

## NEWS &gt; LAW &gt; OPERA

## Unjust enrichment, equity and your mother-in-law



Charles Wagner

The average person goes to a lawyer because they just feel they were treated unfairly. I read a case recently and thought long and hard about how the plaintiff, Mary Simonin, must have felt. Her lawyer could not go to court and just say Mary was treated inappropriately. We lawyers must apply the facts to legal doctrines and theories. We rely on older cases to show that in similar circumstances the courts have granted damages to our clients. So let's go through the facts of this case, see why Mary felt she was treated unjustly, and look how the courts applied the law to her situation.

Mary, her husband Franco and their children lived on a farm owned by Mary's mother-in-law. They paid no rent. Franco ran a construction company and used that company to renovate his mother's farm. He never charged his mother a penny for what amounted to more than \$200,000 worth of

work. Instead, for between 30 per cent and 50 per cent of the cost of the improvements Franco billed his company's other clients.

Franco died. Six months later Mary and her children left the farm. The mother sold the farm for \$880,000 and gave \$200,000 to her daughter. Mary and her children got nothing. Does that sound unfair to you? It did to Mary. Were Franco's children also not entitled? Didn't Franco add value to the property? Were his children not entitled to the benefit of their father's work? The matter went to trial and was appealed. One can surely understand why Mary felt cheated. Let's see how the courts dealt with her complaint in the legal context.

Mary's lawyer argued that Franco's estate had a *quantum meruit* claim for unjust enrichment. Essentially, this Latin phrase describes a legal doctrine standing for the proposition that a person should be compensated for services or goods provided even if there was no legally enforceable contract. Based on seminal cases such as *Peter v. Beblow*, 1993 CanLII 126 (S.C.C.), [1993] 1 S.C.R. 980 and *Garland v. Consumers' Gas Co.*, 2004 SCC 25 (CanLII), [2004] 1 S.C.R.

629 Mary's lawyer argued that she should be compensated because Franco's mother was enriched by virtue of the work done by Franco, that Franco suffered a corresponding deprivation for what he could have charged her and there was no juristic (legal) reason for Franco's mother to get that work done for free. The other side disagreed.

While the trial judge and Ontario Court of Appeal agreed that Franco's mother was enriched they did not believe that he suffered a corresponding deprivation. In other words - he did not lose anything. Firstly, it was his company not Franco that did the work. Secondly, the company was paid for the work already, albeit by other customers. How could Franco have been deprived of compensation for his work if he was already paid for it by his other customers? Finally, when addressing the third part of this test, that being the absence of a juristic reason for Franco's mother to retain the benefit, the court pointed out that it was just and fair that the mother keep the benefits without paying for it. After all, Franco and Mary lived on the property rent free. They benefited from the renovations and most impor-

tantly they never indicated to Franco's mother that there was any expectation at all of compensation for Franco's work.

Before leaving this case I want to address an interesting side point. Ordinarily, a plaintiff cannot come to court seeking an equitable remedy and compensation for unjust enrichment, if she does not come to court with clean hands. Even though Franco charged his clients for the work done on his mother's farm, the court did not hold that against Mary. Why? Because while improper, those actions were not immediately and necessarily related to the claim.

This short review of the case law should not be taken as legal advice. Based on my experience in dealing with these cases, they often turn on the specific facts. If you have a legal question relating to something similar, you are best advised to seek out competent legal counsel to determine your best course of action.

Charles B. Wagner is a partner at Wagner Sidlofsky LLP. This Toronto office is a boutique litigation law firm whose practice is focused on estate, commercial and tax litigation.

## Texas enacts law upholding mezuzah rights

(JTA) - Texas Governor Rick Perry signed a bill requiring homeowner associations to permit religious displays on residents' doors, including *mezuzahs*.

According to the law, the religious item must be under 25 inches and remain in the doorway.

The law, signed in June, was introduced after a Conservative Jewish couple was ordered to remove a *mezuzah* from the door of their rental apartment and then fined when they refused. The couple sued to be allowed to keep the *mezuzah* up and lost; they moved from the building when their lease was up. They then turned to Garnet Coleman, a state legislator from Houston, to help pass a bill to prevent the same thing from happening to others, the *Houston Chronicle* reported.

In 2008, Florida passed a similar bill.



Mezuzahs okay in Texas

## Jewish opera singer becomes goddess

Marvin Glassman  
Special to the Tribune

TORONTO - When Jewish mezzo-soprano opera singer Lauren Segal becomes the goddess 'Diana' in the Canadian Opera Company's production of Gluck's *Iphigenia In Tauris* from Sept. 22 through Oct. 15 at the Four Seasons Centre, she will show the audience her immense vocal range as she sings her role in French with English subtitles.

Born in South Africa but raised in Thornhill since her family immigrated to Canada in 1976, Segal has earned acclaim across Canada for her many roles on stage performing everywhere from British Columbia to Nova Scotia with the Canadian Opera Company. However, the acclaimed

opera star could have easily become the next Albert Einstein instead of the next Beverly Sills. Segal switched careers while she was earning her masters degree in physics at the University of Toronto.

"I loved music even as a child, but took it more seriously as a profession when I joined the choir as an undergraduate at York University. Most of my friends in the choir studied opera and I loved it myself. So, I took voice lessons even while I was considering a career in physics and have no regrets at all for having a career in music instead of science," said Segal in a phone interview.

Segal's unusual path to becoming an opera singer is quite different from many of her peers who have been

planning a musical career since they were children. Competing with others who had a more traditional pedigree, Segal immersed herself in studying French, German and Italian, as well as the history of opera after leaving university.

Hard work combined with talent paid off. Performing mostly with the Canadian Opera Company since 2008, Segal has earned standing ovations and critical acclaim for her performances as Sonya in *War And Peace*, Suzuki in *Madama Butterfly*, Valencienne in *The Merry Widow*, Nancy T'sing in *Nixon In China*, among other roles.

Segal's prominence as an opera singer has earned her fame as the only Canadian to have been accepted to the prestigious Salzberg Festival

For Young Artists in 2008, as well as winning the Metropolitan Opera National Council Auditions Encouragement Award twice.

In concert, Segal's grace, impeccable vocals and physical beauty has made her a sought out artist, as witnessed with her standing ovations for her performance in 2010 at the National Arts Centre in Ottawa and playing Carmen at this year's Brott Musical Festival in Hamilton.

Although Segal has travelled to Israel, she has never performed there. She is proud of her Jewish roots and is often asked to sing in synagogues as a cantor.

"A lot of opera stars have become cantors," she said. "I respect and love cantors, but I love performing on the stage and would miss it if I became a cantor. However, singing in the choir is fun to do when I can."

Segal sings with the synagogue choir at Adath Israel Congregation in North York when she is not performing.

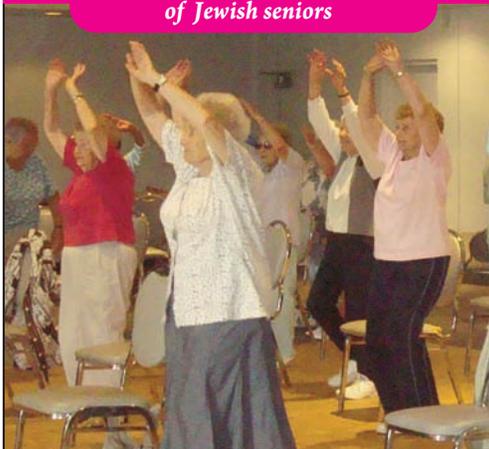
Lauren Segal stars as Diana in Gluck's *Iphigenia In Tauris*, a production of the Canadian Opera Company Sept. 22 through Oct. 15 at the Four Seasons Centre, 145 Queen St.

For tickets and show times, call (416) 363-8231 or go to [www.coc.ca](http://www.coc.ca).

For information on Lauren Segal's coming performances, go to [www.laurensegal.com](http://www.laurensegal.com).

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