

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *K.A.R. v.P.J.T.*, 2018 NSSC 4

**Date:** 2018-01-18

**Docket:** *Kentville*, No. 15244

**Registry:** Kentville

**Between:**

K.A. R.

*Applicant*

v.

P.J.T.

*Respondent*

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Pierre L. Muise, J

**Heard:** October 30, 2017, in Kentville, Nova Scotia

**Summary:** Ms. R. brought application under the *Partition Act* requesting sale and unequal division of proceeds in relation to a home she owned jointly with her ex-common law partner, Mr. T., based on having made the down-payment, having paid-out the mortgage from her accident settlement and the loan secured by the home having paid off his credit cards. Mr. T. sought equal division subject to a credit to Ms. R. for the mortgage payout. Ms. R. asked that the sale be by sheriff's sale because she was of the view that Mr. T. could not finance the purchase and would interfere with showing and selling the home so that he could remain in exclusive possession longer. She also sought return of items from the house.

**Issues:**

1. Is Mr. T. barred from claiming any equitable relief based upon the clean hands doctrine?
2. Has Ms. R. rebutted the presumption of equal sharing that arises from joint tenancy?
3. Are there post-separation contributions which constitute an equitable allowance justifying an adjustment?
4. What is the impact on this application, if any, of the parties owning as joint tenants the Annapolis County land, considering that Mr. T. paid the entire purchase price?
5. What is the impact on this application, if any, of Mr. T. having retained the proceeds of sale of the camper and all hydroponic marijuana growing equipment?
6. How should the value or sale proceeds of the home be divided?
7. Should the house be ordered sold and, if so, how?
8. Does this Court have jurisdiction to make an order regarding household contents in this application?
9. If so, what, if any, order should be made in relation to the household contents?

**Result:**

1. Mr. T. was not claiming equitable relief and his conduct would not have barred it under the clean hands doctrine.
2. Ms. R. rebutted the presumption of equal sharing because the mortgage payout was a grossly disproportionate contribution made near the end of a nine-year relationship in which there had been roughly equal sharing of expenses.
3. There were no post-separation contributions warranting an equitable allowance. Mr. T. made post-separation payments; but, he also had exclusive possession and the respective pre-separation contributions could not accurately be determined.

4. The joint ownership of the Annapolis County land had no impact as it was not included in the request for partition and it was not shown that any of the debt secured by the house was incurred for the purchase of that land.

5. Mr. T. had paid for the camper and the hydroponic equipment. Any portion of the joint loan that may relate to the purchase of the camper was offset by Ms. R.'s use of the camper. Therefore, his retention of the camper proceeds and hydroponic equipment did not alter the division.

6. The net proceeds, after payment of the joint loan and disposition costs, were to be split 80% to Ms. R. and 20% to Mr. T..

7. Mr. T. was given 60 days to arrange financing to purchase the property, failing which it was to be listed and sold.

8. The Court had jurisdiction to make an order relating to household contents.

9. The Court ordered Mr. T. to make available for pickup by Ms. R. the items he agreed to provide, and those which the Court determined she had purchased or belonged to her children.