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À / To Centre of Excellence for Matrimonial Real Property
Date April 8, 2017
Objet / Re Translation and summary of : « Droit de la famille — 162829, 2016 QCCS 5685 (CanLII) »
De / From Me Marie-Ève L. Bordeleau

As per the request of Mrs. Kathy McCue, the following is the English translation of « Droit de la famille — 162829, 2016 QCCS 5685 (CanLII) » followed by a brief summary of issues that might be coming from the ruling in the interpretation of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, hereinafter referred to as : « MRP Act ».

1. TRANSLATION OF « DROIT DE LA FAMILLE — 162829, 2016 QCCS 5685 (CANLII) »

Family Law — 162829, 2016 QCCS 5685 (CanLII)

Superior Court

Canada

Province of Quebec

District of Quebec

Number : 200-12-085621-150

Date : November 21, 2016

Under the presidency of Judge Denis Jacques

M...L.. applicant vs. N...G...respondent

JUDGEMENT

1. The applicant presents an application for divorce and requests from the Court to rule on accessory measures.
2. The application is not contested by the respondent and the parties agreed together on the accessory measures, except on the division of the family home.
3. The marriage of the parties was celebrated on August 27, 2005 in Wendake (Quebec).
4. The parties did not have children together.
5. On August 28, 2012 the parties separated.
6. According to the proof presented, there has been no resumption of cohabitation.
7. In the absence of collusion and because of the impossibility of resumption of the life together, the Court considers that the ground of divorce is proved to its satisfaction.
8. At the hearing, the parties reported on their agreement concerning the accessory measures as followed :
 - There will be equal division of the REER FTQ held by the applicant of a value of \$994.99 (P-4)
 - The movable properties and vehicles were divided at the satisfaction of the parties when they first separated;
 - The REER held by the respondent of an amount of \$43 789.33 will be divided in equal parts (D-7);
 - There will also be the division of the accumulated earnings at Retirement Quebec (Retraite Québec) as per the disposition of the Law;
 - The parties declared that they are independant and are not claiming any alimony to each other.
9. As previously mentioned, only the division of the family home is in dispute.
10. Indeed, the family home is located on the Territory A and the respondent is a member of the Huron-Wendat Nation.
11. The respondent claims that considering that she is subject to the *Indian Act* (L.R.C., ch. I-5) and that she contracted a loan with the Council of the Huron-Wendat Nation for the construction of the family home, the Council remains the owner of the home until the loan is completely paid.
12. The respondent alleges that there is a balance remaining of the loan contracted with the Council of the Huron-Wendat Nation and consequently, the respondent is not the owner of the family home, reason for which she is seeking that the family home be exempt from the division of the family patrimony.

13. On examination, the Tribunal can not agree with the respondent.
14. The family homes are part of the family patrimony, as specified in section 415 of the *Civil Code of Quebec* , (CCQ).
15. Also, according to section 416 of the CCQ, the value of the family patrimony of the spouses is divided equally.
16. Even if there is a remaining amount contracted by the respondent still owed to the Council of the Huron-Wendat Nation, it is undeniable that the respondent still has a value in the family home susceptible to the division.
17. The situation of the respondent is similar to the situation of any owner that contracts a loan with a financial institution in counterpart of a mortgage security.
18. In the Judgement : « Droit de la famille- 2885 » our colleague, Judge Paul Corriveau, concludes with the same conclusions :

« Indeed, concerning de division of the patrimony, we have to remember that the legislator decided that this division was concerning the value of the family patrimony of the spouses. We then talk of value and no exception can come with the effect that when a good is included in the family patrimony and that it is located on a indian reserve the value of this good would be excluded from the division of the patrimony. The Tribunal concludes then that the respondent has the right to its value of the family home fixed at \$ 75 000. »
19. But there is more.
20. In 2013, the Federal legislator adopted the *Family Homes on Reserves and Matrimonial Interests or Rights Act*)L.C. 2013, chapitre 20).
21. In its preamble, the legislator explains that it is necessary to treat certain questions regarding the family law in the reserves of the First Nations, and that because the provincial and territorial laws regulating these questions do not apply and that the *Indian Act* does not deal with it.
22. The preamble also states that it is necessary to take measures to grant spouses or common-law partners during the conjugal relationship or in the event of the latter's failure or the death of one of them, rights and recourses in respect of, among other things, the division of the value of the rights or interests they hold in constructions and lands located on reserves.
23. More specifically, section 28 of this Act prescribes the division rule of the value of the family home in the case of the end of the conjugale relationship.
24. In the Act, the family home is defined as followed :

« means a structure — that need not be affixed but that must be situated on reserve land — where the spouses or common- law partners habitually reside or, if they have ceased to cohabit or one of them has died, where

they habitually resided on the day on which they ceased to cohabit or the death occurred... »

25. Section 28 specifically provides for the equal division of the value of the family home, in particular where the spouse is not a member of the first nation :

«**28 (1)** When a conjugal relationship breaks down, each spouse or common-law partner is entitled, on application made under section 30, to an amount equal to one half of the value, on the valuation date, of the interest or right that is held by at least one of them in or to the family home and to the amounts referred to in subsections (2) and (3).

(3) A spouse or common-law partner who is not a member of the First Nation on whose reserve are situated any structures and lands that are the object of interests or rights that are held by the other spouse or common-law partner is also entitled to an amount equal to the total of

(a) one half of the value, on the valuation date, of matrimonial interests or rights referred to in paragraphs (a) and (b) of the definition *matrimonial interests or rights* in subsection 2(1) that are held by the other spouse or common-law partner in or to structures situated on a reserve of that First Nation (...) »

26. On review, it is only fair that the value of the family home be divided equally, in accordance with the provisions of the Act.
27. Considering the circumstances, there is no reason to apply section 29 of the Act which allows the Court to vary the amount that would be payable if it would be unfair according to the factors mentioned.
28. In this case, the parties agreed that, in the case of partition of the family home, the value payable to the applicant is of \$10 572.48 in accordance with the Act.
29. In addition, the parties also requested to the Tribunal, in the event of the division, to confirm their agreement that the amount due would be paid in 6 installments starting July 1 , 2017 in the amount of \$1 762.08 every 6 months , without interest, until full payment.

FOR THESE REASONS, THE TRIBUNAL:

30. GRANTS the divorce of the parties whose marriage was celebrated on August 27, 2005 in Wendake, Quebec, which judgment will come into force on the thirty-first day following its signature;
31. ENDORSES and MAKES IT ENFORCEABLE the accessory measures Agreement agreed upon by the parties as describe in paragraph 8 of this judgment and ORDERS them to comply therewith;
32. ORDERS the respondent to pay to the applicant an amount of \$10,572.48 for the division of the value of the family home, which amount she will have to pay in 6

installments as of July 1, 2017 in the amount of \$1 762.09 every 6 months, without interest, until full payment;

33. WITHOUT LEGAL FEES.

DENIS JACQUES, j.c.s.

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Date of hearing: November 17, 2016

2. SUMMARY OF ISSUES

The following is a summary of issues that might be coming from the ruling in the interpretation and application of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, hereinafter referred to as : « MRP Act ».

- As mentioned in the judgement, the parties were legally married and separated in 2012 and there has been no resumption of cohabitation. They separated before the coming into force of the MRP Act Provisional Federal Rules (December 16, 2014). However, the application for the divorce was made after the coming into force of the Provisional Federal Rules;
- The Judge granted the division of the value of the family home even if there was still a balance owed to the Council of the Huron-Wendat Nation for a loan contracted for the construction of the family home. The respondent was claiming that the Council remains the owner of the home until the loan is completely paid.

The Judge then compared this situation to the situation of any owner that contracts a loan with a financial institution in counterpart of a mortgage security, and so without examining the contractual relationship and real status of the land considering the *Indian Act*,

- The Judge also referred to the family home being part of the family patrimony under the CCQ without any references to the MRP Act and *Derrickson v. Derrickson*

(1986) SCR 285. In order to establish how the family home should be divided, he refers to the CCQ and not to the MRP Act.

- The reasoning for the Judge to order the division of the family home seems to have been made much more in accordance with the CCQ and that he only referred to the MRP Act in order to legitimate its decision.
- The Judge refers to judgement : « Droit de la famille- 2885 », which dates prior to the coming into force of the Provisional Federal Rules (November 20, 1997).