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SUPREME COURT OF CANADA HAS FINAL WORD ON UNJUST ENRICHMENT AND CONSTRUCTIVE TRUSTS

By Paul Trudelle

The Supreme Court of Canada has recently clarified the law on unjust enrichment and the remedy of a constructive trust.

In *Moore v. Sweet*,¹ the deceased's first spouse, Moore, separated from the deceased. Under an oral agreement, the deceased was to maintain a policy of insurance in favour of Moore. Moore paid the premiums on the policy for approximately 13 years. However, the deceased had named his new spouse, Sweet, as the irrevocable beneficiary of the policy of insurance. The deceased's estate was insolvent.

Moore claimed that Sweet received the proceeds of the policy of insurance in trust for Moore. The Superior Court of Ontario agreed. Sweet appealed, and the Ontario Court of Appeal sided with Sweet, with the majority holding that the applicable provisions of the *Insurance Act* created a "juristic reason" for the enrichment of Sweet.

Moore appealed to the Supreme Court of Canada. In a 7-2 decision released November 23, 2018, the majority allowed the appeal and held that Moore was entitled to the insurance proceeds.

The majority and the minority of the Supreme Court of Canada agreed on the test for unjust enrichment. Under this test, to succeed, the claimant must show:

- a. that the defendant was enriched;
- b. that the plaintiff suffered a corresponding deprivation; and
- c. the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason.

In allowing the appeal, the majority of the court held that on the issue of "juristic reason", the court must look at the reason for the enrichment, as well as the reason for the detriment. The majority noted that the Court of Appeal only looked at the reason for the enrichment. While the regime established by the *Insurance Act* might provide a reason why Sweet was enriched, it did not provide an adequate reason why Moore should be deprived.

Further, the Supreme Court majority disagreed with the Court of Appeal's finding that the provisions of the *Insurance Act* provided a regime for insurance policies that gives rights to the insurer and beneficiaries. "Nothing in the *Insurance Act* can be read as ousting the common law or equitable rights that a person other than the designated beneficiary may have in the policy proceeds." While the *Insurance Act* might provide for a beneficiary's entitlement, it does not preclude the existence of rights outside of its provisions. Put another way, the irrevocable beneficiary under the *Insurance Act* takes the proceeds subject to the rights of third parties.

On the issue of "juristic reason", the minority held that the provisions of the *Insurance Act* created a comprehensive statutory scheme that amounted to a juristic reason for Sweet's enrichment. Under the *Insurance Act*, Sweet received the insurance proceeds free from any claims by the deceased's creditors (one of which might be Moore). The minority was of the opinion that the majority's test, being that there needs to be a juristic reason for the enrichment AND the deprivation, goes too far.

Hull & Hull LLP is proud to have been counsel for Ms. Moore. Congratulations to Ian, Suzana and David and the team at Hull & Hull for their success before the Supreme Court of Canada, and for all of their hard work.



¹ 2018 SCC 52 (CanLII)



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