

**CITATION:** Legault v. Hebert, 2024 ONSC 5168  
**COURT FILE NO.:** FS-22-14393  
**DATE:** 2024-09-18

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Dennis Legault ) Chris McInnis, for the Applicant  
 )  
Applicant )  
 )  
– and – )  
 )  
Mandy Herbert ) Hayley Cairns, for the Respondent  
 )  
Respondent )  
 )  
 ) **HEARD:** July 29,2024

**DECISION REGARDING THE SALE OF 6 HERMAN MAYER DRIVE**

**S.K. STOTHART, J.**

**Overview**

[1] The applicant and the respondent have both brought motions seeking the sale of a property jointly owned and located at 6 Herman Mayer Drive, Greater Sudbury, Ontario.

[2] While the parties agree that the property should be sold, they disagree about how the sale of the property should proceed and how the net proceeds from the sale should be disbursed.

**Background**

[3] The parties were involved in a relationship when the respondent became unexpectedly pregnant. As a result of the pregnancy, the parties decided to pursue their relationship more seriously and to live together.

*The purchase of the home*

[4] On November 27, 2019, the parties entered into an agreement of purchase and sale to purchase a home located at 6 Herman Mayer Drive. The parties moved into the property in January 2020. The parties lived together for about 26 months until the applicant moved out on March 18, 2022.

[5] The Herman Mayer property was purchased for \$360,000 with the respondent contributing \$105,000 towards the purchase. The remaining amount was secured by way of a joint mortgage in both names in the amount of \$260,000. The house was placed in both the applicant and respondent's names as joint tenants. The parties had the assistance of a lawyer for the purchase of the property.

[6] The parties did not enter into any written agreement with respect to their respective interests in the property or their expectations if the property was subsequently sold.

[7] The parties agree that it was always understood that if the home sold, the respondent would be compensated for her \$105,000 downpayment. It is also agreed that the respondent would be compensated for the expenses she incurred in renovating the home.

[8] The parties disagree about why they purchased the Herman Mayer Drive property. The applicant states that they bought the home to live in together as a family, with the idea of purchasing their dream home later on. The respondent states she wished to purchase the home as an investment for herself. She planned to renovate the home and then sell it, as she had done with her previous home.

[9] The respondent states that at the time of purchase, she incorrectly thought that she required the applicant's assistance to obtain a mortgage and the applicant threatened that he would not contribute to the expenses of the home if he was not placed on title. The respondent states that she wanted to ensure that if the applicant died, the house would revert to her name. As a result, she agreed to put the home in both of their names.

[10] The applicant states the parties always intended to own the home together equally. He denies that he made any threats and states that they required his income in order to obtain a mortgage because the respondent had no reported income. They also received a tax benefit because he was a first-time homeowner.

*Financial contributions towards the mortgage and carrying costs*

[11] The respondent states that the applicant contributed very little to the home and she paid for virtually everything. She has provided a detailed spreadsheet that sets out how much she paid towards the mortgage, insurance, taxes, and utilities up to the end of April 2024. She has provided receipts for these expenses to the applicant. In total, the respondent has paid:

- a. \$105,000 towards the purchase;
- b. \$80, 576.64 towards renovations;
- c. \$107, 014.64 towards the mortgage; and
- d. \$16,807.07 towards utilities.

[12] The respondent states that when they purchased the property, she understood that they would each pay \$936.84 towards the mortgage and property tax, and they would split the utility bills. Despite this, the applicant often did not pay these agreed upon amounts.

[13] The applicant states that the parties agreed that he would contribute \$1,200 towards the home and its expenses, however there were various times when he had to close his gym, due to the COVID pandemic. During these times, he would contribute \$600 a month. The applicant has provided bank statements that show transfers to the respondent for the home. In total, the bank records show that the applicant transferred \$25,700 to the respondent, which he says were payments towards the house mortgage and house carrying costs.

[14] The respondent disputes the applicant's statement that he earned less money when his gym was closed. She states that he continued to earn money through his business and government grants and points to his tax returns which show he earned the same amount in 2019, 2020 and 2021. She also points to the fact that on May 31, 2021, the applicant bought out his partner's interest in his gym business for approximately \$91,000.

[15] There is some dispute about whether two payments totaling \$2,400 made by the applicant after separation were made towards the home or towards child support. The applicant has been inconsistent about this, claiming in earlier proceedings that the \$2,400 paid after he left the home was child support. The applicant now says these were house payments. For the purposes of this decision, I am going to assume that the \$2,400 went towards the home and will use the total amount of \$25,700 as the amount the applicant contributed financially towards the property. This will mean the applicant will not be permitted to credit this amount towards any child support payments owing.

*Contributions towards renovations*

[16] The parties agree that the home underwent a number of significant renovations. They also agree that the respondent paid for almost all of those renovations. If the applicant purchased anything for renovations, the respondent would reimburse him for the cost.

[17] The applicant states in his affidavit dated May 24, 2024, that because he could not contribute economically to the renovations, they agreed that the respondent would be reimbursed for her costs upon any future sale of the home.

[18] The respondent has provided a detailed spreadsheet setting out how much she has paid towards renovations for the years 2020, 2021, 2022, 2023 and 2024. In total she states she has paid \$80,576.64 towards renovations.

[19] The applicant submits that he is not aware of all of the renovations and did not necessarily agree with those undertaken after he left the home.

[20] In addition to financial contributions, the respondent and applicant each state that they contributed their personal time and labour towards the renovations. The parties disagree about how

much time and effort was expended by each. The respondent's family, who work in construction, were also involved in performing renovations at no financial cost to the parties.

[21] At one point the property underwent significant repairs to the foundation. It is agreed that the respondent's brother, who works in construction, completed this work. While it was hoped that title insurance would cover this amount, it did not. The respondent states this bill must still be paid and has provided an invoice. The applicant states that the brother agreed they would not have to pay for the work if title insurance did not cover it and that the work on the foundation was a gift. The invoice has not been paid. The applicant takes the position that the brother should have to pursue the applicant and respondent for payment of this invoice.

[22] I have received an affidavit from Joey Herbert which states that when the Herman Mayer property was purchased, he agreed to undertake several large renovation jobs for the house. He states that the applicant would sometimes be present and would help with renovations on those occasions. Joey Herbert states that the respondent purchased all of the supplies and paid for the cost of labour. The respondent was usually at home and able to help with the labour and oversee the work as it was being completed.

[23] I have received an affidavit from Ivan Herbert which states that he helped his sister with numerous projects at the home. Between May 4 and May 12, 2021, his team repaired the house foundation. He owns several pieces of heavy machinery that were required to complete the job. After the job was completed, he provided an invoice on May 16, 2021, for \$15,224.36. He was advised by both the applicant and the respondent that they hoped title insurance would cover the claim. If not, the respondent told him that she would pay him once all the renovations were completed and payment would come from the proceeds of the sale.

#### *Contributions Post-separation*

[24] It is agreed that after May 2022, the applicant stopped contributing financially towards the home. In July 2022, the applicant cancelled his mortgage insurance, leaving the respondent solely responsible for all costs associated with the home.

#### *Post-separation agreement*

[25] The applicant says that following separation, the respondent drew up a "Home Equity Agreement" which he signed on April 22, 2022. In that agreement, the applicant agreed that the respondent was entitled to be reimbursed \$157,800 from the sale proceeds of the home (consisting of a \$100,000 downpayment and \$57,800 in home renovations and upgrades to that date). The agreement also states that the parties agree to split the remaining equity in the home. The applicant has included a copy of this agreement as exhibit N to his affidavit. It is signed by the applicant and a witness, but not signed by the respondent.

[26] The respondent denies that she prepared the Home Equity Agreement contained in the applicant's affidavit. She states that she prepared a similarly worded Home Equity Agreement that acknowledged that she was entitled to receive the downpayment of \$100,000 and renovation costs

in the amount of \$57,800 from the proceeds of the house sale, however the document she prepared did not include the words “Only after this amount is paid to Mandy will the remaining balance of the equity in the home be disbursed equally between the two parties”.

[27] The respondent has included her version of the document entitled Home Equity Agreement as exhibit W to her affidavit along with the version history of the document which indicates it was created by the Mandy Herbert on April 19, 2022, edited by Denis Legault on April 22, 2022, and then edited again by Mandy Herbert on May 1, 2022.

### **Position of the Parties**

[28] In his notice of motion dated April 10, 2024, that applicant seeks the sale of the home, exclusive possession of the property, and an order that he should be solely responsible for the sale of the property without the necessity of having the respondent join in, consent to anything, or sign any required paperwork. In this notice of motion, the applicant seeks that the net proceeds of the sale be disbursed equally and that a prior costs order as against the respondent, made on May 16, 2024, be paid using funds from the respondent’s share of the net proceeds. In the alternative, the applicant submits that the net proceeds be held in trust pending a further determination of the court.

[29] In her responding motion dated May 3, 2024, the respondent seeks summary judgment declaring that she is the sole beneficial owner of the property and that the applicant’s interest in the home as joint tenant is held in trust for her, in the form of a resulting trust. In the alternative, she submits that the applicant has been unjustly enriched and that she should receive a constructive trust in the applicant’s share of the property. The respondent submits that as the 100% beneficial owner of the property she should have carriage of its sale.

[30] The respondent takes the position that she should receive all net proceeds from the sale of the property, less the costs order made against her in a former motion. In the alternative, she submits that 50% of the proceeds should be released to her, less the costs order, and that the remaining 50% be held in trust until there is a further determination with respect to the property and retroactive child support.

[31] In the further alternative, the respondent submits that if she is not successful with respect to her claim of resulting trust, unjust enrichment, or constructive trust, that the applicant should pay half the cost of the mortgage, property taxes, property insurance, utilities, and yard maintenance from the date of separation.

[32] In another notice of motion dated May 24, 2024, the applicant seeks an order that a prior cost order be paid by the respondent from the proceeds of the sale of the home, and an order that if the respondent is found to be the beneficial owner of 100% of the home, that the applicant is entitled to one-half of the home’s equity value based on unjust enrichment.

[33] In oral submissions, counsel for the applicant advised that he was not asking for exclusive possession and agreed that the property could be sold jointly. The applicant submitted that the

respondent should be reimbursed for her downpayment, half of her renovation costs, and that the rest of the net proceeds should then be divided equally.

## **Legal Principles to be Applied**

### *Resulting trust*

[34] The presumption of a resulting trust is a rebuttable presumption of law that arises in certain circumstances. Broadly speaking, it arises whenever legal or equitable title to property is in one party's name, but that party, because he/she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner, or the person who did give value for it: *Kerr v. Baranow*, 2011 SCC 10 at para. 16.

[35] A resulting trust may arise in circumstances where there has been a gratuitous transfer of property from one person to another, and where the transfer is made for no consideration. In these circumstances an onus rests on the transferee to demonstrate on a balance of probabilities that a gift was intended. This is because equity presumes bargains and not gifts. In considering whether the transfer was a gift, the court must look at the actual intent of the transferor at the time of the transfer: *Pecore v. Pecore*, 2007 SCC 17 at para. 24 and 43-44; *Kerr v. Baranow*, 2011 SCC 10 at paras. 17-18.

[36] A resulting trust may also arise where one party advances funds to contribute to the purchase price of a property and the title to the property is placed in the name of another for no consideration. In these circumstances it is presumed that the transferee holds their interest in the property in trust for the transferor and the onus rests on the transferee to establish, on a balance of probabilities, that a gift was intended: *Pecore v. Pecore* at para. 25; *Korman v. Korman*, 2015 ONCA 578 at para. 27; *Kerr v. Baranow*, at para. 12.

[37] It has been found in some circumstances where two parties purchase a property together as joint tenants, however only one party makes the downpayment, a resulting trust may apply to the downpayment: *MacIntyre v. Winter*, 2021 ONCA 516.

### *Unjust Enrichment*

[38] To establish unjust enrichment, a claimant must prove three things on a balance of probabilities:

- (1) An enrichment of or benefit to the other party;
- (2) A corresponding deprivation to the claimant; and
- (3) The absence of a juristic reason for the enrichment.

[39] With respect to the absence of a juristic reason for the enrichment, the court must consider whether the case falls within a pre-existing category of jurisdiction reasons, including a contract,

a disposition of law, donative intent, and other valid common law, equitable or statutory obligations. If a case falls outside of one of these established categories, the court must consider the reasonable expectations of the parties and public policy considerations in assessing whether recovery should be denied. *Kerr v. Baranow*, at paras. 43-44.

[40] In the context of a relationship between two individuals, an unjust enrichment may arise from a joint family venture. In determining whether there was a joint family venture, the court looks at the totality of the circumstances including the parties' mutual efforts towards a common goal, their economic integration, their actual intent in sharing the wealth that they jointly created and the priority that was placed on the family in the parties' decision making. *Kerr v. Baranow*, at paras. 87-100.

[41] Where unjust enrichment is established, two equitable remedies are available: a monetary remedy or a proprietary remedy.

[42] Where the unjust enrichment is characterized as one party retaining a disproportionate share of assets resulting from a joint family venture, a monetary award is usually appropriate and should be calculated on the basis of the share of those assets proportionate to the claimant's contributions. *Kerr v. Baranow*, at para. 100.

[43] In some circumstances monetary damages may be an insufficient remedy to the unjust enrichment. For example, monetary damages may be insufficient where it is unlikely that a monetary award would be paid or where there has been a special interest in the property acquired by the contributions that cannot be remedied by money. *Peter v. Beblow*, [1993] 1 S.C.R. No. 36 at paras. 34-35, *Martin v. Sansome*, 2014 ONCA 14, at paras. 48 and 52.

[44] In some circumstances, a beneficial interest in property by way of a constructive trust is found to be an appropriate remedy for an unjust enrichment. A constructive trust is an equitable proprietary remedy granted in circumstances where a court finds that there has been an unjust enrichment that cannot be addressed by way of other remedies. A constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he/she would be unjustly enriched if he/she were entitled to retain it.

[45] A court will only impress a constructive trust on property if the claimant satisfies the court that a monetary award would be insufficient in the circumstances and that there is a sufficiently substantial and direct link between his/her contribution and the acquisition, preservation, maintenance, or improvement of the disputed property. *Martin v. Sansome* at para. 48, *Keller v. Hollub*, 2017 ONCA 186 at para. 20.

### *Summary Judgment*

[46] On a summary judgment motion, the moving party has the onus of establishing that there is no genuine issue requiring a trial: Rule 20 - *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[47] Summary judgment is appropriate if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence. There will be no genuine issue requiring a trial if the summary judgment process:

- a. allows the judge to make the necessary findings of fact;
- b. allows the judge to apply the law to the facts; and
- c. is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v. Maldin*, at para. 49.

[48] A summary judgment motion judge must first determine if there is a genuine issue requiring a trial based only on the evidence before the court, without using the fact-finding powers in r. 20.04(2.1) and (2.2). If the court is satisfied that this evidence permits it to fairly and justly adjudicate the dispute and it is a timely, affordable, and proportionate procedure, summary judgment may issue. *Hryniak v. Mauldin*, 2014 SCC 7 at para. 66.

[49] A summary judgment motion judge may also exercise his/her discretion and determine if the need for a trial can be avoided using the fact-finding powers in rr. 20.04(2.1) and (2.), provided their use is not against the interests of justice, will lead to a fair and just result, and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as whole. *Hryniak v. Mauldin*, at para. 66.

[50] Parties are required to put their best foot forward on a summary judgment motion. The court is entitled to assume that the record on a motion for summary judgment contains all the evidence the parties would present at trial. *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200 at paras. 26-27.

### **Analysis**

[51] The parties agree that the property should be sold. They also agree that the applicant should be paid his costs, as ordered by Justice Cornell in another motion, from the respondent's net proceeds from the sale.

[52] As such, the submissions on this motion focused primarily on how ownership should be defined and how the net proceeds from the sale should be distributed.

[53] I am satisfied that this matter can proceed to summary judgment on these issues without the necessity of a trial. Many of the facts are not in dispute. Those that are in dispute are set out in the affidavit materials in sufficient detail that findings of fact can be made and applied to the law. Both parties have been able to put their "best foot forward" in terms of the evidence. Both parties have had the opportunity to cross-examine the other on their evidence and the transcripts of their cross-examinations have been filed.

[54] I am satisfied that summary judgment is proportionate, more expeditious and a less expensive means to achieve a just result in the circumstances of this case.

*Is there a resulting trust with respect to the ownership of the property?*

[55] I am not satisfied that there is a resulting trust whereby the applicant holds his 50% interest, as joint tenant, in trust for the respondent.

[56] The facts in this case do not involve a gratuitous transfer of property from one party to another (in part or in whole). The applicant and respondent entered into an agreement of purchase and sale for the Herman Mayer property in both of their names. Title was taken in both of their names from the outset. There was never a transfer of title from the respondent to the applicant.

[57] I am also not satisfied that the facts support a finding of a “purchase money resulting trust”. While the respondent provided the downpayment, both the applicant and respondent provided the remaining funds for the purchase by way of a joint mortgage. They both borrowed money from a third party (mortgagee) that was then applied to the balance of the purchase price. In these circumstances, it cannot be said that the applicant did not contribute towards the purchase price of the property. The applicant took on a joint debt in order to secure funds that were applied to the purchase price, and then made regularly monthly payments towards that debt during the time he lived at the property. In doing so the applicant made the purchase of the property possible: *Inniss v. Blackett*, 2022 ONCA 166 at para. 13.

[58] On the facts of this case, I find that the equitable factors that favour a finding that one party holds the property, either in whole or in part, by way of resulting trust, do not exist.

*Has there been an unjust enrichment?*

[59] I am satisfied that the respondent has demonstrated on a balance of probabilities that the applicant will be unjustly enriched if there is an equal sharing of the net proceeds from the sale of the property.

[60] The property was purchased in 2020 for \$360,000 and the parties expect to receive between \$600,000 to \$640,000 on the sale of the property in 2024. The parties appear to agree that they anticipate receiving approximately \$400,000 in net proceeds from the sale.

[61] On all of the evidence provided, I find that the applicant financially contributed \$25,700 towards the mortgage and carrying costs. This is supported by the applicant’s bank records.

[62] On all of the evidence provided, I find that the respondent financially contributed a total of \$309,398.35 towards the property. This consists of \$105,000 towards the down payment, \$107,014.64 towards the mortgage, \$16,807.07 towards the carrying costs, and \$80,576.64 towards renovations. These amounts are set out in the respondent’s evidence, supported by specific

details regarding each payment. Counsel for the respondent noted that receipts have all been provided to the applicant.

[63] No serious issue was taken with respect to the amounts paid and these receipts on this motion, with the exception of a few small purchases, that the applicant did not agree were renovations such as the purchase of appliances. Although the applicant states that he is not aware of what renovations occurred after he left, I note that the amount spent following separation is not a large amount with the respondent paying \$1,608.93 in 2023 and \$38.40 in 2024. I find these to be reasonable costs towards renovations.

[64] Based on the parties' relative contributions, the applicant has paid approximately 7% towards the purchase price and the respondent has paid approximately 86%. Put another way, based on the total contributions towards the house (\$309,398.35 plus 25,700 = 335,098.35) the applicant has paid 7.7% of this total and the respondent has paid 92.3%. On either calculation, the respondent has contributed the vastly larger amount of money towards the property.

Will there be an enrichment

[65] I am satisfied that if the applicant were to receive half of the net proceeds from the sale of the home, given his relatively small contribution, this would amount to an unjust enrichment. If the parties are successful in achieving a \$400,000 net profit, something they both anticipate, it would mean the applicant would receive approximately \$200,000 in profit in exchange for a 7% investment of \$25,700.

Will there be a corresponding deprivation

[66] I am satisfied that if the applicant were to receive half of the net proceeds from the sale of the home, there will be a corresponding deprivation to the respondent. Using the anticipated net return of \$400,000 as an example, it will mean the respondent will receive 50% of the net proceeds in exchange for her substantial investment of approximately 93% of the total amount contributed.

Is there a juristic reason for the enrichment

[67] I am satisfied that there is no jurisdiction reason for this unjust enrichment. The parties did not enter into any contract with respect to how the net proceeds of the house would be divided. Further, the property was not a joint venture, with both parties comingling their funds towards the property. The parties were quite intentional in keeping their respective contributions separate and apart.

*How should the unjust enrichment be addressed?*

[68] The applicant concedes in his affidavits that there was an agreement between the parties that the respondent would receive her downpayment and the money she paid towards renovations

from the net proceeds from the sale of the house. Given this understanding, I find that the respondent, on the basis of equity and fairness, should receive \$185,576.64 from the net proceeds (\$105,000 plus \$80,576.64).

[69] I will go on to address whether dividing the net proceeds (less the amounts noted above) would continue to result in an unjust enrichment, or whether the payment of these funds addresses the issue.

#### Financial contributions

[70] With respect to the mortgage and carrying costs alone, the respondent has paid \$123,821.71 towards these expenses and the applicant had paid \$25,700. Based on these figures, the applicant has contributed 17% towards the mortgage and carrying costs.

#### Personal labour contributions

[71] With respect to the physical contributions towards renovations, I am satisfied and find as a fact that the property underwent significant renovations after it was purchased. This included new flooring throughout, new bathrooms, a new kitchen, substantial repairs to the foundation, painting, a new deck, a new fence, and other cosmetic renovations including a children's playroom under the stairs.

[72] The applicant does not dispute that the respondent paid for these renovations and that she and her family completed most of them. I accept the respondent's evidence with respect to the renovations. Her evidence is supported by the evidence of her brothers who confirm the work performed and by the detailed records she kept with respect to the renovations. This makes sense when one considers that the respondent and her family were experienced in construction and renovations. I accept that the applicant was busy working on his own business at the time and would have only been available to assist during his time off. In a text message the applicant appears to agree that he contributed little to the renovations and expresses his remorse for this.

[73] I find that the applicant's evidence regarding the hours of physical labour he contributed to the renovations to be unreliable. He kept no record of the work he performed and agreed that it was his "best guess". While I accept that the applicant did perform some of the renovations, some of his claims are credibly disputed by the respondent's brothers.

[74] I am satisfied on a balance of probabilities that the respondent contributed more in terms of physical labour towards the property than the applicant, however I cannot quantify how much more given that the respondent's work was intertwined with the work performed by her family for which they were paid. Even if I could quantify the percentage of work performed by each party, I am unable to place a monetary value on that work. Further, it is unlikely that a court could value how much the parties' respective physical contributions will impact the ultimately selling price.

[75] Therefore, I place little weight on the physical contributions by each party in my analysis.

*Will there be an enrichment if the net equity is shared?*

Will there be an enrichment

[76] The applicant has contributed 17% towards the mortgage and house carrying costs. The respondent has contributed 83%. Based on these significantly unequal contributions, I am satisfied that the applicant will be enriched if he receives 50% of the net proceeds (after repayment of the downpayment and cost of renovations).

Will there be a corresponding deprivation

[77] Given that respondent's 83% contribution to the mortgage and carrying costs, in addition to the physical labour performed, I am satisfied that there would be a corresponding deprivation to the respondent if the applicant were to receive 50% of the net proceeds.

Is there a juristic reason for the enrichment

[78] There does not appear to be a juristic reason for the enrichment. The parties did not enter into any written agreement with respect to how the equity in the home would be shared.

[79] I have considered the "Home Equity Agreement" that was drafted after the parties separated. I find the version provided by the applicant to be suspicious, particularly having regard to the document history provided by the respondent. On all of the evidence, I find that there was no agreement between the parties about how the equity would be shared.

[80] I am also satisfied that there was no donative intent on the part of the respondent with respect to the equity in the home whereby she intended to gift the equity to the applicant. Donative intent is inconsistent with the way the parties approached the purchase of the home with the respondent providing a substantial downpayment; the way the parties paid the mortgage and carrying costs with the respondent paying the vast majority of these costs; and the respondent taking full financial responsibility with respect to renovations. It is also inconsistent with the applicant's conduct when he left the home, cancelling his mortgage insurance and making no further payments towards the mortgage.

[81] I am not satisfied that the applicant's credit worthiness and his ability to qualify for a first-time homebuyer land transfer tax rebate amounts to a juristic reason for the enrichment: *Surridge v. Ross*, 2024 ONCA 314 at para. 13.

*What is the appropriate remedy?*

[82] I am satisfied that a monetary remedy is appropriate in this case, given that the property is to be sold. In my view, the most appropriate way to fashion a remedy is to divide the net proceeds (after the respondent has been reimbursed for her downpayment and renovation costs) on the basis of their respective financial contributions to the house post purchase.

[83] I have considered whether a remedy could be fashioned to reflect the fact that the renovations to the home likely contributed to a significant increase in its value. Given the evidence provided on this motion, I am unable to determine how much the renovations increased the value of the property versus how much general market demands contributed to the increase in the value of the property. Further, I find that the issue of renovations is adequately addressed by reimbursing the respondent for the full amount that she has paid for them. I appreciate that this may mean that the applicant is receiving a portion of the increase in the value of the property caused by the substantial renovations completed.

[84] When I consider all of the factors in this case, particularly the relative contribution of the parties, I find that the appropriate remedy is to order that once the respondent is reimbursed for her downpayment and renovation costs, the applicant should receive 17% of the remaining net proceeds and the respondent should receive 83% of the remaining net proceeds.

### **Payment of the Costs Order**

[85] The respondent agrees that the cost order made by Justice Cornell, in the amount of \$45,200 should be paid to the applicant from her proceeds from the sale of the home.

### **The Sale of the Property**

[86] I understand that following the hearing of this motion, the property was listed for sale with a mutually agreeable real estate agent. As such, orders are no longer required with respect to the sale of the property.

### **Conclusion**

[87] For the reasons set out above, I make the following orders:

- a. All costs related to the sale of the property located at 6 Herman Mayer Drive shall be deducted from the net proceeds from the sale;
- b. After the property located at 6 Herman Mayer Drive is sold, the respondent shall be reimbursed from the net proceeds the following amounts: (a) \$105,000 for her downpayment towards the home and (b) \$80, 576.64 for the cost of renovations;
- c. Any remaining net proceeds shall be divided, with the applicant receiving 17% of the net proceeds and the respondent receiving 83% of the net proceeds.
- d. The cost order of Justice Cornell dated May 16, 2023, in the amount of \$45,200 shall be paid to the applicant from the respondent's proceeds from the sale of the property.

**Costs**

[88] If the parties are unable to agree on the issue of costs, they may provide written submissions on the issue. The respondent shall provide written submissions that are no longer than 3 pages, within 15 days of release of this decision.

[89] The applicant shall provide written submissions of the same length within 15 days of receipt of the respondent's submissions.

[90] If I do not receive written submissions on the issue of costs within 45 days of the release of this decision, the costs of this motion shall be deemed to have been disposed of.

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The Honourable Madam Justice S.K. Stothart

**Released:** September 18, 2024

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Dennis Legault

Applicant

– and –

Mandy Herbert

Respondent

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S.K. Stothart, J.

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