

CANADA / JUDGMENT

Ackerman v. Ackerman

2024 BCSC 1702

COURT

Supreme Court of British Columbia

DECIDED

12 September 2024

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2024 BCSC 1702 Ackerman v. Ackerman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ackerman v. Ackerman,

2024 BCSC 1702

Date: 20240912

Docket: S234185

Registry: Vancouver

Between:

Kent Alan Ackerman

Petitioner

And

Mark Edmund Ackerman

Respondent

Before: The Honourable Madam Justice Duncan

Reasons for Judgment

Counsel for the Petitioner:

C.L. Lee

Counsel for the Respondent:

M. Potomak

J.B. Maryniuk

Place and Date of Hearing:

Vancouver, B.C.

June 11 and August 7, 2024

Place and Date of Judgment:

Vancouver, B.C.

September 12, 2024

Introduction

- [1] The petitioner, Kent Ackerman, and the respondent, Mark Ackerman, are twin brothers. I will refer to them by their first names for ease of reference.
- [2] Kent applies for an order for the sale of property located at 20392 Lorne Avenue, Maple Ridge (the "Property") pursuant to s. 4(1) of the Partition of Property Act, R.S.B.C. 1996, c. 347 [PPA]. He relies on s. 6 of the PPA which states:

In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.

- [3] In the original petition filed in June 2023, Kent applied for a variety of declarations pursuant to a trust Mark executed in his favour concerning the Property. In the amended petition, filed March 26, 2024, he has abandoned pursuit of those declarations and takes the position that the trust is enforceable and he is the beneficial owner of the Property.
- [4] Mark is opposed to the sale. Since the purchase of the Property in October 2013, he has been on title as the holder of a 99% interest in it. Kent holds the remaining 1%. Mark has lived on the Property with his husband Manuel Kengkegnan since shortly after it was purchased with funds advanced by Kent for the down payment.
- [5] Because of my view that the dispute between the parties cannot be resolved on the basis of this petition, I will review the facts on a cursory basis.
- [6] It appears that Kent, Mark and Mr. Kengkegnan had some kind of agreement to buy, fix up and sell properties for their mutual benefit. Kent is a veterinarian who lives in Toronto and was looking for some investment opportunities in British Columbia. Mark and Mr. Kengkegnan maintain that their work with Kent was partly to make money and partly to permit the two of them to get into the real estate market.

- [7] Mark agreed that his first time home buyer's exemption would be used to save property purchase tax on this Property. Mr. Kengkegnan used his exemption for the purchase of a different property which is not the subject of a dispute. That property was sold and the proceeds divided in a manner that Mark maintains has a parallel to the subject Property: Kent received 50% of the sale proceeds after expenses and Mark and Mr. Kengkegnan received the other 50% of net sale proceeds.
- [8] Mark maintains that he and his husband have made substantial improvements to the Property and had a verbal agreement with Kent, predating the alleged trust document, that the Property would not be sold unless and until the brothers agreed. He says he did not understand what he was doing when Kent asked him to execute a trust in his favour.
- [9] The details of the purchase, who made payments towards a mortgage or loan on the Property and how a sale of the Property would be effected are all the subject of starkly conflicting affidavit material on this petition.
- [10] In addition, Mark raises a standing issue because he says that Kent does not have an immediate right to possession of the land, since Mark and/or his husband live there as tenants: see *Pallot v. Douglas*, 2017 BCCA 254 at para. 34; *Lennox v. Lennox*, 2018 BCCA 412; and *Benias v. Lee*, 2021 BCSC 2312 at paras. 47, 48, 62-63 and 71-72.
- [11] Finally, Mark maintains there is good reason the property should not be ordered to be sold, as there is substantial dispute over the division of any profits. In the original petition and in the amended one, Kent sought 50% of the sale proceeds to be paid to his counsel in trust, to be paid out to him forthwith, with the balance to be paid into court pending further orders or the written agreement of the parties.
- [12] At the hearing of the petition, Ms. Lee, counsel for Kent, made submissions that her client is in dire financial straits but would be content with a payout of his original investment in the Property, approximately \$249,000, with the rest to be held in trust pending resolution of the financial disputes between the brothers.
- [13] After a full day hearing on June 11, 2024 I reserved judgment. Two weeks later, counsel for Kent requested to appear before me to file and speak to further affidavit materials in support of the order for sale. I advised the parties I was not available until the first week of August and the request was withdrawn.
- [14] Subsequently, another request to appear was filed by counsel for Mark, advising me that on June 27, 2024 Mark had commenced an action by notice of civil claim in the Abbotsford registry, action no. S05806, (the "Abbotsford Action") against Kent on a variety of equitable bases and had filed a claim of pending litigation ("CPL") against title to the Property.

- [15] The parties arranged to appear before me on August 7. At that hearing, Ms. Lee reiterated that her client Kent wanted the property sold as soon as possible, with payment out to him of his original investment and distribution of the balance of funds to be determined by agreement or court order. Ms. Lee said I had inherent jurisdiction to remove the CPL and order the sale despite the pending litigation.
- [16] Mr. Potomak, counsel for Mark, maintained that the action and the CPL had been filed to protect the interests of Mark and his spouse in relation to the Property. The amendments to the petition by Kent effectively stripped Mark of the ability to dispute the trust he executed in favour of Kent and risked erasing all the financial contributions he and his husband have made to the Property over the years since it was purchased. He resisted the suggestion that the authority to remove a CPL in these circumstances rested on anything but one of the statutory bases in the Land Title Act, R.S.B.C. 1996, c. 250. In any event, there was no application before me to remove the CPL from the Property.

Analysis

- [17] Setting aside the standing issue advanced by Mark, the affidavit evidence filed by Kent and Mark in relation to the amended petition heard on June 7 is in substantial conflict. It may well have been a case where cross-examination on affidavits would have assisted in resolving the complex factual and financial entanglements between the parties.
- [18] In *Cepuran v. Carlton*, 2022 BCCA 76, the Court of Appeal sat as a division of five to consider, amongst other issues, when it is appropriate to convert a petition to an action and refer it to the trial list. The existence of conflicts in the evidence is not a bar to resolving a matter by way of petition: at paras. 156-157. At para. 158, Griffin J.A. for the Court said, "[t]here should be good reason for dispensing with a petition's summary procedure in favour of an action. The mere fact that there is a triable issue is no longer a good reason."
- [19] The decision in *Cepuran* left it open to trial judges to determine, on a case-by-case basis, whether a petition should be heard through a hybrid procedure involving some limited discovery or documents or cross-examination on affidavits, or should be converted to an action and referred to trial: at para 162.
- [20] I find that the combination of the difficulty in finding facts due to conflicting affidavit material and the complication posed by the filing of the Abbotsford Action and CPL against the subject Property, after the hearing of the petition, render this petition one that should be converted to an action and referred to trial. In the interests of proportionality and to avoid duplication of procedures, it should either be consolidated with the existing Abbotsford Action or heard at the same time.
- [21] I direct that once pleadings are closed in the Abbotsford Action by Kent filing a response to civil claim, the parties should schedule a case planning conference to streamline the two matters and ensure overlap in pretrial proceedings, and the associated cost, is minimized.

"Duncan J."

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Prepared on 27 October 2026 · Esheria