

CANADA / JUDGMENT

Centrone v. Jones

2025 BCCA 201

COURT

British Columbia Court of Appeal

DECIDED

27 May 2025

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2025 BCCA 201 Centrone v. Jones COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Centrone v. Jones, 2025 BCCA 201 Date: 20250527 Docket: CA50080 Between: Glenda Centrone Appellant (Defendant) And Michael Jones and Bernice Jones Respondents (Plaintiffs) Before: The Honourable Mr. Justice Abrioux The Honourable Mr. Justice Grauer The Honourable Justice Gomery On appeal from: An order of the Supreme Court of British Columbia, dated July 23, 2024 (Jones v. Centrone, 2024 BCSC 1516, Nelson Docket S21341). Oral Reasons for Judgment Counsel for the Appellant: L. Kozak Counsel for the Respondents (via videoconference): M.D. Scheffelmaier Place and Date of Hearing: Kelowna, British Columbia May 27, 2025 Place and Date of Judgment: Kelowna, British Columbia May 27, 2025 Summary: The appellant, Ms. Centrone, appeals from a post-trial order arising from a dispute over whether the respondents had a prior, enforceable agreement to purchase a portion of family property that Ms. Centrone had purchased knowing of the respondents' agreement to purchase it. The trial judge found that the respondents were the beneficial owners and ordered Ms. Centrone to "take all steps necessary" to transfer the disputed portion of land to them. After the respondents had incurred over \$25,000 in expenses preparing for the transfer they sought reimbursement from Ms. Centrone, who refused to pay. Following an application for further directions, the judge clarified that her original order required Ms. Centrone to bear the costs of the transfer, and ordered her to pay them. On appeal, Ms. Centrone argues that the judge erred in (i) finding her responsible for the transfer costs; (ii) failing to find that the doctrine of privity of contract shields her from obligations under the respondents' prior agreement; and (iii) departing from the general rule that trustees are indemnified for costs incurred in relation to trust property. Held: appeal dismissed. The appellant's first two arguments on privity of contract fail as they attempt to collaterally attack the trial judge's unchallenged findings. The judge found that, as Ms. Centrone had purchased the disputed portion of land in full knowledge of the prior agreement, she was obliged to effect the transfer and there was no suggestion that the respondents were responsible for the associated costs. The third argument on trustee obligations fails to recognize the unique nature of the trust imposed in this case--a constructive trust imposed to ensure the land was conveyed to its equitable owners in response to Ms. Centrone's self-interested conduct. The judge correctly held that the general rule on trustee expenses does not apply in this case. GRAUER J.A.:

1. INTRODUCTION

- [1] This is an appeal from a post-trial order made by Madam Justice Lyster after an application for directions. Justice Lyster's application reasons are indexed 2024 BCSC 1516.
- [2] That application for directions followed Lyster J's trial order arising out of a land dispute among members of the Jones family. The trial reasons are indexed at 2022 BCSC 1816 and set out the background and facts in detail.
- [3] For present purposes, it is sufficient to note that the primary dispute was between the appellant, Glenda Centrone, and her brother and his wife, the respondents Michael Jones and Bernice Jones. The property in question (the "family property") belonged to their parents, Marian Jones and Glen Jones. In the trial, Michael and Bernice sought to enforce what they said was an agreement between them and Michael's parents to sell a portion (the "disputed portion") of the family property to them. In the meantime, Glenda had purchased part of the family property from her father, which included the disputed portion. The judge found (at para 254) that Glenda made that purchase with "full knowledge" of the agreement between her parents and Michael and Bernice.
- [4] In the result, Lyster J found that there was an enforceable contract for the transfer of the disputed portion from Marian and Glen to Michael and Bernice (at paras 230 and 250). In the circumstances, the judge further found that the disputed portion was "irreplaceable" and was, therefore, appropriately the subject of an order for specific performance (at para 253).
- [5] The immediate problem was that the vendors under the contract, Glen and Marian, no longer owned the disputed portion and therefore could not directly transfer it to Michael and Bernice. The judge then turned to the obligation of the registered owner, the appellant. Justice Lyster concluded at para 255 that, while the appellant was the legal owner of the disputed portion, Michael and Bernice were the beneficial owners, so that the appellant was obliged to effect the intended transfer. The judge then pronounced the following order:
- [256] I therefore order Glenda, upon payment by Michael and Bernice of \$10,000 to Glen and Marian, to take all steps necessary to transfer [the disputed portion] to Michael and Bernice. All parties are to take all steps reasonably necessary to effect this transfer. All parties are at liberty to apply to the court should further directions be necessary to carry out the intention of this order.
- [6] These terms were incorporated into the entered order:
1. Michael and Bernice Jones pay \$10,000 to Glen and Marian Jones;
 2. Glenda Centrone, upon payment by Michael and Bernice Jones of \$10,000 to Glen and Marian Jones, will take all steps necessary to transfer the [disputed portion] to Michael and Bernice Jones;
 3. All parties are to take all steps reasonably necessary to effect this transfer;

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4. All parties are at liberty to apply to the Court should further directions be necessary to carry out the intention of this Order.
- [7] The appellant filed an appeal from this order but her appeal was ultimately dismissed as abandoned after being placed on the inactive list.
- [8] Because the means of conveyance was to be by subdivision effected by boundary adjustment, Michael proceeded to incur expenses of \$25,182.25 in surveying and related costs. He sought payment of those costs from the appellant, who refused to pay them. The transfer did not occur.
- [9] This state of affairs led Michael and Bernice to apply to Lyster J for directions. They sought an order requiring the appellant to pay the costs associated with the subdivision and transfer the disputed portion, which the appellant opposed.
- [10] The judge concluded that it was the intention of her trial order that the appellant be responsible for the costs associated with effecting the transfer. She did not think it necessary to expand upon the order she had already made that the appellant was required to take all steps necessary to transfer the disputed portion (application reasons at paras 28-30).
- [11] It is from this post-trial order that the appellant appeals. 2 ISSUES
- [12] The appellant raises three issues.
- [13] First, she submits that the judge erred in finding her responsible for the transfer costs instead of finding that they were the responsibility of the vendor under the agreement. She says that her obligation to transfer the land is distinct and independent from the obligation to bear the costs of such transfer.
- [14] Second, and closely related, she submits that the judge erred in failing to consider the doctrine of privity of contract. She says that she was not a party to the agreement and so could not be responsible for obligations under it.
- [15] I will consider the first and second issues together.
- [16] Third, the appellant contends that the judge erred in departing from the general rule that a trustee is entitled to indemnification of expenses incurred in relation to the trust property.
3. DISCUSSION 3.1 Privity of contract
- [17] The difficulty the appellant faces is that there is no appeal from the judge's findings at trial. In her application reasons, the judge referred to her significant concerns about the credibility and reliability of the appellant's evidence (at para 21).

- [18] With respect to the contract, the judge referred to her observations in the trial judgment that the parents were aware that the land now legally owned by the appellant was already Michael's and that it was the appellant's responsibility to put it into Michael's name (trial reasons at para 201; application reasons at para 22). The judge further observed that there was no suggestion that Michael and Bernice were responsible for the cost of effecting the transfer by way of boundary adjustment (application reasons at para 25).
- [19] The judge then reiterated her trial finding that the appellant had purchased the disputed portion in full knowledge of the agreement between her parents and Michael and Bernice (application reasons at para 27), and her trial conclusion that the appellant was obliged to effect the transfer of the property to Michael and Bernice as beneficial owners.
- [20] The judge's conclusion was that the intention of her trial order was that Glenda be responsible for the costs associated with effecting the transfer (at para 28). Justice Lyster was clearly of the view that, having taken the disputed portion notwithstanding her knowledge that it belonged to her brother, and there being no obligation on her brother to pay the costs, those costs fell to the appellant along with the obligation to effect the transfer--in effect, the appellant was left standing in the shoes of her parents.
- [21] The appellant submits the judge nevertheless erred in taking responsibility for the costs out of the context of the contract and attaching it to the trust obligations, thereby shedding doubt on the formation of the contract itself.
- [22] In my view, the appellant's attempts to get around these findings on the basis of privity of contract cannot succeed in the face of the findings at trial, and amount to an attempt to attack those findings collaterally. Accepting the judge's trial findings, as we must, the appellant has shown no reversible error in the judge's interpretation of her own reasons. 3.2 Obligations of a trustee
- [23] The appellant then submits that in her trial reasons, the judge found a trust relationship between her and the respondents. She then argues that, as a general rule, when a trustee holds property in trust for a beneficiary, the beneficiary is bound to indemnify the trustee for expenses incurred in dealing with the trust property. She maintains that it is not material that the beneficiary did not create the trust or did not request the trustee to incur liability. The appellant further asserts that the judge has, in effect, reversed the trustee indemnity rule by making the trustee responsible for indemnifying the beneficiary.
- [24] I accept the correctness of the general rule upon which the appellant relies, but what the appellant's argument is missing is the nature of the trust relationship in question. This is not a situation where property was conveyed to the appellant to hold in trust for the benefit of her brother. Quite the contrary. The appellant purported to obtain the disputed portion for her own benefit. The judge found that it was not intended to be for the appellant's benefit and, in the face of the appellant's wrongful conduct, imposed a constructive trust as a remedy to prevent the appellant from retaining property that, in good conscience, she should not be permitted to retain, and to ensure its conveyance to the person equitably

entitled to it--given that an order for specific performance could not be made against the parents. See, for instance, the discussion in *BNSF Railway Co v Teck Metals Ltd*, 2016 BCCA 350 at paras 47-53. This is a situation very different from the usual case of a trust, where the intention of the settlor is determinative. It follows that the appellant's stated concern, that the judge's order will impose a burden on trustees generally, is unfounded.

[25] In these circumstances, I am satisfied that the judge did not err in concluding that the general rule was inapplicable.

4. DISPOSITION

[26] For these reasons, I would dismiss the appeal.

[27] ABRIOUX J.A.: I agree.

[28] GOMERY J.A.: I agree.

[29] ABRIOUX J.A.: The appeal is dismissed. "The Honourable Mr. Justice Grauer"

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Prepared on 28 October 2026 · Esheria