The Superior Court of Québec rules on de facto spouses and the right to use a residence during legal proceedings

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In a judgment handed down on February 16, 2021, in a case involving former *de facto* spouses, the Superior Court dismissed an interlocutory injunction filed by the plaintiff seeking the eviction of the defendant from what had been their common residence.

After having lived together in a *de facto* union for 32 years, the parties separated. The plaintiff, sole owner of the family residence, left the residence while the defendant continued to live there. The parties' adult children were financially independent and no longer lived in the residence. After a few weeks of separation, the plaintiff decided to put the residence up for sale and asked the defendant to leave the residence in preparation for a buyer who had shown interest to take possession of it. The defendant refused, which led to the plaintiff's application for an interlocutory injunction to evict the defendant from the residence. The defendant simultaneously instituted proceedings against the plaintiff for unjust enrichment.

***Prima facie* case**

In the case of a mandatory interlocutory injunction, the burden of proof that the plaintiff must meet is what the Court describes as a "strong *prima facie* case."[01] One of the reasons for this is that there are few situations where a plaintiff will not obtain relief at a trial on the merits. TDhe significant consequences of a mandatory interlocutory injunction on the defendant do indeed require that the judge conduct such an analysis.

In this regard, the plaintiff argued that he was the sole owner of the residence, as evidenced by the title. The defendant raised the issue of unjust enrichment resulting from the family obligations that she had had to bear, leaving her unable to work while the plaintiff was free to invest in his increasingly successful career. She also raised the financial arrangements that the parties had made during their life together. Defendant argued that since the beginning of their relationship, they had reached an agreement on the partition of accumulated assets. The defendant considered that the

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combining of the parties' efforts and assets during their life together also applied to the residence from which the plaintiff was trying to evict her. According to the defendant, it had always been clear that she was a co-owner of the residence, although no title made mention of this.

According to the Court, [translation] "the parties' family arrangement as part of a long-term, traditional, *de facto* union"[2] precluded the plaintiff's claim to a unilateral right to make decisions about the family residence.

Irreparable prejudice

On the issue of irreparable prejudice, the Court found that it was not plausible that the residence would lose value simply because it could not be sold immediately. Moreover, should there be any prejudice, it could not be described as irreparable.

On the contrary, for the Court, it was rather the defendant who would suffer serious and irreparable prejudice, and the sale of the house before the hearing on the merits would preclude her from proposing to acquire the plaintiff's share in the house should the Court find that she was entitled to a portion of its value.

Balance of convenience

The Court concluded that the balance of convenience favoured the defendant. The only inconvenience for the plaintiff was a financial one. The inconvenience for the defendant, who has no assets or income and suffers from multiple sclerosis, would be much more serious, as she would have to move during winter, probably at a significant distance from the environment that she had become accustomed to living in for the past 30 years.

Conclusion

This Superior Court judgment dismissing the plaintiff's injunction in the context of a *de facto* union will certainly be significant for the advancement of the rights of *de facto* spouses, as it allows a former *de facto* spouse without minor children to stay in a residence for which she has no title of ownership at the time of the interlocutory injunction.

In 2013, the Supreme Court ruled on the much-publicized *Eric and Lola* case, and the majority opted to maintain the *status quo;* that is, no right to obtain support and no right to the partitioning of assets that a *de facto* spouse does not own.[3] However, many *de facto* spouses may find themselves in precarious situations after a separation.

What Laroche c. Couillard teaches is how important agreements made during *de facto* unions are, and that such agreements are valid even if the relationship ends. This decision on interlocutory injunction will certainly be useful for other former *de facto* spouses who find themselves in a similar situation after their separation.

The residence that *de facto* spouses live in during their life together is often a substantial asset, and protecting it is advantageous. Thus, consulting a family law lawyer can help avoid ambiguous situations at the end of a relationship and protect the rights of the parties beforehand.

Lavery's Family, Estate and Personal Law team is at your disposal to assist you in your projects and in finding solutions to protect your rights. We would be happy to discuss our legal service offerings with you to help you determine which one is best for you.

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1. *R.* v. *Canadian Broadcasting Corp.*,2018 SCC 5, para. 15.
2. *Laroche* c. *Couillard*, 200-17-031680-200, February 16, 2021, para. 21.
3. *Quebec (Attorney General)* v. *A.*, 2013 SCC 5.; Caroline Harnois, "Eric and Lola: The Supreme Court rules on the rights of de facto spouses in Quebec" (2013), Lavery Lawyers – Publications

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