

CITATION: Vanasse v. Seguin, 2009 ONCA 595  
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COURT OF APPEAL FOR ONTARIO

Weiler, Juriansz and Epstein JJ.A.

BETWEEN

Michelle Vanasse

Applicant  
(Respondent in Appeal)

and

David Seguin

Respondent  
(Appellant in Appeal)

H. Hunter Phillips, for the appellant

John E. Johnson, for the respondent

Heard: July 13, 2009

On appeal and cross-appeal from the order of Justice Jennifer A. Blishen of the Superior Court of Justice dated July 4, 2008.

**By the Court:**

[1] Mr. Seguin and Ms. Vanasse lived in a common law relationship for approximately 12 years. They have two children, aged 10 and 8. When the relationship ended, Vanasse claimed spousal support, child support, and compensation for unjust

enrichment. At trial, Vanasse was awarded \$5,472 per month in child support and \$3,800 per month in spousal support until June 2015, for a total of approximately \$111,000 per year in support. She was also awarded a monetary award for unjust enrichment in the amount of \$996,500. In addition, the trial judge ordered Seguin to pay trial costs of \$55,988.

[2] Only Vanasse's compensation for unjust enrichment is in issue in this appeal. In order to establish unjust enrichment, there must be an enrichment, a corresponding deprivation, and the absence of any juristic reason for the enrichment: see *Peter v. Beblow, supra*, at para. 3. There may be unjust enrichment during certain periods in a couple's relationship, but not during others.

[3] In this case, the trial judge found that there were three distinct periods during the couple's cohabitation. In the first period, from approximately 1993-1997, she found no unjust enrichment. There were no children of the relationship and both parties were involved in their careers. Seguin was developing a network operating system with a partner in a company known as FastLane. Vanasse was employed by CSIS. In the second period, from March 1997-2000, the trial judge found that Seguin was unjustly enriched as a result of Vanasse's efforts. Vanasse resigned her position at CSIS and relocated to Halifax because that is where Seguin moved his business. Their two children were born and Vanasse devoted herself full-time to running the household and raising the children. The trial judge concluded that Seguin could not have built up the company as he did but for Vanasse's efforts. The business was ultimately sold in September 2000 and

Seguin retired. Mr. Seguin received proceeds of approximately \$11,000,000 from the sale of the company. In the third period of the relationship, from September 2000 to March 2005, both parents were at home and again the trial judge found that there was no unjust enrichment.

[4] Having found a period of unjust enrichment and that monetary compensation was in order, the trial judge acknowledged that the “value received” approach was appropriate. The value received approach determines the value of the services rendered by the claimant to the common law spouse. However, at para. 117 of her reasons, she relied on *Nasser v. Nasser-Mayer* (2000), 5 R.F.L. (5<sup>th</sup>) 100 (Ont. C.A.) for the proposition that, in general, this court has endorsed a blurring of the “value received” and “value survived” approach at the quantification stage. The “value survived” approach, which looks at what the increase in value of the assets was during the period of the unjust enrichment, is used when a constructive trust is established because a link has been demonstrated between the contribution that founds the action and the assets themselves.

[5] As a result, the trial judge did not use the “value received” approach to quantification but instead determined the increase in the value of Seguin’s property during the period of unjust enrichment, namely the second period of cohabitation, and awarded Vanasse a monetary amount equal to half the increase in Seguin’s assets during this period less the benefits received by Vanasse as a result of the relationship. After subtracting Seguin’s gifts to Vanasse of a half-interest in the matrimonial home worth approximately \$215,000 and a spousal RRSP worth approximately \$44,486 from

Vanasse's half-interest in the increase in Seguin's net worth during the period of unjust enrichment, she ordered that Seguin pay Vanasse \$996,500 as compensation for unjust enrichment.

[6] The appellant did not appeal the trial judge's finding of unjust enrichment during the second period of their cohabitation. The only aspect of the trial judge's award that Seguin appeals is her approach to calculating the amount Seguin should pay Vanasse. Seguin argues that the trial judge erred in the approach she used to quantify the compensation owed due to unjust enrichment.

[7] We agree with Seguin's submission. The approach adopted by the trial judge to quantify the compensation owed to Vanasse on the basis of unjust enrichment is precisely the approach this court held was incorrect in *Bell v. Bailey* (2001), 20 R.F.L. (5<sup>th</sup>) 272 (Ont. C.A.) at para. 35, and *Wylie v. Leclair* (2003), 38 R.F.L (5<sup>th</sup>) 227 (Ont. C.A.) at para. 19.

[8] *Nasser* does not stand for the general proposition that the "value received" and "value survived" approaches can be blurred. Rather, the result in *Nasser* was driven by the facts of that case. Ms. Mayer-Nasser worked directly for her common law husband's company for a period of time and spent virtually all the money she made outside the home on the household expenses enabling Mr. Nasser to keep a greater proportion of his assets. That is not this case.

[9] The decision of this court in *Yackobeck v. Hartwig* (2000), 138 O.A.C. 131, on which Vanasse relies, also does not support the proposition that the two approaches may ordinarily be blurred in calculating the amount owed upon a finding of unjust enrichment. In that case the trial judge gave Ms. Yackobeck 30% of the value of the property based on her contribution to the domestic undertaking over fifteen years in which she worked both on and off the farm property including in Hartwig's harness shop. Any blurring of the "value survived" and "value received" approaches was again specific to the facts of that case: that case featured a direct connection to the property in question, but the strict application of the "value survived" approach would not have recognized Ms. Yackobeck's contribution given the deterioration of the farm property after she left. The main issue on appeal was the trial judge's order for support. In relation to the amount awarded for unjust enrichment the court simply endorsed the result arrived at by the trial judge.

[10] Given that the correct approach was to determine the "value received" and perform a quantum meruit calculation, the value that each party received from the other should have been assessed and set-off. See generally *Peter v. Beblow*, [1993] 1 S.C.R. 980, *Bell v. Bailey* (2001), 20 R.F.L. (5<sup>th</sup>) 272, (Ont. C.A.), and *Wiley v. Leclair* (2003), 38 R.F.L. (5<sup>th</sup>) 227, (Ont. C.A.). In addition to Seguin's financial contribution, the trial judge should have considered relevant evidence pertaining to Seguin's non-financial contributions to the relationship during the second period of cohabitation. For example, she did not appear to take into account that shortly after the birth of their first child,

Seguin cut back his hours and resigned his position as President of the company which resulted in him losing the opportunity to obtain any further stock options. Within a year after their first child was born, the family returned to Ottawa at Vanasse's urging. The move resulted in a diminution of Seguin's commitment to the business, friction with his partners, and reduced the amount he ultimately received from the sale of the business.

[11] For these reasons the award made by the trial judge to Vanasse for unjust enrichment must be set aside.

[12] Both counsel requested that we not order a new trial on the parties. They urged that we, as did the court, in *Wylie v. Leclair, supra*, do our best to calculate the "value received" by Seguin at Vanasse's expense. However, the record does not contain evidence that enables us to do so on any principled basis. The primary responsibility for leading the necessary evidence lay upon the claimant, Vanasse.

[13] Regrettably, in these circumstances, we have no alternative but to leave it to the parties or a new trial judge to resolve Vanasse's claim for damages arising from unjust enrichment. We note that in any event, it will be necessary for counsel to agree or to return to court to determine the appropriate adjustment to spousal support.

[14] Costs of the trial are set aside. In the event that counsel cannot agree on the costs of trial, we leave it to counsel to apply to have the trial costs fixed by the trial judge in light of our decision.

[15] Costs of the appeal are to the appellant and are fixed in the amount of \$20,000, all inclusive.

“Karen M. Weiler J.A.”

“R.G. Juriansz J.A.”

“G.J. Epstein J.A.”

RELEASED: July 29, 2009