

Sorochan v. Sorochan, [1986] 2 S.C.R. 38

Mary Sorochan *Appellant*

v.

Alex Sorochan *Respondent*

INDEXED AS: SOROCHAN v. SOROCHAN

File No.: 19171.

1986: June 26; 1986: July 31.

Present: Dickson C.J. and Beetz, Chouinard, Lamer, Wilson, Le Dain and La Forest JJ.

on appeal from the court of appeal for alberta

Unjust Enrichment -- Constructive trust -- Long term "common law" relationship -- Common law husband acquired farm before relationship -- Common law wife's farm work essential to maintenance and preservation of farm -- Expectation to receive an interest in farm -- Whether or not unjust enrichment allowing the imposition of a constructive trust in favour of estranged common law wife.

Mary and Alex Sorochan lived together for forty-two years. They jointly worked a mixed farming operation and had six children. They were never married. Appellant ran the household, cared for their children and worked long hours on the

farm. For a number of years, the respondent worked as a travelling salesperson. During these periods, appellant often assumed sole responsibility for the farm chores. When the parties began living together, respondent owned six quarter sections of farmland along with his brother; he later became sole owner of three quarter sections. At the time of the transfer, appellant was asked to sign documents barring any potential dower entitlement. Early in their relationship, appellant had asked respondent to marry her, with the reply of "later on". In 1971, she requested the respondent to transfer part of the land into her name and was refused. Appellant commenced legal action for an interest in the farm after failing health and a deteriorating relationship forced her to move to a senior citizen's home.

The trial judge found a constructive trust and ordered that one quarter section be transferred to appellant, provided that she reconvey it forthwith to her children. A cash payment was also awarded. The Court of Appeal allowed an appeal from that decision. At issue is whether a court can impose a constructive trust in a situation where a common law wife has contributed her labour for a number of years to preserving and maintaining a farm and doing all the domestic labour, despite the fact that her spouse already owned the property prior to the date when cohabitation commenced.

Held: The appeal should be allowed.

A constructive trust can be imposed to remedy an unjust enrichment. The elements of unjust enrichment include: (a) an enrichment, (b) a corresponding deprivation, and (c) the absence of any juristic reason for the enrichment. Respondent clearly benefitted from the appellant's many years of unpaid labour maintaining and

preserving the farm and running the household. Appellant suffered a corresponding deprivation. There was no juristic reason for the enrichment. Appellant was under no obligation, contractual or otherwise, to perform this work. Furthermore, she had a reasonable expectation of receiving some benefit in return for her labour and respondent knew or ought to have known of that expectation.

In assessing whether a constructive trust remedy was appropriate, the first factor considered was whether there was a clear link between the claimant's contribution and the disputed property. The contribution does not have to be connected to the acquisition of property. A sufficient nexus may exist where the contribution relates to the preservation, maintenance or improvement of property.

A second consideration in determining whether proprietary relief should be ordered was whether the claimant reasonably expected to receive an actual interest in property and whether the respondent knew or reasonably ought to have known of that expectation. This criterion was met on the facts of this case.

The longevity of the relationship was the final consideration in assessing whether an *in rem* remedy was appropriate.

The remedy ordered by the trial judge was appropriate in all but one respect. The trial judge erred when he made appellant's entitlement to the land contingent on her immediate transfer of title to her children. Appellant was the person who suffered the deprivation and it was she who was entitled to the remedy.

Cases Cited

Applied: *Pettkus v. Becker*, [1980] 2 S.C.R. 834; **considered:** *Murray v. Roty* (1983), 41 O.R. (2d) 705; *Pierce v. Timmons*, Ont. C.A., February 26, 1985, unreported; *Lawrence v. Lindsey* (1982), 28 R.F.L. (2d) 356; **distinguished:** *Beard v. Beard*, [1982] 1 S.C.R. 282, affirming (1980), 35 A.R. 448, varying (1978), 16 A.R. 271; **referred to:** *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436; *Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67; *Beaudoin-Daigneault v. Richard*, [1984] 1 S.C.R. 2, reversing on other grounds [1982] C.A. 66; *Herman v. Smith* (1984), 42 R.F.L. (2d) 154; *Rochon v. Emary* (1982), 32 R.F.L. (2d) 217, affirming (1981), 21 R.F.L. (2d) 366; *Wilson v. Munro* (1983), 32 R.F.L. (2d) 235.

Authors Cited

Fridman, G. H. L. and James G. McLeod. *Restitution*. Toronto: Carswells, 1982.

Goff, Sir Robert and Gareth Jones. *The Law of Restitution*, 2nd ed. London: Sweet & Maxwell, 1978.

Klippert, George B. *Unjust Enrichment*. Toronto: Butterworths, 1983.

McClellan, A. J. "Constructive and Resulting Trusts--Unjust Enrichment in a Common Law Relationship--*Pettkus v. Becker*" (1981), 16 *U.B.C.L. Rev.* 155.

Palmer, George C. *Law of Restitution*, vol. 1. Boston: Little, Brown, 1978.

Waters, D. W. M. *Law of Trusts in Canada*, 2nd ed. Toronto: Carswells, 1984.

APPEAL from a judgment of the Alberta Court of Appeal (1984), Alta. L.R. (2d) 119, allowing an appeal from a judgment of Purvis J. Appeal allowed.

Margaret R. Odishaw and Terryl J. Rostad, for the appellant.

Damon D. Himsl, for the respondent.

The judgment of the Court was delivered by

1. THE CHIEF JUSTICE--In this appeal, the Court is called upon to consider whether the appellant, Mary Sorochan, is entitled to an interest in the farmland owned by the respondent, Alex Sorochan, on the basis of the law of constructive trust. The central issue is whether a court can impose a constructive trust in a situation where a "common law" wife has contributed her labour for a number of years to preserving and maintaining a farm and doing all of the domestic labour, despite the fact that her spouse already owned the property prior to the date cohabitation commenced.

I

Facts

2. Mary and Alex Sorochan lived together for forty-two years, between 1940 and 1982, on a farm in the Two Hills District of Alberta. During this time, they jointly worked a mixed farming operation and had six children. They never married. Mary Sorochan did all of the domestic labour associated with running the household and caring for the children. In addition, she worked long hours on the farm. The family lived in modest circumstances.
3. At the time the parties began living together, Alex Sorochan was the owner, along with his brother, of six one-quarter sections of farmland. In 1951, the land was divided between the two brothers and the respondent became the registered owner of three one-quarter sections. From 1942 to 1945, and from 1968 to 1982, the respondent worked as a travelling salesperson. During these periods, Mary Sorochan

often assumed responsibility for doing all of the farm chores on her own. In 1982, due to the failing health of the appellant and the deteriorating relationship between the couple, Mary Sorochan moved to a senior citizen's home. She subsequently commenced this legal action for an interest in the farm upon which she had worked for forty-two years.

II

Judgments

Alberta Court of Queen's Bench

4. At trial, Purvis J. of the Alberta Court of Queen's Bench, relying on *Pettkus v. Becker*, [1980] 2 S.C.R. 834, held that "the law of constructive trust can be extended to cover situations such as the one disclosed in the evidence in these proceedings". He found that Alex Sorochan was enriched by his association with Mary Sorochan and that she had suffered a corresponding deprivation. Purvis J. also found that there was no juristic reason justifying the enrichment. Mary Sorochan had prejudiced herself with the reasonable expectation of receiving an interest in the property and Alex Sorochan knew of that expectation. Purvis J. noted, in particular, that in 1971 Mary Sorochan had asked the respondent to transfer land into her name.

5. Accordingly, Purvis J. ordered the transfer of one of the three quarter sections of land into the name of Mary Sorochan, upon her undertaking to transfer title forthwith to her six children. He also ordered Alex Sorochan to pay \$8,000 in cash

forthwith to Mary Sorochan and a further \$12,000 within one year, the latter sum to be reduced to \$7,000 if paid within six months.

Alberta Court of Appeal

6. The Court of Appeal reversed the trial judge's order and rejected the finding of a constructive trust in favour of Mary Sorochan. Lieberman J.A., for the Court, held that the trial judge had erred in his interpretation of *Pettkus v. Becker*, stating:

Plaintiff's counsel argues that a constructive trust has been created here by reason of the unjust enrichment of the defendant as a result of the plaintiff's labours, but she has been unable to point out any accumulation of assets by the couple during the relevant period.

In *Pettkus* Dickson J., as he then was, said at page 183:

"For the unjust enrichment principle to apply it is obvious that some connection must be shown between the acquisition of property and corresponding deprivation. On the facts of this case, that test was met. The indirect contribution of money and the direct contribution of labour is clearly linked to the acquisition of property, the beneficial ownership of which is in dispute."

Unfortunately, the facts in the case at bar do not fall within that principle. There is no link between the acquisition of the property in question and the plaintiff's labour.

7. To ascertain whether a constructive trust should be imposed in this case, we must begin by examining the doctrine of unjust enrichment. As I had occasion to say in *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436, at p. 444:

On the legal front, acceptance of the notion of restitution and unjust enrichment in Canadian jurisprudence (*Degelman v. Guaranty Trust Company*, [1954] S.C.R. 725), has opened the way to recognition of the constructive trust as an available and useful remedial tool in resolving matrimonial property disputes.

In *Pettkus v. Becker*, the Court stated at pp. 847-48:

The principle of unjust enrichment lies at the heart of the constructive trust. "Unjust enrichment" has played a role in Anglo-American legal writing for centuries. Lord Mansfield, in the case of *Moses v. Macferlan* (1760), 2 Burr. 1005, put the matter in these words: "... the gist of this kind of action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money". It would be undesirable, and indeed impossible, to attempt to define all the circumstances in which an unjust enrichment might ariseThe great advantage of ancient principles of equity is their flexibility: the judiciary is thus able to shape these malleable principles so as to accommodate the changing needs and mores of society, in order to achieve justice. The constructive trust has proven to be a useful tool in the judicial armoury.

See also: Waters, *Law of Trusts in Canada*, 2nd ed. (Toronto 1984), pp. 378-85; Fridman & McLeod, *Restitution* (Toronto 1982), pp. 20-22, 34-39; Palmer, *Law of Restitution*, vol. 1 (Boston 1978), p. 5.

8. It is also interesting to note that the principle of unjust enrichment has been firmly acknowledged as part of the civil law of Quebec: see *Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67, at pp. 75-77, in which Beetz J. articulates the theoretical principles underlying the concept of unjust enrichment. In the family law context, see *Richard c. Beaudoin-Daigneault*, [1982] C.A. 66, where

the Quebec Court of Appeal applied the principle of unjust enrichment, although it ultimately rejected the merits of the unjust enrichment claim on the facts of the case. On appeal to this Court (see *Beaudoin- Daigneault v. Richard*, [1984] 1 S.C.R. 2), the Court of Appeal's judgment was reversed on another ground and the Court expressly held it unnecessary to consider the merits of the unjust enrichment claim.

9. Before a constructive trust can be imposed in this case, the Court must find that there has been an unjust enrichment. In *Pettkus and Rathwell*, the Court outlined three requirements that must be satisfied before it can be said that an unjust enrichment exists. These include:

(a) an enrichment;

(b) a corresponding deprivation; and

(c) the absence of any juristic reason for the enrichment.

10. In the present appeal, the appellant worked on the farm for forty-two years, during which time she received no remuneration from the respondent. She did all of the household work, including the raising of their six children. In addition, she looked after the vegetable garden, milked the cows, raised chickens, did farmyard chores, worked in the fields, hayed, hauled bales, harvested grain and helped to clear the land of rocks. She also sold garden produce, milk and eggs to pay for food and clothing for the family and for the schooling of the youngest child. On numerous occasions when Alex Sorochan was engaged in his sales activities, Mary Sorochan was left with sole responsibility for the operation of the farm.

11. The trial judge held that there was "clear evidence of enrichment" to the respondent. The Court of Appeal found that Mary Sorochan "performed all the work of a diligent farm wife". In my view, it is clear that the respondent derived a benefit from the appellant's many years of labour in the home and on the farm. This benefit included valuable savings from having essential farm services and domestic work performed by the appellant without having to provide remuneration. Professor McLeod, in his annotation of *Herman v. Smith* (1984), 42 R.F.L. (2d) 154, a case involving a contribution primarily in the form of housekeeping services, summarized the enrichment aspect of the judgment at p. 155:

The initial point raised is: Has the man received a benefit? In the case, the benefit resulted from the claimant performing the normal "spousal" services. No attempt was made to state the issue on any other basis. The rendering of spousal services amounts to a valuable service.

12. In addition, through the appellant's years of labour, the farm was maintained and preserved as valuable farmland. It did not deteriorate in value through neglect or disuse, as it no doubt would have in the absence of Mary Sorochan's faithful and long years of labour. The appellant's maintenance and preservation of the land, therefore, conferred a significant benefit on the respondent. As noted in *Rochon v. Emary* (1981), 21 R.F.L. (2d) 366 (B.C.S.C.), at p. 370, affirmed on appeal (1982), 32 R.F.L. (2d) 217 (B.C.C.A.), "the plaintiff...made a valuable contribution by way of her services as housekeeper and in assisting the defendant in maintaining and improving the property".

13. On the other side of the coin, the labour done by Mary Sorochan during those forty-two years constituted for her a corresponding deprivation. The trial judge concluded that this was the case. Moreover, the case law indicates that the full-time

devotion of one's labour and earnings without compensation can readily be viewed as a deprivation. In *Murray v. Roty* (1983), 41 O.R. (2d) 705 (Ont. C.A.), for example, a case involving a joint business and farm operation, Cory J.A. commented (at p. 710): "For eight years of her life she devoted all of her time and energy and almost all of her wages for the benefit of Roty. The deprivation is obvious". Similarly, *Pettkus* addressed the first two criteria as follows at p. 849:

. . . the first two requirements laid down in *Rathwell* have clearly been satisfied: Mr. Pettkus has had the benefit of nineteen years of unpaid labour, while Miss Becker has received little or nothing in return.

14. The third condition that must be satisfied before a finding of unjust enrichment can be made is also easily met on the facts of this case. There was no juristic reason for the enrichment. Mary Sorochan was under no obligation, contractual or otherwise, to perform the work and services in the home or on the land. In *Pettkus*, the Court held that this third requirement would be met in situations where one party prejudices himself or herself with the reasonable expectation of receiving something in return and the other person freely accepts the benefits conferred by the first person in circumstances where he or she knows or ought to have known of that reasonable expectation.

15. Mary Sorochan came to live with Alex Sorochan on his farm. Together they worked the land, had six children and held themselves out to the community as married. In my view, Mary Sorochan had a reasonable expectation of receiving some benefit in return for her forty-two years of domestic and farm labour. Indeed, it was reasonable for her to believe that this would take the form of an interest in the property. In 1951, when the two brothers split their joint ownership of the land, Mary

Sorochan was asked to sign the conveyancing documents to bar any dower entitlement to the lands ceded to Alex Sorochan's brother. At the time of their first child in 1941, Mary Sorochan asked Alex Sorochan to get married. She testified at trial that he responded "later on". In 1971, she asked him to transfer part of the land into her name, which he refused to do. These incidents convince me that Alex Sorochan knew or ought to have known that Mary Sorochan had a reasonable expectation of obtaining some share in the land in return for her long-term commitment to working the farm and raising their six children.

16. In my view, to deny Mary Sorochan any form of relief would be unjust. I conclude, therefore, that the three pre-conditions for unjust enrichment have been satisfied in this case.

IV

Constructive Trust

17. The constructive trust constitutes one important judicial means of remedying unjust enrichment. Other remedies, such as monetary damages, may also be available to rectify situations of unjust enrichment. We must, therefore, ask when and under what circumstances it is appropriate for a court to impose a constructive trust. (See discussions in Waters, *supra*, chapter 11; McClean, "Constructive and Resulting Trusts--Unjust Enrichment in a Common Law Relationship--Pettkus v. Becker" (1981), 16 *U.B.C.L. Rev.* 155, at pp. 171-74; Klippert, *Unjust Enrichment* (Toronto 1983), chapter 7; Goff & Jones, *The Law of Restitution*, 2nd ed. (London 1978), at pp. 60-63).

18. In this regard, the first issue to be considered is the causal connection requirement, upon which the Court of Appeal's decision turned. Relying on the decision in *Pettkus*, the Court of Appeal held, and the respondent now submits, that before a constructive trust can be imposed, some connection must be shown between the deprivation and the actual acquisition of the property in question. Alex Sorochan already owned the land at the time Mary Sorochan moved in with him; it is maintained, therefore, that she did not contribute in any way to the acquisition of the farm.

19. It is understandable that this issue could be a source of confusion. Since the early constructive trust cases involved situations where there was some acquisition of property, there was a tendency to treat a particular manifestation of a general principle as the rule itself. In the same paragraph from which the Alberta Court of Appeal derived the acquisition requirement in *Pettkus*, however, one also finds articulations of the causal connection test in more general terms. It is suggested simply that there should be "a clear link between the contribution and the disputed asset" (p. 852). The question of a connection between the deprivation and the property is further explained as "an issue of fact". That is, courts must ask whether the contribution is "sufficiently substantial and direct" to entitle the plaintiff to an interest in the property in question.

20. In a number of cases, this more general formulation of the causal connection test has been adopted and courts have held that constructive trusts can be imposed in situations where the contribution does not relate to the acquisition of property. See, for example, *Pierce v. Timmons*, Ontario Court of Appeal, February 26, 1985, unreported; *Murray v. Roty*, *supra*; *Lawrence v. Lindsey* (1982), 28 R.F.L. (2d)

356 (Alta. Q.B.) Nevertheless, in each of these cases, some reasonable connection did exist between the contribution or deprivation and the property (i.e. property improvement, maintenance or preservation).

21. In *Pierce v. Timmons*, the Ontario Court of Appeal approved of the application of the constructive trust principle in a situation where a common law farm wife worked for over twenty years to maintain and preserve the farm. The following passage from the trial judgment was cited with approval at p. 1:

I find that without the significant contributions of Annie Pierce in animal husbandry, in the operation of heavy equipment, in crop cultivation, in farm and house management, and in personal care and nursing of an ailing farm proprietor Weldon Timmons would have been required to expend a very large sum of money and over a period of two decades. Indeed, bearing in mind his propensity to drink, and the abandonment of Weldon by all of his family for many years, and for good cause, it is entirely possible that Annie Pierce is the sole reason that Weldon Timmons was able, despite serious illness and growing physical incapacity to hold his assets together for so long. Clarence Timmons was enabled to harvest a very substantial windfall in realty and chattels, substantially in excess of \$100,000 because of the loyalty, the unselfishness and the continued devotion and service of Annie Pierce.

22. In *Murray v. Roty*, the Ontario Court of Appeal also upheld the imposition of a constructive trust. The common law wife had worked in her husband's gas station business for less than minimum wage, did all of the domestic labour and contributed almost all of her salary to the maintenance of the properties and the purchase of groceries. Although it was held that she had in fact contributed directly and indirectly to her common law husband's acquisition of properties, it was also held that she contributed to their maintenance, improvement and increase in value (p. 712). Moreover, as pointed out in the appellant's factum, Cory J.A. stated at pp. 712-13:

It is not strictly necessary to the disposition of this case but I should add that the remedy need not be confined to situations where the contribution, direct or indirect, was to the acquisition of the property. If a party to a relationship such as this contributed significantly to the construction of an addition or to the major renovation, improvement or modernization of a property I would hope that the remedy would be available to ensure that appropriate relief was granted. As an example where this remedy was granted in such a situation, see *Hussey v. Palmer*, [1972] 1 W.L.R. 1286.

Of further note is Cory J.A.'s comment at p. 711 to the effect that it may be important to distinguish commercial cases from those arising in the context of the family:

The parties lived together and worked together during a significant span of time. From the words and deeds of Roty, Charlotte Murray believed they were working towards common goals. In spite of her arduous toil and significant contributions, her efforts will benefit only Roty unless judicial intervention is warranted to protect her interest. It may well be necessary and appropriate to scrutinize closely the contributions of business partners to the acquisition of property. It is unnecessary and inappropriate to scrutinize the contributions of married couples or couples in a relationship such as this one in the same way. Instead, equity and fairness should guide the court.

23. *Lawrence v. Lindsey* provides another illustration of a constructive trust being imposed in a situation where no acquisition has occurred. The parties lived in a common law relationship for approximately twenty-four years, during which time they had five children. From the commencement of the relationship, the defendant owned the house in question. The plaintiff had initially moved in to provide housekeeping services to the defendant for a sum of \$15 to \$20 per month. This continued for about three months at which time the plaintiff became pregnant. The Alberta Court of Queen's Bench held that the plaintiff reasonably believed she would receive an interest in the property. She had conferred a benefit on the defendant by doing all of the housekeeping and child raising labour. Although the Court found that

a constructive trust could be imposed in these circumstances, her claim was denied due to her eighteen year delay in bringing the action.

24. These cases reveal the need to retain flexibility in applying the constructive trust. In my view, the constructive trust remedy should not be confined to cases involving property acquisition. While it is important to require that some nexus exist between the claimant's deprivation and the property in question, the link need not always take the form of a contribution to the actual acquisition of the property. A contribution relating to the preservation, maintenance or improvement of property may also suffice. What remains primary is whether or not the services rendered have a "clear proprietary relationship", to use Professor McLeod's phrase. When such a connection is present, proprietary relief may be appropriate. Such an approach will help to ensure equitable and fair relief in the myriad of familial circumstances and situations where unjust enrichment occurs. As stated in *Pettkus* at pp. 850-51: "The equitable principle on which the remedy of constructive trust rests is broad and general; its purpose is to prevent unjust enrichment in whatever circumstances it occurs."

25. In the present case, Mary Sorochan worked on the farm for forty-two years. Her labour directly and substantially contributed to the maintenance and preservation of the farm, preventing asset deterioration or divestment. There is, therefore, a "clear link" between the contribution and the disputed assets.

26. It is appropriate at this point to address the case of *Beard v. Beard*, [1982] 1 S.C.R. 282, affirming (1980), 35 A.R. 448 (Alta. C.A.), varying (1978), 16 A.R. 271 (Alta. S.C.) In that case, the Alberta Court of Appeal reversed the trial judge's decision

to give a husband one half the increase in value of certain properties inherited by his wife just five and a half years before the dissolution of their thirty year marriage. The Court of Appeal held that the increase in value of these lands was "solely inflationary". The property had been jointly farmed by the parties. Clement J.A. concluded at p. 448, "neither the facts nor the applicable principles of law, support the finding of the learned trial judge that one-half the inflationary increment should be apportioned to Mr. Beard".

27. On appeal to this Court, Laskin C.J. rendered the following oral judgment:

We do not need to hear you, Mr. Crane and Mr. Stephen. We are all of the opinion that there was no ground shown to set aside the judgment of the Alberta Court of Appeal. This appeal is accordingly dismissed with costs.

The respondent submitted that this case should be applied in the present appeal to deny Mary Sorochan any entitlement to an interest in the farm properties. I do not find this submission persuasive for three reasons.

28. First, I do not think the Alberta Court of Appeal's decision in *Beard* or this Court's brief oral judgment stands for the proposition that inflationary increases are never to be apportioned between spouses when the land was acquired solely by one of the spouses. In some circumstances, it will be appropriate to award the claiming spouse an interest in the property that includes value increases due to inflation. For example, if the asset would have been sold absent the claimant's contribution, a "clear link" would exist between the deprivation and the increase in value through inflation over the time when the asset was retained. In other circumstances, it may be appropriate to discount inflationary increases from the *quantum* of relief ordered.

Much will depend on the particular facts of each case. Indeed, the Alberta Court of Appeal reached its conclusion in *Beard* on the basis of both the facts of the case and principles of law.

29. When we look at the particular facts in *Beard*, we find a situation markedly different from the present appeal. This brings me to my second reason for rejecting the applicability of *Beard*. In *Beard*, most of the farm property was divided evenly. Unlike the case at bar, therefore, in the absence of the constructive trust remedy, the husband in *Beard* would not be left with nothing upon dissolution of the marriage.
30. A third reason for not applying *Beard* is the absence of any clear evidence in the present appeal regarding that part of the property value increase that can be attributed to inflation. There was no discussion of this issue in the decision either at trial or at the Court of Appeal. This is not an appropriate case, therefore, to elaborate the legal interplay between inflationary property increases and constructive trusts.
31. In addition to the causal connection requirement, it is often suggested that the reasonable expectation of the claimant in obtaining an actual interest in the property as opposed to monetary relief, constitutes another important consideration in determining if the constructive trust remedy is appropriate: see, for example, *Wilson v. Munro* (1983), 32 R.F.L. (2d) 235 (B.C.S.C.), McClean, *supra*, at p. 171. A reasonable expectation of benefit is part and parcel of the third pre-condition of unjust enrichment (the absence of a juristic reason for the enrichment). At this point, however, in assessing whether a constructive trust remedy is appropriate, we must direct our minds to the specific question of whether the claimant reasonably expected to receive an actual interest in property and whether the respondent was or reasonably

ought to have been cognizant of that expectation. As concluded above, Mary Sorochan did have a reasonable expectation in obtaining an interest in the land and Alex Sorochan was aware of her expectation in this regard.

32. In assessing whether or not an *in rem* remedy is appropriate, a final consideration in this case is the longevity of the relationship. The appellant worked the farm for forty-two years of her life. In my opinion, this constitutes a further compelling factor in favour of granting proprietary relief.

33. Under these circumstances, I conclude that it was appropriate for the trial judge to provide relief, at least in part, by way of constructive trust.

V

The Appropriate Remedy

34. There remains the question of the appropriateness of the trial judge's remedial orders. After considering the equities and the circumstances of the parties, he awarded Mary Sorochan title to one third of the farm property by way of constructive trust, on the condition that she transfer title forthwith to her six children. This portion of the farm had an assessed market value of \$40,000 in 1983. The total value of the farm was approximately \$138,000. It appears that the trial judge's order for proprietary relief was motivated by Mary Sorochan's desire to devise an interest in the lands she had worked for forty-two years to her children. This further explains the condition stipulated by the trial judge that title be transferred forthwith to her children--a matter to which I shall return below. The trial judge allowed Alex

Sorochan to retain full title to the other two-thirds of the farm, which included the home quarter. In so doing, Alex Sorochan could continue to live on the farm and derive his income from the land.

35. In addition to the constructive trust remedy, the trial judge made an order for monetary relief for \$20,000 (to be reduced to \$15,000 if paid within six months). In my opinion, it was open to the trial judge to make this type of lump sum award. The statement of claim of Mary Sorochan had requested not only proprietary relief, but as well "such further Order that this Honourable Court may deem just".

36. To remedy the unjust enrichment, therefore, the trial judge relied in part on the constructive trust device and in part on a straightforward monetary award.

37. The *quantum* of the trial judge's award has not been challenged by either party, except in so far as the respondent contends that no remedy whatsoever should have been granted. Under these circumstances, and bearing in mind that the trial judge is much better situated to assess what is fair and just in light of the particular facts of each case, I am inclined to defer to the trial judge's ruling in all but one respect.

38. In my view, the trial judge erred when he made Mary Sorochan's entitlement to the land contingent on her immediate transfer of title to her children. Mary Sorochan is the one who suffered the deprivation and it is she who is entitled to the remedy--not her children. She may well decide to transfer title to the land to her children, but this will be her decision alone to make.

Conclusion

39. I would allow the appeal, reverse the decision of the Alberta Court of Appeal and reinstate the judgment of the trial judge save that (i) the obligation imposed upon Mary Sorochan to transfer title of the quarter section to her children shall be deleted; and (ii) the "one year" and "six months" periods referred to in the judgment at trial shall commence to run from the date of this judgment. The appellant is awarded costs in this Court and in the courts below.

Appeal allowed with costs.

Solicitors for the appellant: Odishaw & Odishaw, Edmonton.

Solicitor for the respondent: Damon David Himsl, Vegreville.