

Case Law Update: Grover v Hodgins

February 16, 2011

2011 ONCA 72 (Released January 27, 2011)

Unjust Enrichment Jurisdiction Small Claims Court

The Court of Appeal for Ontario held that the Small Claims Court has equitable jurisdiction for the payment of money and the return of personal property.

The appellants and respondents are individuals who lived in Ontario and owned units in the same condominium complex in British Columbia. A dispute arose between the owners and the management of the condominium complex. The respondents John Hodgins and Ann Dorans ("Hodgins and Dorans") hired legal counsel in British Columbia and obtained an order in the Supreme Court of British Columbia appointing an administrator to manage the condominium council and to prepare an expert report on the financial management of the complex.

Hodgins and Dorans brought an action in the Ontario Small Claims Court ("OSCC") seeking payment of a portion of their legal expenses by the appellants Chander Grover and Tabassum Grover ("Grovers"). Hodgins and Dorans based their claim in (1) contract or, in the alternative, (2) the unjust enrichment of the Grovers. The deputy judge dismissed the contract claim but upheld the unjust enrichment claim. The deputy judge found that there was a benefit to the Grovers, a corresponding deprivation to Hodgins and Dorans, and no juristic reason for the enrichment. The Grovers lost at the first stage of appeal before a single judge of the Divisional Court.

The question for the Court of Appeal was whether the OSCC has jurisdiction to grant equitable remedies. Two sections in the *Courts of Justice Act*, R.S.O. 1990, c. C.43 appear to conflict: section 23(1)(a) states that the OSCC "has jurisdiction in any action for the payment of money . . .", while section 96(3) states that only "the Court of Appeal and Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided".

Justice Epstein, writing for the Court, reviewed the legislative history of these sections and the history of the OSCC. Of importance was section 96(1) of the *Courts of Justice Act* which states that courts "shall administer concurrently all rules of equity and the common law". Justice Epstein held that this section extends to the OSCC, which therefore has the power to administer the rules of equity. Because it would not make sense for the legislature to extend this power to the OSCC but then to preclude the OSCC from granting equitable relief, the OSCC can grant equitable relief. However, section 96(3) limits such equitable relief to the payment of money within the OSCC's jurisdictional boundary and to the return of personal property.

Although Justice Epstein held that the deputy judge had jurisdiction to make the unjust enrichment award, she found he erred in doing so on the facts before him. There was no benefit to the Grovers and no deprivation to Hodgins and Dorans. The court allowed the appeal.



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