



CAN I CLAIM A SHARE IN MY FORMER SPOUSE'S BUSINESS?

You live with a man for several years. You claim that during that time, you collaborated actively in the growth of his business. If he is the sole proprietor of his business, can you still claim a share of that business on the grounds that you contributed to its success? Moreover, can you claim a sum of money from your former spouse on the grounds that he was enriched when living with you and that you were impoverished during that same period?

THE FACTS

A couple began living together in June 1986 as de facto spouses. In 1987, they signed a notarized agreement governing the consequences should they split up. In July 1988, the couple separated and all matters were settled in accordance with that agreement. In the fall of the same year, they resumed living together until they split up permanently in 1998. The man had a business in which he was the sole shareholder. During their relationship, the woman worked for the business. Primarily, she did secretarial and accounting work. In addition, she targeted potential clients and contacted them to establish initial contact. Now, she claims that ever since they resumed living together in 1988, a tacit partnership existed between her and her spouse. She now seeks dissolution of the partnership and that the value be divided between them. He denies there ever was such a partnership and argues that the notarized agreement signed in 1987 governs her claims.

THE ISSUE

The first issue the court had to decide was if the 1987 notarized separation agreement still governed the situation between the parties.

The next issue was if the woman was entitled to half the value of the man's business in accordance with the rules governing tacit partnerships.

The last issue was whether the woman was entitled to the \$300,000 that she claimed on the grounds that her former de facto spouse

had been enriched by that amount at her expense.

In reply to the woman's demands, the man sought reimbursement of \$10,000 he lent her as well as the amount of certain improvements that were made to her cottage.

THE DECISION

The court was of the view that the notarized agreement signed in 1987 applied to the first separation of the parties in 1988. They should have signed a new agreement after they resumed living together if they wanted to establish the rules governing their resumed life together and to provide the financial conditions of a subsequent breakup. Without such a contract, the provisions of the *Civil Code of Québec* applied: tacit partnership or unjust enrichment.

The action seeking a declaration that there was a tacit partnership was dismissed, as was the action in unjust enrichment.

The court held that the woman had to repay certain amounts to the man for work he did on her cottage but he informed the court that if her actions were dismissed, he would waive those amounts.

THE GROUNDS

Because the 1988 breakup was settled according to the notarized agreement signed a year earlier, it was no longer in effect. The final breakup, which took place in 1998, was therefore not governed by any agreement.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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In the circumstances, the woman asked the court to rule that her de facto spouse had created a partnership while they were living together, namely in the company created by the man. She wanted the court to divide the value between them because, according to her, she had contributed just as much to the business as he did while they were living together.

According to the applicable caselaw, three requirements must exist in order to find that there is a tacit partnership. Firstly, each spouse must contribute to the business in assets, money or work. Secondly, they must have shared the losses and profits. Thirdly, the alleged partners must have intended to collaborate actively, on an equal footing, with a view to sharing profits. In this case, the woman had the burden of establishing that, on the balance of probabilities, there was a tacit partnership. At trial, none of the prerequisites had been proved. The court stated that the evidence indicated the following:

- She did not contribute any assets to the man's business;
- She did not have access to the business's bank accounts except in the limited context of her functions as secretary in accounting;
- She never signed a contract for the acquisition of assets or any other contract binding on the business;
- She did not participate in the hiring or firing of employees or in determining their working conditions;
- She did not contribute to setting the price of the services rendered or goods sold by the business;
- She was never informed of the business's progress and did not participate in decisions aimed at its expansion;
- She did not have any financial liabilities in that respect.

The judge therefore held that there was no tacit partnership between the woman and her

former spouse. Unjust enrichment : she had to prove that he had been enriched during their life together and that she had been impoverished, that there was a correlation between the two and that there was no justification for the enrichment.

The court was of the view that both parties benefited from living together. The woman and her children from a former relationship, who she had custody of, had a more agreeable and enriching life, at least materially. Her maintenance of his home was more in her interest and that of her children than in his interest because he did not have custody of his son. She was paid a salary for working in his business. He provided her with room and board and paid for most of the couple's expenses. Also, the evidence did not show that she would have accumulated greater assets had she not lived with him.

The court therefore dismissed the woman's action for \$300,000 for unjust enrichment.

The court allowed the man's action in part but did not award him anything because he had announced that he would waive his action in the event that the court dismissed the woman's action.

References

Fillion v. Gagné, Superior Court (S.C.) Rimouski 100-05-001069-985, October 31, 2003, Judge: Benoît Moulin (J.E.2004-63; available on the Web at the following address: www.jugements.qc.ca)

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