SUPREME COURT OF NOVA SCOTIA
Citation: *King v. Raftus*, 2023 NSSC 160

Date: 20230516
Docket: Halifax, No. 504034
Registry: Halifax

Between:

Brandon King

Applicant

v.

Andrew Raftus and Cynthia Raftus

Respondents

TRIAL DECISION

Judge:	The Honourable Justice John P. Bodurtha
Heard:	July 4 and 5, 2022, in Halifax, Nova Scotia
Final Written Submissions:	November 14, 2022
Oral Decision:	May 16, 2023
Written Decision:	May 19, 2023
Counsel:	Eugene Y.S. Tan, Counsel for the Applicant Brian Hebert, Counsel for the Respondents

By the Court (Orally):

Background

[1] The Applicant, Brandon King, seeks an order for repayment of monies on the basis of unjust enrichment. The monies were provided to the Respondents, Andrew Raftus and Cynthia Raftus to renovate an In-Law Suite, which would have been the Applicant's residence for the rest of his life. He also seeks an order for various other damages, such as general, special, and punitive.

Facts

[2] The parties agreed to the following facts:

(a) Brandon King (hereinafter "Brandon") had lived at 38 Leesboro Trail, Thorndale, Ontario.

(b) He retired at the conclusion of his employment as a project manager.

(c) Hi [*sic*] wife passed away in August 2018.

(d) The Respondents, Cynthia and Andrew Raftus (hereinafter "Cynthia" and/or "Andrew") attended the funeral.

(e) All three parties at some point discussed renovating a workshop on the property owned by Cynthia and Andrew into an In-Law Suite for Brandon;

(f) Prior to these plans, Andrew had intended to upgrade his workshop, but was prepared in [*sic*] abandon such plans in favour of the In-Law Suite.

(g) After considering some other properties with Cynthia's help, Brandon decided to accept the offer of the renovation in January 2019.

(h) Brandon decided to relocate to Nova Scotia and he would sell his home in Ontario.

(i) Brandon was to pay for the renovation of the workshop into an In-Law Suite.

(j) Andrew, a contractor by trade, would supply his own labour and coordinate other trades without cost to Brandon.

(k) Once completed, Brandon would have the option of living in the In-Law Suite for the rest of his life if he so chose.

(l) Brandon would be responsible for maintaining the interior.

(m) Brandon was to have no title in Cynthia and Andrew's property.

(n) Andrew began work on the In-Law Suite in February 2019.

(o) After some discussion, a budget of approximately $67,000.00 was agreed upon by Brandon and Andrew. Andrew's initial estimate was of $78,000.00, while Brandon did not wish to spend more than $50,000.00.

(p) There is no evidence as to whether any party considered the budget binding.

(q) Brandon listed his home at some point prior to July 2019.

(r) In April 2019, Brandon had purchased two vehicles: a new Chevrolet Corvette for $142,388.23; and a Chevrolet pickup truck for just under $60,000.

(s) Brandon initially sent money to Cynthia for the renovations via e-transfer and later arranged for a second Master Card to be issued to Cynthia which could be used to purchase items for the renovation.

(t) Andrew advised Brandon of the status of the renovations from time to time via email / Facebook Messenger.

(u) At some point prior to Brandon moving to Nova Scotia, he expressed concern over his status should either Cynthia or Andrew die, should they divorce or should they choose to sell the property. There were some discussions regarding giving the property to Brandon as a bequest in Cynthia and Andrew's wills.

(v) No formal agreement was executed.

(w) Cynthia and Andrew instructed their lawyer to prepare the wills to reflect these intentions but the wills were not finalized.

(x) Brandon's house took some time to sell and this caused Brandon some concern regarding his finances.

(y) He did sell his Corvette for $74,000.00 on November 20, 2019.

(z) Brandon did seek some changes / additions to the renovations from time to time. These included, but were not limited to:

(i) A garage in October 2019;

(ii) A pellet stove in January 2020;

(aa) Brandon sold his house and was prepared to move to Nova Scotia in late 2019.

(bb) Cynthia flew to Ontario to assist Brandon with packing his belongings and traveling to Nova Scotia.

(cc) On the drive from Ontario, a traffic incident caused an angry exchange between Brandon and Cynthia.

(dd) Brandon and Cynthia arrived at Cynthia and Andrew's property on December 24, 2019.

(ee) There were some outstanding projects to complete in the In-Law Suite upon Brandon's arrival and Andrew notified Brandon of these projects.

(ff) In March 2020, two pieces of Brandon's mail were misplaced for a time. These had been take [*sic*] accidentally by another party living at Cynthia and Andrew's home at that time. These two pieces of mail were eventually found and given to Brandon. Cynthia apologized for this delay.

(gg) On two occasions in spring 2020, the sewage line to the In-Law Suite was not draining. Brandon advised Andrew and Andrew did attend to the matter quickly. However, the issue persisted over a period of time. However, the problem was resolved by pumping the sewage tank.

(hh) In mid-April 2020, Brandon reported noises in the attic. He reported the matter to Cynthia and Andrew, who had some ideas as to what was happening and did investigate the issue. The investigation took some time. There was at least one occasion in which Brandon had sought to enlist the help of a pest control expert, which he cancelled after learning that Cynthia and Andrew would prefer a humane approach. Eventually the issue was resolved when raccoons were trapped and released elsewhere some time in May 2020.

(ii) Almost all communication was eventually conducted between Brandon and Cynthia occurred via text message and/or Facebook messenger.

(jj) Brandon asked Cynthia to attend counselling with him.

(kk) In early July 2020, Andrew did some repairs to roof shingles on the In-Law Suite on an afternoon. Brandon was napping at that time although Andrew did not know that. Brandon expressed displeasure at that event, and Andrew apologized.

(ll) Brandon was seeing a counsellor for various [*sic*], and decided, for his own health, to leave without prior notice to Cynthia and Andrew.

(mm) After Brandon's departure, Cynthia and Andrew received a letter from Brandon's lawyer at that time, requesting compensation.

(nn) Brandon did extend some loans to Cynthia and Andrew from time to time to assist in the purchase of various items, which they would repay on a schedule.

(oo) There are two property appraisals submitted by Cynthia and Andrew which are entered via consent.

(pp) Brandon is unable to comment upon the hours expended by Andrew on the In-Law Suite.

[3] I have made the following additional findings of fact:

(qq) The Applicant, Brandon is the brother of the Respondent, Cynthia. The Respondent, Andrew, is the brother-in-law of Brandon, and Cynthia's spouse.

(rr) Brandon entered into an oral agreement with Cynthia and Andrew whereby Brandon would pay for all materials and labour (other than Andrew's labour) to renovate an outbuilding on Cynthia and Andrew's family property (the "Property") to create a detached self-contained in-law suite (the "In-Law Suite") where he could live as long as he wanted for the rest of his life.

(ss) The agreement was performed by Cynthia and Andrew and the In-Law Suite was renovated for Brandon. Brandon paid for materials and labour (except Andrew's). Brandon went into possession of the In-Law Suite on December 24, 2019.

(tt) After several months of living in the In-Law Suite, Brandon raised concerns such as sewage issues, animals in the attic, pounding on the

roof, undelivered mail, WETT inspection for the pellet stove, insurance and building permits.

(uu) Without discussing it with Cynthia or Andrew, Brandon moved out of the In-Law Suite at the end of August 2020. He instructed his lawyer to send written notification that he had vacated the In-Law Suite which Cynthia and Andrew received on September 2, 2020, following Brandon's departure. The letter demanded immediate payment of $138,000 (Andrew's First Affidavit, para. 94, Ex. FF) which was the amount Brandon asserted he had spent on the renovation.

(vv) Cynthia and Andrew did not have $138,000 to pay Brandon. Further, the renovation had not resulted in a large increase in the fair market value ("FMV") of the Property. The comparison of two appraisals done before and after the renovation, showed that the FMV of the Property was $92,000 after the renovation. Of this, $62,040 of the increase was attributable to inflation as housing prices had risen 22% during that same time. This meant $29,960 of the increase in FMV was attributable to the renovation of the In-Law Suite.

(ww) Brandon commenced this application on February 11, 2021 seeking $97,944 he claims to have spent on the renovation as well as general, punitive and special damages (Notice of Application, para. 51). He relies on the equitable principle of unjust enrichment.

(xx) Andrew supplied $42,455 worth of his time to the renovation.

(yy) Brandon agreed to pay all renovation costs other than Andrew's labour and would not be reimbursed for his expenditures on the renovation. Brandon would not have an interest in the property.

(zz) Brandon was fully aware of the agreement when he chose to leave the In-Law Suite. He did not tell Cynthia and Andrew that he was leaving. He left without notice.

(aaa) Brandon would be responsible for the upkeep and maintenance of the In-Law Suite.

Issues

[4] The issues are as follows:

1. Were the Respondents enriched?

2. What is the extent of the enrichment of the Respondents?
3. Is there a contract between the Applicant and the Respondents which provides a juristic reason for the enrichment?
4. Can the Respondents avail themselves of any defence? and
5. If there is an unjust enrichment what is the appropriate remedy?

Law
Unjust Enrichment

[5] In *Annapolis (County) v. Kings Transit Authority*, 2012 NSSC 401, Justice Warner summarized the analytic framework to be applied in an unjust enrichment claim, as established by the Supreme Court of Canada in the following paragraphs:

> 5 This decision applies the analytical framework set out in a series of Supreme Court decisions beginning in 1954 but, most notably, *Garland v. Consumers' Gas Co. (Garland)*, 2004 SCC 25 (S.C.C.), and *Kerr v. Baranow (Kerr)*, 2011 SCC 10 (S.C.C.).
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> …
>
> 48 Unjust enrichment is an equitable principle, a notion that equity will intervene to protect against an unfairness that is not recognized by the common law or legislation. Equity does not override legislation or the common law, but imputes an obligation on those who have legal rights and responsibilities to act fairly. Equity looks at the substance of conduct, not the form. Where the equities are equal, the law prevails. Those seeking equity, must act equitably.
>
> 49 Unjust enrichment specifically addresses when to reverse the unjust or unwarranted transfers of tangible economic benefits. Because unjust enrichment is an equitable principle, and not a rule of law, the circumstances in which it arises are unlimited. Intervention by a court is therefore discretionary, but that discretion cannot be exercised capriciously or arbitrarily.
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> 50 Intervention is dependent entirely upon the particular factual and social context out of which the claim arises (*Kerr*, para 34), and, where an established category justifying the benefit does not exist, on the legitimate expectations of the parties and moral or policy-based arguments (*Kerr*, para 44), and must be well grounded in the evidence (*Kerr*, para 88).
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> . . .
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> 57 *Garland* clearly recognizes that unjust enrichment is an evolving principle and not a clear and certain rule of law. If the applicant establishes that one of the established justifications for retention of a benefit does not apply on the factual matrix, the door is open, in the second part of the juristic reason analysis, to a

consideration of the reasonable expectations of parties (expanded upon in *Kerr*) and public policy considerations, that may yield new justification. At paragraph 46, the *Garland* court clearly identified, in step two of the juristic reason analysis, three possible outcomes: (1) establishment of a new category of juristic reason for the enrichment; (2) no new category of juristic reason but a juristic reason in the particular circumstances of a case; and (3) no juristic reason for the enrichment.…

…

60 The analytical framework described in *Garland*, beginning at para 28, and *Kerr*, beginning at para 31, is as follows.

> 1. Was the defendant enriched by the plaintiff? Enrichment connotes a tangible economic *benefit* conferred on the defendant. This analysis is devoid of moral or policy considerations. In *Kerr*, the Court clarified that the benefit may be positive or negative.
>
> 2. Was the plaintiff deprived? The *Garland* and *Kerr* courts do not analyze this step in any depth. Deprivation or detriment does not appear to have been in serious dispute in these cases. In *Garland*, the transfer of money was directly from the plaintiff to the defendant. In *Garland*, the Court described deprivation as involving a tangible, economic deprivation, devoid of moral or policy considerations. In *Kerr*, the Court clarified that the deprivation is a "corresponding" deprivation that may, in respect of a benefit to the Defendant, occur directly or indirectly.
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> 3. While the *Garland* Court described the issue in para 28 as: "Is there a juristic reason for the enrichment?", the analysis begins at para 38 and clearly frames the third question as whether there is "an absence of juristic reason" for the enrichment. The answer to the question may require a two-step analysis. As noted above, in response to academic and judicial commentary, the Court described the first step as requiring the deprived party to prove that none of the established justifications for the benefit apply. If it is successful, the evidential burden shifts to the beneficiary to establish a juristic reason for retention, either by establishing a new category of juristic reason, or alternatively, that in the particular circumstances of the case (without establishing a new category) the retention is justified. Justice Cromwell amplifies the juristic reason analysis at paras 40 to 46 in *Kerr*.
>
> 4. Can the Defendant avail itself of any defence? *Garland* effectively sets this up as a fourth question (para 28.2 and beginning at para 62). In *Garland* the defences advanced included the 'change of position' defence, and the 'regulated industry' or obedience-to-a-statute defence. In *Kerr* the defences included the 'mutual enrichments' defence.
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> 5. What remedy, if any, should the court order? One of the features of equity is that equitable remedies are discretionary. The Supreme Court has not suggested, either in *Garland* or *Kerr*, that unjust enrichment has lost

its equitable foundation such as to restrict the discretion of the Court in granting a fair remedy, or refusing any remedy.

61 While it would be strange to encounter a matrix in which a finding of unjust enrichment did not lead to a remedy, the nature of any remedy must flow logically from the specific matrix, and the determinations made as to the nature of the benefit, the nature of the deprivation, the absence of a juristic reason, and the defences.

[6] In *Reid v. Reid*, 2020 NSCA 32, starting at para. 23, the Court of Appeal had occasion recently to review the test for unjust enrichment in the context of an arrangement involving an in-law suite similar to that in the present case. The Court went on to discuss the analysis regarding a juristic reason:

23 Brenda Reid augments her first ground of appeal by arguing that even if there were an enrichment, there was a juristic reason which should have precluded any award in Kathleen Reid's favour.

24 *Garland v. Consumers' Gas Co.*, 2004 SCC 25 (S.C.C.) addresses the absence of juristic reason:

44 ... the proper approach to the juristic reason analysis is in two parts. **First, the plaintiff must show that no juristic reason from an established category exists to deny recovery.** ... 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.

[Emphasis in original]

25 Once a *prima facie* case has been established, the defendant can rebut it in certain circumstances. Referring again to *Garland*:

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.** 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.
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> [Emphasis in original]

Analysis

Issue 1: Were the Respondents Enriched?

[7] The Property was appraised two years before the renovation of the In-Law Suite and again shortly after Brandon vacated by the same appraiser, Shawna Best. The FMV was determined to be $282,000 on August 25, 2017 (Andrew's First Affidavit, para. 12, Ex. "B", p. 3 and 5) and $374,000 on October 26, 2020 (Andrew's First Affidavit, para. 95, Ex. "HH", p. 2) for an increase of $92,000.

[8] The appraiser was fully aware of the existence of the In-Law Suite when completing the October 26, 2020 appraisal. Included in the report are photos of the In-Law Suite (Andrew's First Affidavit, Ex. "HH", pp. 1, 2, 5, 17-19, 23).

[9] Between August 25, 2017 and October 26, 2020 sale prices in homes located in the general area of the subject Property increased in value by 22% (i.e., 6.95% per year) (Affidavit of Tia Howell, Exhibit "A", Turner Drake Expert Report, p. 2).

[10] Based on this Report $62,040 of the increase in FMV from $282,000 to $374,000 was attributable to inflation as housing prices rose by 22% during that time (Affidavit of Tia Howell, Exhibit "A", Turner Drake Expert Report, p. 2). Therefore, the actual increase as a result of the renovation is $29,960 (increase in price less increase based on inflation).

[11] Andrew spent 653 hours working on the renovation without any compensation. This included the time involved in complying with Brandon's many requests for changes and the extras. Andrew has identified the extras requested by Brandon: (a) instant hot water tank (Andrew's First Affidavit, para. 43-44); (b) kitchen island (Andrew's First Affidavit, para. 45); (c) blinds (Andrew's First Affidavit, para. 46); (d) pellet versus a wood stove (Andrew's First Affidavit, para. 47); (e) larger sink (Andrew's First Affidavit, para. 48); (f)

hard wired cabling for Internet and TV (Andrew's First Affidavit, para. 49); (g) dog run (Andrew's First Affidavit, para. 50); (h) larger bathtub (Andrew's First Affidavit, para. 51); and (i) garage (Andrew's First Affidavit, para. 52).

[12] Andrew's only source of income comes from his business as a contractor. Andrew's charge out rate for his time as a contractor was $65/hour. Accordingly, the value of Andrew's contribution to the renovation was $42,455 (Andrew's First Affidavit, para. 29).

[13] In this case, the uncontradicted expert evidence establishes that the fair market value ("FMV") of the Property only increased by $29,960 owing to the renovation. The remainder of the increase resulted from the general rise in real estate prices in the area.

[14] The valuation numbers regarding the expert reports were unchallenged. No rebuttal reports were filed. The Court is left with the finding that Andrew invested $42,455 worth of his time in the renovation and has an In-Law Suite that increased the FMV of the Property by $29,960.

[15] Brandon acknowledged Andrew's contributions added value to the renovation.

[16] When considering the issue as to whether there was an enrichment at all, the Court needs to look at the project as a whole. Brandon is seeking an equitable remedy. What is fair in the circumstances? As a result of Brandon vacating the In-Law Suite, Cynthia and Andrew are left with an empty In-Law Suite. The In-Law Suite has only added $29,960 in value to the Property and Andrew put in labour worth $42,455. In reviewing the renovation as a whole, I conclude that Cynthia and Andrew have not been enriched. They suffered a net loss on the renovation project. Brandon chose to leave. Cynthia and Andrew both testified that Brandon is welcome to return anytime.

[17] In reaching this conclusion, the Court considered the reasonableness of Brandon leaving because if he was forced out and prevented from returning that could affect my unjust enrichment analysis.

[18] Brandon testified to several reasons that led to his leaving the In-Law Suite. I shall address the main reasons.

Sewage Issues

[19] Brandon complained that Andrew did not address the sewage issue with reasonable dispatch (Brandon's First Affidavit, paras. 58-63) and this was one of the reasons he decided to leave (Brandon's First Affidavit, para. 84).

[20] The timelines for this issue can be ascertained from the Facebook messages between Andrew and Brandon. The messages show that Brandon notified Andrew on April 7, 2020 at 8:00 p.m. that the toilet wasn't draining (Andrew's First Affidavit, Ex. "X"). Andrew went over right away and did some troubleshooting. When he left on April 7, 2020 the toilet was working (Andrew's First Affidavit, para. 77).

[21] Five days later, on April 12, 2020 at 8:47 p.m., Brandon messaged Andrew again about another overflow (Andrew's First Affidavit, Ex. Y). By 1:35 p.m. the following day, April 13, 2020, a tanker was on site pumping the septic tank (Andrew's First Affidavit, Ex. "Z").

[22] This rectified the problem.

[23] Brandon testified that there were more emails and texts demonstrating that this sewage issue happened several times. However, none of those were before the Court. The evidence in the texts before the Court shows an initial complaint about 5-7 days before the issue was resolved. Andrew went over to address the problem immediately upon becoming aware of the issue. Brandon suggested that pumping the septic tank was the solution. Andrew went through his own troubleshooting process initially, which did not include pumping the septic tank. Andrew checked the toilet, tub, and sink and used a plunger to resolve the problem. He successfully fixed the toilet and it was operational when he left. Several days later, Andrew received an email from Brandon advising that the toilet had backed up again. Andrew responded right away and contacted a person to pump the septic tank. The person was on site the next day and pumped the septic tank out which rectified the problem. The texts before the Court indicate that communications between Brandon and Andrew were amicable.

[24] I find that Andrew took a reasonable method for resolving the problem and that the problem was addressed in a reasonable timeframe.

Animals in the Attic

[25] I accept the affidavit evidence of Andrew and Cynthia as well as Facebook messages, texts, and their testimony, which illustrate that Andrew acted reasonably to address this issue.

[26] The first message from Brandon advising of noises in the attic came on April 17, 2020 (Andrew's First Affidavit, para. 79, Exhibit "AA"). After work that day, Andrew immediately examined the In-Law Suite and noticed that a piece of soffit had blown off, creating an opening that could permit a small animal to enter. Andrew closed the opening that day (Andrew's First Affidavit, para. 79).

[27] Andrew later found out that this didn't solve the problem and Brandon was worried about squirrels chewing wires. Andrew reassured him that there were no wires in the attic (Andrew's First Affidavit, para. 80).

[28] Andrew spent the next couple of weeks attempting to solve the problem by opening the soffit to allow the squirrels to leave and closing it later hoping they had left (Andrew's First Affidavit, para. 82).

[29] Brandon called a pest control technician in early May. He advised Cynthia of this in a text on May 6, 2020 saying it was going to cost him $400 to have the squirrels removed. Cynthia suggested that he needed to be patient and allow her and Andrew to allow the squirrels to escape by opening and closing the soffit. She suggested that this is what life was like in the country and perhaps he would be better off living in the city (Brandon's Affidavit, Exhibit "C").

[30] As a result of this exchange, Brandon decided to cancel the pest control technician who was supposed to be there on May 7, 2020. Andrew learned about the cancellation from Brandon after he had already set things up for the service call, and he encouraged Brandon not to cancel as he could use help in removing the squirrels (Andrew's First Affidavit, para. 81, Exhibit "BB").

[31] Andrew testified that getting rid of pests is not an overnight process and that it would take time. He explained the process to Brandon. Brandon acknowledged his decision to cancel the exterminator when he realized Cynthia and Andrew preferred a more humane solution. However, Cynthia rebooked the exterminator to meet Brandon's demands and appease the situation.

[32] Once Cynthia rebooked the appointment, the pest control technician attended to the issue in a timely manner and solved the problem by trapping and

releasing a racoon (Andrew's First Affidavit, para. 83; Cynthia's Affidavit, paras. 34-35).

[33] I note that all of this happened during the declared state of emergency as a result of the COVID-19 pandemic.

[34] Again, I find this to be a reasonable solution by Andrew and the problem was addressed in a reasonable timeframe. There is nothing to suggest that Brandon should abandon the In-Law Suite as a result of this. The problem was effectively resolved five weeks later during a state of emergency. Whether the approach taken by the Respondents is different than the approach which Brandon may have taken, the issue was resolved in a reasonable and timely manner.

Missing Mail

[35] Brandon blames Cynthia for him not receiving his MSI application in the mail, causing him to be without his medication, thus leading to the withdrawals he describes (Brandon's Rebuttal Affidavit, para. 7). However, I do not see why Brandon could not have requested another application form when the first did not arrive within a couple of days. Further, Brandon could have obtained an MSI application form immediately upon his arrival in Nova Scotia.

Once the letter was found, it was delivered to Brandon. There was a two-week delay in him receiving the letter, at most. In the end, the letter did not resolve Brandon's ultimate concern of a referral to a pain therapy clinic. Brandon was aware that the waiting list for a family doctor in Nova Scotia was very long. Brandon knew his OHIP was expiring at some point and he waited for the last minute to renew. I do not find this a valid reason to abandon the In-Law Suite in support of Brandon's claim for unjust enrichment.

Building Permit and Insurance

[36] There is no evidence that the parties agreed there would be a building permit. Brandon states that he expected anyone doing a home renovation for more than $10,000 to have a building permit (Brandon's Affidavit, para. 12), while Andrew's evidence is that many homeowners do not take out a permit for renovation of an existing building (Andrew's First Affidavit, para. 24).

[37] Andrew and Cynthia provided evidence that Brandon was aware there would be no building permit at the outset (Andrew's First Affidavit, para. 25; Cynthia's

Affidavit, para. 36). I conclude that the decision not to apply for a permit was discussed, as it is something that would reasonably flow from the conversation between the parties with respect to keeping costs as low as possible.

[38] There is neither a suggestion nor any evidence that Cynthia and Andrew tried to conceal from Brandon the fact that there was no building permit.

[39] Regarding insurance, the evidence is that the In-Law Suite was insured through Andrew and Cynthia's homeowner's policy (Andrew's First Affidavit, para. 36). Brandon raised the issue of insurance one time and there were no subsequent discussions. He did not indicate that a lack of insurance or building permit was causing him to rethink living in the In-Law Suite (Cynthia's Affidavit, para. 36).

[40] Brandon testified that his insurance concern coincided with his decision to leave the In-Law Suite. He says he called an insurance broker and was advised that he would need a building permit. Cynthia had previously advised him that they did not have a building permit and the In-Law Suite was insured.

[41] I find that Brandon moved into the In-Law Suite unconcerned about the status of insurance or lack of building permit. I therefore find these to be invalid reasons for vacating the In-Law Suite without notice or any type of expression that Brandon was rethinking his living situation. These are both issues that should have been discussed with the Respondents further before abandoning the In-Law Suite.

Relationship Breakdown

[42] The relationship between Cynthia and Brandon started to breakdown on the drive back from Ontario. Brandon gave evidence of his driving being critiqued by Cynthia which he found distracting. The discussion was heated and, from Brandon's perspective, was damaging to the relationship.

[43] I find that, even if the driving experience caused the relationship to deteriorate, there is no evidence that the Respondents were harassing or provoking Brandon as a result of the relationship breakdown such that it affected his living arrangement or warranted him abandoning the In-Law Suite.

[44] The Court finds there was a breakdown of the relationship between Brandon and Cynthia based on their respective testimony. However, in terms of the living arrangement, Brandon was in the residence for approximately eight months after

the incident and they were clearly cordial in the way they dealt with issues that arose between them. The living arrangement was not affected by the breakdown in the relationship.

Incident on the Roof

[45] In July, 2020, Andrew went onto the roof of the In-Law Suite for several minutes in the middle of the afternoon to repair a loose shingle in advance of a storm. Andrew did not know that Brandon was napping at the time. Brandon's nap was interrupted by Andrew hammering on the roof without permission. This scared Brandon. A text exchange resulted from the incident with Brandon expressing his displeasure to Andrew (Andrew's First Affidavit at Tab CC). Andrew then apologized and, from that point forward, work was never undertaken around the In-Law Suite without notice to Brandon (Andrew's First Affidavit, para. 83).

WETT Inspection

Brandon was not pleased with the initial wood pellet stove. The final pellet stove was only installed after Brandon had moved in and at his request. Andrew replaced it with the one Brandon preferred. Andrew installed the stove but he is not WETT (Wood Energy Technology Transfer) certified which Brandon knew. Brandon complained that Andrew did not follow through in getting the pellet stove WETT inspected (Andrew's First Affidavit, para. 39). Changing the pellet stove was an extra that Andrew carried out at Brandon's request. Brandon would be responsible for paying for the WETT inspection in any event. Brandon continued to use the stove during his stay and eventually had it WETT inspected which resolved the issue.

Chattels

[46] I wish to address the chattels. The evidence was not complete on this issue but Brandon's counsel provided a list of the chattels to which Brandon believed he is entitled:

- washer
- dryer
- fridge

- stove
- dishwasher
- replacement pellet stove
- on-demand hot water heater
- dog runs
- couch

[47] After reviewing the list, I find that Brandon is entitled to have items which would be considered chattels, not fixtures. Therefore, the replacement pellet stove and on-demand hot water heater are being removed from the list unless these items are free stand-alone items that have not been installed in the In-Law Suite. I find that Brandon is entitled to the remaining items.

[48] Counsel are directed to arrange a time when Brandon can pick the items up from the In-Law Suite. The Respondents' counsel has indicated that Cynthia and Andrew are prepared to consent to an order for him to come and pick up those items considered chattels.

[49] Should the parties be in dispute regarding any other items or an issue arises with respect to the chattels, they are free to contact me through my assistant to arrange for a resolution of the issue.

Life Interest

[50] At the end of the hearing, the Applicant, Brandon, asserted an argument that he had a life interest in the In-Law Suite. Such an interest would give him the right to reside in the In-Law Suite for the rest of his life. This is the very right he walked away from in September 2020. Cynthia and Andrew have never denied Brandon's contractual right to live in the In-Law Suite for the rest of his life. They do deny that Brandon has a proprietary interest in the Property or the right to lease the In-Law Suite to a third party.

[51] A life interest is a proprietary interest in real property (as opposed to a license or a contractual right) and is conveyed by deed, by testamentary instrument, or by operation of law upon death. There was never a deed to Brandon. In fact, the parties agreed that Brandon would have no title to the Property (Agreed Statement of Facts, para. "M"; this decision, para. 13). Title did not pass to

Brandon by testamentary instrument or by operation of law - Cynthia and Andrew are both still alive.

[52] I conclude that it is not appropriate for the Court to address the arguments raised in the Applicant's Post-Hearing Brief regarding a life interest or a secret trust, because these questions were not pleaded, no legal arguments were put forward to address them, and the evidentiary record was focused on the only issue pleaded – unjust enrichment.

Conclusion

[53] The Respondents testified that Brandon can still continue to live in the In-Law Suite. I conclude that Brandon *still* can live in the In-Law Suite for the rest of his life. Brandon has the right to live there, but he chose to leave. I find there is no claim for unjust enrichment. Brandon gave notice that he was not going to live there anymore through his counsel. I find he abandoned the In-Law Suite and is not entitled to the equitable remedy of unjust enrichment because he has not proven that the Respondents were enriched.

[54] The Respondents did nothing to impact his living in the In-Law Suite that would result in his abandoning the In-Law Suite. Brandon agreed the in-person conversations with Andrew and Cynthia were amicable and non-confrontational. Brandon acknowledged all the issues had been resolved to his satisfaction by the time he decided to leave in June/July 2020 and certainly before the date he left at the end of August, 2020. All the issues raised at the hearing by Brandon's counsel regarding the In-Law Suite were resolved to his satisfaction.

[55] While Brandon did complain about various issues, at no time did he indicate to Andrew or Cynthia that any of the issues were of such severity that he was contemplating abandoning the In-Law Suite. Based on the evidence none of these issues would give him justification to abandon the In-Law Suite. Brandon made the decision to leave. He was not forced out by the Respondents.

[56] The application is dismissed with costs to the Respondents. I would ask counsel for the Respondents to prepare the order. If the parties are unable to agree to costs, I will accept written submissions within 30 days from today's date.