
CANADA / JUDGMENT

Pickard v. Knudsen

2013 BCSC 1091

COURT

Supreme Court of British Columbia

DECIDED

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2013 BCSC 1091 Pickard v. Knudsen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pickard v. Knudsen,

2013 BCSC 1091

Date: 20130621

Docket: S125388

Registry: Vancouver

Between:

Ronald Hugh Pickard

Plaintiff

And

Vonda May Knudsen, Executrix of the Estate of Kathleen Pickard otherwise known as Kay Pickard, Deceased; Vonda May Knudsen, Vonda Delaine Hope, Andrew Kevin Kerr

Defendants

Before: The Honourable Mr. Justice Savage

Reasons for Judgment

Counsel for the Plaintiff:

R.N. Toews

Counsel for the Defendant Vonda May Knudsen:

D.E. Dent

No other appearances

Place and Date of Trial:

Vancouver, B.C.

June 3-7, 2013

Place and Date of Judgment:

Vancouver, B.C.

June 21, 2013

I. Introduction

- [1] Kathleen Pickard died on March 31, 2011, at the age of 92 years. The plaintiff, Ronald Hugh Pickard ("Mr. Ronald Pickard"), advances claims against his mother's estate for unjust enrichment and a constructive trust, or, alternatively, seeks a variation of her will pursuant to the Wills Variation Act, R.S.B.C. 1996, c. 490. The will divides the estate equally between Mr. Ronald Pickard, his sister Vonda May Knudsen ("Mrs. Knudsen"), his cousin Vonda Delaine Hope ("Mrs. Hope"), and Andrew Kevin Kerr, Mrs. Hope's son ("Mr. Kerr"). Although named as defendants, neither Mrs. Hope nor Mr. Kerr have appeared in this proceeding. Mr. Kerr testified as a witness for Mrs. Knudsen and attended much of the trial.
- [2] The most significant asset in the estate is a 2.2 acre parcel of property containing two houses in Brackendale, B.C. (the "Brackendale Property"). Other assets passed by operation of law to the parties. The assets that apparently passed to the beneficiaries outside of the estate total \$420,000. Mrs. Knudsen received \$150,000, Mr. Ronald Pickard \$110,000, Mrs. Hope \$80,000 and Mr. Kerr \$80,000. These assets include two joint bank accounts where there is an issue as to whether they should properly form part of the estate: a savings account in the name of Mrs. Knudsen and the deceased jointly, and a chequing account in the name of Mr. Ronald Pickard and the deceased jointly.
- [3] With respect to the real estate, Mr. Ronald Pickard says that he contributed directly and indirectly to the acquisition and enhancement of the Brackendale Property. For more than 25 years he worked without pay for his father in a garbage collection business. The garbage collection business enabled his parents to purchase the Brackendale Property in 1966. Mr. Ronald Pickard also assisted his father in dismantling some ten buildings in the area of Britannia Beach, the materials from which he and his father used to renovate and/or construct the two houses on the Brackendale Property. Without interest, he calculates the value of his unpaid labour at approximately \$271,000.

- [4] Mr. Ronald Pickard and his wife and family have lived in one of the houses on the Brackendale Property since 1970. After five years they ceased paying rent, which had been \$100 per month. Since 1987, they have paid one-half of the property taxes on the entirety of the Brackendale Property. For 43 years, Mr. Ronald Pickard has renovated, expanded and maintained the house and fenced grounds where he resides. He has no other real property.
- [5] Mr. Ronald Pickard's father and mother lived in the other house on the Brackendale Property. Mr. Ronald Pickard assisted in maintaining other parts of the property both while his father was alive and thereafter.
- [6] The will contemplates the Brackendale Property being subdivided into four lots and the four beneficiaries each receiving a lot and being compensated for any difference in value. Although it is large, because of riparian and access issues, the Brackendale Property can only realistically be subdivided into two parcels. As one lot, it has a value of \$860,000. Subdivided into two lots, it would have a total value of \$1,125,000, less subdivision costs. The value of the portion of the Brackendale Property on which Mr. Ronald Pickard resides, considered as a separate parcel, is approximately \$525,000. If the terms of the will are carried out, all things being equal, Mr. Ronald Pickard would have to pay his sister, cousin and cousin's son \$243,750 in compensation to retain the property on which he resides.

II. Issues

- [7] The issues arising in this trial are: (1) whether Mr. Ronald Pickard has made out a claim for unjust enrichment or a constructive trust, and if he has, in what amount; (2) in the alternative, whether the will of Mr. Ronald Pickard's mother, Mrs. Kathleen Pickard, should be varied on the basis that it does not provide adequately for the maintenance and support of Mr. Ronald Pickard; and (3) whether the joint bank accounts should form part of the assets of the estate.
- [8] Unjust enrichment requires the plaintiff to establish: (a) an enrichment of the respondent; (b) a corresponding deprivation of the claimant; and (c) the absence of any juristic reason for the enrichment: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269. If unjust enrichment is made out, a constructive trust is available when a monetary award is inappropriate or insufficient and where there is a sufficiently substantial and direct link between the plaintiff's contributions and the property that is the subject matter of the trust: *Kerr* at paras. 50 and 51.
- [9] Section 2 of the Wills Variation Act provides for the variation of a will and reads as follows:
- 2 Despite any law or statute to the contrary, if a testator dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the testator's spouse or children, the court may, in its discretion, in an action by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the testator's estate for the spouse or children.

- [10] The leading case on the interpretation of s. 2 of the Wills Variation Act is the decision of the Supreme Court of Canada in *Tataryn v. Tataryn Estate*, [1994] 2 S.C.R. 807, [1994] 7 W.W.R. 609.
- [11] With respect to the joint bank accounts, the leading case is *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795.

III. Background Facts

- [12] In 1942 the deceased, Mrs. Kathleen Pickard, and her husband, Mr. Geoffrey Pickard, moved from Vancouver to Britannia Beach. Britannia Beach is located 20 kilometers south of Squamish. Britannia Beach Mining Company operated a copper mine at the site and owned all of the land in the surrounding area, including lands on which the miners resided. Mr. Geoffrey Pickard became a miner.
- [13] There were three residential areas near the mine: the Britannia Beach town site, adjacent to the mine; Mount Sheer, an area located some seven kilometers to the east of Britannia Beach; and Minaty Bay, an area on the oceanfront a few kilometers south of the mine site.
- [14] During the years of 1942 to 1984 the deceased and her husband resided in five different houses in the Britannia Beach area. One of those homes was in Minaty Bay. The building was owned by Mrs. Kathleen Pickard and Mr. Geoffrey Pickard, although the land was leased from the Britannia Beach Mining Company. The earlier properties on which they resided in Mount Sheer and the town site had been rented.
- [15] Mrs. Kathleen Pickard and Mr. Geoffrey Pickard had two biological children and raised two other children as their own. Mrs. Knudsen, born in 1941, is the biological daughter of the deceased. Mr. Ronald Pickard, born in 1944, is the biological son of the deceased. Mrs. Hope is the daughter of the deceased's sister and was born in 1956. She was raised as a daughter of the deceased from an early age, but left home at 15 after the birth of Mr. Kerr. Mr. Kerr is the son of Mrs. Hope and was born in 1971. He was raised as a son of the deceased and Mr. Geoffrey Pickard.
- [16] Mr. Ronald Pickard took an apprenticeship program in heavy duty diesel mechanics after completing high school. In 1962 he commenced employment with the PGE Railway in Squamish. His employment continued with BC Rail and then CN Rail. He continued in full-time employment for 35 years until his employment contract was bought out, together with those of other railway employees, in 1998. Since then he has been employed at other jobs and currently works as a security guard.
- [17] Mrs. Knudsen moved to Vancouver after completing high school. She attended University for two years to study teaching. Her parents paid her room and board and she stayed with her grandmother. In 1961 she married Mr. Knudsen who was a barber. She did not complete her university courses, although she could have taught. She and Mr. Knudsen had four children. Mrs. Knudsen and her husband resided briefly in Prince George and Comox before settling

in Sidney on Vancouver Island where they resided from 1964 to 1997. In 1997 Mr. Knudsen retired and they moved to Lone Butte near 100 Mile House where they currently reside. Mrs. Knudsen contemplated returning to school, and she worked for a time as a teacher's aide and as a housekeeper for hotels and resorts.

- [18] Mr. Kerr resided with the deceased and Mr. Geoffrey Pickard until he was 25 or 26 years old. He then married and moved out of the family home. On two occasions he returned with his wife to reside at the Brackendale Property with the deceased and Mr. Geoffrey Pickard. Mrs. Kerr testified that this enabled her and Mr. Kerr to save for a down payment to purchase a townhouse, into which they then moved. Mr. Kerr is divorced and now resides within a block of the Brackendale Property. He is employed in Squamish.
- [19] The Brackendale Property was purchased in 1966 for \$12,500. There was one small house on the property, which was rented until 1970. In 1969 Mr. Ronald Pickard moved out of the family home at Minaty Bay and commenced residing with his girlfriend and future wife, Dorothy Jean Pickard. Mrs. Pickard had four children from a previous marriage. In time Mr. Ronald Pickard adopted those children and had two children with Mrs. Pickard. In 1970 they moved into the home on the Brackendale Property. Mr. Ronald Pickard paid rent of \$100 per month for about five years.
- [20] A second home was completed on the Brackendale Property in 1984. The deceased, Mr. Geoffrey Pickard and Mr. Kerr moved from a house in the Britannia Beach area to the second home in 1984. In 1984, the Brackendale Property was assessed at \$77,900, although that reflected the value of the property as of 1983. The 1985 assessment increased to \$153,050, which presumably reflected the value of the second home. The increase is supported by a statutory declaration made by Mr. Geoffrey Pickard.
- [21] The deceased and Mr. Geoffrey Pickard resided in the second home until they died. Mr. Geoffrey Pickard died in 2002, while the deceased passed in March 2011. Mr. Geoffrey Pickard's will gave all of his estate to his wife, the deceased. It was handwritten and executed in 1998. The deceased's will was made in 2002 shortly after her husband's passing. It is as described above.
- [22] Mr. Ronald Pickard and his wife continue to reside in the same home on the Brackendale Property as they have done for 43 years. Mr. Ronald Pickard maintained all of the Brackendale Property until the fall of 2011. There has been acrimony between Mrs. Knudsen and Mr. Ronald Pickard. Mrs. Knudsen, as executor, has locked the premises formerly occupied by her parents. Since that time, the grounds forming the curtilage of the premises formerly occupied by the deceased and Mr. Geoffrey Pickard have periodically fallen into an untended state.

IV. Credibility

- [23] There are some credibility issues. The major credibility issue raised by the defendant is whether Mr. Ronald Pickard accurately described the work he performed for his father, and in particular, whether he was paid for certain work. Mr. Ronald Pickard testified that he was not paid. Mrs. Knudsen says he is either untruthful or he was foolish.
- [24] Mr. Ronald Pickard testified concerning factual matters, most of which took place many years ago. On occasion he got some dates wrong or was persuaded that the sequence of events was not quite as he described it, although generally in a non-material way. In my view these minor inconsistencies were not intentional, but the natural result of trying to describe events long past.
- [25] When asked why she thought Mr. Ronald Pickard untruthful, Mrs. Knudsen related two childhood events, one of which concerned a statement made by another person, and the second of which she conceded may only have been an exaggeration.
- [26] On the other hand, Mrs. Knudsen created a document that purported to show amounts paid out to third parties for maintenance work. She testified under oath at discovery that the sum of \$1,880 had been paid to a work crew. At trial she acknowledged that this was untrue. No such sum had been paid. She had created the document purporting to show expenses as a way of seeking "revenge" on Mr. Ronald Pickard after he stopped maintaining parts of the Brackendale Property.
- [27] I found Mr. Ronald Pickard to be a careful and thoughtful witness. He was careful when giving his testimony, gave detail about matters that he knew about, and did not embellish his testimony. When reciting a conversation that he had with his late father for which there were no living witnesses other than himself, he testified as to what was actually said and to what he took those statements to mean, but he also acknowledged that the words spoken were more limited than the inferences he drew from them. Of the parties, I found Mr. Ronald Pickard the more credible witness.

V. Facts Forming the Basis of the Claims

- [28] Both the unjust enrichment claim and the Wills Variation Act claim arise from circumstances concerning the working lives of Mr. Ronald Pickard and his father Mr. Geoffrey Pickard. It is apparent that Mr. Geoffrey Pickard and Mr. Ronald Pickard were both very industrious, hard-working people. Mr. Ronald Pickard was particularly generous with his time, including helping Mr. Kerr and Mrs. Knudson.
- [29] Mr. Geoffrey Pickard and Mr. Ronald Pickard worked together for many years on two enterprises: a contract to collect garbage at Britannia Beach (the "Garbage Contract"), and construction projects involving the dismantling of old buildings and the building of three residences (the "Construction Projects"). I will describe those enterprises in some detail.

A. The Garbage Contract

- [30] Mr. Ronald Pickard testified that when he was a child, Mr. Geoffrey Pickard was always working and that he involved Mr. Ronald Pickard in that work. His father cut and sold wood to the miners living in Britannia Beach and Mount Sheer. Mr. Ronald Pickard assisted his father in that work. When a neighbour complained that Mr. Ronald Pickard was too young to carry an axe, his father said that he was safer doing that than playing with the neighbourhood children.
- [31] Later, in the early 1960s, his father acquired the Garbage Contract. That contract required the collection of garbage on Saturdays and sometimes Wednesdays for Copper Beach Estates and the Britannia Beach area. Mr. Geoffrey Pickard, assisted by Mr. Ronald Pickard, collected garbage, sorted it, and dumped what was unusable. Mr. Geoffrey Pickard would sometimes sell or give away things that were usable. The Garbage Contract continued until December 1989 when the business was sold to Owen G. Carney Ltd. The Garbage Contract required a full day of work on Saturdays and for a period of years involved work on Wednesdays as well. The Wednesday work sometimes continued into the late night and early morning.
- [32] During this time both Mr. Ronald Pickard and Mr. Geoffrey Pickard had full-time jobs. Mr. Ronald Pickard worked for the PGE and then BC Rail. Mr. Geoffrey Pickard worked as a hoist man at the Britannia Beach mine. The mine shut down in the mid-1960s. Mr. Geoffrey Pickard was one of the last miners let go after the shutdown, as he was involved in dismantling the machinery in the mine. He then found work as a school bus driver.
- [33] Mr. Ronald Pickard acknowledged that other family members would help on the Garbage Contract from time to time, or just go along for the ride as the men did their work. He testified that his father was almost constantly working, so if the children or grandchildren wanted to see him they too might tag along. Mr. Ronald Pickard, however, worked regularly for 25 or more years on the Garbage Contract for no pay.
- [34] Mr. Ronald Pickard remembered living in five houses in the Mount Sheer, Britannia Beach and Minaty Bay areas. All of these communities were within a few kilometres of the Britannia Beach mine site. His parents were concerned about their company housing. The houses they lived in were generally rented from the owners of the mine. Sometimes the miners owned the buildings on the properties but the land was always rented. As a "back up" his father purchased the Brackendale Property in 1966. I accept Mr. Ronald Pickard's assertion that the Garbage Contract contributed to his father being able to purchase the Brackendale Property. When the Garbage Contract ended in 1989 it was producing \$535 per month. The end of the Garbage Contract coincided with Mr. Geoffrey Pickard's retirement.

- [35] By marrying Mrs. Pickard, Mr. Ronald Pickard immediately had a large family. Two children of his own followed. In 1970 Mr. Ronald Pickard and his family moved into the Brackendale Property. They paid rent of \$100 per month for about five years. They worked hard on renovating the house on the Brackendale Property. After five years they ceased paying rent.

B. The Construction Projects

- [36] As the mine shut down, the houses owned by the mining company became vacant. The house on the Brackendale Property required renovation. The home in which Mr. Geoffrey Pickard, the deceased, and Mr. Kerr resided in Minaty Bay required renovation as well. At the urging of the deceased, Mr. Geoffrey Pickard determined to build a second home on the Brackendale Property.
- [37] From the time the mine shut down until 1984, Mr. Geoffrey Pickard and Mr. Ronald Pickard dismantled some ten buildings, including houses, a duplex, and a carpentry building. They reclaimed the materials and used them to build or renovate three homes. They began by extending the home at Minaty Bay, which was eventually sold. The original home on the Brackendale Property was raised, a basement added, an extension built, and the interior reconfigured. Most of the work on that home was done by Mr. Ronald Pickard. Mr. Geoffrey Pickard also assisted. The second home on the Brackendale Property was built and completed in 1984. The work on the second home was done primarily by Mr. Geoffrey Pickard and Mr. Ronald Pickard. There were minor contributions by others. Later a shed was added to the second home. Most of the work on the shed was done by Mr. Geoffrey Pickard, Mr. Ronald Pickard, and Mr. Kerr.
- [38] The homes were built, renovated, and extended by Geoffrey Pickard and Mr. Ronald Pickard. The two men used primarily reclaimed building materials from the dismantled buildings from Britannia Beach over ten years. From time to time they had to hire someone for specialized trade tasks or buy materials, and on occasion others pitched in, but the vast majority of the work they did themselves. Mr. Ronald Pickard received no pay for working on any of the buildings.
- [39] The Brackendale Property has always been one legal parcel. Commencing in 1987, Ronald Pickard paid one-half of the property taxes and utilities on the entire parcel. In addition to maintaining and renovating the original home, he helped his father on projects at the second home and helped his mother, the deceased, after his father passed.
- [40] I accept Mr. Ronald Pickard's evidence that, after a conversation with his brother-in-law, he offered to purchase the property from his father in approximately 1994. His father asked how Mr. Ronald Pickard could buy the house. His father said he had built two good houses on the property, one for Ron and one for himself. In the context of that conversation, Mr. Ronald Pickard interpreted his father's response to be that he did not need to purchase the house as he already owned it through his labour.

VI. Unjust Enrichment

[41] Unjust enrichment arises where one party receives a benefit, the other party suffers a corresponding deprivation, and there is no juridical reason for the benefit and deprivation. The usual remedy is damages. When there is a substantial connection between the unjust deprivation and a specific asset, and where damages are inadequate, equity may impress the asset with a constructive trust.

A. Was there a benefit?

[42] The defendant Knudsen here acknowledges that there has been an enrichment or benefit. Clearly that admission is properly made. There is some dispute about the value of that enrichment. Both parties sought to do an economic analysis to justify their positions.

[43] The plaintiff produced an economic analysis dated March 12, 2013, prepared by John Struthers of Associated Economic Consultants Ltd. Table 2 estimates the value of Mr. Roland Pickard's work from 1962 through 1989 and additional work in 1998. The analysis does not contain a running total but concludes that some \$271,106 was contributed in labour over those years. There is no allowance for interest in those figures. Of that work, \$4,313 was provided in 1998. Of the total sum, \$266,793 was performed by 1989.

[44] The defendants dispute that amount, but did not provide any better evidence. They challenged Mr. Ronald Pickard on some aspects of his testimony, but, in my view, Mr. Ronald Pickard was forthright and credible. I accept his evidence that he performed work of this approximate value over that period.

[45] Of course, during that period, Mr. Ronald Pickard received a benefit as well. He resided on the Brackendale Property from 1970. He paid rent until 1975 of \$100 per month. The defendant Mrs. Knudson calculates the value of unpaid rent from 1975 through 1984 at \$39,775.76. A fair value for unpaid rent from 1985 through 1989, based on a consideration of assessed values, is \$30,000.

[46] The defendants argue that the plaintiff also received other benefits, such as the use of his father's truck. The plaintiff worked only a short distance from his home. The use of the truck to dismantle the buildings and perform the garbage contract involved far greater distances. Whatever benefit the plaintiff derived from his use of the truck was, in my view, minor in comparison to these other uses.

[47] At the end of 1989, I find that the plaintiff had contributed a net value of about \$200,000. Of course, not all of the value of that labour went into the Brackendale Property. The funds from the Garbage Contract, while likely used in the initial purchase, did not otherwise go directly into the property. After the death of his mother, Mr. Ronald Pickard removed some 17 ½ truckloads of unusable building materials stored on the property. There was, therefore, some labour that did not translate wholly into value.

- [48] The Brackendale Property in 1990 was assessed at \$182,700. That included two homes and the large acreage but not the shed. Subdivided, it would have had a value in excess of that however, using the current ratios (subdivided versus un-subdivided, based on the appraisal reports in evidence), the value would still have been less than \$300,000. In my opinion, even accepting some of the offsets argued for by the defendant Mrs. Knudson, the plaintiff has shown that the value of his labour exceeded the value of the property on which he resided at that time.
- [49] This analysis looks at the situation as it was in 1990. I doubt that the analysis would look very much different if viewed from the date of trial, although land value increases in many jurisdictions can have a distorting effect. Of course property values have gone up. But there would also be interest on the value of the unpaid labour. At times those interest rates would have been very high.
- [50] Nor, in my view would it be appropriate to reduce the benefit conferred by Mr. Ronald Pickard by the amount he would have paid in rent after he had already contributed more than the value of the part of the property on which he resided. I also note that Mr. Ronald Pickard commenced paying half of the property taxes and utilities in 1987.
- [51] In any event, the jurisprudence is that a constructive trust arises immediately once the duty to make restitution occurs. Mr. Justice Cory in *Rawluk v. Rawluk*, [1990] 1 S.C.R. 70 at 91-92, 65 D.L.R. (4th) 161, said:

It is important in this respect to keep in mind that a property interest arising under a constructive trust can be recognized as having come into existence not when the trust is judicially declared but from the time when the unjust enrichment first arose. As Professors Oosterhoff and Gillese state, "the date at which a constructive trust arises ... is now generally accepted to be the date upon which a duty to make restitution occurs" (Oosterhoff and Gillese, A. H. Oosterhoff: Text, Commentary and Cases on Trusts (3rd ed. 1987), at p. 579). Professor Scott has stated in *Law of Trusts*, op. cit., at pp. 323-24, that:

The beneficial interest in the property is from the beginning in the person who has been wronged. The constructive trust arises from the situation in which he is entitled to the remedy of restitution, and it arises as soon as that situation is created. ... It would seem that there is no foundation whatever for the notion that a constructive trust does not arise until it is decreed by a court. It arises when the duty to make restitution arises, not when that duty is subsequently enforced.

I agree completely with the position taken on this issue by the authors of these helpful texts.

[Emphasis added]

[52] The Court of Appeal followed Rowluk in *Clarkson v. McCrossen Estate*, [1995] 6 W.W.R. 28, 122 D.L.R. (4th) 239 (B.C.C.A.), and confirmed that "[w]here a constructive trust is the appropriate remedy, it arises on the date upon which a duty to make restitution occurred, and not on the date that it is decreed" (*Clarkson* at para. 75). See also *McMillan v. Johnson (Estate)*, 2011 BCCA 48 at para. 50, 330 D.L.R. (4th) 648. Thus, despite some academic controversy, the law by which I am bound is clear.

[53] If Mr. Ronald Pickard establishes a constructive trust, it will have come into existence on the date the unjust enrichment occurred. That being the case, it would be inappropriate to charge him rent on a property that he already owned as beneficiary of the constructive trust.

B. Was there a deprivation?

[54] In this case the deprivation to Mr. Ronald Pickard is the time and effort he put into the Garbage Contract, the dismantling of ten buildings, and the construction and renovation of two houses. Due in part to this deprivation, Mr. Ronald Pickard did not purchase another house when property values were much lower than they are now.

[55] In my view, Mr. Ronald Pickard has established that there has been deprivation as discussed in the authorities: see the decision of Cory J. in *Peter v. Beblow*, [1993] 1 S.C.R. 980 at 1012, 101 D.L.R. (4th) 621, referred to by Chiasson J.A. in *Blake v. Wells Estate*, 2007 BCCA 617 at para. 45, 288 D.L.R. (4th) 712.

C. Is there a juristic reason for the enrichment?

[56] In *Blake v. Ross*, 2006 BCSC 799, 25 E.T.R. (3d) 56, Johnston J. analyzed the juristic reason element of unjust enrichment and said:

[52] A more difficult question in this case is whether the plaintiff has shown a lack of juristic reason for the benefit and the detriment found to exist. If the plaintiff can show that there is no reason based in contract, disposition of law, intent to donate, or other valid common law or equitable statutory obligation that would constitute juristic reason for the benefit and deprivation, the onus shifts to the defendant to show some other valid reason to deny recovery to the plaintiff: *Pacific National Investments*.

[57] On appeal in *Blake v. Wells Estate*, Chiasson J.A., for the Court, said:

[53] The Court in *Pacific National Investments* addressed juristic reason in paras. 23 and 25:

The use of the expression "juristic reason" in this connection emphasized that "unjust" is to be addressed as a matter of law and legal reasoning rather than a free-floating conscience that may risk being overly subjective. There are now two stages to the juristic reason inquiry. 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]". The categories may be added to over time. On proving that none of these limited categorical reasons exist to deny recovery, the plaintiff will have made out a *prima facie* case of unjust enrichment. It

will have demonstrated "a positive reason for reversing the defendant's enrichment" .

At the second stage, the onus shifts to the defendant , who must rebut the prima facie case by showing that there is some other valid reason to deny recovery. In the absence of a convincing rebuttal, the transfer of wealth will be reversed. According to [Garland v. Consumers' Gas Co., 2004 SCC 25, [2004] 1 S.C.R. 629], it is at this stage that the court should have regard to the reasonable expectation of the parties and public policy considerations.

[54] In para. 52, the trial judge correctly stated the approach to the issue as articulated in Pacific National Investments. He then considered contract, tenancy, statutory or other legal compulsion and gift and concluded that Ms. Blake had met the onus on her to establish no reason within the established categories to deny recovery.

[Emphasis added.]

[58] The decision of the Supreme Court of Canada in Kerr is apposite:

[43] In Garland, the Court set out a two-step analysis for the absence of juristic reason. It is important to remember that what prompted this development was to ensure that the juristic reason analysis was not "purely subjective", thereby building into the unjust enrichment analysis an unacceptable "immeasurable judicial discretion" that would permit "case by case 'palm tree' justice": Garland, at para. 40. The first step of the juristic reason analysis applies the established categories of juristic reasons; in their absence, the second step permits consideration of the reasonable expectations of the parties and public policy considerations to assess whether recovery should be denied:

First, the plaintiff must show that no juristic reason from an established category exists to deny recovery. . . . The established categories that can constitute juristic reasons include a contract (Pettkus, supra), a disposition of law (Pettkus, supra), a donative intent (Peter, supra), and other valid common law, equitable or statutory obligations (Peter,supra). If there is no juristic reason from an established category, then the plaintiff has made out a prima facie case under the juristic reason component of the analysis.

The prima facie case is rebuttable, however, where the defendant can show that there is another reason to deny recovery. As a result, there is a de facto burden of proof placed on the defendant to show the reason why the enrichment should be retained. This stage of the analysis thus provides for a category of residual defence in which courts can look to all of the circumstances of the transaction in order to determine whether there is another reason to deny recovery.

As part of the defendant's attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations. [paras. 44-46]

[44] Thus, at the juristic reason stage of the analysis, if the case falls outside the existing categories, the court may take into account the legitimate expectations of the parties (Pettkus, at p. 849) and moral and policy-based arguments about whether particular enrichments are unjust (Peter, at p. 990). For example, in Peter, it was at this stage that the

Court considered and rejected the argument that the provision of domestic and childcare services should not give rise to equitable claims against the other spouse in a marital or quasi-marital relationship (pp. 993-95). Overall, the test for juristic reason is flexible, and the relevant factors to consider will depend on the situation before the court (Peter, at p. 990).

- [45] Policy arguments concerning individual autonomy may arise under the second branch of the juristic reason analysis. In the context of claims for unjust enrichment, this has led to questions regarding how (and when) factors relating to the manner in which the parties organized their relationship should be taken into account. It has been argued, for example, that the legislative decision to exclude unmarried couples from property division legislation indicates the court should not use the equitable doctrine of unjust enrichment to address their property and asset disputes. However, the court in Peter rejected this argument, noting that it misapprehended the role of equity. As McLachlin J. put it at p. 994, "It is precisely where an injustice arises without a legal remedy that equity finds a role." (See also *Nova Scotia (Attorney General) v. Walsh*, 2002 SCC 83, [2002] 4 S.C.R. 325, at para. 61.)
- [59] In this case there is no contract (e.g., there is no evidence of an agreement that Mr. Ronald Pickard performed services in lieu of rent). Likewise, the evidence does not disclose that Mr. Ronald Pickard made a gift of his services. The sheer length and magnitude of the services belie there being donative intent. The length and magnitude of these services go well beyond that which could be expected even of the closest family member. There was not, in my opinion, any evidence of a common law, equitable or statutory obligation; that is, there is no aspect of juridical obligation to Mr. Ronald Pickard's provision of services.
- [60] That brings me to consideration of the parties' legitimate expectations. The conversation Mr. Ronald Pickard had with his father occurred in approximately 1994. In my view there is consilience between the notional balance sheet viewed at that time, and his father's query: "How can you buy the property?" That was because, in equity, half the property was already owned by Mr. Ronald Pickard. Mr. Ronald Pickard legitimately expected this to be so and interpreted his father's question appropriately in that light. Relying on that, he made no effort to purchase another property and continued to pay half the property taxes and utilities.

D. What is the appropriate remedy?

- [61] In cases of unjust enrichment, a successful claim may attract either a personal restitutionary award or a proprietary restitutionary award. The plaintiff may be entitled to either a monetary or proprietary remedy: *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 at 669, 61 D.L.R. (4th) 14, La Forest J.; Kerr at para. 46.

- [62] In this case I am satisfied that there is a sufficiently substantial and direct link between the plaintiff's contributions and the property that is the subject matter of the trust that a clear proprietary remedy is appropriate. In this case there are indirect contributions of money (through labour under the Garbage Contract and the Construction Projects) and direct contributions of labour to the property (the improvement, preservation, and maintenance of the two houses and the shed).
- [63] The plaintiff built the houses on the property and has resided in one of the houses he built for more than 40 years. In my view a monetary award that would cause he and his family to be dispossessed is clearly insufficient. In the circumstance, I would grant the plaintiff a constructive trust over the property sufficient to create the subdivision appraised at \$525,000 in the report of David Mathews (Ex. 4).

VII. Wills Variation Act Claim

- [64] In light of my conclusion on the unjust enrichment claim it is unnecessary to decide the Wills Variation Act claim, and I decline to do so.

VIII. Bank Accounts Claim

- [65] At the time the deceased passed she owned two bank accounts jointly, one with Mrs. Knudsen and one with Mr. Ronald Pickard. Mr. Ronald Pickard knew of the account and used it from time to time to pay for expenses for the deceased before she passed away. Mrs. Knudsen signed bank documentation related to the savings account that she held jointly with the deceased. Mrs. Knudsen testified that she was not aware that she was signing documentation relating to establishing her name on an account with her mother.
- [66] Mr. Ronald Pickard acknowledges that the chequing account balance should form part of the estate of the deceased. Mrs. Knudsen claims that she should have the benefit of the balance in the savings account as she says it was a gift to her.
- [67] With respect to joint accounts, the Supreme Court of Canada in *Pecore* held that between parents and adult children, there is a presumption of a resulting trust. Thus, the surviving joint account holder must prove on a balance of probabilities that the transferor intended to gift the assets in the account to the survivor. Absent such proof, the assets will be treated as part of the deceased's estate and be distributed in accordance with the transferor's will.
- [68] The evidence here falls short of establishing any intent on the part of the deceased to gift the account monies to the joint account holders. Mr. Ronald Pickard acknowledges that. Mrs. Knudsen argues that because she was not aware of her name being on the account, and because there was no mention of it to her by the deceased, the probable intent is that it was a gift. I can only accept Mrs. Knudsen's statement that she did not know of the account if I accept her evidence that she did not know the effect of, or inquire as to the effect of, the papers she signed with the bank. I find that evidence improbable. In any event, even if this evidence was accepted, in my view such evidence would generally be insufficient to

establish a gift, and I find that no gift was proven here.

[69] The balance in the joint savings account with Mrs. Knudson was just under \$46,000 as of May 20, 2011. The balance in the joint chequing account with Mr. Ronald Pickard was just over \$22,000 on the same date. In the circumstances the balances in these joint accounts will form part of the residue of the estate.

IX. Other Matters

[70] It is apparent that there will be subdivision costs. Those costs are estimated to be between \$20,000 and \$30,000. In my view it is appropriate that Mr. Ronald Pickard should be in charge of effecting the subdivision. The costs of subdivision should be borne by Mr. Ronald Pickard and the estate jointly. That is, Mr. Ronald Pickard should bear one-half of the costs of subdivision personally.

X. Costs

[71] Costs would normally follow the event at scale B. If the parties are unable to agree on costs they are at liberty to address the court on that issue.

"The Honourable Mr. Justice Savage"

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