# COURT OF APPEAL FOR ONTARIO

CITATION: Surridge v. Ross, 2024 ONCA 314
DATE: 20240429
DOCKET: COA-23-CV-0037



Rouleau, Lauwers and Monahan JJ.A.

BETWEEN

Phillip Edward Glenn Surridge

Applicant (Respondent)

and

Cassandra Lorenne Ross

Respondent (Appellant)

Kristie V. Stewart, for the appellant

Aaron B. R. Drury, for the respondent

Heard: March 14, 2024

On appeal from the order of Justice Russell M. Raikes of the Superior Court of Justice, dated December 14, 2022.

## REASONS FOR DECISION

[1] The parties were in a romantic relationship but never married. On October 30, 2014, after having maintained separate residences, they purchased a home to live in together and took title as joint tenants. The parties did not have any written agreement as to their respective interests in the property. The purchase price was $251,500. The $25,000 down payment was paid by the respondent and, thereafter,

the respondent made all the payments related to the residence, including the utility bills and mortgage payments.

[2] On February 10, 2016, approximately 15 months after moving into the home, the parties separated. The appellant left the property and the respondent continued to reside in the home and make all payments.

[3] In November 2019, the home was sold for $395,000.00 less adjustments. The sale produced net proceeds of $163,945.16 after paying the outstanding mortgage and closing expenses. The respondent brought an application seeking unequal division of the proceeds of the sale from the jointly held property based on unjust enrichment. Specifically, he sought reimbursement for the principal portion of the mortgage payments he made, as well as the cost of a new furnace installed in 2017. As part of the 2019 agreement of purchase of sale, the purchaser had required, as a condition of purchase, that certain repairs be made to the basement. The respondent maintained that the cost of making these repairs was to be paid out of the proceeds of sale. The respondent did not, however, seek reimbursement for the $25,000 deposit he had made to purchase the home.

[4] In her answer, the appellant sought the equal distribution of the net proceeds without deduction for the cost of the repairs. She also sought occupation rent from February 2016 to November 2019.

[5] The respondent brought a motion for summary judgment pursuant to r. 16 of the *Family Law Rules*, O. Reg. 114/99 and the appellant brought a cross-motion for partial summary judgment. The motion judge granted summary judgment in favour of the respondent on the issue of unjust enrichment. He found that the parties had received legal advice before closing, that title was taken by them as equal owners, and that there is no suggestion that a mistake was made in how title was taken. He also found that the respondent had proven deprivation flowing from his unilateral payments toward the equity of the property, namely the down payment and all mortgage and property expenses, and that these payments enriched the appellant. The motion judge found that there was no contract between the parties that provided a juristic reason for the enrichment, nor was there any evidence of it constituting a gift from the respondent to the appellant. This *prima facie* case for an absence of juristic reason was not rebutted by the appellant. The motion judge also allowed the respondent credit for the installation of the new furnace and agreed with the respondent that the cost of the basement repairs ought to be shared equally by the parties.

[6] With respect to the appellant's claim for occupation rent, the motion judge noted that although the appellant had indicated an intention to bring expert evidence regarding the market rental rates, no such evidence was led on the motion despite the passage of significant time. The motion judge concluded that it would be inequitable to order the respondent to pay occupation rent to the

appellant in the circumstances given that the appellant provided no evidence of market rental rates and brought her claim a year after the property was sold. In addition, the respondent had made all the monthly mortgage and house-related payments both before and after separation and did not seek any credit for having made the $25,000 down payment. To the extent that the appellant contributed to the household during the relationship and assisted in obtaining the mortgage, the motion judge concluded that she was more than adequately compensated by the increase in value of her equity in the property and that she too derived a benefit from her contributions to other monthly household expenses during her time residing at the property.

[7] On appeal, the appellant essentially renews all the arguments she made below. She maintains that the motion judge erred in allowing the unjust enrichment claim and in denying her claim for occupation rent. Further, she maintains that the respondent ought not to have received any credit for the replacement of the furnace and the basement repairs.

[8] In our view, the appeal must be dismissed. The motion judge did not err in his application of the law of unjust enrichment. The record supported his findings that the appellant had been enriched by the payments made by the respondent and that no juristic reason for this enrichment existed.

[9] The motion judge reviewed the relevant jurisprudence, including *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at paras. 31-43 and *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629, at paras. 44-46, wherein the established categories of juristic reason are set out. As noted above, the motion judge found that the respondent established a *prima facie* case for absence of juristic reason and the appellant had not rebutted it. He explained that there was no evidence that the parties had turned their minds to the consequences of separating, particularly in respect of servicing the mortgage debt and the outcome of the property itself.

[10] The motion judge should have addressed in his reasons whether there was evidence of donative intent at the time the property was acquired in joint names and when the payments at issue were made. In gratuitous transfer situations, the actual intention of the grantor is the governing consideration: *Kerr*, at para. 18, referring to *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795.

[11] Further, as the Supreme Court states in *Kerr,* at para. 96:

> The title to property may also reflect an intent to share wealth, or some portion of it, equitably. This may be the case where the parties are joint tenants of property.

[12] However, given the presumption of resulting trust where money or property is advanced by only one party, the onus is on the appellant to demonstrate donative intent: *Pecore*, at para. 25; *Kerr*, at para. 19. It is clear from the motion judge's reasons as well as the record that the onus was not met in this case.

[13] Contrary to the appellant's submissions, the motion judge considered the circumstances of the parties as required by *Garland* and specifically the appellant's claim that the appellant's credit worthiness had permitted the purchase of the home. The motion judge found that this claim had not been made out and, even if it had, the appellant's argument pertaining to her credit worthiness did not provide a juristic reason and was irrelevant to the issue of unjust enrichment. Although it is true that the motion judge did not address the issue of spousal abuse in his reasons, that issue, while mentioned in the appellant's answer, was not pursued in her written submissions on the motion. In her factum, the appellant lists several examples of alleged abuse. All but one are irrelevant to a claim of spousal abuse. The remaining example is a reference to a bald allegation made by the appellant in her affidavit. That allegation was not pursued in the cross-examination of the respondent. It was clearly not the focus of the motion, and as a result, the motion judge cannot be faulted for his failure to address this allegation. In our view, the allegation has not been made out and therefore does not provide a justification for the appellant's enrichment.

[14] As for the appellant's claim for occupation rent, again, we see no basis to interfere with the motion judge's findings and conclusions. It was acknowledged that the appellant made no financial contribution to the purchase of the home nor to the mortgage and property expenses. Additionally, she profited from the increase in value of her equity in the home and, as noted by the motion judge, she

led no evidence as to what a reasonable rent would be during the period of occupation by the respondent.

[15] Turning to the issue of the reimbursement for the furnace replacement and basement repairs, the motion judge noted that the respondent provided proof of the cost of replacing the furnace and found that it constituted an improvement to the property. The basement repairs had been required pursuant to the agreement of purchase of sale and had to be made to complete the sale. Despite indicating in her affidavit that she intended to provide expert evidence to demonstrate that the repairs were unnecessary, the appellant failed to present this evidence, notwithstanding her obligation to put her best foot forward in response to the motion. We see no basis to interfere with the motion judge's conclusion that the respondent was entitled to reimbursement for these payments.

[16] The appeal is dismissed. Costs to the respondent are fixed in the amount of $14,000, inclusive of disbursements and applicable tax.

"Paul Rouleau J.A."

"P. Lauwers J.A."

"P.J. Monahan J.A."