

IN THE SUPREME COURT OF YUKON

Citation: C.S. v. S.N., 2008 YKSC 23

Date: March 7, 2008

Docket: S.C. 05-B0033

Registry: Supreme Court of Yukon

Between:

C.S.

Plaintiff

-and-

S.N.

Defendant

**Reasons for Judgment
The Honourable Justice M. T. Moreau**

I. Introduction

[1] This action arises from the common-law relationship between the plaintiff and the defendant. The plaintiff maintains that she is entitled to 60% of the proceeds of the sale of the house formerly occupied by the couple as well as the surrounding land, based on the concepts of unjust enrichment and constructive trust. Alternatively, she seeks an amount corresponding to the value of her direct and indirect contributions to the property, based on the principle of *quantum meruit*.

[2] The plaintiff also seeks an amount corresponding to 1/2 the value of the personal property accumulated by the parties during their relationship. The majority of these are in the defendant's possession.

[3] The defendant maintains that he had reached an agreement with the plaintiff pursuant to which the plaintiff's financial investment in the house would be reimbursed to her in the event of their separation. He maintains that she has no other interest in the house or the surrounding lands, either through unjust enrichment or constructive trust.

[4] The property in question is a 15-acre piece of agricultural land located in the district of Gentian Lane near Whitehorse (the "Lands"). The defendant entered into an agricultural sales agreement relating to the Lands with the Yukon Government on July 31, 2002. Pursuant to this agreement, the government had the right to retain title to the Lands until the completion of the construction of some agriculturally related buildings on the Lands.

[5] Pursuant to the plaintiff's request, the Honourable Justice Gower ordered, on May 29, 2007, the transfer to the plaintiff of the defendant's interest in the agricultural sales contract and the sale of the Lands.

[6] In para. 16 of his reasons, Gower J. had this to say about the plaintiff's application for 60% of the proceeds of the sale of the Lands:

The plaintiff's counsel suggested that I already have sufficient evidence to make a final order determining entitlement issue. She says that it is not enough for the defendant to simply state that he disagrees with the plaintiff on this point. Rather, that it is incumbent upon him to produce documentation or particulars supporting his claim. I am sympathetic to that argument and tend to agree that the defendant's affidavit evidence on this point lacks the kind of detail that I would expect. However, given the importance of the issue and the potential value of the property, I am persuaded that there should be a trial of the issue of

entitlement. It would also be appropriate to determine at that trial whether the other communal assets of the parties should be divided equally, or in some other fashion.

[7] Gower J. ordered that the proceeds of the sale of the Lands be paid into Court, except for an amount of \$20,000 to be paid to the plaintiff.

[8] Gower J. also ordered a trial of the following issues:

1. Should the court order the payment of 60% of the proceeds of the sale of the Lands to the plaintiff and 40% to the defendant or should the sale proceeds be divided according to another formula?
2. Should the court order an equal division of other assets accumulated during the relationship?

[9] The defendant filed an appeal from Gower J.'s orders. On August 27, 2007, I set a trial date with the consent of both parties. On September 18, 2007, the defendant obtained a stay of Justice Gower's orders from the Yukon Court of Appeal.

[10] Neither the plaintiff nor the defendant had the assistance of legal counsel at the trial.

II. The Evidence

[11] The plaintiff met the defendant in early 2002, shortly after having obtained a full-time position as a journalist in Whitehorse. The defendant was unemployed at the time. She maintains that they began living together in February 2002. The defendant maintains that they only started living together later in June or July 2002, but his memory was less definite. I prefer the plaintiff's more definitive version.

[12] I note that neither of the parties had significant property prior to their relationship. The defendant moved into the plaintiff's apartment where she was paying \$500 per month in rent. She purchased a Westfalia van in April 2002 for the sum of \$6,000. The defendant did not dispute the value of \$3,500 being attributed by the plaintiff to the van at the time of their separation in August 2005.

[13] I note that the defendant had made most of the efforts to acquire the Lands prior to the parties' relationship; although he did sign the agricultural sales contract relating to the Lands in September 2002, several months after the parties started cohabiting. The plaintiff's name as purchaser does not appear on the contract. The sale price was \$44,000, but the contract provided for the defendant's receipt of a credit of one dollar for each dollar expended on the construction of the buildings in question. The contract stipulates that the buildings be erected within a five-year timeframe.

[14] The defendant worked in the construction industry for several months during the fall of 2002. During that same period, the plaintiff learned that she was pregnant. She testified that the defendant did not work during the winter of 2002-03 but he did occasionally accompany her to film news stories.

[15] The plaintiff was prepared to finance the construction of a house on the Lands but the defendant refused to add her name to the sales contract, citing as justification conflicts with his former partner regarding the division of their assets. According to the plaintiff, the defendant asked her to trust him and reassured her that she would receive "her fair share" in the event of a separation. She rejected the defendant's suggestion

during cross-examination that they had reached an agreement whereby he would reimburse to her the amount of her investment only, in the event of a separation. The plaintiff acknowledged the possibility that they had had such discussions at the beginning of their relationship. However, once she learned that she was pregnant, they proceeded with plans to build a house and the defendant committed himself to reimbursing her fair share. She did point out that after the separation, the defendant offered to reimburse her investment at the rate of \$1000 per month but she refused his offer because she was unemployed at the time as a result of a lockout. She did not wish to be reimbursed through periodic payments and she characterized the offer as unrealistic since the defendant was unemployed. She testified that the defendant has made no other offers to settle the matter. Moreover, he continues to live on the Lands over two years after their separation without paying any rent, while she continues to pay the debts arising from the construction of their house and their cohabitation.

[16] In 2003, the plaintiff obtained a bank loan in the amount of \$8,000 to finance the purchase of a Silverado truck at a cost of \$8,200. The couple discussed the type of truck that would suit them. The defendant states that he was not in agreement with the purchase of a truck but I accept the plaintiff's testimony that they had indeed agreed on this particular purchase. The plaintiff transferred (for \$1.00) her interest in the Silverado to the defendant in November 2005, shortly after their separation. The defendant did not dispute the value of \$5,000 assigned by the plaintiff to the truck as of the date of separation. The defendant is still driving this vehicle.

[17] In April 2003, the plaintiff borrowed \$20,000 from a bank to finance the construction of the house. The agricultural sales contract provided for the transfer of title to the defendant only after the completion of the construction of certain buildings. The defendant was therefore unable to obtain a mortgage. The bank also refused to accept the defendant as a co-signer for the loan. I accept the defendant's explanation that he had no credit rating at the time, never before having obtained a loan. The plaintiff transferred the balance of the Silverado truck loan to the new loan.

[18] According to the plaintiff, the defendant worked for a short time in the construction industry in the spring of 2003. In May 2003, he bought two horses with his earnings.

[19] On July 6, 2003, the plaintiff gave birth to their child, L. She gave notice of termination of her lease, to take effect October 1, 2003. Consequently, the construction of a house before winter became more urgent. Since the house was far from being completed, the couple borrowed a camper from mutual friends to save money and permit them to remain on the construction site. The defendant performed most of the construction work in October 2003 with the help of the plaintiff's father. The family resided in the city for a time when winter set in, but was able to move into the new house during the 2003 holiday season.

[20] The plaintiff testified that she contributed directly to the construction of the house in the following ways: she helped clear the land; she consulted experts and reference material to develop the plans; she organized building bees for several steps of the

construction; she ordered and purchased construction materials; she obtained construction permits and consulted with the building inspector; and she physically worked on the construction itself. She also financed the project, having purchased construction materials with her credit card. She identified several transactions on her monthly Visa statement that detailed the purchases of construction materials. She also paid installation charges for electricity in the amount of \$3,500 and for a telephone line in the amount of \$581 (of which \$500 remained outstanding at the time of the separation).

[21] The plaintiff testified that she contributed indirectly to the construction of the house in the following ways: she prepared meals, took care of L. and cleaned their apartment, thereby leaving the defendant free to concentrate on the construction project. The defendant was the primary worker in terms of the physical construction of the house, but the plaintiff stated that he contributed very little to the financing of the project and to their relationship, since he did not have outside work during the plaintiff's maternity leave. She complained about the slowness of the project but I note that the couple lacked experience in building houses and depended on volunteer workers. However, because of the pressure exerted on the defendant by the plaintiff, the project was completed in almost four months. This is not unreasonable under the circumstances.

[22] The plaintiff testified that she provided a credit card to the defendant with which to make purchases.

[23] The couple's relationship became very strained near the end of 2003 and the defendant left the house for several days in January 2004. The couple then decided to visit their families in Quebec but to avoid the defendant being stopped at the Quebec border, the plaintiff had to pay old outstanding fines that the defendant had collected for traffic violations in a total amount of \$778.

[24] The plaintiff's salary in 2002 was \$60,000. During her maternity leave from mid-2003 to mid-2004, she earned only \$30,000 to \$40,000. The parties agreed that the defendant would remain at home to care for L. when the plaintiff went back to work until the child was ready to make the transition to daycare, a period of about one year. The plaintiff indicated however that after her return to work, she continued to perform the bulk of the housework and the meal preparation.

[25] The plaintiff obtained a \$10,000 line of credit in September 2004 to pay her Visa bill resulting from family expenses. In April 2004, she obtained a \$12,000 personal loan for the purchase of a Tracker pick-up truck, the latter requiring lower maintenance costs than the Silverado. The plaintiff is still driving the Tracker. Since the Tracker loan is still outstanding, the value of this vehicle is indicated as a debt on the balance sheet.

[26] During the summer of 2005, the plaintiff tried to negotiate an agreement with the defendant concerning the house and the debts. On August 4, 2005, she left with L. for good, taking only her clothing and personal effects. She stayed with friends for two months during her employer's lock-out. At the time of the separation, the balance on her line of credit was \$33,027 with interest to the time of trial of \$4,482.

[27] The plaintiff stated that the defendant built a shed after their separation, resulting in a slight increase in the value of the Lands. In January 2007, she had the Lands evaluated by a real estate agent, Mr. Don MacDonald. The Government of the Yukon still held title to the Lands. Mr. MacDonald estimated the value of the Lands at between \$130,000 and \$140,000. However, he did not have an opportunity to inspect the premises.

[28] As a result of the May 29, 2007 order of Gower J. transferring the defendant's interest in the agricultural sales contract to the plaintiff, the defendant offered to pay the amount of \$70,000 into Court (*i.e.* half the maximum value of the Lands as estimated by Mr. MacDonald). The plaintiff refused the offer since this would not have resolved the litigation. The plaintiff also wanted to ensure that the buildings referred to in the sales contract were built before the contract's deadline (*i.e.* September 2007) in order to effect the transfer of title to the lands into her name and to facilitate the sale of the Lands as provided for in Gower J.'s order.

[29] The defendant met his commitment under the contract of sale by building a greenhouse. However, in order to transfer title into her name pursuant to the prior order by Gower J., the plaintiff was required to pay property tax arrears in the amount of \$3,970 and to seek the court's intervention to compel the defendant to sign the transfer documents.

[30] With the title to the Lands registered in her name, the plaintiff ordered a formal appraisal of the Lands from Yamada Appraisals Ltd. This appraisal dated September

13, 2007 set the value of the Lands at \$135,000. Mr. MacDonald, the real estate agent, performed another valuation on September 18, 2007. He estimated the value of the Lands to be between \$175,000 and \$185,000. The plaintiff also tendered in evidence at trial a letter dated October 24, 2007 signed by A.D. offering her the sum of \$175,000 for the Lands.

[31] Addressing the personal property accumulated by the parties during their relationship, the plaintiff testified that she asked the defendant on numerous occasions to allow her to take certain items from the house. Pursuant to a court order granted on October 21, 2005, she attended at the house accompanied by an RCMP officer to recover items contained in a list previously approved by the Court but the defendant simply presented her with some bags which, she maintained, contained no item appearing on the list. She stated under cross-examination that she did not make a list of the items she obtained from that visit as ordered by the Court. On May 29, 2007, she tried once again to recover certain items from the house pursuant to a second court order granted on May 28, 2007, but she did not find the items on the original list that had been forwarded to the defendant's counsel in November 2005. The defendant stated that he had sold two water tanks and a septic tank and that he had "set aside" some other items.

[32] The plaintiff tendered in evidence a letter from her employer indicating the amount of her contributions to her pension plan from early December 2001 until August 4, 2005. This amount totaled \$7,434. She did not present actuarial evidence regarding

the value of her pension. The plaintiff stated that she had forgotten to include in her sworn statement two RRSP plans to which she had contributed a total amount of \$1,000 during the period of their cohabitation.

[33] The plaintiff called three witnesses. E. S., the plaintiff's father, testified that he travelled from Quebec in September 2003 to help the parties install a roof on their house before winter. He testified that the construction project was a team effort. The plaintiff and the defendant would consult with each other regarding project-related decisions in addition to consulting with experts. The plaintiff provided the funds, prepared the designs, ordered and transported construction materials, organized building bees, and took care of L. and meals. While the defendant played an essential role in the construction project, according to E.S., the project could not have continued without the financial support provided by the plaintiff.

[34] C. D. lives on a neighboring property and works in the construction industry. In view of his professional qualifications as an engineer, both parties consulted with him often regarding the construction project. C.D. was of the opinion the completion of the construction of a house by non-professionals within three or four months was not unreasonable. He repeated E.S.'s observation that the construction of the house was a project shared by the couple and that the plaintiff had significant involvement in its completion, both financially and physically. She consulted with him, prepared food for the workers, and picked up construction materials. He thought the Lands could sell for \$175,000.

[35] E. G. is a close friend of the plaintiff and was a mutual friend of the parties during their cohabitation. He frequently visited the house-building site. According to E.G., the construction work proceeded at a slow pace. He tried to help the defendant but the latter would not let him do anything. He observed that the plaintiff cleaned the construction site, prepared meals, ran errands, and cared for L. He was aware that she was also financing the project. He echoed the comments of other witnesses that this was a joint project of the couple and he pointed out that without the “small nudge” provided by the plaintiff, the construction project would not have advanced.

[36] E. G. testified that he offered the defendant a job as a building painter before L.’s birth but the defendant refused the offer, indicating that he did not like painting. However, in his August 8, 2005 affidavit, E. G. stated that he made that offer in the summer of 2004 (after L.’s birth). I accept the defendant’s testimony that he refused the job offer after L.’s birth because he was caring for L. after the plaintiff had returned to her employment as a journalist.

[37] The defendant testified that he made several attempts to acquire the Lands before cohabiting with the plaintiff. He had already filled in the government application forms, cleared a section of the land to permit the construction of an electrical line and built 600 meters of road and another road allowing access to a neighboring piece of land. He stated that the bureaucratic process for obtaining agricultural land is long and complex. He had to demonstrate agricultural and development knowledge to become

eligible for the government program and he fulfilled all the administrative requirements and completed the land survey before he and the plaintiff first met.

[38] The defendant noted that the initial agricultural operations plan attached to the sale contract did not include the construction of a house. It was his dream to build a cabin using wood on the site. However, I accept C. D.'s testimony that the trees on the Lands would not have been sufficient to build a cabin. The defendant noted that the government only considers 20% of the value of a house in agricultural sales contracts.

[39] At the plaintiff's insistence, the defendant left his construction job to devote himself to the construction of the house. According to him, it was the plaintiff who created the urgency by giving notice to the owner of her apartment of her intention to leave on October 1, 2003 without consulting with him.

[40] Contrary to the plaintiff's testimony, the defendant stated that he was the one who drew up the plans for the house based on drawings borrowed from a neighbor for a similar but larger house. He consulted with the building inspector to familiarize himself with building code requirements and signed applications for construction permits. He performed the bulk of the construction work. He also prepared meals. He insisted that he was the one who made the arrangements for the use of the camper as temporary quarters.

[41] The defendant testified that at the beginning of the construction project, the plaintiff wanted him to promise that he would not "steal" her investment should they

separate. He reassured her that the funds she was prepared to invest would be reimbursed to her.

[42] According to the defendant, the plaintiff was putting considerable pressure on him, on her father, E. S., and on their friends to complete the construction project. His comments confirmed E. G.'s testimony regarding the significant role of the plaintiff in the sense that she was providing the "nudge" needed for the successful completion of the project. The defendant emphasized the very hard work demanded of him by the plaintiff at certain stages of the project, such as electrical installation work during very cold weather.

[43] The defendant testified that he asked his former spouse several times to advise him of the amount she had contributed to the construction project so that he could reimburse her. However, she never provided a precise figure and insisted that she was entitled to 50% of the value of the house. He testified that he made a verbal offer to pay her \$20,000, having calculated the construction costs at \$15,000, plus interest. However, he admitted under cross-examination that he did not have the means at the time to pay this amount because he was unemployed. It was his contention that he would have tried to borrow the money had the plaintiff accepted his offer. He also offered to repay the plaintiff's investment by way of a mortgage, upon title to the Lands being registered in his name. He acknowledged responsibility for payment of one-half of the line of credit of \$33,027.

[44] The defendant was under the impression that the line of credit was the source of the funding for two trips taken by the plaintiff to Quebec with L. during their relationship. The plaintiff was able to establish to my satisfaction, based on her Visa statements she referred to in cross-examination, expenses paid by exchanging reward miles, which minimized costs.

[45] According to the defendant's calculations, the plaintiff disbursed the amount of \$11,250 for construction materials. The plaintiff pointed out, and I accept, that this figure only represents purchases from two stores and she established, through her Visa statements, the purchase of materials at other stores.

[46] The defendant stated that shortly before their separation in August 2005, he placed a small advertisement for the sale of the Lands in the local newspaper without indicating any price. However, he testified that it was not his intention to put the Lands up for sale. Rather, he simply wanted to investigate the market prospects and the amount he might recover in order to reimburse the plaintiff. I do not understand his testimony in this regard. It seems evident to me that the value of the Lands at the time of the separation greatly exceeded the balance on the line of credit. If the plaintiff was only entitled to the reimbursement of her investment, the market price would bear no relationship to the amount that the defendant thought he had to reimburse to her.

[47] According to the defendant, the plaintiff was prepared, during their cohabitation, to finance the raising of horses but she refused to assist financially after their separation. She cancelled the defendant's credit card even though she knew he was

unemployed. He stated that one of the horses died from malnutrition, among other reasons, and that the defendant sold the other horse for \$500.

[48] Following the separation, the defendant obtained a weekend job and a contract as a lumberjack.

[49] The defendant testified that he inquired at the bank about the prospect of obtaining a mortgage and that the bank was prepared to approve a loan of up to \$120,000 upon title to the Lands being registered in his name. He intended to pay the property tax arrears from these funds. During her questioning of the defendant, the plaintiff noted that the agricultural sales contract required the payment of property taxes to be made before any transfer of title.

[50] The defendant stated that his three previous partners had stable employment and that he had had problems keeping a job. He pointed to their higher levels of education and the lack of stability in seasonal work.

[51] The defendant testified that he wishes to continue residing in the house and that L. has a special connection with the Lands where he can enjoy wide open spaces in which to walk and play, a playhouse, a trampoline, an old boat that he also uses as a playhouse as well as a country dog that would not be suited to city life.

[52] The defendant testified that he was unemployed at the time of the trial. He had recently lost a job as a mechanic that he had secured in March 2007. This four-day-per-week job paid \$20 per hour and allowed him to visit his son according to the schedule set by the court. He indicated that he lost the job because he was spending a

lot of time preparing for the litigation. He noted that it is quite difficult to obtain a job that fits the access schedule (Sunday to Tuesday night). He pointed out that before the trial he had offered to pay \$20,000 to the plaintiff and the balance of \$50,000 into Court in exchange for a transfer of title to the lands into his name pending the Court's decision as to the final distribution of these funds. The defendant believed that the Lands were worth between \$150,000 and \$160,000 at the time of the trial but he did not tender a formal appraisal in evidence.

[53] The defendant confirmed that he is holding most of the personal property shown on the list presented by the plaintiff at trial and he provided his opinion as to the value of each item. A list of personal property is attached as Schedule 1 to these reasons. He stated that the plaintiff is entitled to 50% of the personal property accumulated during their cohabitation. The defendant insisted that he has none of the plaintiff's jewelry. He did not assign any value to the personal property in the plaintiff's possession. The parties expressed their own viewpoints on the difficulties experienced when the plaintiff, accompanied by an RCMP officer, attempted to recover her personal property. The defendant stated that he had "set aside" some of the personal effects on the list approved by the court because he characterized them as joint property. He even described the plaintiff's ski boots as joint property.

III. Summary of the positions of the parties

[54] The plaintiff is requesting the sale of the Lands and 60% of the proceeds of the sale after reimbursement of the following amounts that she paid, namely: (i) the line of

credit in the amount of \$33,027 plus interest of \$4,482; (ii) the construction costs for the electrical line (\$3,500) and the telephone line (\$500 still unpaid); (iii) the property tax arrears (\$3,970); and the cost of the formal appraisal of the Lands of \$370, for a total of \$45,489. She does not accept that a sale of the Lands would have a negative impact on L. since he easily developed a connection with the plaintiff's current accommodations. She submits that her proposed distribution of the proceeds of sale constitutes fair compensation for her direct and indirect contributions to the increase in the value of the Lands and for the fact that she kept the loans up-to-date while the defendant has lived on the Lands for over two years without paying rent. She also justified this distribution on the basis of her efforts to move the litigation forward over the past two years which, she stated, caused her psychological distress. However, the plaintiff did not tender any evidence of professional consultations related to psychological problems.

[55] The plaintiff is also claiming an equal division of the value of the personal property (identified in Schedule 1).

[56] Finally, the plaintiff is claiming an additional amount of \$20,000 for lawyer's fees. She did not tender any accounts in evidence but estimates that she has already paid about \$10,000 to her lawyer and that unbilled fees total between \$10,000 and \$15,000. She states that she tried everything to resolve the litigation but that the defendant did everything to stall the process and has never made any firm offer to settle their differences.

[57] The defendant submits that the plaintiff has not established a right to a portion of the proceeds of the sale of the Lands, in view of his own efforts to secure the agricultural sale contract before even meeting the plaintiff, the short duration of their relationship, the fact that they are not married and that it was the plaintiff who left their relationship, and the fact that the plaintiff did not have to pay rent during their relationship. He maintains that he had an agreement with the plaintiff pursuant to which he would reimburse the plaintiff's financial contribution to the construction project in the event of their separation but that he would retain the Land for himself. He pointed out that he also contributed cash to the project but did not provide any supporting receipts. He indicated that he is prepared to pay the outstanding balance of the line of credit in the amount of \$33,027 and to withdraw his application for a share of her pension plan, her RRSP and the personal property in her possession so long as he can retain the Lands.

IV. Findings of fact

[58] I make the following findings:

1. The defendant's employment during the relationship and his financial contribution to the relationship

The defendant worked in construction during the summer of 2003, but the plaintiff asked him in early fall 2003 to leave his job to build their house. After L.'s birth, the parties agreed that the defendant would take care of L. when the plaintiff returned to her job in June 2004 until the child was ready to be integrated into daycare, that is, at about one year of age. The plaintiff paid for the bulk of the construction materials, the property accumulated by the parties, and their common expenses during their cohabitation.

2. The value of the Lands

I assign greater weight to the formal appraisal of the Lands performed by Yamada Appraisals since they are qualified appraisers and their report refers to other sales of similar properties. I assign less weight to the appraisal performed in September 2007 by Mr. MacDonald. His one-page report does not refer to any other comparable sales of similar properties. C. D., along with each of the parties, also offered opinions regarding the value of the Lands. Neither Mr. MacDonald nor C. D. is a qualified appraiser. However, given their respective professions, they do have an appreciation of the local real estate market. On the other hand, I do not assign much significance to the letter dated October 24, 2007 from A. D., tendered in evidence by the plaintiff on the first day of the trial, with no prior notice to the defendant. This is an offer to purchase the Lands for \$175,000. A. D. was not called to testify and the defendant therefore had no opportunity to cross-examine him regarding the legitimacy and the details of his offer.

Having considered the evidence, I find that the current value of the Lands is approximately \$155,000.

3. The value of the personal property acquired during cohabitation

I set the total value of the personal property retained by one or the other of the parties at \$13,130 (see Schedule 1). This amount is based on the average of the values proposed by the parties in view the absence of a formal valuation.

4. The existence of an agreement between the parties regarding the Lands

I find that no agreement was reached between the parties as to the manner of compensating the plaintiff for her financial and physical contributions to the construction project. However, I accept the plaintiff's testimony that the defendant assured her at the time that she decided to finance the construction project that she would receive her "fair share" in the event of their separation.

5. The plaintiff's contributions to the development of the Lands

The plaintiff contributed directly to the construction of the house in the following ways: helping clear the Lands in a minor way; financing the purchase of construction materials; ordering, purchasing and transporting construction materials; organizing building bees; helping in a minor way with the on-site physical construction work; preparing construction plans and consulting with the building inspector. The plaintiff contributed to the project indirectly in the following ways, thereby permitting the defendant to devote himself exclusively to the construction of the house: preparing meals for the workers along with the defendant and L.; caring for L.; and keeping house.

I accept the testimony of the plaintiff, her father, E. G., and C. D. that: (i) the construction project was a joint project of the couple; (ii) the plaintiff played a significant and central role in the completion of the project; and (iii) the parties consulted with each other regularly on major decisions concerning the project.

6. The defendant's contributions to the development of the Lands

The defendant contributed directly to the construction of the house in the following ways: executing the relatively complex steps necessary to acquire the Lands through an agricultural sales contract; clearing the Lands; developing the building plans in cooperation with the plaintiff; consulting with the building inspector; and contributing physical labour in the construction project itself. I find that the defendant made minimal financial contributions to the project.

7. The electrical line

I find that the installation of the electrical line increased the value of the Lands.

8. The plaintiff's financial contribution to the construction project

I accept the plaintiff's testimony that her financial contribution to the project by way of purchases of materials exceeded the \$11,250 acknowledged by the defendant and that her contribution also included the cost of gas for the transport of materials and the cost of food for the volunteer workers. I estimate her financial contribution to the construction project to be at least \$20,000, not including the interest she paid on the line of credit. I accept that she was paying for family expenses from borrowed funds, from the line of credit and with her credit card.

9. **Costs related to the litigation**

I conclude that the defendant did not make any formal offers that would have had the effect of resolving the litigation. The plaintiff was obliged to take formal steps to recover her personal property and that the defendant hindered that process by hiding certain items and selling others.

10. **The transfer of the Lands**

I find that it is only as a result of the plaintiff's request in May 2007 to transfer title to the Lands into her name that the defendant undertook to perform the construction work needed to effect the transfer of the title before the deadline stipulated in the agricultural sales contract. I find that he did not cooperate in the transfer of the title and that the plaintiff was therefore obliged to seek the court's intervention.

V. **Discussion**

Has the defendant been unjustly enriched?

[59] The Supreme Court of Canada determined in ***Nova Scotia (Attorney General) v. Walsh***, [2002] 4 S.C.R. 325 that the distinction between the legal regimes applicable to marriage and unmarried spouses in relation to the division of property is not discriminatory. The term spouse in the *Matrimonial Property and Family Support Act*, RSY 2002, c.83, s. 1 (as amended) excludes unmarried couples. Consequently, there is no presumption of equal division of property (see also ***Wylie v. Leclair*** (2003), 38 R.F.L. (5th) 227 (Ont. C.A.) at para. 18).

[60] However, the plaintiff is claiming 60% of the current value of the Lands, as well as 50% of the value of the personal property accumulated during their relationship, based on the principles of unjust enrichment and constructive trust.

[61] A party who seeks relief based on the principle of unjust enrichment must establish that: (i) there was an enrichment; (ii) the person who provided the enrichment suffered a corresponding deprivation; and (iii) the absence of any juristic reason for the enrichment: **Pettkus v. Becker**, [1980] S.C.R. 834, at para. 38; **Sorochan v. Sorochan**, [1986] 2 S.C.R. 38, at para. 11; **Peter v. Beblow**, [1993] 1 S.C.R. 980, at para. 64.

[62] I am of the view that the three conditions for the establishment of an unjust enrichment are met in this case. The defendant was enriched in that he obtained the services of the plaintiff without remuneration. She financed the purchase and saw to the transportation of construction materials, she helped with the construction planning, and she performed several tasks on the construction site in addition to supplying domestic services, thereby permitting the defendant to devote himself to the construction of the house. I have already found that the construction project would not have progressed without the plaintiff's efforts and resources (both physical and financial).

[63] The plaintiff's corresponding deprivation is evident. She dedicated a large part of her time and energy without remuneration: see **Peter**, at para. 72. She contributed financially to the construction project and to the improvement of the Lands to the benefit

of the defendant and the family. I recognize that the defendant turned down possible outside jobs during the year he was caring for the child and the plaintiff was back at her job, in order to provide domestic services. However, I accept that the plaintiff continued to perform a large part of the housework evenings and weekends.

[64] The third condition necessary to establish unjust enrichment, the absence of a juristic reason for the enrichment, is an objective one: **Peter**, at para. 84. In **Pacific National Investments v. Victoria (City of)**, [2004] 3 S.C.R. 575, Binnie J., writing for the Court, noted that the analysis of this third condition comprises two stages:

At the first stage, a claimant must show that there is no juristic reason within the established categories that would deny it recovery. The established categories are the existence of a contract, disposition of law, donative intent, and “other valid common law, equitable or statutory obligatio[n]”.

At the second stage, the focus shifts to the defendant, who must rebut the *prima facie* case by showing that there is some other valid reason to deny recovery.

[65] I conclude that no juristic reasons within an established category justify refusing to compensate the plaintiff. While the parties had discussed the issue of the plaintiff’s contribution to the house, I have found that they did not enter into any agreement in the matter. Moreover, the defendant did not provide a valid reason in the present case to refuse compensation. The opportunity to live in a house without payment is not a valid reason for refusing compensation, in view of the debts that the plaintiff incurred during the period of cohabitation.

[66] In the majority opinion in **Peter**, at para. 87, McLachlin J. (now Chief Justice) made the following comments regarding common-law relationships:

It is not necessary that there be evidence of promises to marry or to compensate the claimant for the services provided. Rather, where a person provides "spousal services" to another, those services should be taken as having been given with the expectation of compensation unless there is evidence to the contrary.

[67] In light of the services provided by the plaintiff to the construction project and her spousal services, I find that there was a reasonable expectation that she would benefit from the enrichment she had helped to create. Accordingly, the three conditions for unjust enrichment are established in this case.

What is the appropriate remedy in the present case?

[68] In ***Rathwell v. Rathwell***, [1978] 2 S.C.R. 436, at paras 36 to 38, Dickson J. (later Chief Justice) noted that constructive trust is an obligation quite distinct from contract and tort obligations. The court subjects a party holding title to a property to an equitable obligation to convey title to another on the ground that he would be unjustly enriched if he were permitted to retain it. The law imposes this obligation when a common intention is lacking and cannot be presumed. Dickson J. described constructive trust as an obligation with "great elasticity". He added at para. 39 that constructive trust comprehends the imposition of trust machinery by the court in order to achieve a result consonant with good conscience.

[69] In ***Peter***, McLachlin J. recognized, at para. 65, that constructive trust constitutes one of the remedies to unjust enrichment and, at para. 74, that this remedy may be granted in the context of a common-law relationship. Moreover, she noted, at para. 66,

that constructive trust may also be invoked by a spouse who has contributed not to the acquisition of property but rather to its preservation, maintenance or improvement. In the present case, the plaintiff did not contribute to the acquisition of the Lands but she did contribute financially and physically to their improvement and maintenance, creating through her efforts “a special link to the property in question” (**Peter**, at para. 67). I find that the plaintiff’s contribution was sufficiently significant to entitle her to a share of the equity or of the net value of the house and accordingly, to a share of the proceeds of the sale. The share of the property must be proportional to the applicant’s contribution, direct or indirect (**Peter**, at para. 27).

[70] I note that the period of cohabitation was less than three years but that during that period, the plaintiff gave birth to L. and the parties built a family home. While the plaintiff’s financial contribution was not the sole source of funding for the construction project, it is clear that she was providing for her family’s needs with her income and the line of credit that she was able to secure. As McLachlin J. noted in **Peter**, at para. 95:

... in a family relationship the work, services and contributions provided by one of the parties need not be clearly and directly linked to a specific property. As long as there was no compensation paid for the work and services provided by one party to the family relationship then it can be inferred that their provision permitted the other party to acquire lands or to improve them.

[71] I conclude that it would be appropriate to impose a constructive trust in this case.

[72] There are two methods to determine the extent of the trust: **Peter**, at para. 28.

The first is based on value received (*quantum meruit*), that is, the amount that the person would have had to pay to a third party to obtain the services in question. The plaintiff offered no calculation, such as found in **Aleksich v. Konradson**, [1995] B.C.J.

No. 328 (C.A.), at para. 12, of the amount of savings attributable to non-remunerated work.

[73] The second method for determining the extent of the trust is to set the accumulated value, that is, the value of the improvements made to the property. The defendant cited *Wylie* wherein the Ontario Court of Appeal viewed it appropriate to use a calculation based on value received (para. 18). However, the plaintiff in *Wylie* had benefited from 15 years of cohabitation without paying rent, a situation markedly different from the circumstances of this case. Under the terms of the agricultural sales contract in this case, the defendant was neither under the obligation to pay the purchase price of \$44,000, nor did he have the right to the register title into his name, without first performing the construction work contemplated in both the agreement and territorial regulations. Both parties lived on the Lands without paying rent but the plaintiff assumed responsibility for the line of credit and for the payment of the bulk of the expenses. In *Dorey v. Parr*, [2002] B.C.J. No. 1414, 2002 BCSC 921, also cited by the defendant, the court ruled that the plaintiff had not established the defendant's enrichment (the first condition of unjust enrichment). Accordingly, this decision is clearly distinguishable from the present case. I conclude that the "accumulated value" method more closely corresponds to the expectations of the parties, namely, that the plaintiff would have the right to receive, in the event of separation, her fair share of the wealth accumulated by the couple.

[74] The extent of the trust remains to be quantified. I note that: (i) the defendant had taken steps, even before meeting the plaintiff, to acquire the Lands through a long and

complex process, but without incurring significant expenses; (ii) the parties had already been cohabiting for several months at the time the agricultural sales contract was finalized between the defendant and the Government; (iii) the plaintiff helped clear the Lands so that a road could be built; (iv) the plaintiff established a line of credit in her name alone, which allowed the parties to build the house. About \$20,000 was paid from the line of credit and/or her Visa account for the purchase of construction materials, whereas the defendant invested very little money in the project; (v) the plaintiff helped the defendant plan the construction project, consulted with the building inspector and ordered and transported construction materials to the site; (vi) the plaintiff organized building bees and prepared meals for the volunteer workers; (vii) the defendant benefitted from the help of the plaintiff's father on the project for a full month; (viii) the plaintiff performed the bulk of the housekeeping work and took care of L., which permitted the defendant to focus on the construction project. However, I note that the defendant performed the bulk of the actual construction work.

[75] The construction of the house was a joint family enterprise. Taking into account the respective contributions of the parties, I find that the plaintiff is entitled to one half of the value of the house equity. I do not believe, however, that the plaintiff is entitled to a share greater than 50%. The behaviour of the defendant in this litigation about which she complains raises issues that are properly addressed in a discussion of costs. Nor am I of the view that the plaintiff is entitled to reimbursement of her line of credit and other investments in addition to recovering 50% of the value of the house. Both parties contributed to this value, as a joint project, the plaintiff in money and services and the

defendant mostly in services. It would be unfair in this case to reimburse the financial debt incurred by the plaintiff without acknowledging that the defendant's services had value.

[76] On May 29, 2007, Gower J. ordered the transfer to the plaintiff of the defendant's interest in the agricultural sales agreement for the purposes of the sale of the Lands. On September 18, 2007, the defendant was granted a stay of that order by the Court of Appeal. However, on November 1, 2007, with the parties' consent, I ordered the plaintiff to transfer title to the Lands into the name of the defendant upon the defendant's payment into court of the amount of \$118,000 by December 17, 2007, representing the total approximate claim of the plaintiff. From these funds, I directed the immediate payment of \$33,000 to the plaintiff, the defendant having acknowledged at trial that he owed her that amount.

[77] Since these funds were not paid into court, the court may order either that the plaintiff retain title to the Lands and pay the defendant 50% of the net value of the house, or that the defendant have an opportunity to pay the plaintiff her share of the net value, or again that the Lands be sold and the net profits be divided equally between the parties.

[78] The plaintiff stated that she does not wish to retain the Lands because she is a co-owner of another home. On the other hand, I note that: (i) the plaintiff's interest is relatively large compared to the value of the Lands; (ii) the defendant was unemployed at the time of the trial, his employment in the past having been rather seasonal and I am

of the view that in all probability, he would not be in a position to pay the plaintiff her share of the net value; and (iii) I do not accept that L. would suffer significant harm in the event of the sale of the Lands and the loss of the advantages of a large play area or that the defendant would be unable to find another accommodation using his share of the proceeds of the sale.

[79] The defendant is claiming an equal division of the direct contributions from the plaintiff's salary to her employer's pension plan and her contributions during their relationship to her RRSPs. I note, according to **Walsh**, that no presumption exists in favour of an equal division of these investments in the case a common-law relationship. The defendant must satisfy the conditions for unjust enrichment or constructive trust.

[80] I conclude that the defendant has satisfied the three conditions for unjust enrichment regarding the pension funds. There was an enrichment and a corresponding deprivation. Prior to L.'s birth, the defendant worked as a seasonal worker and contributed his salary to the joint expenses. After L.'s birth, the defendant dedicated his time and energy to building the house. He also took care of L. during the daytime between June 2003 and August 2004, except for the spring of 2004 while in Quebec, when the couple was sharing L.'s care. The relationship itself was not a juristic reason for this enrichment, since these services did not arise from any contractual obligation. The Alberta Court of Appeal in **Hantel v. Hilscher** (2000), 255 A.R. 187, 2000 ABCA 84, at para. 23, noted that spousal services and child care in the context of a common-law relationship may constitute enrichment, and providing free services, a

corresponding deprivation. These services allowed the plaintiff to return to her job and thus increase her pension fund. I conclude that the defendant is entitled to 50% of the plaintiff's contribution to her employment pension fund, that is, $\$7,434 \times 50\%$, or $\$3,717$.

The defendant is entitled to one-half of the plaintiff's contributions to her RRSPs after the deduction of tax. I set the amount of reimbursement at $\$1,000 \times 50\%$, or $\$500$ less 25% taking into account tax considerations, for a net amount of $\$375$. The total amount due to the credit of the defendant is therefore $\$4,092$.

[81] I direct an equal division between the parties of the total value of the personal property as it was accumulated it jointly. Given that: (i) the plaintiff made two attempts sanctioned by the court to recover her fair share of these items; (ii) the defendant did not cooperate in that he acknowledged having "set aside" or sold some of these items; and (iii) it is likely that further conflicts will arise if the court orders a division of the personal property in kind, I direct that the plaintiff shall be entitled to a cash amount of $\$3,332$, calculated in accordance with Schedule 1, in final settlement of all her claims to the personal property.

[82] The plaintiff claimed 60% of the value of the Lands because of the problems and the delays in the litigation and the fact that she has had to pay interest on the line of credit since the separation. She maintains that she has already paid $\$10,000$ to her lawyer in preparation for trial. The defendant also retained the services of a lawyer during certain periods in 2006 and 2007 but he did not indicate the amount that he has paid in lawyer's fees. I have reviewed the interim orders granted in this case. I am of

the view that several of the applications were necessitated, at least in part, by the inertia or the recalcitrance of the defendant, such as the application of October 21, 2005 (recovery of personal property), of May 28, 2007 (recovery of personal property), of May 29, 2007 (title transfer) and of July 31, 2007 (defendant's signature on the transfer). Moreover, even though the plaintiff has obtained 50% of the equity in the Lands rather than the 60% she claimed, my reasons reflect a clear rejection of the defendant's position that the plaintiff is only entitled to be reimbursed for her investment. I also find that the plaintiff was represented by a lawyer for most of the previous applications dealing with the transfer of the Lands into her name for the purposes of sale. In all of the circumstances and having regard to the mixed success at trial, I direct that the defendant pay the plaintiff pursuant to para 13.1 (a) of Rule 57 of the *Rules of Court*, the costs of the above applications, except for the applications of October 21, 2005, the plaintiff having stated that she had not drawn up a list of personal property ordered by Veale J. I set these costs at \$1000 per application, including disbursements, except for the more complex application of May 29, 2007 where the costs shall be set at \$2000, for a total of \$5,000. I order that each of the parties bear their own costs of applications excluding the applications I have noted above and those applications noted in my reasons for judgment regarding the custody of their child. I direct that each of the parties bear their own costs of the trial.

VI. Conclusion - Order

[83] I direct that the defendant have the option to purchase from the plaintiff her share of the Lands in the amount of \$77,500, *i.e.* one-half of the value set at \$155,000. From the credit that I've attributed to the defendant in the amount of \$4,092 (in para. 80) in respect of the plaintiff's pension plan and RRSPs, the amount of \$3,332 shall be deducted, representing the plaintiff's interest in the personal property (calculated in para. 81, and Schedule 1), for a net credit to the defendant of \$760. The defendant will therefore remit the amount of \$76,740 plus the costs provided for in para. 82, together with costs in the amount of \$2,000 provided for in my reasons for judgment regarding the custody of the child, in exchange for a transfer of title to the Lands into his name. The expenses provided for in para. 89 shall not be deducted from the costs of the transfer. Consequently, the amount of \$76,740 plus costs of \$7,000 for a total of \$83,740 shall be paid by the defendant to the plaintiff within 30 days.

[84] If the defendant does not exercise the option provided for in para. 83, the plaintiff shall have the option of offering the Lands for private sale for a 30 day period, without real estate agent. The expenses associated with the publication of sale advertisements shall be deducted from the proceeds of sale.

[85] The plaintiff shall be authorized to accept or refuse offers in writing and conditions of sale and to make counter-offers for the sale of the Lands. However, any accepted offer must provide the defendant with at least 30 days to deliver up the house

and to move. The plaintiff's signature alone shall be sufficient to complete a sales transaction.

[86] The defendant shall ensure that the Lands are maintained in reasonable condition until the sale and shall permit the Lands to be shown to potential buyers upon 24 hours advance notice communicated to him by telephone or e-mail.

[87] If no unconditional offer of a least \$155,000 is accepted within the 30 days provided for a private sale, the Lands shall be offered for sale by Mr. McDonald of Caldwell Banker Redwood Realty at a sale price of \$175,000. Should Mr. McDonald not wish to undertake this task, another agent from the same real estate agency may act in his place.

[88] The plaintiff shall have the right to accept any unconditional offer of a least \$155,000. If the plaintiff receives no such unconditional offer within 60 days following the offer of sale of the Lands by Caldwell Banker Redwood Realty, she shall have the option to reduce the sale price to \$155,000 and to accept any unconditional offer of at least \$140,000. If no offer of \$140,000 is received within 60 days following the reduction in the sales price, the acceptance of an offer of less than \$140,000 shall be subject to the defendant's consent. In the event that the defendant does not give his consent within 72 hours, the plaintiff shall be at liberty to apply for a court order approving the sale.

[89] Only the following expenses shall be paid from the proceeds of the sale of the Lands: (i) real estate fees (only in the event of a sale through a real estate agent); and (ii) the legal fees and disbursements relating to the sale.

[90] The balance of the sale proceeds shall be divided in equal shares between the parties after deduction of the costs noted in paragraph 89. From the defendant's share, the amount of \$6,240 (costs of \$7,000 less credit of \$760 payable to the defendant) shall be paid to the plaintiff.

Heard: October 30 and 31 and November 1, 2007.

Issued: March 7, 2008

M. T. Moreau
J.S.C.

For the plaintiff:

C.S. appeared on her own behalf

For the defendant:

S.N. appeared on his own behalf

Schedule 1: Personal Property**Property in the defendant's possession:**

	Value - plaintiff		Value - defendant
Silverado	\$5,000		\$5,000
Water tank (1250 gal.)	1,000		750 (sold for \$500)
Water tank (850 gal.)	200		200
Septic tank	2,000		750
Horses	1,000		500 (1 horse died)
Boat	400		250
Motorcycle	400		225
Greenhouse and accessories	400		200
Construction materials	200		20
Refrigerator and stove	200		200
Microwave oven	100		50
Counter	20		25
Stackable shelves	30		-
Flatware and utensils	50		10
Pots, pans, casseroles and crock-pot	50		50
Television, VCR and DVD	150		75
Tools	300		250
Wooden carpets	50		20
Trampoline	50		50
Bed frame	50		50
Reclining chair	50		20
Jewellery	<u>300</u>		<u>--</u>
Total	\$11,100		\$8,695
Average value:		\$9,897	

Property in the plaintiff's possession:

Chair	50		50
Westfalia van	3,500		3 500
Chev Tracker	(-1,034)		0
Sleeping bags	<u>-</u>		<u>400</u>
Total	\$2,516		\$3,950
Average value:		<u>3,233</u>	
Total of average values		\$13,130	
Total divided by 2:		6,565	
Already received by the plaintiff			
(Average value):		(\$3,233)	

Amount owing to the plaintiff:**\$3,332**