

Unjust Enrichment Demands Payment



By Brian Madigan LL.B.

What happens if a party promises to leave their house to someone if they help with the chores? Do they get the property? Is this an enforceable contract? Can you have an agreement to make a Will?

George Constantineau was a student and he went to live with his rich aunt Laura Brunet while he attended school in Ottawa. George lived with his aunt and he was to perform certain chores that she might ask of him from time to time. He lived there for 6 months. Needless to say, aunt Laura died and there was no Will leaving the two properties that George said had been promised to him.

So, this was a difficult case to administer. George said he should have two properties, that was the deal. Only one little problem, there was nothing in writing to support this. It was George's word alone. After all, aunt Laura was now dead, so no sense asking her.

The case brought before the Courts. The Administrator of the Estate, Guaranty Trust Company pleaded that according to the Statute of Frauds, the "agreement" was to be in writing. And, this was just the sort of case that the *Statute of Frauds* was designed to prevent.

George's counsel argued that there was an exception to the general rules and this fell within the exception. Part performance was pleaded. This was not just a contract to be performed sometime in the future, this was already in the works and George had already upheld his part of the bargain.

The Courts struggled with this case all the way to the Supreme Court of Canada. The **Honourable Mr. Justice Rand** made some observations:

- The best explanation of it seems to be, that the payment of money is an equivocal act, not (in itself) until the connection is established by parol testimony, indicative of a contract concerning land . . . All the authorities show that the acts relied upon as part performance must be unequivocally, and in their own nature referable to some such agreement as that alleged.
- It must be unequivocal. It must have relation to the one agreement relied upon, and to no other when it must be such, in Lord Hardwicke's words, "as could be done with no other view or design than to perform that agreement".
- I am quite unable to distinguish that authority from the matter before us. Here, as there, the acts of performance to themselves are wholly neutral and have no more relation to a contract connected with premises No. 548 than with those of

No. 550 or than to mere expectation that his aunt would requite his solicitude in her will, or that they were given gratuitously or on terms that the time and outlays would be compensated in money.

- In relation to specific performance, strict pleading would seem to require a demonstrated connection between the acts of performance and a dealing with the land before evidence of the terms of any agreement is admissible.
- The facts here are almost the classical case against which the statute was aimed: they have been found to be truly stated and I accept that; but it is the nature of the proof that is condemned, not the facts, and their truth at law is irrelevant. Against this, equity intervenes only in circumstances that are not present here.
- There remains the question of recovery for the services rendered on the basis of a quantum meruit. On the findings of both courts below the services were not given gratuitously but on the footing of a contractual relation: they were to be paid for.

The statute in such a case does not touch the principle of restitution against what would otherwise be an unjust enrichment of the defendant at the expense of the plaintiff.

This is exemplified in the simple case of part or full payment in money as the price under an oral contract; it would be inequitable to allow the promissor to keep both the land and the money and the other party to the bargain is entitled to recover what he has paid. Similarly is it in the case of services given.

- The respondent is entitled to recover for his services and outlays what the deceased would have had to pay for them on a purely business basis to any other person in the position of the respondent. The evidence covers generally and perhaps in the only way possible the particulars, but enough is shown to enable the court to make a fair determination of the amount called for; and since it would be to the benefit of the other beneficiaries to bring an end to this litigation, I think we should not hesitate to do that by fixing the amount to be allowed. This I place at the sum of \$3,000.

So, that is the **law of “unjust enrichment”**. The Courts would not enforce an agreement at common law, since the Statute of Frauds would have required it to be in writing. The part performance exception would have required specific reference to the two properties under consideration. They were obviously worth a lot more than \$3,000. However, George did do some work and he should be compensated. Accordingly, the Court awarded him the value of his work computed on a businesslike basis.

Comment

There are certainly some lessons here:

- If you are Aunt Laura, please make a Will
- Don't put it off, that's unfair
- If you are George, see to it that you get something in writing
- Even an agreement to convey is enforceable
- Get a lawyer involved, the time between the promise and the final resolution by the Court was 23 years
- Yes, I appreciate that some lawyers can be slow, but two decades should have been more than enough time.

If you would like more information, kindly refer to *Deglman vs. Brunet Estate*[1954] S.C.R. 725.

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