She testified perhaps the work on the kennels would have proceeded more slowly without the money from Mr. Goddard.

[30] Considering the renovations and construction Mr. Goddard performed, he is to be compensated for the value of his work. Ms. Hambleton acknowledged it may have cost between \$13,000.00 and \$14,000.00 to construct the kennels in the woodshed. However, the quality of Mr. Goddard's work left much to be desired. For example, the moulding installed in the kennels in the woodshed missed the flooring and Ms. Hambleton had to take remedial action to prevent cat urine from getting between the flooring and the walls. The floor in the kennel was not level - which Mr. Goddard claimed was meant to maintain the rustic characteristic of the building. The insulation he installed had to be removed. The photographs entered into evidence show the work performed by Mr. Goddard was pretty rough. Ms. Hambleton obtained an estimate from Blumden Construction, stating the labour to construct twelve rooms for cats, complete with doors, shelves and outside cages, as well as installing the floor, was \$1,265.00, including H.S.T. Both Mr. Goddard and Ms. Hambleton worked on the renovations and construction. Considering the evidence as a whole, I find Mr. Goddard is entitled to the sum of \$5,000.00 for construction of the kennels in the woodshed, renovations to the residence and other buildings on the property.

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

[32] In order to establish a resulting trust, a common intention of the parties must be expressed or implied. In this case, there is no expressed common intention to establish a trust and, from the evidence, such an intention cannot be implied.

[33] Having decided a monetary award is adequate to compensate Mr. Goddard, I do not have to determine the value of the real property at Milford, Nova Scotia, or the value of the business. I will, however, provisionally deal with valuation.

[34] Three appraisers testified: Jean Hicks, Michael Allison and Ralph Howard Taylor.

[35] Jean Hicks, a residential real estate appraiser testified. She and her firm had prepared three appraisals of the subject property. One on February 9, 1999 for mortgage purposes, prepared by Joanne Carlos, an employee of Ms. Hicks and approved by Ms. Hicks, valued the property as of February 8, 1999 at \$88,000.00.

A second appraisal prepared by Michael Allison, and approved by Ms. Hicks, valued the property as of November 16, 2000 at \$155,000.00. A third appraisal signed by Ms. Hicks on July 6, 2004 valued the property as of June 30, 1997 at \$132,000.00.

[36] Ms. Hicks said the report prepared by Joanne Carlos is accurate, but in the low range of value for the property. She explained the difference between an appraisal for fair market value for mortgage purposes and one of fair market value for the purpose of selling. Lenders have limitations in what can be valued, for example: lenders place little value on outbuildings. In addition, lenders limit the value which can be given for land in excess of the land which the residence occupies.

[37] I do not have confidence in Ms. Hicks' appraisal of the property as of June 30, 1997. She did not view the interior of the residence or any of the outbuildings, but based her value of the residence and outbuildings on what she was told of the interior of the buildings by Mr. Allison and Ms. Carlos, and the notes prepared by them for the appraisals they prepared. On cross-examination, Ms. Hicks admitted the outbuildings could have been structurally unsound. She had no knowledge of the buildings' condition. In the addendum to the appraisal as of June 30, 1997, under the heading "Condition of the Improvements", it states:

The subject is a 115 year old 1.5 storey dwelling which has been renovated over the years including a 1 year old roof, siding, electrical and furnace. The floor in the kitchen has been finished with parquet and there have been new entry ways installed.

[38] In cross-examination, Ms. Hicks stated she did not know if the siding was installed in 1997, nor did she know what changes, if any, were made to the furnace or electrical system. She also stated she did not know if the parquet floor installed in the kitchen or the new entryways had been installed prior to June 30, 1997.

[39] Ms. Hicks, as supervisor, signed the appraisal prepared by Ms. Carlos, which valued the property as of February 8, 1999 at \$88,000.00 for mortgage purposes. In that appraisal, the statement is made, "the subject is 114 ± year old five bedroom dwelling viewed as being in average condition only".

[40] Michael Allison, a residential real estate appraiser, testified. He received his Canada Residential Appraiser (CRA) designation in June or July of 2004. He visited the property in 2000 to conduct an appraisal for mortgage purposes. When he visited in 2000, the property had a new parquet floor. Mr. Allison did not know when the aluminum siding was installed, but found it in good condition. He did not know what his notation about upgrades to the furnace or electrical system meant.

[41] His report stated the living floor space to be 2,242 square feet, as compared to the floor space in the report prepared by Ms. Carlos, which states the living floor space to be 1,626 square feet. He explained the difference was as a result of his including a section of the house, which was used as kennels, as part of the living floor area. The area had flooring and was heated, so he included it in the living space. It had been referred to as a shed.

[42] Mr. Allison's appraisal determined the fair market value as of November 16, 2000 to be \$155,000.00, which was the same amount as the sale price for the property in the agreement of purchase and sale between Ms. Hambleton and Marilyn R. Weagle. However, the agreement of purchase and sale provided for the sale of the client list, equipment and other assets used in the business Kitty Care Inn, in addition to the real property.

[43] The differences in the results of the appraisals conducted by Ms. Hicks and her employees were not adequately explained and I have no confidence in the appraisals.

[44] Ralph Howard Taylor testified. He received the Accredited Appraiser Canadian Institute (AACI) designation from the Appraisal Institute of Canada in 1979, which entitles him to appraise all types of real property, including farm, residential and commercial. He worked for the Nova Scotia Farm Loan Board for twenty-five years. He retired in 1994 and established his own appraising business and conducts appraisals throughout the Atlantic Provinces. He has been appraising rural properties since 1969. Comparable properties he used in his report are located within a reasonable distance of the Milford property and their sale dates are close to the appraisal date of July 1, 1997. In his report, Mr. Taylor valued the real property at \$90,000.00 as of July 1, 1997. He appraised the land, house and garage. He excluded the barn and shed from his appraisal. I accept Mr. Taylor's appraisal and find the value of the land, residence and outbuildings, excluding the

barn and shed, as of July 1, 1997 was \$90,000.00 and as of December 4, 2000 \$100,000.00.

[45] Having valued the property at \$100,000.00 as of December 4, 2000, Mr. Taylor valued the business at \$55,000.00, being the difference between the value of the real property and the sale price of the real property and business of \$155,000.00. Mr. Taylor attributed \$17,954.95 as the value of the kennels in the barn - being the amount paid to Blunden Construction to build the kennels; \$9,000.00 attributed as the value of the kennels and shed and the balance of \$28,045.05 for the client list, consulting fees and goodwill. In reality, he accepted the difference between the selling price in the agreement of purchase and sale and the value of the real property as the value of the business. Having accepted Mr. Taylor's valuation of the real property, there is nothing in evidence to demonstrate the selling price of \$155,000.00 does not accurately reflect the value of the property and business.

[46] In conclusion, Mr. Goddard has established his claim for unjust enrichment and shall have damages in the amount of \$16,400.00, being the amount of the funds he provided toward the purchase of the Milford Property and the value of the construction and renovations he made.

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

Coughlan, J.