



Simonin v. Simonin [2008] O.J. No. 4502 (Ont. Sup. Ct. J.)

*David Lobl**

This was an action for unjust enrichment brought by Mary Simonin (“Mary”), personally and as Estate Trustee of the Franco Simonin Estate, against Matilda Simonin (“Matilda”), the defendant. The late Franco Simonin (“Franco”) was Mary’s husband and Matilda’s son.

Mary and Franco had lived rent-free on a farm property owned by Matilda from the time they were married until Franco’s death, approximately seven years. While living on the farm property, Franco made substantial renovations and improvements to the property that was paid for by his company, which had the effect of increasing its sale value by approximately \$230,000. The property had an active income generating farm. The farm income was retained by Franco and Mary.

Shortly after Franco died, Mary decided she could no longer live on the farm property. After Mary moved out, Matilda sold the farm property for a sale price of \$880,000.00. Mary alleged that Matilda had been unjustly enriched on account of the substantial renovations and improvements made to the farm property by Franco, which increased the value obtained by Matilda upon its sale.

The Honourable Justice P.A. Daley of the Ontario Superior Court of Justice dismissed the claim after finding that the three elements for an unjust enrichment had not been satisfied, namely: (i) an enrichment of the defendant, (ii) a corresponding deprivation of the plaintiff and, (iii) the absence of a juristic reason for the enrichment. Justice Daley found as follows on each of these points:

(i) Enrichment of the Defendant

On its face, it appears that the defendant was enriched in light of the renovations and improvements to the farm property and the corresponding increase in its value. However, Justice Daley concluded

that since the renovations and improvements to the farm property had in fact been paid for by Franco's company, and not by Mary or Franco, the action failed as no benefit was conferred on the defendant by Mary or Franco.

(ii) Corresponding Deprivation

In determining whether there was any corresponding deprivation, the Court should consider the "totality of what had passed between the parties" and not merely undertake a mathematical exercise. Justice Daley stated that Mary, Franco and their family had received intangible benefits associated with their occupancy of the farm property and the use of the land over and above a simple monetary comparison. They had enjoyed the use of all aspects of the farm property in their day to day lives. In addition to these non-tangible benefits, Mary and Franco received monetary benefits in excess of \$600,000.00 flowing from their use and occupancy of the farm property, its buildings and farmland. Justice Daley found that the monetary benefits far out-weighed the increased sale value of the farm property, estimated at \$230,000.00, which resulted from the improvements undertaken by Franco. The Court concluded that Mary had not established that she or her late husband had suffered a corresponding deprivation as a result of the benefit Matilda received from the renovations and improvements carried out at the farm property.

(iii) Absence of a Juristic Reason for Enrichment of the Defendant

Pursuant the Supreme Court of Canada's test set out in *Garwin v. Consumers Gas Co.* [2004] 1 S.C.R. 629 (S.C.C.), Mary was required to demonstrate a *prima facie* case by showing that there was no juristic reason from an established category (a contract, a disposition of law, a donative intent, or other valid common law, equitable or statutory obligations) which would deny recovery. The Court held that Mary had failed to establish her *prima facie* case, as Matilda was never billed for any of the work performed and was never advised that Franco and Mary expected to be compensated for their contributions. In addition, the Court concluded that any benefit conferred by Mary and Franco upon Matilda was voluntary and in their own self-interest and that there was therefore a juristic reason for Matilda to retain the benefits received by her.

Justice Daley stated that if a plaintiff conferred a benefit to another for his or her own self-interest, or if a plaintiff benefited in return from his or her conferral of benefits, then this would amount to evidence that the parties had no reasonable expectation that the benefit conferred by a plaintiff would be compensated for by a defendant. Unjust enrichment only applies to requested benefits. Granting a plaintiff compensation for a benefit which the plaintiff had not previously requested would unjustly enrich the plaintiff.

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