IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Dodsworth v. Dodsworth,* 2021 NSSM 15

SCT: 501299

BETWEEN:

Susan Rector Dodsworth
[address removed]

CLAIMANT

AND

Ardis McNutt Dodsworth
[address removed]

DEFENDANT

ORDER

On the basis of the evidence heard before me March 15, 2021 outlined in the attached decision, I hereby Order that the Defendant pay to the Claimant as follows:

Debt: $25,000.00
Costs: $199.35
Total: $25,199.35

Dated at Truro, in the County of Colchester, in the Province of Nova Scotia, this 18th day of June, 2021.

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)

Shelly A. Martin
Adjudicator, Colchester County

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BETWEEN:

Susan Rector Dodsworth
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CLAIMANT

Ardis McNutt Dodsworth
[address removed]

DEFENDANT

REASONS FOR DECISION

BEFORE
Shelly A. Martin, Adjudicator
Hearing held at Truro, Nova Scotia on 15 March 2021
Decision rendered on June 18, 2021

APPEARANCES

For the Claimant	Self-Represented
For the Defendant	Self-Represented

[1] After her marriage ended, the Claimant was invited to live with her son Matthew and the Defendant at their home in Great Village. By all accounts, the decision to invite the Claimant to reside with them was a joint decision meant to ensure she would always have a place to live and feel settled. The Claimant took out a mortgage of $54,000, $14,00 of which was to pay off some existing debt, with the remaining $40,000 earmarked to construct an in-law suite at their home.

[2] The Defendant worked two days a week outside of the home and the Claimant, who clearly loved her two young grandchildren, taught them and cared for them during their mother's absence. The Claimant testified there was no discussion or expectation that

she would pay rent or utilities or otherwise contribute to expenses of the household.

[3] Tragically, Matthew, died in 2018. Only hours after learning of his death, the Claimant was approached by the Defendant, about their living situation and told her mother-in-law that "you don't have to think about it just now, but if you want to leave, you can. You don't have to stay here for us." The Claimant testified she was shocked by this conversation and admitted the relationship with her daughter in law began to deteriorate. In fairness to both parties, it is clear that both were dealing with an immense amount of shock and pain in the wake of this tragedy and each person responds to grief in different ways.

[4] The Claimant testified to her heartache in the wake of her son's death and admits that she was probably "brusque" in some of her comments to her daughter in law, which worsened an already difficult situation. The Defendant soon realized that she would need to sell the home, as the costs were too great for her to manage on her own and she informed the Claimant that she would have to leave. The Claimant and Defendant both testified before me that the pair had discussions about reimbursing the Claimant for the construction of the in-law suite. However, the relationship deteriorated further when the Defendant approached the Claimant, referencing her deceased husband by asking "This isn't going to make me look very good, but did Matthew talk to you? Did he ever say anything to you about looking after the boys?" When the Claimant indicated that he hadn't, the Defendant informed her she was no longer able to care for the children without supervision. At that point, rather than foment further tension in the house in front of her grandchildren, the Claimant felt her only recourse was to remove herself from the property and she did so by May 30th, 2020. It is unfortunate the children's relationship with their grandmother has suffered as this matter has escalated.

[5] The Claimant argued that she is entitled to a monetary award on the basis that the in-law suite added to the value of the home, which the Defendant realized upon its sale, to the Claimant's detriment. This is the essence of unjust enrichment: where one party has unfairly received a benefit at the expense of another and the benefit should not be allowed unless there is a legal justification for allowing it. This case is not novel to Nova Scotia, the Supreme Court and Court of Appeal both ruled on a case involving similar circumstances in *Reid v. Reid*, 2020 NSCA 32 and *Reid v. Reid*, 2019 NSSC 229, though it *Becker v. Pettkus*, 1980 CanLII 22 (SCC), [1980] 2 S.C.R 834 at 848 (S.C.C.) states three requirements to ground a claim for unjust enrichment:

A. There must be an enrichment,
B. There must be a corresponding deprivation, and
C. There is an absence of any juristic reason for enrichment

[6] The Claimant argued that the Defendant benefitted from her expenditure of money on the home. The evidence of the Defendant was that the home was initially purchased in 2004 for $72,000.00. It sold 2019 for $189,014.13, nearly tripled in value. The Defendant attributed the increase in value was from the renovations required on the home prior to sale, not the existence of the in-law suite. No evidence was led to suggest the increase in value to the home brought specifically by the addition of the in-law suite, however, it was clearly used as a selling point, figuring prominently in the listing cut;

The second unit has a *lovely open eating and* a *living area with laminate and ceramic flooring,* a *dinette with* a *Bay of windows, four piece bath, patio doors,* a *bedroom and* a *lower level with a rec* room *with hardwood floors and* a *heat pump.*

[7] The Defendant took a narrow view of enrichment and argued the small profit from the sale of the house cannot be said to be enrichment. It is clear however, that adding a new useable living space to what was otherwise an older, modest home conferred a benefit on the Defendant that she was able to realize upon the sale of the home. It is also worth mentioning that the relationship between the parties conferred on the Defendant certain benefits, including free child care and home schooling assistance for at least two days per week while the Defendant worked. The Claimant also made various purchases for the home or paid for work to be done on the property. This included appliances that were included in the sale of the home, a John Deere tractor and snow blower, new heat pump, excavation and stone work for the property. The amounts given by the Claimant in this regard totalled $19,000 and were not disputed by the Defendant. Through the Claimant's monetary contributions to the household and through her labour and care of her family, the Defendant was enriched.

[8] I find the second part of the test is likewise clearly met. The Claimant is now well into her advanced years living on a fixed income and is still paying a mortgage for a property that was meant to be her home for the rest of her life. The Claimant relied on the Defendant's invitation, to her detriment, having acquired a mortgage for a property she was ultimately forced to leave. The Defendant discussed payment at various points since her husband's death but revoked offers to settle and sold the home without compensating the Claimant. This has held the Claimant in limbo, exacerbating an already difficult situation for her financially, emotionally and for the family as well.

[9] The third part of the test involves an analysis of legal reasons that may justify the deprivation. The Defendant cited several reasons why the Claimant is not entitled to succeed in her claim, most of which are not persuasive. These reasons include a lower-than-expected payout on several insurance policies, a historic flooding claim (that was

paid out through the couple's home insurance) and repairs done by the Defendant's father and now-husband to the property, in preparation for its sale. None of the repairs mentioned were the fault of the defendant's negligence or deliberate acts and are an ordinary aspect of wear and tear in a home.

[10] The Defendant also provided a letter through her employer and legal counsel, who did not represent her in the hearing, itemizing the costs of living the claimant has avoided while living "rent free" at the property for 14 years. The letter states the Defendant's costs for the property and speculated about the costs the Claimant might have faced, had the Defendant opted to charge rent on the in-law suite and shared expenses with the Claimant, including property tax bill, a 40% portion of the power bill, lawn care, snow removal general maintenance, upkeep and finally, the costs of care for the Claimant's late mother, who lived her last three years with dementia in the Defendant's home. The Defendant argued that her forbearance on these matters should negate the value of the Claimant's contribution to the property and the household and thus defeat her claim.

[11] I disagree with this argument. It is clear examining the relationship as a whole that this was one of mutual benefit. The Defendant received an expansion of her property, free child care and support while the Claimant lived in the In-law suite. The Claimant paid for and lived in a home she believed to be hers for as long as she lived. I disagree with the idea that the benefit derived by the Claimant by living in the property deprives her of a claim for unjust enrichment. However, it may be that some of the benefits received by the Claimant may be used to reduce the award to which she may be entitled. This was the ruling of the Supreme Court of Canada in *Kerr v. Baranow,* [2011] S.C.J. No. 10. However, it is necessary to weigh the expectation of the parties when assessing mutual benefit and a possible set-off.

[12] It was the testimony of both parties that the Claimant was to pay the costs for the construction of the in-law suite, which the Defendant and her husband would later reap the benefit of upon her death. There was nothing in evidence before me to suggest the Claimant was required or agreed to pay rent on an addition she had financed herself. This would be unconscionable. The suggestion that she should have paid rent more than a decade after paying to build the suite and living in it, is unconscionable.

[13] The Defendant also cited the care of the Claimant's aging mother for a three year period as a cost savings to the Claimant to suggest they were "even." I acknowledge fully that care for an aging loved one is difficult and challenging work. The Defendant's own evidence was that she "didn't mind" and was "happy to do it", given the Claimant's own capabilities and health issues. This again suggests this was not contemplated as something for which the Claimant ought to have paid the Defendant but rather has been

argued in her defence by the Defendant, in hindsight. Without more evidence on this point, it is not a factor I am willing to consider in this analysis.

[14] I likewise find no evidence of an expectation that the Claimant pay property tax or any other costs associated with the property, factors that were previously speculated upon to suggest a set off. I cannot accept the speculation about what it might have cost the Claimant for insurance on her portion property, as this is based on several factors and an assessment of risk to which this court was not privy. Additionally, I have no indication that she was expected to provide her own insurance for a property she accessed from inside the main part of the dwelling, though I can accept that in hindsight the Defendant felt it would have been prudent for her to do so.

[15] Indeed, many of these factors raised by the Defendant in asserting a set off appear to be overreach. The one exception in this regard is the power bill after 2010. I accept the evidence of the Defendant that her husband approached the Claimant in 2010, six years after she moved in, asking her to assist with the costs of electricity. The Defendant states that her late husband and the Claimant agreed that she would pay the power bill. Though the Claimant did contribute some money to the costs of the power bill, her efforts were not sufficient to avoid disconnection notices. The Defendant's husband resumed paying for the electricity in 2014 to avoid disconnection. On this basis, the Defendant communicated through her Solicitor that a 40% share of the power over the ten-year period would amount to $16,800.00.

[16] I am wary of reducing this claim to a mathematical exercise, but law is insufficient to provide a remedy for all that has been lost and gained by this family over the course of the last 15 years. The Claimant moved in with her son and his family after a late-in-life divorce and built onto their home a space that she believed to be hers for the remainder of her life. The Defendant found herself unexpectedly widowed with two young sons and facing financial hardship and took charge of her circumstances to provide a stable life for her children in the midst of great heartbreak. It is clear both parties worked in their ways to provide care and support for their family in difficult and imperfect circumstances. I acknowledge the emotional weight this has been for this family and the circumstances that surrounded the tragic death of a beloved son, father and husband have aggravated the situation. Hopefully, the relationships can be mended in time.

[17] I will allow the Claimant's claim, but note that she has elected to forgo a claim for the remaining $40,000.00 mortgage in order to access a decision within the jurisdiction of this court. I would offset the Defendant's $16,800 from her share of the power bill for ten years against the $19,000.00 contributed by the Claimant to the household over and above the costs of the in-law suite and Order that the Defendant pay $25,000 plus costs to

the Claimant.

Dated at Truro, in the County of Colchester, in the Province of Nova Scotia, this 18th day of June, 2021.

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Shelly A. Martin
Adjudicator, Colchester County