

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** *Dunn v. Murphy*, 2013 NSSC 444

**Date:**20130715

**Docket:** SFSNOTH-063283

**Registry:** Sydney

**Between:**

Leslie Dunn

Petitioner

v.

Thomas Murphy

Respondent

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**Judge:** The Honourable Justice M. Clare MacLellan

**Decision:** July 15, 2013

**Subject:** Family Law; Division of assets acquired during a 19-year common-law relationship; Application of Kerr v. Baranow, [2011] 1 S.C.R. 269

**Issues:** Common-law relationship found to exist by agreement

- 1) Issues: The existence of the three elements of enrichment, detriment and absence of juristic reason were examined.
- 2) How were the four subcategories of a joint family venture analyzed; that is: (a) mutual effort; (b) economic integration; (c) actual intent; and (d) priority of family? (p. 44)
- 3) What is the finding in relation to the existence of mutually conferred benefits? (p. 54)
- 4) Was a clear link between the joint efforts of the couple and the assets acquired? (p. 43)
- 5) How was credibility assessed? Credibility assessment was analyzed using the summary of factors presented in Baker-Warren v. Denault, [2009] N.S.J. No. 209 (pp. 28-42)
- 6) What effect, if any, arises from the defendant's liability as sole mortgagor of the properties in dispute? (p.57)
- 7) What is the proper assessment of costs?

**Result:**

The 17-year common-law union resulted in profits from the sale of two (2) rental units held in the defendant's name only. The parties performed the required labour to transform the properties to the level where the sale resulted in profit. The defendant sold the properties without notice to the plaintiff and retained the profits. The defendant ignored interim orders granted, which were designed to maintain the proceeds of the sale (\$153,000.00) were adjudicated.

The Court held while the defendant was sole mortgagor, his actual liability was negligible given the plaintiff provided him with a physical, emotional, and financial security. The plaintiff provided the defendant with a thriving environment which allowed him to succeed. The Court drew a distinction between legal liability and actual liability in relation to the mortgaged rental properties. The plaintiff enabled the defendant to enhance his RRSP for retirement.

A clear link was established. The plaintiff was able to establish a clear link between her efforts physically and financially with the profit of \$153,000.00. The plaintiff was awarded forty-five (45%) per cent of the net profits. The mutually conferred benefit received by the plaintiff from the defendant was too small to quantify. The defendant's unauthorized disposal of personal property resulted in an uneven division in favour of the plaintiff.

The defendant's counterclaim for half ( $\frac{1}{2}$ ) of the plaintiff's \$180,000.00 home was dismissed with costs awarded subsequently in the amount of \$20,938.00.

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