IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Bennett v. Pettipas, 2023 NSSC 198

Date: 20230626
Docket: SFHOTH 115625
Registry: Halifax

Between:

Cracean Bennett

Applicant

and

Paula Pettipas

Respondent

Judge: Associate Chief Justice Lawrence I. O'Neil

Heard: January 30, 31 and February 27, 2023 in Halifax, Nova Scotia

Counsel: Michael Owen, Counsel for Cracean Bennett
Douglas Livingstone, Counsel for Paula Pettipas

Overview

[1] Cracean Bennett and Paula Pettipas were previously in a relationship.

[2] Mr. Bennett says the parties were living in a common law relationship from which his claim for unjust enrichment originates. Mr. Bennett says that he provided Ms. Pettipas with money and services which benefited her and which caused him to suffer a corresponding deprivation.

[3] Mr. Bennett says there was no juristic reason for the benefit conferred on Ms. Pettipas. Mr. Bennett claims he is entitled to substantial relief. He claims he is entitled to one half the value of the properties held in Ms. Pettipas's name at the time of separation. He says that the parties were engaged in a joint family venture

or in the alternative he bases his claim on the law of quantum meruit.

[4] Ms. Pettipas denies the parties were living together in a common law relationship. She says that they had an “on” again, “off” again relationship which was not healthy. She denies Mr. Bennett’s unjust enrichment claim and his request for a joint venture finding or other monetary relief.

[5] In this decision I will answer the following questions:

1. What was the nature of the parties’ relationship?
2. Did Mr. Bennett prove his claim of unjust enrichment?
3. If so, did Mr. Bennett prove a joint family venture ?
4. If not, did Mr. Bennett prove that monetary relief is appropriate on a quantum meruit basis ?

[6] Prior to answering the questions which the parties raise I must direct myself to consider the relevant legal principles when making a general assessment of the credibility and reliability of the parties. I remind myself of the following.

[7] In *Salah v. Salah*, 2013 NSSC 308, Justice Beaton wrote:

> 23. It may be helpful to the parties to reference a very succinct but useful list of factors taken into account when balancing credibility as enumerated by Justice Forgeron in Baker-Warren v. Denault. That list is found at paragraph 19 of the decision, wherein Justice Forgeron wrote:
>
> > 19. With these caveats in mind, the following are some of the factors which were balanced when the Court assessed credibility:
> >
> > (a) What were the inconsistencies and weaknesses in the witness' evidence which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the documentary evidence and the testimony of other witnesses? Re Novak Estate, 2008 NSSC 283;
> >
> > (b) Did the witness have an interest in the outcome or was he or she personally connected to either party;
> >
> > (c) Did the witness have a motive to deceive;
> >
> > (d) Did the witness have the ability to observe the factual matters about which he or she testified;

(e) Did the witness have a sufficient power of recollection to provide the Court with an accurate account;

(f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would recognize ... pardon me, would find reasonable, given the particular place and conditions? Faryna v. Chorney 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354;

(g) Was there an internal consistency and logical flow to the evidence;

(h) Was the evidence provided in a candid and straightforward manner or was the witness evasive, strategic, hesitant, or biassed, and;

(i) Where appropriate, was the witness capable of making an admission against interest or was the witness self-serving?

[8] Turning to the evidence, I observe that Mr. Bennett did not report his true income to the government tax authorities. This must be balanced with his forthright answers as to his income when he testified. He did acknowledge his substance abuse problem as an issue at times in his relationship with Ms. Pettipas.

[9] Overall, I found he was candid – admitting to his shortcomings and furthermore, his claims about his relationship with Ms. Pettipas – both its ups and downs and their being a couple were corroborated by other witnesses. This will be commented upon later.

[10] In contrast, Ms. Pettipas' evidence about her relationship with Mr. Bennett was clearly not true. It reflected strategic considerations on her part. In addition, she did not make disclosure of her income for the years the parties were together. She called witnesses to give evidence she knew was untrue. Those decisions on her part diminish her credibility.

[11] She had a serious substance abuse problem during the relationship with Mr. Bennett and I am satisfied this impacted her reliability.

What was the nature of the parties' relationship?

[12] For the reasons that follow, I have found the parties lived together as a common-law couple for approximately nine (9) years commencing in 2009 or

2010. They were never a married couple or subject to a registered domestic partnership with one another.

[13] They lived together at various locations in the Halifax Regional Municipality. While together, a home was constructed at 11 Upanover Lane (Head of Chezzetcook Harbour), Halifax County in 2011. The title to the home was in Paula Pettipas' name solely. This home was sold in 2017. The parties then lived together in rental accommodations for a period while a second home was constructed at 5 Willowdale Drive (Musquodoboit Harbour) in 2017. This home was also registered solely in Ms. Pettipas' name.

[14] The parties separated in February 2019.

[15] The second home was sold after separation for approximately $600,000 and one-half (1/2) of the net proceeds from that sale is being held in trust pending this decision.

[16] As stated, Ms. Pettipas downplays, if not outright denies the parties had a common-law relationship. She describes the parties as having an 'on again', 'off again' relationship for approximately nine (9) years.

[17] Mr. Bennett offered a number of witnesses whose evidence is that the parties lived together before and while the first home at 11 Upanover was being constructed and at other locations after it was sold.

[18] He says they lived together at the following addresses at various times during their relationship:

> Exhibit 1 - Tab B, Paragraph 4:
>
> (i) 70 Post Office Road, Porters Lake
> (ii) 547 Conrad Settlement Road, Head of Chezzetcook
> (iii) 6 Belvedere Avenue, Dartmouth
> (iv) 11 Upanover Lane, Head of Chezzetcook
> (v) 6321 Highway #7, Head of Chezzetcook
> (vi) 5 Willowdale Drive, Musquodoboit Harbour

[19] Diana Crump (tab G of exhibit 1) testified the parties lived together at 6 Belvedere Drive while 11 Upanover was being constructed. She says they were her tenants. She also testified she was aware of their having lived at 6321

Highway #7, i.e. The Tin Roof Mercantile Café and 5 Willowdale Drive.

[20] Wanda Nadeau (tab H of exhibit 1) said she visited the parties when they were living as a couple at Post Office Road, Porters Lake and later at 11 Upanover Lane. She testified that at all times, they lived as a couple.

[21] Mr. Bennett's mother, Bonnie Trenchard (tab J of exhibit 1) testified the parties first lived as a couple at 70 Post Office Road, Porters Lake.

[22] I am satisfied, given the overwhelming evidence of the following, that the parties lived as a common-law couple and they were in fact living as a common-law couple as claimed by Mr. Bennett.

[23] Ms. Pettipas' evidence to the contrary is clearly a misrepresentation of her romantic relationship with Mr. Bennett and their living arrangement.

[24] I am satisfied, however, that the relationship had ups and downs.

[25] Mr. Bennett explained the turbulence of the parties' relationship on the alcohol abuse by Ms. Pettipas. The evidence establishes she had a serious substance abuse problem for which she sought treatment and which impaired her functioning.

[26] However, there is evidence that Mr. Bennett also had substance abuse issues, although of a far less extreme nature.

[27] This lifestyle was tolerated by each because of the challenges they faced in achieving stability in their separate lives.

[28] Mr. Bennett testified that Ms. Pettipas would become aggressive when drinking to extremes. She would often call police to complain about him and he says he would remove himself from the home when this occurred.

[29] I am satisfied the parties did have a somewhat tumultuous relationship as a consequence. There were, however, extended periods of productivity and calm as between them. For example, notwithstanding the foregoing, Mr. Bennett did operate a barbershop, established in the basement of the home he occupied with Ms. Pettipas at 11 Upanover Lane. He did this until government authorities withdrew permission for him to do so.

Did Mr. Bennett prove his claim of unjust enrichment?

[30] In order to succeed, Mr. Bennett must prove a benefit conferred on Ms. Pettipas; a corresponding detriment to him and a lack of juristic reason for the benefit.

Unjust Enrichment

[31] I had occasion to discuss the law of unjust enrichment in recent cases. In *Richardson v. Underwood*, 2018 NSSC 258 I summarized the guiding principles:

> **Unjust Enrichment**
>
> [27] In a recent decision, *Moore v. Sweet*, 2018 SCC 52, the Supreme Court restated the elements of a cause of action in unjust enrichment:
>
> > [41] The first two elements of the cause of action in unjust enrichment require an enrichment of the defendant and a corresponding deprivation of the plaintiff. These two elements are closely related; a straightforward economic approach is taken to both of them, with moral and policy considerations instead coming into play at the juristic reason stage of the analysis (Kerr, at para. 37; Garland, at para. 31). To establish that the defendant was enriched and the plaintiff correspondingly deprived, it must be shown that something of value — a "tangible benefit" — passed from the latter to the former (Kerr, at para. 38; Garland, at para. 31; Peel, at p. 790; Pacific National Investments Ltd. v. Victoria (City), 2004 SCC 75 (CanLII), [2004] 3 S.C.R. 575, at para. 15). This Court has described the enrichment and detriment elements as being "the same thing from different perspectives" (Professional Institute of the Public Service of Canada v. Canada (Attorney General), 2012 SCC 71 (CanLII), [2012] 3 S.C.R. 660 ("PIPSC"), at para. 151) and thus as being "essentially two sides of the same coin" (Peter, at p. 1012).
> >
> > . . . . .
> >
> > [43] In addition to an enrichment of the defendant, a plaintiff asserting an unjust enrichment claim must also establish that he or she suffered a corresponding deprivation. According to Professor McInnes, this element serves the purpose of identifying the plaintiff as the person with standing to seek restitution against an unjustly enriched defendant (M. McInnes, The Canadian Law of Unjust Enrichment and Restitution (2014), at p. 149; see also Peel, at pp. 789-90, and Kleinwort Benson Ltd. v. Birmingham City Council, [1997] Q.B. 380 (C.A.), at pp. 393 and 400). Even if a defendant's retention of a benefit can be said to be unjust, a plaintiff has no right to recover against that defendant if he or

> she suffered no loss at all, or suffered a loss wholly unrelated to the defendant's gain. Instead, the plaintiff must demonstrate that the loss he or she incurred corresponds to the defendant's gain, in the sense that there is some causal connection between the two (Pettkus, at p. 852). Put simply, the transaction that enriched the defendant must also have caused the plaintiff's impoverishment, such that the defendant can be said to have been enriched at the plaintiff's expense (P. D. Maddaugh and J. D. McCamus, The Law of Restitution (loose-leaf ed.), at p. 3-24). While the nature of the correspondence between such gain and loss may vary from case to case, this correspondence is what grounds the plaintiff's entitlement to restitution as against an unjustly enriched defendant. Professor McInnes explains that "the Canadian conception of a 'corresponding deprivation' rightly emphasizes the crucial connection between the defendant's gain and the plaintiff's loss" (The Canadian Law of Unjust Enrichment and Restitution, at p. 149).

[32] Mr. Bennett testified he contributed financially to the household expenses while he lived with Ms. Pettipas and further, that he was actively involved in the construction of both homes. He says the parties constructed these homes together.

[33] He listed the work he performed as including (exhibit 1, tab A, paragraph 11 and 15 and tab B, paragraphs 7, 8 and 9). I accept that he generally did much of this work although he exaggerated the extent of his contribution :

> Tab A, Paragraphs 11 & 15
>
> 11. That with respect to the first home we built, I did:
>
> - The groundwork
> - Help prepare plans
> - Select building materials
> - Assist in framing of the residence (my brother, Shane, was hired to assist and I paid him)
> - The taping and sanding of drywall
> - Paint the whole interior
> - The trim work
> - Assist with the flooring
> - Used my truck and fuel to pick up and transport building materials when needed
>
> 15. That in general, I contributed the following to 5 Willowdale Drive, Musquodoboit Harbour:
>
> - Purchased building materials

- Helped frame the home
- Helped with the installation of drywall, including taping and crack-filling of same
- Helped install the trim work and finish work
- Landscaping
- Cleaned up debris from the construction site

Tab B, Paragraphs 7, 8 & 9

7. That I took a month off from barbering to assist Shane in construction of 11 Upanover Lane. During that month I assisted in:

    - Framing the house, including installation of floor joists, sub-floors, framing exterior walls, sheathings, roof tresses and roof sheathings
    - Framing in interior walls and stairs
    - Installation of windows and exterior doors
    - The application of exterior siding, exterior trim, soffits and facia

8. That I took additional time off from my barbering business to do additional work which included, but not limited to:

    - Crack-filling and taping all interior drywall [note: I was a drywall installer for several years before starting the barbering business]
    - Crack-filling and taping all seams and corners, including sanding the joints and corners and applying second and third finish coats of drywall compound so as the walls, corners and all joints were ready for painting. I recall that approximately 11,000 square feet of drywall was installed and finished
    - Painting the interior drywall – walls and ceilings, which included a primer coat and final coats of paint
    - Applying all interior trim for windows and doors
    - Installing of all interior floors on two levels, including ceramic tile and hardwood flooring

9. That although building supply accounts were in Paula's name, I arranged and coordinated:

    - Various trades to attend the property
    - Picking up lumber, flooring, hardware, fixtures, fittings and other materials

[34] He says he took weeks away from his self-employment to assist in the construction and finishing of the homes – both on the inside and the outside. I accept that he did what he claimed to have done to assist in constructing both homes.

[35] Mr. Bennett's brother, Shane, was the contractor engaged to build both homes. He testified that the contract price charged by him was discounted because his brother and Ms. Pettipas were the customers and his brother was helping and his brother's help reduced his costs as the contractor. I accept this evidence.

[36] A number of witnesses offered by Mr. Bennett confirmed having observed Mr. Bennett working on both home construction sites and contributing to the construction of the homes.

[37] For example, Shane Bennett, the Applicant's brother and the contractor who built both homes testified as follows (tab E of exhibit 1):

> 8. That I was contracted to build a home for Paula and Cracean on Upanover Lane, Head of Chezzetcook, Nova Scotia.
>
> 9. That to save on the cost of the home, it was agreed that Cracean would provide labour at no cost to me in the construction of Paula's and Cracean's home.
>
> 10. That at the time Cracean had a barbering business but before he had the barbering business, Cracean was a drywaller – he was a crack-filler and taper in the drywall trade.
>
> 11. That during the construction of the home at Upanover Lane, Cracean did assist me in:
>
> - Putting in floor joists on both floors
> - Framing and erecting exterior walls
> - Positioning and placing roof trusses
> - Applying exterior wall sheathing and roof sheathing
> - Studding and framing interior walls and partitions
> - Putting in windows, inclusive of applying flashing
> - Applying exterior siding, soffits and facia
> - Interior work such as crack-filling and taping drywall seams
> - Laying the flooring, inclusive of ceramic tile
>
> 12. That Cracean was not paid by me, and his labour and time saved he and Paula a considerable amount of money in the construction of their home. I did not keep time sheets for Cracean as he was not being paid.
>
> 13. That Paula was well aware of the labour and help provided by Cracean to build their home.

[38] With respect to the construction of 5 Willowdale Drive, Shane Bennett testified (tab E of exhibit 1):

> 20. That when I started the construction of 5 Willowdale Drive and throughout the construction, Paula frequently visited the job site – it was clear to me that Paula and Cracean were living as husband and wife, given their interaction with each other.
>
> 21. That at 5 Willowdale Drive, Musquodoboit Harbour, as with 11 Upanover Lane, Cracean did provide labour at no cost to me and did assist me in:
>
> - Placing rafters
> - Framing and erecting exterior walls
> - Placing the roof trusses
> - Installing windows
> - Sheathing the exterior walls and roof
> - Framing interior walls and stairs
> - Placing exterior siding, soffits and facia
> - Installation of flooring
>
> 22. That given his background in the drywall trades, Cracean crack-filled and taped the drywall seams, inclusive of sanding and finish coats.
>
> 23. That Cracean's work and skill did save a considerable amount of money in the construction of 5 Willowdale Drive. As I was not paying Cracean, I did not keep time sheets for the time Cracean spent on the job site.
>
> 24. That Paula was well aware that Cracean spent considerable time assisting to build the home.
>
> 25. That further, Cracean made frequent trips to pick up supplies.

[39] Wanda Nadeau testified that she recalls when 11 Upanover Lane was under construction and when she visited the site, Cracean Bennett was very involved in the construction of the home (exhibit 1 of tab K). I accept her evidence.

[40] Similarly, Donna DeCoste testified she saw the Applicant, Cracean Bennett involved in the construction of 11 Upanover Lane (exhibit 1, tab I). I accept her evidence.

[41] Bonnie Trenchard, Cracean Bennett's mother and her partner Richard Trenchard testified that Cracean was involved in the construction of 11 Upanover Lane (exhibit 1, tab J and tab K). I accept their evidence.

[42] Other witnesses offered by Ms. Pettipas testified Mr. Bennett was not on site and did not contribute his labour to construction of the home. Their evidence, however, proved to be totally unreliable. For example, the affidavits of Sean Sutherland, Chris Josey, Rhonda Frank and Harold Crowell, being exhibits 6, 7, 9 and 10 contained similar statements to the effect that Cracean Bennett did not do much if any work to assist in the construction of 5 Willowdale Lane. When cross-examined, each of these witnesses admitted they had little if no knowledge of what Mr. Cracean Bennett did or did not do to assist in the construction of either of the homes. Clearly, these were witnesses called by Ms. Pettipas to give evidence to diminish Mr. Bennett's contribution to the home construction projects. Their having no basis to express such an opinion would have to be known by Ms. Pettipas and these witnesses. Their evidence does not assist Ms. Pettipas.

[43] In addition, it is concerning that Ms. Pettipas would ask these persons to testify to a fact that they were unaware of, and each of these witnesses would testify to knowing the answer to an important question which is the extent of each party's contribution to the construction of the homes.

[44] I am satisfied Mr. Cracean Bennett's evidence and that of Mr. Bennett's other witnesses, establishes that he did contribute financially to the households he and Ms. Pettipas shared and he provided services which aided the construction of both homes. He had earnings from his barbershop and from other sources.

[45] Although Mr. Bennett declared an income to CRA each year, I accept that he earned additional income which was undeclared. I accept he provided Ms. Pettipas with cash, perhaps $100 or more on a regular basis, to cover household and other expenses related to the home construction project.

[46] Mr. Bennett's tax returns show the following incomes (exhibit 4, tab F):

2012 - $19,533,00	2016 - $9,243.11
2013 - $11,815.00	2017 - $10,229.18
2014 - $4,723.00	2018 - $10,252.27
2015 - $7,694.00	2019 - $18,863.74

[47] Further the suggestion that Mr. Bennett would not contribute his labour to the construction of these homes defies common sense. He is a skilled drywaller and taper and is familiar with and capable of performing many tasks associated

with home construction. His brother was the principal contractor for both homes and had discounted his invoice in recognition of the fact his brother Cracean was helping, and he was doing work for family members – a description he applied to Ms. Pettipas as well as his brother.

[48] Finally, I accept his evidence that he operated his barbershop for about 41/2 years while the couple lived at 11 Upanover. He was available to expend many hours of after work time on construction of 11 Upanover in addition to the time he took of from his business to do so.

Did Mr. Bennett prove a joint family venture?

Joint Family Venture

[49] The existence of a joint family venture typically broadens the pool of 'wealth' that can be considered when calculating a monetary award for unjust enrichment.

[50] In *Darlington v. Moore*, 2015 NSSC 124, I was required to determine whether a joint family venture existed. At paragraph 111 – 112, I described the analysis as follows:

> [111] As stated, unjust enrichment claims made by a party following the breakdown of a common law relationship and which are based on the claimed existence of that relationship require the Court to analyse circumstances to determine whether the parties were in fact in a 'joint family venture'. In the words of Cromwell, J. at para. 87 in *Baranow, supra*:
>
> > My view is that when the parties have been engaged in a joint family venture, and the claimant's contributions to it are linked to the generation of wealth, a monetary award for unjust enrichment should be calculated according to the share of the accumulated wealth proportionate to the claimant's contributions. In order to apply this approach, it is first necessary to identify whether the parties have, in fact, been engaged in a joint family venture . . .
>
> [112] The existence of a joint family venture will be determined after considering evidence relevant to four criteria, i.e. (a) the existence of mutual effort; (b) the degree of economic integration; (c) actual intent of the parties, and (d) the extent to which the parties gave priority to the family.

[51] I find that Mr. Bennett did prove a joint family venture.

[52] The evidence establishes the parties were in a common law relationship and developed a level of inter-dependency, sharing and life planning.

[53] They committed mutual effort to the construction of their two homes. They planned that the first home would house both their businesses, his barbershop and the hair salon she hoped to open at some point. Their personal and business lives were to be significantly integrated.

[54] Their economic integration is evidenced by the fact Ms. Pettipas managed bank accounts on their behalf and had a good credit history they benefitted from as contrasted with Mr. Bennett's not having the same.

[55] Ms. Pettipas did not appear to be earning an income through most of the years in the relationship. Mr. Bennett gave her a significant amount of his cash earnings over time to ensure their household expenses were covered.

[56] They purchased a new vehicle together and Mr. Bennett invested a significant amount of time and I infer financial resources in the construction of both homes on an incidental basis.

[57] Mr. Bennett transferred $30,000 of his inheritance to Ms. Pettipas as a partial contribution to past financial obligations and he trusted her to manage these funds.

[58] Mr. Bennett said he did not have a bank account into which to deposit the funds.

[59] Ms. Pettipas says they were not a couple. I have concluded they clearly were a couple. Ms. Pettipas says Mr. Bennett did not contribute time or money to the construction of either home. I have concluded that he did in fact contribute both. I also find that Mr. Bennett met more than his share of the household expenses while they lived together.

[60] Ms. Pattipas was enriched by Mr. Bennett in as much as he invested his money, his time and skills in the construction of both homes.

[61] There was a juristic reason for him to invest some of his resources in the

homes he shared with Ms. Pettipas. Given he was living in the home he would be expected to pay regular expenses for shelter and food. However, his contribution far exceeds what one would expect.

[62] Mr. Bennett claims a one-half interest in the value of the proceeds from the sale of 5 Willowdale Lane, the second home the parties purchased. He claims Ms. Pettipas would be unjustly enriched if he were denied an interest in the equity in that home. I agree that Ms. Pettipas would be unjustly enriched if he was not compensated.

[63] The challenge for the Court is to determine what value should be assigned to Mr. Bennett's contribution.

Did Mr. Bennett prove he is entitled to a monetary award based on quantum meruit?

- **Financing of the Homes**

[64] As stated, the first home located at 11 Upanover Lane was registered solely in the name of Ms. Pettipas (exhibit 4, tab A). Similarly, the second home located at 5 Willowdale Drive was registered solely in Ms. Pettipas' name (exhibit 4, tab B).

[65] Mr. Bennett explained that he did not have a good credit history and because his income was mostly cash, he was not eligible to assist in the financing by lenders.

[66] The record is unclear as to Ms. Pettipas' employment history while the parties lived together. She did accept employment at a local health care clinic on or about 2015.

[67] Ms. Pettipas says she paid $35,385.11 for 11 Upanover – then a vacant lot in July 2011 and this total amount was paid solely by her (para 9, exhibit 3).

[68] Ms. Pettipas says she partially financed the construction of the home at 11 Upanover Lane by drawing on some or all of $115,000 she received from her divorce settlement and applying some or all funds derived from an inheritance of $268,000 from her father's estate (para 39-40, exhibit 3). She moved into this home in the Spring of 2012.

[69] She says she sold 11 Upanover Lane on August 2, 2017, for $347,500 and netted $324,713.91 after payment of the real estate commission and legal expenses. This leads to the inference the property was not subject to a mortgage. The sale proceeds were then available to invest in whole or partially in the construction of a home at 5 Willowdale Lane (para 11, exhibit 3). This amount or some portion of it was supplemented by borrowed funds in the amount of $90,000 to meet the cost of constructing the second home i.e., at Willowdale Lane (para 14, exhibit 3).

[70] Loan documents naming Paula Pettipas as the sole borrower are attached to exhibit 4 tab B – Ms. Pettipas first supplementary affidavit – sworn February 23, 2022.

> Graysbrook Capital Ltd. – Collateral Mortgage - $58,000
> March 2, 2018 (page 73 of tab B)
>
> Home Trust – Residential First Mortgage - $90,000
> July 4, 2018 (page 49 of tab B)

[71] Ms. Pettipas explains the Home Trust mortgage funds were used in part to retire the Graysbrook Capital collateral mortgage (exhibit 4, para 14 and exhibit 4 pages 40-41).

[72] The second home was listed for $469,900 on or about July 7, 2021 (exhibit 4 at tab C) and an agreement to sell was reached but had to be abandoned because of this litigation. In April 2021 Ms. Pettipas received an offer to sell 5 Willowdale Lane for $500,000 (exhibit 4 tab C).

[73] The Court is told by counsel the home has since sold and one half of the net proceeds of sale is being held in trust pending resolution of Mr. Bennett's claim herein. In his post hearing brief, counsel for Ms. Pettipas says the home sold for $600,000 on March 3, 2022 and net proceeds were $427,839.80.

[74] Ms. Pettipas says that 11 Upanover was to house a hair salon she would operate and a barbershop Mr. Bennett would operate (para 21, exhibit 3). She did not operate a hair salon as she planned.

[75] Ms. Pettipas says she was addicted to alcohol and sought treatment and that

Mr. Bennett was addicted to alcohol and cocaine.

[76] She disputes Mr. Bennett's claim that he contributed labour services for the construction of either home.

[77] Ms. Pettipas repeated she had inherited money and had a divorce settlement and this was her equity in the homes, and which presumably facilitated her arranging financing with lenders. In addition, she gained employment in 2015 or so and this enhanced her application to borrow.

[78] Mr. Bennett says Ms. Pettipas only gained employment at the local hospital in 2018 and for the early years of their relationship when they lived together, he paid all the day to day bills of their household (exhibit 1 tab A para 6 and 37). It is unclear to what extent she had an earned income leading up to 2018 since her tax returns were not in evidence and she did not provide oral evidence on this subject.

[79] In *Darlington v. Moore supra,* I was required to value benefits and costs and to determine whether a joint family venture existed – a factor that is relevant to determining the existence and value assigned to an unjust enrichment.

[80] The following is my summary of the distinction between unjust enrichment and the statutory presumption of equal division of "marital" property which governs both married and common law couples in some but not all jurisdictions. As stated at paragraph 96 – 105 of that decision:

> [96] The Court must be mindful to resist interpreting the law in a manner that blurs the distinction between married and unmarried couples when property division issues arise at separation. In *Walsh v. Bona*, 2002 SCJ 325 and *Quebec (Attorney General) v. A.*, 2013 SCC 5 the Supreme Court upheld the distinction. These cases are hereinafter referred to as *Walsh* and 'A' respectively.
>
> [97] The objective of an unjust enrichment analysis is not to achieve a property regime at common law for unmarried couples similar to that which many legislatures have established for married persons. That would be improper given the role of the legislatures under our constitution and earlier rulings of the Supreme Court. I observe also that such an approach forces the question what legislative regime is preferred. Not all Provinces have the same legislative regime governing property division between married couples upon separation. Consequently, to the extent that Court initiative seeks to eliminate the distinction between statutory regimes and common law regimes governing the division of property upon separation, on the basis of fairness and consistency what Provincial regime will be favoured?

[98] As observed in '*A* ' at paragraph 279-280:

> [279] This type of legislative intervention has in fact occurred in certain provinces. Provincial legislatures have chosen to regulate the private relationships of common law spouses on the basis of their own provinces' legislative objectives. Today, each province defines the effects of de facto unions or common law relationships differently, which is a mark of Canadian legal pluralism.
>
> [280] For example, in all provinces except Quebec, and in the territories, cohabitation for a certain number of years gives rise to an obligation of support between common law spouses: see, inter alia, Family Law Act, R.S.O. 1990, c. F.3; Family Services Act, S.N.B. 1980, c. F-2.2; The Family Maintenance Act, R.S.M. 1987, c. F20; Maintenance and Custody Act, R.S.N.S. 1989, c. 160; Family Relations Act, R.S.B.C. 1996, c. 128; Family Law Act, R.S.N.L. 1990, c. F-2; The Family Maintenance Act, 1997, S.S. 1997, c. F-6.2; Family Law Act, R.S.P.E.I. 1988, c. F-2.1; Family Law Act, S.N.W.T. 1997, c. 18; Domestic Relations Act, R.S.A. 2000, c. D-14. Some provinces, such as Ontario, have imposed this policy to alleviate the burden on the public purse: see, inter alia, W. Holland, "Intimate Relationships in the New Millennium: The Assimilation of Marriage and Cohabitation?" (2000), 17 Can. J. Fam. L. 114, at p. 128. In British Columbia, in addition to the obligation of support, certain measures to protect the family residence apply to common law spouses: Family Relations Act. In Saskatchewan and Manitoba, common law relationships are, in addition to being subject to a support obligation and measures related to the family residence, subject to the division of family property: The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2), S.S. 2001, c. 51; Common Law Partners' Property and Related Amendments Act, S.M. 2002, c. 48. As we saw above, Nova Scotia's legislation provides that common law partners can choose to register their partnerships and thus be governed by the legal framework applicable to marriage with respect to matrimonial property: Law Reform 2000 Act, S.N.S. 2000, c. 29.

[99] The legal reality for married couples is that the law in all the Provinces is not the same when property division must be effected upon divorce. The *Matrimonial Property Act of Nova Scotia* excludes business assets from the definition of matrimonial assets. Matrimonial assets are presumptively equally divisible and that presumption governs premarital assets. That is not the case in all Provinces.

[100] Some jurists, after finding the existence of a joint family venture, in a presumptive way move to distribute the assets of both parties as if the parties were married i.e. equally. This is an attractive resolution, for its simplicity, but ignores the

fact that the parties are not married and a more in-depth analysis is required. (see 34 C.F.L.Q. 35, December 2014, Carswell)

[101] The first trial court in *Kerr v. Baranow* awarded Ms. Kerr an undivided one third interest, by way of resulting trust, in real property owned by Mr. Baranow (2009 BCCA 111). Following the decision of the Supreme Court of Canada the matter was returned to the Supreme Court of British Columbia. After the rehearing (2012 BCSC 1222) a monetary award of $240,000 was made to Ms. Kerr i.e. 25 %, an amount less than she was awarded after the first trial.

[102] Justice Gerow in the rehearing of *Kerr v. Baranow* 2012 BCSC 1222 commented on the challenge faced by a court when a monetary award must be determined and the mutual conferral of benefits must be valued. At paragraph 63- 65 she quoted Justice Cromwell at length:

> [63] As stated by Cromwell J. at paras. 46 and 47, remedies for unjust enrichment are restitutionary in nature, and the claimant may be entitled to either a monetary or proprietary remedy. The first remedy to consider is the monetary award; however, the calculation of the appropriate award has presented difficulties in the past because of the mutual conferral of benefits that takes place in many relationships. As noted in paras. 48 and 49 of the decision, problems have arisen because it is difficult to retroactively create some sort of notional ledger to record and value the services performed by each partner for the other, and because it was considered that monetary awards must always be calculated on a "fee for service" or "value received" approach. Cromwell J. disagreed that monetary awards should always be calculated on this basis, stating at para. 58:
>
> In my view, restricting the money remedy to a fee-for-services calculation is inappropriate for four reasons. First, it fails to reflect the reality of the lives of many domestic partners. Second, it is inconsistent with the inherent flexibility of unjust enrichment. Third, it ignores the historical basis of quantum meruit claims. Finally, it is not mandated by the Court's judgment in Peter. For those reasons, this remedial dichotomy should be rejected.

and further at paragraph 83 Justice Gerow stated:

> [83] It is clear from Kerr at para. 111 that when the respondent has pleaded a counterclaim or set-off, the mutual benefit issue must be resolved in the course of considering that defence or claim. Cromwell J. rejected the argument that the mutual benefit issue should be taken into consideration at the detriment/benefit stage of the inquiry, but that it may be considered at the juristic reasons stage, stating at para. 116:

> I conclude that mutual benefits may be considered at the juristic reason stage, but only to the extent that they provide evidence relevant to the parties' reasonable expectations. Otherwise, mutual benefit conferrals are to be considered at the defence and/or remedy stage. I will have more to say in the next section about how mutual benefit conferral and the parties' reasonable expectations may come into play in the juristic reason analysis.

[103] Finally Justice Gerow concluded at paragraphs 106-110:

> [106] In my view, the facts demonstrate that both parties conferred benefits on the other, and both have established that they made contributions to the other to their own detriment. The evidence establishes that the parties entered into a joint family venture where they accumulated assets, namely the new home on the Wall Street property and their personal savings. At the same time, they kept their finances separate and any resolution should demonstrate that.
>
> [107] The claimant has established a link between the claimant's contributions and the construction of the new house on the Wall Street property. In my view, it would be unjust for the respondent to retain that entire asset given the claimant's contributions.
>
> [108] However, the respondent's very significant contributions to the claimant's welfare and care, particularly after the stroke, must also be taken into account and go to reduce the amount the claimant would otherwise be entitled to.
>
> [109] As Cromwell J. stated at para. 102:
>
> > ... While determining the proportionate contributions of the parties is not an exact science, it generally does not call for a minute examination of the give and take of daily life. It calls, rather, for the reasoned exercise of judgment in light of all of the evidence.
>
> [110] Having considered all of the circumstances, and both the claims of the claimant and the respondent, I have concluded that the claimant is entitled to a monetary award to offset her contribution to the Wall Street property equivalent to 25% of its appraised value of $960,000, which was done prior to the 2007 trial. Accordingly, the claimant is entitled to $240,000. As well, I have concluded that both parties should retain the savings in their name.

> [104] I recommend the analysis of the Supreme Court's decision in *Kerr v. Baranow*, as articulated by Professor McInnes in his text, The Canadian Law of Unjust Enrichment and Restitution, LexisNexis Canada 2014 at page 1202-1203:
>
> > (iii) Sufficient Connection
> >
> > As Cromwell J. explained, not every joint family venture carries a right to relief calculated on a "value surviving", rather than a value received, basis. And even if the "value surviving" model is applicable, it does not invariably entail equal shares. The plaintiff is entitled to relief only to the extent that her contributions to the couple's collaborative effort were connected to the defendant's enhanced wealth.
> >
> > The burden of proof regarding the causal issue varies with the claim. "[T]here must be a link between the contribution and the accumulation of wealth, or ... between the 'value received' and the 'value surviving' whether the plaintiff seeks beneficial interest under a constructive trust or a judgment debt measured as a proportionate share of the accumulated assets. The proprietary response, however, requires a "sufficiently substantial and direct" nexus, a "clear proprietary relationship", to a specific asset. The personal response, in contrast, is justified as long as "the joint effort ... led to an accumulation of assets generally". Consequently, "[w]here that link exists, and a proprietary remedy is either inappropriate or unnecessary, the monetary award should be fashioned to reflect the true nature of the enrichment and the corresponding deprivation".
>
> [105] In short, these are the principles that will guide the Court's analysis of the parties asset and debt positions.

[81] The absence of a joint family venture does not preclude a finding of unjust enrichment by either party. Herein, only Mr. Bennett makes that claim and the claim relates solely to his contribution to the construction of the two (2) homes.

Conclusion

[82] As earlier stated, I find the parties were engaged in a joint family venture. They were a common law couple for approximately nine (9) years leading to their separation in February 2019.

[83] Mr. Bennett can rely on the existence of a joint family venture with Ms. Pettipas to bolster his claim for increased compensation for having unjustly

enriched Ms. Pettipas.

[84] During their period of cohabitation, they both abused substances. Mr. Bennett, however, was able to continue to work as a barber and at side jobs for cash as he testified to. Ms. Pettipas' work history during this period is not clear from the evidence. Her tax returns for this period have not been entered in evidence, nor do her affidavits describe her employment over much of this period or her sources of earned income. What funds did she draw upon to support herself when not employed? If she relied upon her funds inherited or received as a result of her divorce settlement to fund daily expenses, less of these funds were available to be invested in her homes.

[85] There is evidence that she was not employed for extended periods. Mr. Bennett described how her alcoholism forced him to leave the home from time to time and often resulted in police attending at their home.

[86] Ms. Pettipas does not dispute she was addicted to alcohol and says she entered a rehabilitation program in 2017 at a cost of $25,000. These funds presumably originated from her divorce settlement and or inheritance.

[87] The Court's challenge is to determine the value of the contribution Mr. Bennett made to the parties' 'generation of wealth' principally in the form of the construction of the two (2) homes he occupied with Ms. Pettipas and which unjustly enriched her. The court was not told the details of the financing of both homes. As referenced *supra*, beginning at paragraph 67, Ms. Pettipas had the financial resources to solely purchase the lot known as 11 Upanover and she had access to an inheritance ($268,000) and a divorce settlement ($115,000) to cover a substantial portion of the cost of constructing a home on the vacant lot, 11 Upanover. These amounts totalled $383,000. It is not known what quantum was invested in the homes.

[88] Instead, general statements were made by Ms. Pettipas about the financing of the home construction. Clearly, she did not invest all funds derived from her divorce settlement and her inheritance in the first home. She required funds to finance some or all her living costs, if as she claims, Mr. Bennett was not making a significant financial contribution to the household during these early years of their relationship.

[89] I am satisfied Mr. Cracean Bennett contributed time and effort to the

construction of both homes and the direct financial cost to the construction of both homes was therefore reduced as testified to by both him and his brother who was the principal contractor.

[90] I am also satisfied that Mr. Cracean Bennett earned income in excess of his declared income, as he testified to and that he made cash contributions to Ms. Pettipas to assist in covering household expenses and some of the home construction expenses.

[91] It is clear, however, that the parties did not have the finances to cover their living expenses. For example, real estate taxes remained past due for 11 Upanover as of January 22, 2016 in the amount of $22,377.20 (exhibit 4, tab A, page 112). In July 2017 taxes were in arrears by $3,092.92 (exhibit 4 tab A, page 122). At page 98 of exhibit 4 appears a disconnection notice from Nova Scotia Power dated May 30, 2017.

[92] Subsequently, upon the sale of 11 Upanover, Ms. Pettipas netted $324,713.91 in 2017 which was available to invest in 5 Willowdale Lane – which then sold for an amount the parties agree was $600,000 in 2021.

[93] I conclude much of Ms. Pettipas' available financial resources were invested in the home at 11 Upanover at the time it was constructed.

[94] Much of the initial financial investment of Ms. Pettipas in 11 Upanover flowed through to the construction of 5 Willowdale and was recovered within the net proceeds from the sale of 5 Willowdale Lane.

[95] Ms. Pettipas' general premise is that her equity from the first home flowed to the second home and because the cash equity in the first home originated with her, the equity in the second home is entirely hers.

[96] The financial history, including sales revenue relevant to the construction and sale of the homes, appears to be as follows:

11 Upanover

- Purchase of lot (2011) $35,385.11
- Available funds divorce settlement ($115,000) and inheritance ($268,000)
- Sale of home (2017) $347,000 ($324,713.91 net))

5 Willowdale

- Purchase of lot $50,000 (exhibit 4 tab B page 1)
- Available funds $324,713.91 (proceeds from sale of 11 Upanover)
- Mortgage – Home Trust (July 2018) $90,000
  (subsumed Graysbrook Capital $58,000 collateral mortgage March 2018)
- Assessed value
- Proceeds from sale, $600,000 ($427,839.80 net)

[97] It is worth noting that post separation, Ms. Pettipas did receive $30,000 from Mr. Bennett in February 2019. These funds were from Mr. Bennett's inheritance, and he says in part these funds were to help clean up bills. Mr. Bennett says $12, 000 was for bills she had prior to February 2019 that being the month identified by him as their time of separation. He also implied he wanted to reconcile and his financial help extended to Ms. Pettipas would advance his achieving that objective. In contrast, Ms. Pettipas suggests she cashed the money because Mr. Bennett did not have bank accounts into which to deposit the funds and by implication, she never really benefited from these funds. I prefer the evidence of Mr. Bennett and I accept his explanation that these funds benefitted Ms. Pettipas.

What is the quantum of the compensation/monetary award that should be made to Mr. Bennett because of his unjust enrichment of Ms. Pettipas?

[98] There is a lack of accounting evidence as to each party's day to day revenue and expenses. Nevertheless, it is clear Mr. Bennett's entire financial resources and significant time was invested in the homes he and Ms. Pettipas built. Notwithstanding his substance abuse challenges, he remained gainfully employed when not working full time on the two (2) homes the parties' constructed.

[99] I am satisfied that some of the purchases shown on the invoices naming Ms. Pettipas as the purchaser were paid by Mr. Bennett as he testified to.

[100] I assess Mr. Bennett's unjust enrichment of Ms. Pettipas to be valued at $70,000. This represents a realistic assessment of his contribution to the parties' generation of wealth within their joint family venture over the course of their relationship.

[101] I am satisfied his contribution included the equivalent of 3-5 months of labour to the construction of each home. He also contributed cash on an ongoing

basis to the acquisition of materials as he testified to. Finally, I am satisfied he met many of the ongoing day to day expenses of this family over the years when Ms. Pettipas was without an income.

[102] The fact remains, however, that Ms. Pettipas had the financial resources and made a significant capital investment in these homes. A significant amount of funds were drawn from her divorce settlement and inheritance as she testified to.

[103] Mr. Bennett is therefore entitled to $70,000 of the funds held in trust.

[104] Any submissions on costs must be received by the Court on or before the last business day of July 2023.

O'Neil, ACJ