

CANADA / JUDGMENT

Bevilacqua v. Robinson

2022 BCSC 301

COURT

Supreme Court of British Columbia

DECIDED

25 February 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 301 Bevilacqua v. Robinson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bevilacqua v. Robinson,

2022 BCSC 301

Date: 20220225

Docket: S172891

Registry: New Westminster

Between:

Giovanni Alfredo Bevilacqua also known as John Alfred Bevilacqua

Plaintiff

And

Lucas William Robert Robinson

Defendant

Before: Master Bilawich

Reasons for Judgment

Counsel for Plaintiff:

B.M. Gordon

Counsel for Defendant:

G.F. Gregory

Place and Date of Hearing:

New Westminster, B.C.

January 12, 2022

and January 20, 2022

Place and Date of Judgment:

New Westminster, B.C.

February 25, 2022

Table of Contents

Preliminary Issue - Representative of Plaintiff's Estate. 3

Background. 4

Balance Owing. 4

History of the Property. 5

Sale of Defendant's Interest in the Property. 8

First Application to Approve Sale. 9

Reasons of Mr. Justice Riley. 11

Subsequent Developments. 13

Second Application to Approve Sale. 13

Analysis. 15

Conclusion. 16

- [1] The plaintiff's estate is pursuing execution proceedings to collect the balance owing on a consent judgment and costs awards made against the defendant in this action. This is the plaintiff's second application seeking court approval of a sale of the defendant's undetermined beneficial interest the property at 6053 - 28 Avenue, Delta, B.C. (the "28 Avenue Property"). The defendant co-owns this property as tenants in common with his sister, Micaela Robinson ("Ms. Robinson"). Ms. Robinson is the prospective purchaser of his interest.
- [2] Ms. Robinson previously made an offer dated November 30, 2020 to purchase the defendant's interest for \$400,000. The application to approve the sale was heard on June 1, 2020 before Mr. Justice Riley. On June 9, 2021, he gave oral reasons dismissing the application due to a lack of evidence indicating that a sale at that price was prudent.

- [3] On November 25, 2021, Ms. Robinson made a second offer to purchase the defendant's interest in the 28 Avenue Property, again for \$400,000. The plaintiff has tendered additional evidence in an effort to address issues that Justice Riley identified when dismissing the first application.
- [4] The defendant opposes the proposed sale and asks that the application be adjourned to allow him to cross-examine the three individuals who have tendered affidavit evidence in support of the plaintiff's application.
- [5] For the reasons below, it is not necessary to address the defendant's request to cross-examine on affidavits. The new evidence tendered by the plaintiff is in part not admissible as expert opinion evidence and it fails to adequately address the issues identified by Justice Riley. The plaintiff's application is dismissed.

Preliminary Issue - Representative of Plaintiff's Estate

- [6] The plaintiff was an uncle of the defendant and Ms. Robinson (among others). He died on April 20, 2021. One of his other nieces, Deborah Brown, has sworn an affidavit dated April 29, 2021 in which she says that the plaintiff left a Will appointing her and her cousin Robbie Bevilacqua as his co-executors.
- [7] The defendant takes issue with Ms. Brown's authority to administer the plaintiff's estate. He alleges that she and Ms. Robinson have been improperly conspiring against him. He has requested that Ms. Brown produce a copy of the Will appointing her executor, however, she has refused to do so. The defendant says he has a Will the plaintiff made dated November 20, 2014 which appointed him executor.
- [8] At the hearing before me, plaintiff's counsel stated he was not certain whether probate had been granted for the Will that appoints Ms. Brown as executor. I located a grant of administration that was issued to Ms. Brown on November 30, 2021, in Vancouver registry action no. P-213170, in respect of the plaintiff's Will made September 4, 2015. Ms. Brown appears to have authority to administer the plaintiff's estate.

Background

Balance Owning

- [9] The plaintiff's estate holds several unsatisfied orders and costs awards against the defendant. A partial payment was received from net proceeds from the sale of a property in Delta, referred to as the 53A Property below. Ms. Brown and Ms. Robinson say the balance remaining due, not including post-judgment interest, is as follows:

Description

Amount

Consent Judgment - Aug. 13, 2018

\$700,000.00

Order Gray J. - Aug 19, 2016

\$10,000.00

March 20, 2018 - lump sum costs

\$1,000.00

Subtotal

\$711,000.00

Less: Net Proceeds 53A Street

-\$267,854.02

Subtotal

\$443,145.98

March 9, 2018 - special costs

\$3,141.61

March 29, 2018 - special costs

\$3,972.32

May 9, 2018 - special costs

\$3,723.20

Balance excl. post-judgment interest

\$453,983.11

History of the 28 Avenue Property

[10] The 28 Avenue Property is a farm property which operates as "Loranda Farms". Ms. Robinson and the defendant are the third generation of their family to own it. On June 9, 2006, their mother Lorraine Bernard executed a transfer form transferring title to the defendant, Ms. Robinson and their sister, Amanda Robinson ("Amanda"). The mother died seven days later. The transfer was filed with the Land Title Office on August 11, 2006. Consideration was expressed as \$1 and natural love and affection.

- [11] On July 2, 2009, the defendant and Ms. Robinson purchased Amanda's interest in the 28 Avenue Property for \$511,666.67. Since then, the defendant and Ms. Robinson have been registered co-owners as tenants in common. Concurrent with this last transfer, they granted a mortgage to The Toronto Dominion Bank for \$740,000 and interest at 3.89% per annum. Monthly payments were \$3,214.18. Mortgage proceeds were used to refinance an existing mortgage and pay Amanda for her interest.
- [12] Ms. Robinson says the Loranda Farms' business involved a horse barn with 24 stables, which were used as rental stalls. Outside were 11 sand turn-out paddocks and a pasture for grazing. There were formerly spaces for more horses, but about half of the stables were converted into storage spaces for the use of boarding customers. The barn also had facilities to board pets, primarily cats. The 28 Avenue Property also has two residences.
- [13] Ms. Robinson asserts that income from the Loranda Farms business covered most of the property's expenses, including mortgage payments, property taxes, property utilities, insurance and others. She says she paid a portion of expenses from her own resources, including about \$100,000 for improvements to the residences. She does not particularize that. She has lived on the 28 Avenue Property since birth, save for a two-year period between 2006 and 2008.
- [14] Ms. Robinson says that the defendant has never worked at, been involved in, or contributed to the Loranda Farms business.
- [15] On January 26, 2011, Delta Police executed a search warrant at the 28 Avenue Property. This included a portion of the larger residence which the defendant was occupying at the time. Following the raid, the defendant was charged criminally with several drug-related offences.
- [16] On September 1, 2011, the Director of Civil Forfeiture (the "Director") started petition proceedings in Vancouver registry, action no. S115847, in rem against the 28 Avenue Property, claiming it was an instrument of and proceeds of unlawful activity.
- [17] Ms. Robinson denies ever taking or selling prohibited or illegal drugs. She submitted to a drug test, with results coming back negative. She filed a response to the Director's petition and tendered evidence showing that property related expenses had been paid from legitimate Loranda Farms revenue and her own employment income. She successfully resisted any civil forfeiture of her interest in the 28 Avenue Property.
- [18] By consent order made April 17, 2012, a judgment was granted in favour of the Director against \$185,000 of the value of the defendant's interest in the 28 Avenue Property, plus lump sum costs of \$30,000. The defendant arranged a second mortgage of his interest to Canadian Western Trust Company for \$245,000 to pay the Director.

- [19] Subsequently, the Canadian Western Trust mortgage went into default and foreclosure proceedings were started. Ms. Robinson says she took steps to be added as a respondent and positioned herself to redeem the mortgage. She wished to protect her interest in the 28 Avenue Property and prevent the defendant's interest from being sold to an outside party. Before she did so, the defendant was able to redeem the mortgage himself.
- [20] On November 4, 2013, the defendant filed a petition against Ms. Robinson in Vancouver registry action no. S-138186 (the "Partition Proceeding"), seeking partition of the 28 Avenue Property, an order that title be transferred to him as sole legal and equitable owner, and that he pay Ms. Robinson for her half interest in an amount to be determined by the court. Ms. Robinson opposed the relief sought. The petition was not scheduled for hearing and became dormant for an extended period.
- [21] On September 4, 2015, the plaintiff started this action against the defendant, initially alleging that the defendant had misused a power of attorney to transfer title to three properties owned by the plaintiff to himself and to take about \$300,000 from the plaintiff's bank account. The defendant denied the claims and said he was assisting the plaintiff, who was then about 91 years of age, and had been helping manage his financial affairs. He alleged the plaintiff had gifted him at least one of the three properties, namely 1360 - 53A Street, Delta, B.C. ("53A Property"), which became the defendant's residence at the time.
- [22] On January 27, 2016, there was a fire in the barn on the 28 Avenue Property. Ms. Robinson says the cause was never determined, but she alleges the defendant was the cause. She says that loss of the barn made it more difficult for her to make mortgage payments due to the loss of equestrian and cat boarding revenue. Subsequent to the fire, Ms. Robinson received an insurance payment in excess of \$450,000. It is not clear what became of those funds.
- [23] On August 19, 2016, Madam Justice Gray ordered the defendant to pay the plaintiff \$10,000 plus interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79, and to provide an accounting of funds taken from the plaintiff's bank accounts between January 1, 2013 and September 30, 2015, amongst other terms.
- [24] On August 13, 2018, a consent order was pronounced ordering that the defendant pay the plaintiff \$700,000. There were also several costs awards made against the defendant in the course of this action. These included three orders for special costs on a full indemnity basis in respect of applications related to the sale of the 53A Property and an award of \$1,000 in lump sum costs for a fourth application.

Sale of Defendant's Interest in the Property

- [25] On November 6, 2019, Master Dick ordered there be a reference to the registrar to find what property or interest in the 28 Avenue Property was liable to be sold under the plaintiff's judgment and what the defendant's interest is in the property, among other terms.

[26] On December 11, 2019, counsel for the plaintiff appeared before Registrar Nielsen for a reference pursuant to s. 94 of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 [COEA]. Counsel for the defendant says he was not given notice of the hearing date. Registrar Nielsen issued a Registrar's Report which identified "a portion of" the 28 Avenue Property as the land liable to the sold.

[27] Under Item 2, "Interest of the Judgment Debtor in the Lands" it states:

The judgment debtor's interest in the Lands is: Lucas William Robert Robinson, the judgment debtor, is the registered owner of an undivided one half interest in fee simple of the Lands but a beneficial owner of less than an undivided one half interest in fee simple and is indefeasibly entitled to less [than] an undivided interest in the estate in fee simple as at 12:43 on January 24, 2019 the date a certificate of the state of title of the Lands was obtained for the Lower Mainland Land Title Office.

[28] Under Item 4, judgments forming a lien and charge against the interest of the defendant in the 28 Avenue Property and priorities between them, it notes:

- a) May 30, 2017, Certificate of Judgment CA6029392 [of the plaintiff] for \$10,000;
- b) January 17, 2019, Certificate of Judgment CA7301731 [of the plaintiff] for \$710,000;

[In respect of a) and b), it states that \$453,983.11 remains outstanding as at December 11, 2019.]

- c) January 21, 2019, Certificate of Judgment WX2105438 for a Crown Debt in the sum of \$807.72;
- d) March 21, 2019, Certificate of Judgment CA7406301 of Gregory & Gregory in the sum of \$34,579.60.

[29] On January 8, 2020, Master Keighley made an order receiving and approving the Registrar's Report and ordered that the defendant's interest in the 28 Avenue Property is liable to be sold in satisfaction of the plaintiff's judgments against the defendant dated August 19, 2016 and August 13, 2018. The plaintiff was granted exclusive conduct of sale and the order provided that any sale was subject to approval of the court unless agreed to by all parties. The advertising requirements of the COEA were waived. The plaintiff was granted special costs on a full indemnity basis.

First Application to Approve Sale

[30] On June 1, 2021, the plaintiff applied for approval of a sale of the defendant's interest in the 28 Avenue Property to Ms. Robinson for \$400,000.

[31] Evidence before the court included an affidavit of Ms. Chung, a realtor with EXP Realty LLC ("EXP Realty"). She is the agent that the plaintiff retained to market and sell the defendant's interest in the 28 Avenue Property. She initially swore an affidavit #1 dated December 1, 2020.

[32] On February 28, 2020, the plaintiff entered into an exclusive listing contract with EXP Realty. The term was February 28, 2020 to September 30, 2020. The property being sold is described as "less than 1/2 interest in and to 6053 28 Ave Delta". Terms of sale include listing price at \$500,000. Listing brokerage's remuneration is fixed at \$5,000 plus GST.

[33] Schedule "A" to the listing contract specifies that:

Seller wants advertising to state:

Court ordered sale of a fractional less than 1/2 interest in [the Property]. The property is 9.053 acres in size, is zoned A1 agricultural and is adjacent to the South Fraser Perimeter Road. The property has two residential buildings: the principal residence and an accessory farmhouse.

The interest being sold is subject to a first mortgage registered against the lands under no. CA1177117 on July 7, 2009 at 11:15 in favour of The Toronto Dominion Bank in the sum of \$740,000.00 against the entire property.

The property and buildings are difficult to show however showings can be arranged for serious purchasers.

A purchaser of the interest being sold may not be entitled to a right of partition for various reasons including the fact that the owner of the interest being sold does not have a right to possession for several reasons. It is recommended that any prospective purchaser reach an accommodation on the percentage ownership of the equitable interest being sold with the owner of the balance of the property.

Commission is payable only if the sale is approved by the Supreme Court of B.C. and completes.

*Buyer to verify all details and information pertaining to property and interest.

Commission:

Seller and/or Seller's estate executor will cover all expenses and fees incurred that costs over and above the \$5,000.00 commission as per listing contract for the purpose of executing this court ordered sale; Expenses and fees include listing, transaction, lawyer and insurance deductible of Seller's representative, Chai Chung PREC*if any any [sic] are incurred.

[34] In her affidavit #1, Ms. Chung refers to the defendant having a "significantly compromised interest" in the 28 Avenue Property. As part of the marketing of the defendant's interest, she caused ads to be placed in the Globe & Mail on March 28 and April 3, 2020 and she had a listing on her firm's website from March 2020 to the date of her affidavit, December 1, 2020. The defendant disputes this.

[35] Exhibit C to her affidavit #1 is a copy of the Globe & Mail advertisement and the ad that she says appeared on her firm's website. These are similar to the above description.

- [36] Ms. Chung stated that because the interest being sold is less than a one-half interest in the 28 Avenue Property, it is difficult to market because a purchaser has to deal with quantifying the amount of the interest and making a workable accommodation with the other owner. She also states that the obvious purchaser for the interest is the other owner [Ms. Robinson].
- [37] Not surprisingly, the only offer received after 10 months of marketing in this manner was from Ms. Robinson. She submitted an offer dated November 30, 2020 to purchase the defendant's interest for \$400,000. Other terms included that she would assume the encumbrances on title, including the first mortgage to The Toronto Dominion Bank, the judgment for the crown debt and the certificate of judgment for Gregory & Gregory.

Reasons of Mr. Justice Riley

- [38] On June 1, 2021, the plaintiff's application for approval of the sale to Ms. Robinson was heard by Mr. Justice Riley. On June 9, 2021, he gave oral reasons dismissing the application. I summarize some key portions of his reasons:
- a) [Para 9] The debt is owed and the estate rightly wants to collect the outstanding amount.
 - b) [Para 10] The Partition Proceeding has been outstanding since 2013. It is not realistic or appropriate to adjourn the application for approval of sale until the Partition Proceeding is heard. It should not now be used as a basis for holding up the plaintiff's application for approval of sale.
 - c) [Para 11] The plaintiff obtained an order to sell the defendant's interest in the 28 Avenue Property to collect on the outstanding amount of the judgment. The soundness and validity of the order for sale is taken as a given. It is not open to the defendant to attack it in this application. The only issue before the court is whether to approve the sale of the defendant's interest in the property.
 - d) [Para 12] Following *Elite Mortgage Corp. v. Derewenko*, 2019 BCCA 125, an applicant for approval of a sale must establish that:
 - i. The applicant went about finding a buyer in a businesslike manner; and
 - ii. the proposed sale is provident in all the circumstances.
 - e) [Para 18] With regard to the first element, the court rejected the defendant's argument that the plaintiff's marketing of the defendant's interest was dishonest. The challenge was that the interest is extremely unusual, almost unique. The marketing materials use language that is very similar to the language in the registrar's report describing the defendant's interest in the property. Moreover, one must consider that in marketing an interest of this sort, the seller would want to provide a fair description as to the nature of the interest and what it does and does not entail, so as to avoid any suggestion that the seller has marketed the property in a way that might mislead potential buyers.

- f) [Para 19] When considering the second element, the court agreed with the plaintiff's suggestion that the interest in question is quite unique and this poses challenges for assessing the prudence or providence of the sale price. We are not talking about a clearly identifiable one-half interest in a piece of real property, but rather a beneficial interest of something less than a one-half interest in fee simple.
- g) [Para 23] At the end of the day, the court must be satisfied that the sale is provident or prudent, having regard to all of the circumstances of the case. What is to be sold is a fractional interest in real property. The registrar's report states the nature of that interest - beneficial ownership of something less than a one-half interest - but did not provide any information as to the value of that interest. In all the circumstances, it could end up being very difficult to actually value the interest in question. That is a relevant consideration; the practicalities of being able to value such an interest.
- h) [Para 24] The fact that listing the property for sale generated no interest and no offers apart from Ms. Robinson's is not really surprising given the rather unusual and unique nature of the interest in question.
- i) [Para 25] The court's task is to evaluate the prudence or reasonableness of the offer. The court has no direct evidence as to the current value of Property as a whole and no admissible independent evidence on which to ascertain the value of the defendant's interest in it. Ms. Robinson has filed an affidavit setting out some rough accounting or calculation of the defendant's remaining interest, but she is also the prospective purchaser.
- j) [Para 26] Justice Riley concluded he could not say that the market has spoken because, in his view, it has not. When he asked plaintiff's counsel how the list price [\$500,000] was determined, the response was that it was really an arbitrary figure. That raises real questions about how the court can be satisfied that the proposed sale price, which is less than the listing price, is really reasonable and prudent.
- k) [Para 27] It is clear that the value of the 28 Avenue Property itself is substantial. As to the defendant's interest in it, it may be difficult to value but that does not mean the court must accept the only offer presented, which was presented by a non-arm's length purchaser. The court must be satisfied the sale of the defendant's interest in the Property at that price is prudent.
- l) [Para 28] The court needs to have some objectively reliable evidence that the price Ms. Robinson has offered to pay is a prudent one. It did not have any such evidence. Justice Riley went on to suggest this might begin with a current appraisal of the Property, which might be accompanied by an appraisal of the defendant's interest conducted by an appropriate expert involved in the appraisal of businesses or other valuable assets. He declined to say more, because there may be other approaches to valuation or other forms of evidence that might satisfy a judge that this particular sale price is prudent. On the evidence presented in this application, the court was not satisfied that the sale was a prudent one, so the application is dismissed.

Subsequent Developments

[39] On September 29, 2021, Ms. Robinson applied to dismiss the Partition Proceeding for want of prosecution. On November 3, 2021, Mr. Justice Tammen granted the order sought with costs to Ms. Robinson.

Second Application to Approve Sale

[40] On December 17, 2021, the plaintiff filed an application to approve a second offer of Ms. Robinson to purchase the defendant's interest in the 28 Avenue Property for \$400,000. Supplementing the affidavit material from the first application were new affidavits from Ms. Robinson and Ms. Chung.

[41] Ms. Robinson states she believes she is paying a price for the defendant's interest which is very close to what his interest is worth if it was sold on a "join in sale basis", which is not the case, and that it is likely worth far less on the open market. She refers to Ms. Chung's new evidence regarding sales of two other properties, which they suggest are comparable to the 28 Avenue Property.

[42] Ms. Robinson also offers her calculation of the defendant's reduced interest in the 28 Avenue Property. She says his interest is less than one-half and is perhaps less than one-third, if one accepts her argument that the defendant has disavowed The Toronto Dominion Bank mortgage that was taken out to purchase sister Amanda's interest so her former one-third interest should be attributed to Ms. Robinson only. She offers an accounting of income and expenditures for the period 2016-2019 and arrives at an annual average of what she says should be deducted from the defendant's share. She argues the court can extrapolate similar deductions for each of the years back to 2006, when title to the 28 Avenue Property first passed to them. She again alleges that the defendant caused the barn fire and is responsible for the resulting losses, but says her calculations do not take that into account. She arrives at values for the defendant's interest based on Ms. Chung's new valuation for the entire property and argues that a 30% discount ought to be applied based on the defendant's interest being less than a one-half interest.

[43] The realtor Ms. Chung tendered two new affidavits. She states that the plaintiff entered into a further listing agreement with her firm on September 1, 2021. The term of the agreement extends to July 1, 2022. The new list price was set at \$800,000. This appears to be an arbitrary figure. The listing broker's commission was once again fixed at \$5,000 plus GST.

[44] Ms. Chung says she advertised the interest being sold on her firm's website from March 2021 to the date of swearing her second affidavit, December 2, 2021. She repeats that the interest is difficult to market because it is less than a one-half interest and that a purchaser has to deal with quantifying the amount of the interest and making a workable accommodation with Ms. Robinson. The obvious purchaser for the interest is still Ms. Robinson. On November 25, 2021, Ms. Robinson tendered a second offer of \$400,000 for the defendant's interest.

- [45] Ms. Chung repeats the evidence relating to the two other farm properties referenced in Ms. Robinson's affidavit and suggests they are comparable to the 28 Avenue Property. She compares various features of those and offers her opinion that the 28 Avenue Property as a whole has a value of \$2,500,000. Ms. Chung also attaches photographs which she says are of the comparable properties. During submissions, plaintiff's counsel invited me to carry out my own comparative analysis based on these pictures.
- [46] Ms. Chung goes on to say her research into the sale of less than one-half interests in land leads her to conclude it would also appropriate to apply an additional discount of up to 30 percent to the defendant's beneficial interest in the 28 Avenue Property. She does not provide details of what research she did to arrive at this conclusion. She attaches as an exhibit an article, "Revisiting Valuation of Real Estate Partial Interests: Recent Case Studies" by C. Donald Wiggins DBA and Sidney B. Rosenberg, PhD, The Appraisal Journal, Volume LXIX (October 2001). This article appears to relate to the US real estate market.
- [47] The defendant tendered affidavit evidence challenging Ms. Chung's evidence regarding her marketing efforts. He attaches a copy of the 2022 BC Assessment summary for the 28 Avenue Property which indicates that the property's 2022 BC Assessment value as of July 1, 2021 was \$3,257,000. I was also provided a copy of a loose appraisal of the 28 Avenue Property as of January 8, 2022 by Raymond Hui of Gateway Appraisal & Consulting Group Inc. It opines that the property's market value was \$3,650,000. This appraisal was delivered at the start of the first day of the hearing. I assume the defendant did not give the plaintiff appropriate prior notice of it.

Analysis

- [48] Counsel for the defendant applied to cross-examine Ms. Brown regarding the Will which appoints her executor and any agreements made between the estate and Ms. Robinson. He wishes to cross-examine Ms. Robinson regarding her accounting of his beneficial interest in the 28 Avenue Property and any agreements with the plaintiff's estate. He wishes to cross-examine Ms. Chung about her efforts to market the defendant's interest in the 28 Avenue Property.
- [49] I have concluded cross-examination on affidavits is not necessary for purposes of the present application because the new evidence the plaintiff tendered in support of this application fails to adequately address the issues that Justice Riley identified in his Oral Reasons of June 9, 2021.
- [50] The plaintiff's estate did not arrange its own appraisal of the 28 Avenue Property. Instead, it offered an informal selective comparison with other farm properties.
- [51] Ms. Chung's comparative valuation evidence and her opinion regarding discount factors for selling less than a half interest in land simply do not satisfy the Rule 11-6 Supreme Court Civil Rules requirements for expert opinion evidence. Ms. Chung has not described her professional qualifications and experience beyond indicating she is a realtor. She does not

state that she is aware of an expert's duty to assist the court and not act as an advocate for any party and is complying with that duty. She fails to tender evidence establishing she has expertise necessary to opine on appropriate discount factors when selling a partial interest in property. She mentions having done research, but does not set out what that included beyond the single article. The one article she includes appears potentially dated (2001) and discusses the market in a different country. None of Ms. Chung's evidence regarding the overall value of the 28 Avenue Property or discount factors is admissible.

- [52] The plaintiff has not tendered sufficient evidence which addresses the issues that Justice Riley identified, namely the court needing objective evidence that the price Ms. Robinson is proposing to pay is provident and prudent. He suggested ways this might be approached, none of which the plaintiff took up for this application.
- [53] The plaintiff's estate did not tender admissible evidence supporting the \$2,500,000 overall valuation it advocates. There is also no objective expert evidence addressing the value of defendant's beneficial interest. The plaintiff did offer an analysis based on Ms. Robinson's summary of Loranda Farms' income and expenses for the 2016-2019 period. She did not provide any documents supporting those figures. She also did not explain why similar information has not been provided for 2006-2015. There is also no explanation provided of what became of the substantial insurance payment received after the barn fire.
- [54] While this accounting approach may well help establish a valuation of the defendant's beneficial interest in the 28 Avenue Property, the highly selective and undocumented approach taken in Ms. Robinson's affidavit #2 is inadequate for purposes of the present application.

Conclusion

- [55] The plaintiff has not tendered evidence which adequately addresses whether the proposed purchase price offered by Ms. Robinson is provident and prudent in all the circumstances. The application for approval of Ms. Robinson's agreement of purchase and sale dated November 25, 2021 is dismissed.
- [56] The defendant's application to cross-examine Ms. Brown, Ms. Chung and Ms. Robinson is dismissed as unnecessary.
- [57] The defendant is entitled to costs of this application from the plaintiff's estate.

"Master Bilawich"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/03/2022BCSC0301.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bevilacqua-v-robinson-2022>

Prepared on 29 October 2026 · Esheria