SUPREME COURT OF NOVA SCOTIA
Citation: *Reid v. Reid* 2019 NSSC 229

Date: 20190731
Docket: Hfx No. 465447
Registry: Halifax

Between:

Kathleen Reid

Applicant

v.

Brenda Reid

Respondent

Decision

Judge: The Honourable Justice Gerald R.P. Moir

Heard: February 11 and 12, 2019 in Halifax

Decided: July 31, 2019

Counsel: Ian Gray and Mark Holden, for the Applicants
Ibrahim Badawi, for the Respondent

Moir, J.:

Facts

[1] Mr. John David Reid and Ms. Kathleen Reid were married for many years. They had four sons, one daughter, and extended family. When Mr. Reid died in 1996, Ms. Reid was somewhat isolated. They had bought a property in Tatamagouche and family members did not live nearby.

[2] Ms. Reid's son, Michael Reid, lived in Ellershouse with his wife, Brenda Reid. They owned a one-story home with a spare room and a full basement. They

discussed offering for Kathleen Reid to live with them, and Michael Reid made the offer. Kathleen Reid accepted and stayed in the spare room often, while keeping her home in Tatamagouche.

[3] Many of her immediate family lived near Ellershouse. And, it appears her children and their families got along well. For example, her son, Ira Reid, lived in a neighbouring community with his wife, Gail Reid, and their two children. Michael Reid and Brenda Reid were like second parents to the children.

[4] In 1999, Michael Reid submitted a building permit application to the Municipality of West Hants. He and his mother had agreed that she would pay for materials and her sons would construct an apartment on the Michael and Brenda Reid home for her to occupy.

[5] In their affidavits, Kathleen Reid and Brenda Reid sometimes speak of arrangements for the construction in definitive terms. For example, Kathleen Reid swore:

> Michael and I had agreed that my moving into the Property was contingent on certain renovations; namely, the construction of an In-Law Suite. This project was to be financed by me in full.
>
> Pursuant to our agreement Michael submitted the Permit Application for the renovation. Attached hereto and marked Exhibit "A" to my affidavit is a copy of this Permit Application.
>
> Michael made it clear to me that I would always have a place to live comfortably for the rest of my life. It was my expectation that I would reside at the property until I was no longer physically able to or until my death.
>
> This included the ability to have guests in my constructed In-Law Suite.
>
> Michael insisted that I would be exempt from paying any utilities or property taxes at the Property

The rest of the evidence, including Kathleen Reid's cross-examination, convinces me that little was discussed and much was left to inference.

[6] Brenda Reid swore:

> After discussing various options to try and help Kathleen, Michael and I agreed that Kathleen could build the in-law suite and that we would pay Kathleen's bills and utilities while she lived there because she was incurring the expense of having the in-law suite built.

> There was never any formal agreement in relation to Michael and I paying Kathleen's bills. The arrangement was informal and between family. However, there was a clear awareness between Michael and I that the costs Kathleen was incurring to have the In-Law Suite built would be offset because Michael and I were paying her bills and other expenses. Up until the fall before Michael passed away, we kept all of the bills and bank statements in a large filing cabinet. Michael had a lot of these documents shredded and taken to the dump while he was cleaning out the house and yard. At one point, he mentioned that he figured we had made up for the cost she incurred in building the in-law suite by way of the bills, costs, expenses, and upkeep that we had incurred for her benefit. I do not recall the exact words Michael used, but it was along the lines that he "figured we were even" with Kathleen.

In cross-examination, Brenda Reid confirmed what seems implicit in these averments. She did not discuss terms with Kathleen Reid.

[7] The apartment was built at ground level. An opening was cut into the original foundation to accommodate a staircase going upstairs. Also, an exterior entrance was constructed. Kathleen Reid regarded the construction to be a small home.

[8] Kathleen Reid paid for most of the materials. Labour was supplied generously by her sons. Michael Reid arranged for cutting the foundation to accommodate the staircase from the apartment to the upstairs. He and Brenda Reid paid for a new electrical panel and wiring. George Reid and Ivan Reid are both experienced trades people, and they did most of the general construction. They got others to work for free, such as plumbers and drywallers.

[9] Ira Reid supplied an affidavit. He swore he assisted George Reid, and an electrician. He worked on the interior, including painting with Gail Reid. He did much of the fine carpentry work including installing a hardwood staircase, trims, and cupboards. He did most of the transporting of materials and supplies. Ira Reid paid for the cupboards out of his own pocket. They were a gift for his mother.

[10] Kathleen Reid moved into the new apartment in 2000.

[11] According to Brenda Reid, the new apartment is almost a thousand square feet in area. Its footprint is rectangular. The longer walls are a wall shared with the basement of the main building and an opposite exterior wall. The shorter walls include an entryway to the out-of-doors. The shared wall includes a staircase cut into the foundation that leads upstairs to the main floor of the home.

[12] The apartment consists of a kitchen and a sitting area, bedroom, baths, closets, and the entryways. It is fully finished with hardwood and laminate floors, eight windows, interior doors, cupboards, trim, painted drywall, and so on.

[13] The exterior is sided to match the main building. The apartment has an independent roof that was tiled with thirty-five-year asphalt shingles. (Brenda Reid had the apartment roof re-shingled. I accept Mr. Ira Reid's testimony that this was unnecessary, and only served to match the apartment roof to a new main roof.)

[14] Kathleen Reid produced some $29,000 in receipts. She said, "I spent the entirety of my life savings on this renovation." Excluding duplicates and redundancies, the receipts show payments of about $23,000. She had savings and sources of funds after meeting those expenses.

[15] There were obvious expenditures for which receipts have not been produced. I find Kathleen Reid spent at least $25,000 on materials for the construction of the apartment. As will be seen, valuable labour was invested as a gift to her. So were her kitchen cupboards.

[16] By all accounts, the extended family enjoyed a good life. The homes of Michael Reid, Barbara Reid, and Kathleen Reid figured largely in their lifestyle.

[17] Michael Reid died suddenly in 2010. Title to the Ellershouse property passed to Brenda Reid as joint tenant.

[18] The relationship between Kathleen Reid and Brenda Reid deteriorated after Kathleen Reid let her grandson, Ted Reid, and her great-grandson, Nathanial Reid, move in in with her. That happened in 2014. They brought belongings and a dog. Brenda Reid says this was "without my consent and against my wishes".

[19] Brenda Reid resented the new noisiness. She resented the new occupants using of her part of the dwelling including her study, washer, and dryer. She resented the increase in expenses for electricity and heating.

[20] Ted, his son, and two stepchildren had moved in for a few months when Michael was alive. He made his anger and disapproval clear. The grandson should get a job, and the great-grandson should be in school. However, while he blocked access to a swimming pool on the property and imposed other restrictions, he did not assert a right of eviction.

[21] On January 16, 2016 Brenda Reid went to her mother-in-law's apartment, and delivered a letter that said:

> I am writing to let you know that I am planning to place the house for sale next year. Since Michael's passing, I have found it to be too much for me to handle on my own. I anticipate that I will list it for sale on or about January 31, 2017. I wanted to give you as much notice as possible so that you can arrange alternate living accommodations by December 15, 2016.

The next week, Brenda Reid filled out an application for public housing in the name of Kathleen Reid alone. Kathleen Reid never signed it. She wished to be with her grandson and great-grandson.

[22] Kathleen Reid claims she said she would move upon being compensated for her investment in the Ellershouse property and for various household services she claims to have performed for Brenda Reid and, when he was alive, Michael Reid.

[23] Brenda Reid denies Kathleen Reid made any offer to move or demanded compensation or otherwise. She says she is out a large sum of money for Kathleen Reid's proportionate share of utilities, municipal taxes, and other expenses attributable to occupancy of the apartment.

[24] It was clear Kathleen Reid, Ted Reid, and Nathaniel Reid were not moving out in December 2016 as demanded. After a series of tactics by Brenda Reid, the three moved out on May 23, 2017.

[25] Kathleen Reid's claim was heard almost two years later. The Ellershouse property has not been sold.

What Were the Terms of the Parole Agreement?

[26] Brenda Reid is a certified general accountant. She prepared a spreadsheet showing details of expenses she attributes to the apartment over the seventeen years Kathleen Reid lived there.

[27] In cross-examination, Brenda Reid agreed she had not expected her mother-in-law to make payments. Her affidavit evidence included "…Michael and I agreed that Kathleen could build the in-law suite and that we would pay Kathleen's bills and utilities while she lived there because she was incurring the

expenses of having the in-law suite built." It was put to her in cross-examination that there had been no discussion of a time frame. She responded, "It would be until we could not support Mom anymore."

[28] Brenda Reid was not a party to any discussions with Kathleen Reid about the terms of her occupancy. The evidence does not support the proposition that she could stay only until Brenda Reid decided she could not cover common expenses. (Kathleen Reid supported herself otherwise.)

[29] When she gave notice that her mother-in-law was being evicted, Brenda Reid gave as her reason, "I am planning to place the house for sale next year…I have found it to be too much for me to handle on my own." The evidence does not support this reason. Brenda Reid did not choose to prove her income and expenses. Her home was never marketed.

[30] While Brenda Reid became focused on some expenses that had always been apparent, including when the addition was being discussed with Kathleen Reid, the evidence shows expectations that were far beyond common expenses. I reject the assertion that the term was to end when Brenda Reid decided she could no longer bear all the common expenses.

[31] I find that Michael Reid and, through him Brenda Reid, agreed with Kathleen Reid as follows:

1. Kathleen Reid could construct an addition on the home of Michael Reid and Brenda Reid;
2. Kathleen Reid would pay for the addition;
3. Michael and Brenda Reid would charge Kathleen Reid no rent, and they would bear the expense of the common utilities.
4. Kathleen Reid would live in the addition.

[32] For how long? What term of years was agreed? This is left to inference, but three lines of inquiry make the conclusion obvious.

[33] First, Kathleen Reid came down from Tatamagouche where she had no rent or mortgage payments to worry about so long as she chose.

[34] Second, as Brenda Reid's own evidence shows, she and her husband intended to collect no rent and they intended to pay the common expenses.

[35] Thirdly, there was a dynamic at play involving not only Michael's generosity, but that of each of Kathleen Reid's sons. While Kathleen Reid paid for the materials needed to build the addition on the Ellershouse property, and her son and daughter-in-law supplied the land, her other sons devoted the labour either themselves or by getting friends and family to pitch in.

[36] The materials were purchased in the mutual expectation that the apartment would be Kathleen Reid's for as long as she wanted. Her sons made gifts to her of their labour and further materials in the expectation she could live there as long as she wished.

[37] Brenda Reid's current focus on common expenses is out of touch with 1999 and 2000 when the terms were formulated. If Kathleen Reid became incapacitated or died early in the term, the terms I have described would have favoured Michael and Brenda Reid financially.

[38] I find the agreement included a term of years ending when Kathleen Reid moved out or died. Otherwise, she was entitled to live in "her" apartment rent-free for as long as she wished. It was to be hers and, as such, she did not need consent to accept visitors or roommates, especially her own family.

[39] The terms of the unenforceable parole agreement define, for this case, "the legitimate expectation of the parties" in the sense of *Peter v. Beblow*, [1993] 1 S.C.R. 980 at para. 10.

Unjust Enrichment

[40] There are three components to an unjust enrichment claim:

1. Enrichment
2. Corresponding deprivation
3. Without a juristic reason.

[41] Justice Cromwell's review of the law in *Kerr v. Baranow*, 2011 SCC 10 was discussed in detail by Associate Chief Justice (now Chief Justice) Smith in *Murphy v. Colbourne*, 2016 NSSC 2011 at para. 26 to 30.

[42] Brenda Reid denies that Kathleen Reid has made out any component of unjust enrichment.

[43] The agreement is unenforceable because of the *Statute of Frauds*. Long ago the courts of this province recognized that the *Statute of Frauds* does not stand in the way of restitution of benefits conferred under an agreement made unenforceable by that statute: *Re: Slaughenwhite Estate* (1905), 38 N.S.R. 47 (S.C. *in banco*).

[44] The principle was entrenched, and fully situated within the law of restitution, in *Deglman v. Guaranty Trust Co. of Canada*, [1954] S.C.R. 725. See also the decision of Chief Justice Ilsley in *Goodwin v. Goodwin* (1958), 13 D.L.R. (2d) 365 (N.S.S.C.) and that of Justice Hallett in *Carvery v. Fletcher*, [1987] N.S.J. 6.

[45] The law of restitution protects against an unjust enrichment received and conferred under a contract that is unenforceable because of the *Statute of Frauds*.

Enrichment

[46] Brenda Reid denies that she received any benefit from Kathleen Reid when the addition to the Ellershouse property was constructed. She relies on a passage from Peter D. Maddaugh & John D. McCamus, *The Law of Restitution* (Toronto Thomson Reuters, Looseleaf 2018) para. 3:200.10. The passage gives examples of benefits that may prove the first component.

[47] The only example of interest in this case is "the conferral has created an asset in the defendant's hands which has…a value that is readily realizable by the defendant." On that subject, Brenda Reid puts her case this way:

> There is no evidence before this Court that the In-Law Suite has increased the market value of the Property or will allow the Property to attract a higher sale price than it otherwise would have, resulting in enrichment. Any assertions by the Applicant in this regard are speculative, and unproven. If anything, it may very well be the case that the In-Law Suite has made Brenda's Property more difficult to sell on the open market, as most purchasers of single-family homes likely have no use or need for an In-Law Suite, and may look elsewhere for Properties that better suit their needs.

[48] We must not unnecessarily insist on expert evidence. We are expected to use our common sense when facts are established, including facts about the value of a residential property. Proof that the living area of a residence was substantially

increased by labour and material of good quality may be proof of a significant increase in value.

[49] The discussion of enrichment should end there. Questions of mutual benefits go to defences, remedy, and a narrow aspect of juristic reason in unjust enrichment cases: *Kerr*, para. 104 and para. 109 to 116. However, Brenda Reid's argument about enrichment goes further, "any increase in the value of the Property has been offset by the expenses Brenda incurred…". Five categories of expenses are asserted.

[50] Although the short answer to each of the five is that mutual benefits are irrelevant to enrichment, I will provide my findings and return to them later.

[51] First, "replacement of the roof over the In-Law suite, which had deteriorated and needed to be replaced in 2014". According to Brenda Reid's affidavit both roofs were replaced. She offers heresy from unnamed contractors that both roofs needed new shingles. I accept the testimony of Ira Reid to the effect that the shingles on the addition roof were fine.

[52] Second, "the cost of a new electrical fuse box, breaker box and wire to support the addition of the In-Law Suite". According to Brenda Reid's own affidavit this was part of the generous contributions to construction of the addition by Kathleen Reid's family. In the case of this cost, Michael Reid.

[53] Third, "payment of the increased property taxes associated with the In-Law Suite". One wonders why the assessment was allowed to increase if the addition did not contribute significant value. Also, this was contemplated by the parties when they made their unenforceable agreement.

[54] Fourth, "payment of the utilities used by Kathleen and paid for by Brenda over the course of 17 years and other expenses associated with Kathleen's occupancy". These were contemplated by the parties when they made their unenforceable agreement. The payments were within Kathleen Reid's reasonable expectations.

[55] Last, "the cost of repairing the In-Law Suite to remedy Building Code violations after Kathleen's departure so as to make the Property sellable on the market". This demands close examination.

[56] In her affidavit, Brenda Reid swears "I was informed by a senior building inspector official that the In-Law Suite violated the Building Code and that I

would be required to make alternations to the In-Law Suite." One would think there was something wrong with the construction.

[57] However, Brenda Reid exhibits a copy of an email from Tim Leslie, Senior Building Official for West Hants. He wrote "The building permit 214WH99 for the addition was for adding livingroom & laundry room to a single unit dwelling. There is nothing in the file approving the addition of an apartment."

[58] The apartment is clearly depicted on Michael Reid's application. The error, whoever made it, was easily corrected. Alterations cost $1,828. As Brenda Reid swore when detailing the generous contributions of Kathleen Reid's sons, "Michael…took care of the building permit application".

[59] I find that Kathleen Reid added significantly to the value of the Ellershouse property. I also find that the five categories of expenses alleged by Brenda Reid do not offset that value in any way. The finding of a significant increase in value is based on my observation about a one third increase in the size of the dwelling, the sums invested by Kathleen Reid towards the addition, the labour and other contributions made generously by her sons, and the apparent quality of the construction.

Corresponding Deprivation

[60] *Kerr* speaks of the second element this way at para. 39:

> Turning to the second element – a *corresponding* deprivation – the plaintiff's loss is material only if the defendant has gained a benefit or been enriched (*Peel*, at pp. 789-90). That is why the second requirement obligates the plaintiff to establish not simply that the defendant has been enriched, but also that the enrichment corresponds to a deprivation which the plaintiff has suffered (*Pettkus*, at p. 852; *Rathwell*, at p. 455).

[61] Brenda Reid relies on *Goddard v. Hambleton*, 2005 NSCA 124. The parties were common law spouses. They, and Mr. Goddard's son, lived together in Ms. Hambleton's home from 1994 to 1997. Mr. Goddard gave Ms. Hambleton $11,400 towards the purchase price of Ms. Hambleton's home, he devoted about $5,000 worth of his labour for renovations, and he paid for a share of monthly expenses. Mortgage payments were included in the shared monthly expenses.

[62] The trial judge awarded $16,400 to Mr. Goddard for unjust enrichment. He appealed. He wanted more for whatever portion of his monthly contribution went to mortgage payments. Note that the award for the financial contribution and for labour was not under appeal.

[63] Justice Fichaud dismissed the appeal. His reasons had nothing to do with the contributions to the purchase price or the renovations. Mr. Goddard had not proven deprivation in respect of his monthly contributions to mortgage payment. "It may be that the rent which Mr. Goddard saved would exceed the amount of his contribution to the mortgage payments": para. 11.

[64] *Goddard v. Hambleton* does not assist Brenda Reid's defence. Kathleen Reid is out her financial contribution and her sons' labour, the entire cost of the addition.

[65] Justice Cromwell said at para. 34 of *Kerr*, "while the underlying principles of the law of unjust enrichment are the same for all cases, the courts must apply those common principles in ways that respond to the particular context in which they are to operate." The particular context of this case includes Kathleen Reid's investment, her son's gifts of labour for her, the gift of cupboards by Ira Reid, and the reasonable expectation that the apartment would be hers for as long as she wanted.

[66] The deprivation suffered by Kathleen Reid that corresponds with the benefit obtained by Brenda Reid can be seen in either of two ways. One is the money invested, and gifts made, to construct the apartment on the Ellershouse property. The other is the expectation of having her own apartment for her, her visitors, and her roommates to peacefully enjoy.

Juristic Reason

[67] The third element of unjust enrichment goes back to *Murdoch v. Murdoch*, [1975] 1 S.C.R. 423 and *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436, but it was developed through *Pettkus v. Becker*, [1980] 2 S.C.R. 834, *Peter v. Beblow*, [1993] 1 S.C.R. 980, and *Garland v. Consumers' Gas Co.* 2004 SCC 25. Justice Cromwell describes the *Garland* formulation at para. 43 of *Kerr* cited above. See also, *Murphy v. Colbourne* at para. 29.

[68] Justice Cromwell describes the *Garland* "two-step analysis for the absence of juristic reason.": para. 43. First, established categories of juristic reasons are considered to see if the case at hand falls within one of those. The plaintiff bears the onus, as usual.

[69] Once the plaintiff shows that no established category applies, the defendant may prove a reason why the enrichment should be retained. This "permits consideration of the reasonable expectations of the parties and public policy considerations to assess whether recovery should be denied": also, para. 43.

[70] At para. 44 of *Garland*, Justice Iacobucci wrote:

> 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)*.

See also *Kerr* at para. 43 and *Murphy* at para. 29.

[71] Brenda Reid submits that "other valid…equitable obligations" applies. She relies on *Murfitt v. Jones* 2004 B.C.J. 1688.

[72] A newly married couple moved in with her father, his father-in-law. Eventually, they had two children and moved to a mobile home on the father's property. The couple lived there for nineteen years. Then they separated. The judge found that the husband made improvements to the farm operated on his father-in-law's property, and they amounted to an enrichment of the father-in-law. The son-in-law suffered a deprivation through his labours. However, the judge found a first stage juristic reason.

[73] Justice Melnick wrote at para. 28 that the couple "had an equitable obligation to do their share to maintain the Property if they were to reap the benefits of living there". The judge concluded at para. 34, "I find there is a juristic reason for Mr. Jones to retain the benefit of Mr. Murfitt's contributions."

[74] Justice Melnick relied on three decisions to support his views. However, they were all about enrichment and deprivation and not about juristic reason.

[75] I am not aware of an equitable obligation to make contributions, or to pay rent, that arises automatically on occupancy. Members of an extended family

often live with other family members without paying rent. Respectfully, *Murfitt v. Jones* does not identify any "other valid…equitable obligations".

[76] Brenda Reid does not have a first stage juristic reason for keeping Kathleen Reid's financial contribution or the contributions made by her sons.

[77] Brenda Reid submits she has established a juristic reason at the second stage. She says that the reasonable expectations of the parties were "that a time would come when Michael would no longer support Kathleen…when that time came, she would go to a nursing home". I have found otherwise. See para. 31 to 39.

[78] Brenda Reid presses her submission, saying "the contemplated time for Kathleen to go to a nursing home had finally come when she reached the age of 82". To the contrary, the unenforceable agreement defined the reasonable expectations of the parties. Kathleen Reid could stay in the apartment until she became infirm or died. Whether that would happen in a few years or a few decades was not addressed.

Equitable Set Off

[79] Brenda Reid claims equitable set off against Kathleen Reid. She calculates the amounts as follows:

Value of Benefit conferred to Brenda	**Value of Benefit conferred to Kathleen**
Total Expenditure by Kathleen on construction of In-Law Suite: $**24,757.77** **TOTAL: $24,757.77**	Rental savings to Kathleen calculated at $500 per month over 17 years ($500x12x17): **$102,000** Utilities savings to Kathleen calculated at $250 per month over 17 years ($250x12x17): **$51,000.00** **TOTAL: $153,000.00**
Kathleen's claim less set-off for value of benefit received by Kathleen	
$24,757.77 - $153,000.00 = $**128,242.23 (negative net balance)**	

[80] Note, Brenda Reid allows nothing for the use of Kathleen Reid's money. She allows nothing for inflation. She allows nothing for the substantial contributions Kathleen Reid's sons made for her benefit.

[81] Kathleen Reid moved from a rent-free home in Tatamagouche to a rent-free apartment in Ellershouse. There was no obligation to pay rent. Nothing to set-off. On Brenda Reid's own evidence, the utilities were in exchange for the contributions.

[82] We shall discuss a similar issue in connection with Kathleen Reid's remedy.

Unjust Enrichment of Kathleen Reid

[83] Brenda Reid counter-claims in unjust enrichment for herself. She returns to common expenses.

[84] The first stage juristic reason that justifies Kathleen Reid having made no contribution to common expenses is contract, albeit unenforceable. Brenda Reid's own evidence justified her bearing the common expenses on the ground that Kathleen Reid paid for the addition.

[85] The evidence precludes a second stage juristic reason. Reasonable expectations are defined by the unenforceable agreement, including payment of common expenses.

Remedy

[86] Return of an investment is often the starting point for a damages award to compensate for unjust enrichment. The same goes for value of services. In this case, I would combine the two to recognize the services rendered on Kathleen Reid's behalf exclusively. In the right circumstance, there would be an offset for mutual benefits. See *Kerr* at para. 47 to 49 and 55 to 99, 100, and 124.

[87] It is now clear that investment and services may be more justly compensated on the basis of appreciated wealth, or "value survived": *Kerr*, para. 85, 100, and 158.

[88] Neither approach does justice to Kathleen Reid's claim. She relied to her detriment on the promise she could live, free of rent and free of mortgage payments, closer to her family for as long as she wanted. There is a strong connection between this promise and what Kathleen Reid gave up. She gave up her rent-free and mortgage payment-free home in Tatamagouche and used most of the proceeds for the materials necessary to build the Ellershouse apartment.

[89] There is also a strong connection between the promise and what Kathleen Reid lost when Brenda Reid forced her out of the apartment. She lives in Lower Sackville and pays rent.

[90] But for one fact, this would be a case for a proprietary remedy as discussed at para. 50 to 53 of *Kerr*. I would order a constructive trust for a life tenancy in the Ellershouse property. The fact that stands in the way is that Brenda Reid forced Kathleen Reid into a lease of an apartment in Lower Sackville.

[91] Justice Cromwell writes about the flexibility of equitable remedies and the mirroring of that flexibility for unjust enrichment at para. 71 to 73 of *Kerr*. He wrote at para. 158, "I conclude that the trial judge's approach [similar to "value survived"] was reasonable in the circumstances, but I stress that I do not hold out her approach as necessarily being a template for future cases." And, "…there may be many ways in which an award may be quantified reasonably."

[92] Maddaugh & McCamus introduce their discussion of equitable remedies for unjust enrichment (5:100) by saying:

> While relief at common law has tended to be fairly narrowly circumscribed and often limited to a monetary award, equity has supplemented this limited range of redress with a rather diverse and elastic set of remedies of its own.

They discuss equitable compensation at 5:600.

[93] For Kathleen Reid, Mr. Gray submits that her compensation for unjust enrichment should be the rent she pays, extended over a period of years. I agree. In the circumstances of this case, that approximates the value of a constructive trust for a life estate in the Ellershouse property. As such, it compensates for the tangible interest that has been unjustly taken from Kathleen Reid, living rent-free

and mortgage payment-free in old age. (The intangible losses that a constructive trust would restore are difficult to quantify.)

[94] I find that a five-year term is a fair approximation in the absence of actuarial proof of life expectancy or medical proof of likely needs for assisted living. Kathleen Reid's actual rent of $1,070 per month spread over five years is $64,200. We are nearly halfway through the term, so pre-judgement interest can balance with present valuing.

Trespass

[95] Brenda Reid refers to the *Statute of Frauds* and says that Kathleen Reid was a trespasser in the apartment after Brenda Reid told her to leave. However, I would have ordered a constructive trust had Brenda Reid's tactics not made that impractical.

Punitive Damages

[96] As I said, Kathleen Reid did not surrender the apartment in December, 2016 as Brenda Reid demanded. Brenda Reid's tactics forced Kathleen Reid, her grandson, and her great-grandson to move out on May 23, 2017.

[97] Early in February 2017, Brenda Reid caused the police to serve a *Protection of Property Act* notice on Kathleen Reid. It said Kathleen Reid was prohibited from occupying the Ellershouse apartment and that she was subject to arrest and detention. The police interviewed Kathleen Reid and they determined not to arrest her.

[98] Next, Brenda Reid changed the locks, intending to make a woman in her eighties homeless in the dead of winter. Nicholas Reid was able to open the door from the inside. After that, someone always stayed at home.

[99] Still in February 2017, Brenda Reid shut off the water to the apartment. Kathleen Reid had to melt snow for utilities and buy bottled water for consumption. She also had to endure the discomforts of not having enough water for cooking, cleaning, bathing, and other needs.

[100] Still during the dead of winter, Brenda Reid threatened to shut off the electricity for the apartment. Kathleen Reid's lawyer advised Brenda Reid's lawyer that his client's actions were illegal and abusive and suggested Kathleen Reid move out "while the dispute between them is resolved".

[101] On May 12, 2017, the horrific risks of freezing cold having just passed, Brenda Reid shut the power off. Kathleen Reid endured her locked apartment without running water or electricity for ten days until she, her grandson, and her great-grandson secured a place in an apartment building in Lower Sackville.

[102] Kathleen Reid refers to *Industrial Alliance Insurance and Financial Services Inc. v. Brine,* 2015 NSCA 104, citing *Whiten v. Pilot Insurance Co.,* 2002 SCC 18:

> Justice Binnie for the majority (¶ 43) identified retribution, deterrence and denunciation as the justification for such an award. He said the award should be reasonably proportionate to the blameworthiness of the defendant, the plaintiff's vulnerability, the harm or potential harm directed specifically at the plaintiff and the need for deterrence. The judge should take into account other sanctions to which the defendant is subject, and the advantages gained by the Defendant's misconduct.

[103] Brenda Reid emphasizes "are restricted" in this passage from *Honda Canada Inc. v. Keays,* 2008 SCC 39 at para. 62:

> Damages for conduct in the manner of dismissal are compensatory; punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own.

[104] Brenda Reid submits the following points in her favour:

- The Property was, legally, Brenda's and Brenda's alone, and she had a legal right to exclusive possession of her own Property. Kathleen did not have any legal rights or legal interest in the Property, nor any lawful justification to refuse to leave the Property after being given both oral and written notice that she not longer had Brenda's consent to be on the Property;
- Brenda endured years of Ted, Nathaniel, and their dog living on her Property without her permission or consent;
- Brenda was forced to pay for the utilities used by Ted and Nathaniel for 3 years against her will;

- Kathleen refused to have Ted and Nathaniel to leave the Property despite Brenda making it clear to her that she did not want them living on her Property;
- Brenda reached a point where the repairs, upkeep and maintenance of the Property were becoming too much for her to deal with on her own, and wished to sell the Property;
- Brenda gave Kathleen **eleven months** of written notice giving her from January of 2016 to December of 2016 to find alternative living arrangements;
- Brenda then attempted to assist Kathleen by filling out a form for low income housing for seniors and providing it to her;
- Kathleen was essentially given **the entire year** of 2016 to arrange for new accommodations, but did not do so;
- Kathleen's failure to move out by the requested date of December 15, 2016 **was not because she was unable to do so, but rather because she simply did not want to;**
- When Kathleen refused to move out after being given 11 months of notice, Brenda then arranged a family meeting to attempt to resolve the issue on mutually agreeable terms;
- At the family meeting, Brenda invited Kathleen to provide her input on anything that she needed in terms of assistance and asked for her input on what could be done to assist her with moving;
- Brenda then offered Kathleen a gift of financial assistance in the amount of $5,000 to assist here with moving expense and her first few months of rent to encourage her to move out in a timely manner and ensure she did not face any hardship with her move;
- Kathleen then rejected all of the olive branches extended to her by Brenda and made it clear to Brenda that she had no intention of ever leaving the In-Law Suite until she died, thereby wilfully disregarding Brenda's *prima facie* legal right to exclusive possession of her own Property;
- Brenda then extended the 11-month deadline for Kathleen to move out by a further two months;
- When the second extended deadline was ignored by Kathleen, Brenda had Kathleen served with a PPA Notice advising her that she was prohibited form entering the Property under the *Protection of Property Act*;
- When the PPA Notice was ignored by Kathleen, Brenda unsuccessfully attempted to have the police enforce the *Protection of Property Act*;

- Finally, faced with a willful disregard by the Applicant of her *prima facie* legal right to exclusive possession of her own Property, Brenda was left with no choice but to assert her legal rights to her own Property and had the utilities to the In-Law Suite disconnected after giving notice to the Applicant.

[105] These points are not always accurate, but the obvious premise is clear from "legal" and "legally" in "The Property, was, legally, Brenda's and Brenda's alone"; "she had a legal right to exclusive possession"; "Kathleen did not have any legal rights"; "wilfully disregarding Brenda's *prima facie* legal right to exclusive possession," and; "a willful disregard by the Applicant of her *prima facie* legal right to exclusive possession". The premise is summed up this way for Brenda Reid:

> The Respondent submits that it makes no sense that property owners ought to be punished for – and deterred from – exercising their sacrosanct right to exclusive possession of their own property by taking reasonable, incremental, and necessary steps to remove unlawful trespassers. Accordingly, the Respondent submits that this is not and appropriate case to give any serious consideration to the Applicant's claim for punitive damages.

[106] The problem with the premise is that Brenda Reid did not have a "sacrosanct right to exclusive possession". The problem with her conduct is she acted as if she did.

[107] Coming upon a woman in her eighties who has lived for almost two decades in an apartment she built on the home of close relatives, one does not exhaust inquiry into her rights just by a trip to the Registry of Deeds.

[108] Many lines of inquiry are suggested. Unjust enrichment remedial by constructive trust is just one of them.

[109] Ignoring Kathleen Reid's request of adjudication and employing high handed means to secure her eviction by self help are wrongful acts that are so malicious and outrageous that they deserve punishment.

[110] Kathleen Reid will have judgement for $10,000 in punitive damages. No prejudgement interest should be awarded.

Conclusion

[111] Kathleen Reid will have judgement against Brenda Reid for $74,200. The parties may deliver written submissions on costs to my office, if necessary.

J.