

CANADA / JUDGMENT

1122792 B.C. Ltd. v. 1230310 B.C. Ltd.

2021 BCSC 715

COURT

Supreme Court of British Columbia

DECIDED

19 April 2021

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2021 BCSC 715 1122792 B.C. Ltd. v. 1230310 B.C. Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: 1122792 B.C. Ltd. v. 1230310 B.C. Ltd., 2021 BCSC 715 Date: 20210419 Docket: S210358 Registry: Victoria Between: 1122792 B.C. Ltd. Petitioner And 1230310 B.C. Ltd. 11957961 Canada Ltd. Respondents Before: The Honourable Mr. Justice A. Saunders Reasons for Judgment Counsel for the Petitioner: N. Parhar Counsel for the Respondent 1230310 B.C. Ltd: M. Boulet Counsel for the Respondent 11957961 Canada Ltd. M.W. Buhler Place and Date of Hearing: Victoria, B.C. March 23, 2021 Place and Date of Judgment: Victoria, B.C. April 19, 2021

Introduction

- [1] This petition concerns registration of the transfer of title to lands now owned by the petitioner, located at 425 Nimpkish Drive, Gold River, British Columbia (the "Lands"), notwithstanding a caveat with registration number CA8729221 (the "Caveat") filed against title to the Lands filed by the respondent 1230310 B.C. Ltd. ("123").

Background

- [2] The petitioner ("112") as seller, and the respondent 11957961 Canada Ltd. ("119") as buyer, entered into a contract for the purchase and sale of the Lands on December 23, 2020 (the "112/119 Contract"). On January 18, 2021, a Form A application for Freehold Transfer (the "Application"), bearing registration numbers CA8713598 and CA8713599, by which title to the Lands would be transferred from 112 to 119, was filed by the solicitors for 119 with the Registrar of Land Titles (the "Registrar").
- [3] On January 26, 2021, before the Application was processed and transfer of title registered, the solicitor for 123 filed the Caveat, claiming a beneficial interest in the Lands pursuant to a contract of purchase and sale between 112 and 123 dated July 14, 2020 (the "112/123 Contract").

- [4] By way of a notice declining to register (the "Registrar's Notice") issued on January 26, 2021 by the Registrar pursuant to s. 308 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA], the Registrar notified 119 that registration of the Application could not be proceeded with due to the Caveat. The Registrar's Notice provided that the Caveat must be dealt within 31 days. This petition was filed on February 26, 2021, satisfying that requirement. Positions of the Parties
- [5] In this petition, the petitioner seeks the following relief:
- a) A declaration that the Application has priority over the Caveat;
 - b) An order pursuant to s. 289 of the LTA that the Caveat be discharged from registration against title, and a direction that the Registrar discharge the Caveat from title to the Lands upon presentation of a certified copy of this Order; and
 - c) An order directing the Registrar to proceed with registration of the transfer of title between 112 and 119, as per the Application.
- [6] 119 supports the petition.
- [7] 123 opposes the petition. It says that it entered into the 112/123 Contract in July 2020 knowing that there had been a previous contract for purchase and sale of the Lands as between the petitioner as seller and the principal of 119, a Mr. Johnson ("Johnson"), as buyer, but having received representations from 112 that Johnson did not complete the purchase and held no further interest in, or entitlement to, the Lands. 123 says that Johnson and 119 as plaintiffs then commenced an action in this Court against 112 and others as defendants, by way of a notice of civil claim filed July 30, 2020 under Action No. S15124, Campbell River Registry (the "Johnson Action"), seeking to enforce Johnson's earlier agreement to purchase the Lands, and that on or about August 4, 2020 Johnson and 119 filed a Certificate of Pending Litigation (the "Johnson CPL") against the Lands.
- [8] 123 says that Johnson and 119 commenced the Johnson Action and filed the Johnson CPL knowing that they had no legal or equitable interest in the Lands, and took those steps to wrongfully induce 112 to breach the 112/123 Contract.
- [9] 123 commenced a competing, parallel action, under Action No. 15160, Campbell River Registry (the "123 Action") against 112, 119, and Johnson, by way of a notice of civil claim filed March 9, 2021. I was advised in the course of the hearing that 123 has filed a Certificate of Pending Litigation against the Lands in respect of that claim (the "123 CPL").
- [10] 123 further says that Johnson and 119's wrongful conduct had its intended effect: that 112 entered into the 112/119 Contract in December 2020, without notice to 123, to avoid the cost of litigation and delay in selling the Lands, in violation of 123's beneficial interest as purchaser under the 112/123 Contract. In its filed response to the within petition, 123 pleads that the 112/119 Contract was intended to delay, hinder, or defraud 123 of its just and lawful remedy of specific performance, and it pleads and relies upon provisions of the Fraudulent

Conveyance Act, R.S.B.C. 1996, c. 163. Alternatively, 123 pleads that this petition should be converted to an action and tried on the merits with the Johnson Action and the 123 Action.

Discussion

- [11] The Registrar had no discretion to process the Application and transfer title in the face of the Caveat. This is because the LTA, by operation of s. 37(1), only deems an instrument to have been registered as of the date and time the application for registration was received by the registrar, once it is registered. Section 288 of the LTA states explicitly that, with certain exceptions, the Registrar must not register another instrument affecting the land described in a caveat lodged with the Registrar while the caveat remains in force.
- [12] However, s. 31 of the LTA provides that a caveat or certificate of pending litigation has priority only over an instrument for which application for registration has been made after the caveat or certificate of pending litigation has been lodged: 31 If a caveat has been lodged or a certificate of pending litigation has been registered against the title to land,
- (a) the caveator or plaintiff, if that person's claim is subsequently established by a judgment or order or admitted by an instrument duly executed and produced, is entitled to claim priority for that person's application for registration of the title or charge so claimed over a title, charge or claim, the application for registration, deposit or filing of which is made after the date of the lodging of the caveat or registration of the certificate of pending litigation, and
 - (b) if proof of service of notice of claim to priority on the subsequent applicant is provided to the registrar before registration is effected, the registration of the title or charge claimed by the caveator or plaintiff relates back to and takes effect from the time of the lodging of the caveat or registration of the certificate of pending litigation, and that time, as well as the time of the application for registration of the title or charge so claimed, must be endorsed on the register.
- [13] Section 289 of the LTA provides a mechanism for an owner obtaining discharge of a caveat: 289 (1) An owner or other person claiming an estate or interest in land or a charge, in this Act referred to as the "caveatee", may, before the expiry of the caveat, apply to the Supreme Court and notify the caveator to attend before the court to show cause why the caveat should not be discharged.
- (2) The court may,
 - (a) on proof that the caveator has been served with the notice, and
 - (b) on such evidence as the court may require, make such order as the court may consider proper.
- [14] 123 has failed to show why the Caveat should be maintained. As the Application was filed before the Caveat, the Caveat can have no effect on whether title should be registered: 0878357 B.C. Ltd. v. Tse, 2013 BCSC 2011 at para. 66. 123 may pursue its claim to having a beneficial interest in the Lands; legal title, however, must vest in 119.

[15] The 123 CPL was not challenged in the filed petition, but counsel are agreed that my order should address it. Clearly, the 123 CPL has no priority over the Application and should not interfere with registration of 119's title to the Lands. In the absence of a state of title certificate showing title as of the date of the hearing, it would not be appropriate to discharge the 123 CPL; it may yet have priority over any subsequently registered or created interests. The effect of my order, however, will be that registration will proceed, notwithstanding the 123 CPL remaining on title. Order

[16] I therefore find that 11957961 Canada Ltd. had a good safe holding and marketable title to the Lands upon filing of the Application, and that the petitioner is entitled to an order discharging the Caveat filed by 1230310 B.C. Ltd. I order title in the Lands to vest in 11957961 Canada Ltd., and I direct the Registrar to enter 11957961 Canada Ltd.'s title to the Lands in the Register upon presentation of a certified copy of this Order.

[17] 1230310 B.C. Ltd. will pay the petitioner its costs of this petition. "A. Saunders, J."

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Prepared on 28 October 2026 · Esheria