

Contributions to Multi-Generational Home does not Constitute Unjust Enrichment (Sidhu v. Sidhu)

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A growing trend in home use is multi-generational housing, which is, as the term implies, multiple generations of a family living together within the same home. An example is where aging parents live with their adult children and their grandchildren. When the various generations of the family contribute towards the living expenses of the shared home, it is important to consider the legal and financial implications.

In *Sidhu v. Sidhu*, 2023 ONSC 4618, the Superior Court of Ontario was asked to consider the remedy of unjust enrichment applicable to a multi-generational family living together in a shared residence and pooling funds to meet their housing costs. The applicant was the matriarch of the family, and the respondents were her eldest son and her daughter-in-law. The respondents ran a real estate company together, which they operated out of the den of the shared property.

The applicant brought an application for partition and sale of the property, while the respondents brought a cross-application claiming unjust enrichment and a 50% interest in the property.

The property had been sold for \$1,185,000 with net proceeds of \$753,233.

The respondents argued that they were entitled to 50% of the proceeds based on their contribution to the mortgage payments and the home maintenance costs. They argued that there was a joint family venture.

The applicant, on the other hand, argued that she was entitled to 100% of the proceeds. She argued that the respondents' financial contributions constituted rent.

The respondent son had acted as the home manager. He was responsible for managing the pooled resources to pay for the housing costs in the family bank account, managing the basement tenancy, and maintaining the property. The family bank account was funded by the applicant and each of her married sons living at the property. The account was used to pay for the mortgage, insurance, repairs, maintenance, groceries, phone, and internet, among other things.

The relationships between the family members began to break down until the applicant finally asked the respondents to vacate the property. They refused, claiming a 50% interest.

The issues for the court to determine were whether the applicant was unjustly enriched by the respondents' contributions to the property, and whether a 2008 transfer of title to the respondent daughter-in-law created a resulting trust in the applicant's favor.

Unjust Enrichment

The test for unjust enrichment, applicable to this case was:

1. Whether the applicant was enriched;
2. Whether there was a corresponding deprivation to the respondents; and

3. Whether there was a juristic reason for the benefit and the corresponding detriment (as set out in *Kerr v. Baranow*, 2011 SCC 10)

The court noted that the requirement of showing an enrichment and corresponding deprivation were essentially two sides of the same coin. The acid test was whether the applicant had become richer while the respondents had become poorer (see *Moore v. Sweet*, 2018 SCC 52).

The respondents argued that they paid around 70% of the carrying costs for ten years between 2004 and 2014, and then 100% of costs between 2015 and 2020. The respondent daughter-in-law claimed she provided support through cooking and cleaning, estimated around \$20,000. The court found it difficult to value this type of work, and was also skeptical about whether this service was for the benefit of the applicant versus for the benefit of her own husband and children.

The respondent son argued he contributed nearly \$30,000 towards renovations and maintenance. The court found that there was a lack of evidentiary foundation for these values. There were no receipts tendered, and it was likely that these amounts were paid from the family account, and not paid personally.

The court found that the respondents did not suffer a deprivation equal to the amount they deposited in the family account. Both sides benefited from pooling their resources to maintain the home. The respondents were able to keep their childcare costs low thanks to the applicant looking after their children. The applicant benefited from her son maintaining the property, both physically and financially, especially after she fell ill. The court also found that the respondents claimed some of their contributions to the family account as business expenses for tax purposes. The majority of their deposits into the family account originated from their business' corporate account. As such, the court found that they accrued a benefit to their corporation. At the same time, the respondents likely pocketed all of the rent money collected from the basement tenancy, and the respondents did not pay any rent to the applicant despite occupying a large part of the home.

As such, the court concluded that the respondents did not suffer any deprivation, and the claim for unjust enrichment failed. As this claim failed, there was no need to consider the two other prongs of the unjust enrichment test.

Resulting Trust

With respect to the issue of resulting trust, the facts showed that in 2008 the applicant wanted to take out equity in the home. She transferred a 1% interest in the property to the respondent daughter-in-law for the consideration of \$2.00. The property was then re-mortgaged and the respondent daughter-in-law was added to the property's title. The respondent daughter-in-law argued that she was added to title because the applicant did not have the necessary income to obtain financing for a second mortgage.

While the court accepted this as true, it still held that the respondent daughter-in-law held the 1% interest as a resulting trust in favour of the applicant. Citing the principles in *Andrade v. Andrade*, 2016 ONCA 368, the court looked to the intentions of the parties. The respondent daughter-in-law, by her own evidence, was only put on title to facilitate the applicant obtaining a second mortgage. There was no intention for her to have a beneficial interest in the property, or become responsible for the mortgage. Additionally, following *Pecore v. Pecore*, 2007 SCC 17, the court found that the respondent daughter-in-law gave inadequate consideration for her 1% interest, and as such, she held the interest in a resulting trust for the applicant.

Conclusion

For individuals currently living in, or considering living in, a multi-generational home, it is important to consider the legal implications of the living arrangement. If all of the residents live harmoniously, the arrangement could provide significant social and financial benefits. However, if the relationship between residents breaks down, there may be consequences. Before embarking on the arrangement, the parties should consider a number of questions. Who will be on title? If there is more than one owner, will it be a joint tenancy or a tenancy in common? If an individual contributes money towards the property, does it constitute rent, a gift, a loan, or does it contribute towards an ownership interest? A PDF version is available to download [here](#).

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