

CANADA / JUDGMENT

Bonvino v. O'Flynn

2003 BCSC 216

COURT

Supreme Court of British Columbia

DECIDED

10 February 2003

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2003BCSC0216

Citation:	Bonvino & Bonvino v. O'Flynn et al
Date:	20030210 2003 BCSC 216
Docket:	S73993 Registry: New Westminster IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	FILIPPO BONVINO AND GIROLAMA BONVINO PLAINTIFFS
AND:	ANNA O'FLYNN and THOMAS PATRICK O'FLYNN a.k.a. THOMAS PATRICK JOESPH O'FLYNN a.k.a. THOMAS P. O'FLYNN a.k.a. TOM O'FLYNN a.k.a. THOMAS O'FLYNN DEFENDANTS

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE CRAWFORD Counsel for the plaintiffs: A.R. Reddy Counsel for the defendant (Anna O'Flynn): R. Tretiak Q.C. Thomas P. O'Flynn: In Person Date and Place of Hearing: January 31, 2003 New Westminster, BC

INTRODUCTION

- [1] The plaintiffs apply pursuant to Rule 18A for summary judgment on a promissory note for \$160,000.
- [2] The defendants, Anna O'Flynn and Thomas Patrick O'Flynn, married June 25, 1994.
- [3] They have now separated and there is an on-going divorce action.

- [4] The essential issue in the divorce and in this action brought by Anna O'Flynn's parents, Filippo Bonvino and Girolama Bonvino, is the legal status of the \$160,246 the plaintiffs gave to Thomas O'Flynn on the occasion of the purchase of a house located at 264 East 17th Avenue, Vancouver, B.C.
- [5] To complicate matters further, that house was owned by Thomas O'Flynn's parents, or their alter ego company, Limerick Holdings Ltd.
- [6] The Bonvinos bring this action seeking judgment against Anna O'Flynn and Thomas Patrick O'Flynn, saying the \$160,000 was a loan and that not having been paid, they want a judgment against the defendants jointly and severally in the amount of \$160,000 plus interest at 10% per annum pursuant to the promissory note.
- [7] Shortly put, Thomas O'Flynn's response is that the monies were a gift.
- [8] To cast doubt on the promissory note he says that in fact the note was not truly given but was fabricated approximately a year after, in the Fall of 1997, when he alleges the Bonvinos had a similar problem with monies advanced to their other daughter, Marisa Armeni, who had married Nicodemo Armeni. The Armeni's marriage had broken down, and the same issue was arising, i.e. were the monies advanced a gift or a loan? In either case the husbands would be liable if the monies advanced were a loan, but not liable if the monies advanced were a gift to the young married couple.
- [9] Counsel for the parents, the Bonvinos, led me briskly through the outline making reference to pertinent paragraphs of the affidavit material.
- [10] Mr. Tretiak appeared for Anna O'Flynn. Anna O'Flynn does not deny the allegations of her parents. Mr. Tretiak said he had a watching brief but subsequently advanced argument for his client.
- [11] Thomas Patrick O'Flynn, while represented by solicitors on the record, appeared to speak on his own behalf.
- [12] I understand the Notice of Motion was originally put forward in early December 2002. Mr. O'Flynn's materials are variously dated January 20 through January 29, 2003 and were filed in the Court Registry January 27, 2003. The hearing date was January 31, 2003.
- [13] No responsive material was filed by the plaintiffs to the defendant, Thomas Patrick O'Flynn's affidavit material.
- [14] I reserved judgment so I could read the sixteen documents enumerated in the joint chamber record and the nine cases in the claimant's book of authorities. Also I wanted to see the pleadings filed and I have now done so. **FACTS AND ALLEGATIONS**
- [15] The Bonvinos appear to be in their 60's and while not wealthy, have retirement income of some \$45,000 per annum. Their daughter Anna married Thomas O'Flynn on June 25, 1994.

- [16] Their daughter Marisa married Nicodemo Armeni on May 25, 1995.
- [17] In May 1996, the Bonvinos sold a house to the Armenis who obtained a \$100,000 first mortgage. The balance of the price of \$220,000 was not secured in any fashion by way of promissory note, mortgage or otherwise.
- [18] In June 1996, the O'Flynnns purchased the premises at 264 East 17th Avenue, Vancouver, from Limerick Holdings (Mr. O'Flynn's parents).
- [19] The Bonvinos say that they advanced monies of \$160,000 to the O'Flynnns and that was secured by a promissory note provided to them approximately a month later.
- [20] Their version of the evidence is supported by their daughter Anna.
- [21] However, Thomas O'Flynn says that is not the truth.
- [22] He says that when the Armeni's marriage broke up in September 1997, and Mr. Bonvino became concerned as to the legal status of the unpaid balance of monies owing on the house owned by the Armenis, they sought legal advice.
- [23] Then Mr. O'Flynn says that he went to a friend, Myles, who was a tenant of his parents and drew up a promissory note but altered the computer disk to show the date as being June 26, 1996, to conform with the date on the promissory note. That note reflected a loan from the Bonvinos to the O'Flynnns for \$160,000 plus interest at 10%. Mr. O'Flynn says the purpose of the note was to assist Mr. Bonvino's daughter Marisa in her divorce action with Nicodemo Armeni.
- [24] It is further said that in February 2001, Mr. Bonvino loaned \$6,500 to Thomas O'Flynn for some company shares but those monies were not repaid.
- [25] The O'Flynnns (Thomas and Anna) separated on April 23, 2001 and the divorce action was begun on August 3, 2001.
- [26] On April 8, 2002, Mr. Bonvino made a demand on Thomas O'Flynn for repayment of the \$160,000.
- [27] The writ in this matter was issued on June 6, 2002, making claim against Thomas O'Flynn and Anna O'Flynn on the promissory note.
- [28] On June 20, 2002, in his statement of defence, Mr. O'Flynn denied his liability, saying that in truth the \$160,000 provided by the plaintiffs was a gift to Thomas and Anna O'Flynn.
- [29] There is no evidence of any payment by Thomas and Anna O'Flynn to the Bonvinos from June 1996 to date. DECISION
- [30] There is plainly a dispute as to the true nature of the promissory note dated June 26, 1996. Mr. O'Flynn stated to the court the original note had been destroyed. Mr. Tretiak purported to show Mr. O'Flynn an original promissory note.

- [31] There are issues of public policy and fraud.
- [32] I do not need to recite the various decisions provided to me by counsel. Plainly there are disputes as to the facts and to the credibility of the persons involved in this law suit and accordingly the Rule 18A application for judgment is dismissed with costs in the cause.
- [33] I note this action was joined with the O'Flynn divorce action pursuant to an order of Master Barber of December 12, 2002, but no order is entered in the court file. The order should be entered.
- [34] Costs in the cause. "R. Crawford, J." The Honourable Mr. Justice R. Crawford

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Prepared on 28 October 2026 · Esheria