
CANADA / JUDGMENT

Chuang v. Wong

2012 BCSC 233

COURT

Supreme Court of British Columbia

DECIDED

17 February 2012

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2012 BCSC 233 Chuang v. Wong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chuang v. Wong,

2012 BCSC 233

Date: 20120217

Docket: E110402

Registry: Vancouver

Between:

Bee Tsing Chuang also known as Beatrice Chuang

Claimant

And

Dennis Wong

Respondent

Before: The Honourable Madam Justice Maisonville

Reasons for Judgment

Counsel for the Claimant:

L. Spencer

Counsel for the Respondent:

E. Walker

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 31, 2012

Place and Date of Judgment:

Vancouver, B.C.

February 17, 2012

Introduction

- [1] Several questions are raised in this hearing. Would an agreement to divide the equity of a home based on the percentage of contribution displace any presumptions arising from a property being registered in joint tenancy? What were the intentions of the parties at the time the property was acquired and what is the relevance of such intentions? Does the presumption of advancement apply to common-law relationships in British Columbia? What role do the principles of unjust enrichment play in assessing a division of the property? If the intentions of the parties are in dispute on the affidavit evidence, is it appropriate to proceed by way of summary trial?
- [2] These issues arise on the breakdown of a common-law relationship between the Claimant, Ms. Bee Tsing Chuang, and the Respondent, Mr. Dennis Wong. While at one time the parties wanted to marry and raise a family, regrettably the parties have separated and now must divide the assets they acquired jointly.
- [3] Originally the parties appeared in this Court in October 2011. This application for a summary trial on the issue of the division of equity in a condominium arises from a number of applications that were heard before Affleck J. on October 6, 2011. The court ordered that the issue of the sale and partition of the property be tried on a summary trial pursuant Rule 9-7 of the British Columbia Rules of Court. Since that time, however, there has been further factual disclosure and further issues have arisen between the parties.

Background

- [4] The Claimant, Ms. Chuang, and the Respondent, Mr. Wong, lived in a common-law relationship between April 2004 and April 2009. In April of 2006, the parties purchased a condominium at 701 - 1155 Seymour Street in Vancouver, BC (the "Property") and were registered as joint tenants. The Respondent contributed \$50,895 towards the down payment with the Claimant paying \$10,000 towards the down payment and \$5,000 in immediate renovation costs.

- [5] The Property was purchased for \$295,000 and its value is currently estimated to be \$365,000. The issue before the court is how the equity in the Property should be divided between the parties. The Claimant seeks 50% of the equity while the Respondent argues that he should receive 85% based on what he says are the parties' proportionate financial contributions.

Positions of the Parties

- [6] The Respondent states in his affidavit that it was always his intention that the equity would be apportioned based on the parties' proportionate contributions and that he believes the Claimant to have shared this intention. At his examination for discovery (which is cited in the Claimant's submissions for the purpose of attacking his credibility), he also stated that there was an agreement between the parties to do so. As examination for discovery can only be used against the adverse party, these statements are not in evidence before me for the purpose of establishing an agreement (*Shiels v. Shiels* (1997), 29 B.C.L.R. (3d) 193 at p. 195). In the alternative that there was no intention or agreement, it is submitted that the parties' contributions may still be taken into account when dividing the Property to prevent the party who contributed less from being unjustly enriched.
- [7] The Claimant relies on the statutory presumption in the Land Title Act and on the presumption of advancement, stating that these presumptions place the burden of proving that there was an intention to allocate ownership unequally on the Respondent, and that the Respondent has not discharged this burden. It is further submitted that the unequal monetary contributions should not be a factor in the division of the equity as the parties were engaged in a joint family venture.

Analysis

- [8] The presumption in section 23(2) of the Land Title Act is that the registry reflects the parties' actual ownership interests. The Claimant submits, relying on *Skender v. Skender*, 2005 BCSC 418, that this presumption can only be defeated by two equitable principles: (1) the presumption of advancement, or (2) the enforcement of an agreement between the parties in order to prevent an unjust enrichment if the face of a title is upheld.
- [9] More recent cases have clarified that a third equitable principle, the presumption of resulting trust, may also displace the presumption in the Land Title Act (see *Fuller v. Harper*, 2010 BCCA 421; *Bajwa v. Pannu*, 2007 BCCA 260; *Modonese v. Delac Estate*, 2011 BCSC 82 [Modonese]). The presumption of resulting trust arises upon a gratuitous transfer of property, presuming the equitable interest to be held in trust by the transferee for the benefit of the transferor.
- [10] Whether a transfer is found to be gratuitous, and therefore whether the presumption of resulting trust arises, is a question of fact, and even the exchange of money is not determinative (Modonese). In this case, although the Claimant did pay some money towards the purchase of the Property, the registration as a 50% owner, as opposed to the 15% she

contributed, was based on the parties' intention to have a life together. There may be cases where unequal contributions leading to equal ownership will not be gratuitous (if for example the deal could not be completed without the lesser contributing party's contacts), but those would seem to be different from the present case. In *Miller v. Walker*, 2006 ABQB 424 [Miller], the court found that unequal contributions to a property that was immediately registered as a joint tenancy raised the presumption of resulting trust (although the presumption was rebutted in that case). Further, the Claimant herself argues (and not merely in the alternative) that the presumption of advancement applies, and since the presumption of advancement only arises on gratuitous transfers, her position would seem to implicitly concede that the transfer was gratuitous.

[11] The presumption of resulting trust can itself be rebutted by the presumption of advancement, and either presumption can be defeated by evidence of a contrary intention on the part of the donor.

[12] It is unclear if the presumption of advancement applies to common law spouses in BC. The case law is contradictory and appellate courts have made it clear that the law is unclear. In *J.A.B. v. H.W.C.*, 2008 BCSC 644, the court found that the presumption of advancement did apply to common law spouses, citing authority at para. 176:

The presumption of advancement has been applied to unmarried spouses: see, for example, *Manley v. Schiller* (1980), 22 B.C.L.R. 61 (S.C.) and *Hedberg v. Heaps*, [1999] B.C.J. No. 1309 (Q.L.) (S.C.), varied on other grounds 2000 BCCA 648, 11 R.F.L. (5th) 126.

[13] However, in *McDonald v. Eckert*, 2004 BCSC 323, the court stated at para. 33:

Where one person transfers property to another without consideration, equity presumes a resulting trust, i.e. that a gift was not intended. However, where a husband transfers property gratuitously to his wife, the law presumes that he intended to make a gift. Both of these presumptions are rebuttable. See *Farrell Estate*, supra, at paras. 25-27. Here, the parties were common law spouses, and the law appears to make a distinction between the two kinds of marriage. Although the point has not been clearly decided, it is my opinion that the presumption of advancement does not apply to common law spouses.

[14] In *Dhein v. Pratt*, 2008 BCCA 229, the Court of Appeal refused an application for leave but stated at para. 5:

Mr. Pratt now contends Ms. Dhein may actually have no interest, or very little interest, in the property. This, he says, is because there can be no presumption of advancement between unmarried spouses such that Ms. Dhein's joint interest is held in trust for him. He relies on *McDonald v. Eckert*, 2004 BCSC 323, 7 E.T.R. (3d) 67, but does point out, in *Fumich v. Babic*, 2005 BCCA 552, 20 E.T.R. (3d) 202, this Court observed the presumption of advancement has not been widely recognized beyond relationships between husband and wife or parents and children.

[15] The court continued at para. 8, acknowledging the confusion in the law:

I recognize the question of whether the presumption of advancement arises in a common law relationship may be a matter of some importance generally, and could be significant in this action, but I do not consider there to be sufficient merit in the proposed appeal to justify granting leave and interfering with the course of the proceedings to permit Mr. Pratt to advance an appeal where the relief sought would have to be a new trial of the issue of whether Ms. Dhein is entitled to have the property sold as has been ordered.

[16] In *Kerr v. Baranow*, 2011 SCC 10, the Supreme Court of Canada addressed the confusion at para. 20:

Whether the application of the presumption of advancement applies to unmarried couples may be more controversial: *Oosterhoff*, at pp. 681-82. Although the trial judge in *Kerr* touched on this issue, neither party relies on the presumption of advancement and I need say nothing further about it.

[17] In *Pecore v. Pecore*, 2007 SCC 17, the Supreme Court of Canada clarified that the presumptions only govern in the absence of evidence of a contrary intention. The intention of the donor is determinative, and the equitable trust presumptions serve only to shift the burden of proof.

[18] Therefore, the key fact to be determined in this matter is the intention of the donor (the Respondent) with respect to ownership of the Property and whether or not there was an agreement to allocate ownership based on proportionate contributions. After determining which trust presumptions apply, the donor's intention, and whether or not there was an agreement between the parties, it may be necessary to consider whether one party would be unjustly enriched by a particular division of the Property.

Appropriateness of a Summary trial

[19] As noted the facts have changed in that there has been ongoing disclosure and issues arising since the order of *Affleck J.*

[20] In order to determine whether there was an intention to allocate ownership based on proportionate contributions, I will need to make findings of credibility now sharply in focus and not present before the court in October 2011.

[21] The Respondent states that it was never his intention to share the Property, which, if true, would rebut the presumption of advancement. The Respondent also mentioned an agreement to divide the property in proportionate to the parties' contributions in his examination for discovery, although such an agreement is not specifically referenced in his affidavit (although his reference to it is mentioned in the Claimant's affidavit to support her assertions that he is not credible) and so is not in evidence before me. Such an agreement, if found to exist, would trump any of the statutory or equitable presumptions and would govern.

- [22] In considering the appropriateness of a summary trial, I am mindful of the decision of Macaulay J. in *Marine Masters Holdings Ltd. v. Greater Victoria Harbour Authority*, 2009 BCSC 953 at paras. 5 to 7:
- [5] The courts have identified some additional factors for consideration in addition to those set out above [such as litigating discrete issues also referred to as "litigating in slices", and the resolution of factual issues by preferring one deponent's version over another see *Royal Bank of Canada v. Stonehocker* (1985), 61 B.C.L.R. 265 (C.A.); *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, at para. 56.]. These include the following: the amount involved; the complexity of the matter; the cost of a conventional trial in relation to the amount involved; the course of the proceedings; the time required for summary trial; and whether the application will really save time and complexity: *Dahl v. Royal Bank*.
- [6] In complex litigation, the court can, in my view, expect counsel to consider the relative importance and cost benefit of determining discrete issues. This is because the lawyers generally have a different perspective and appreciation of the parties' needs and wishes than the court. They know, for example, whether the final determination of a discrete issue will alter the course of the proceedings including enhancing the possibility of settlement. Only the lawyer knows whether his or her client will accept the outcome of the particular issue without regard to the resolution of other issues.
- [7] The court rarely knows such details yet they are factors driving the cost considerations that all litigants must have regard to. The litigation process cannot be truly proportionate without taking such factors into account. When experienced counsel agree, with full awareness of the implications, that judicial determination of an issue is desirable, the court should try, in my opinion, to develop an approach that permits access to a final judicial decision on that issue in a cost effective and just manner.
- [23] Both counsel here agree that the trial of this matter would be appropriate under Rule 9-7, but that is not determinative of the matter (see *Bacchus Agents (1981) Ltd. v. Philippe Dandurand Wines Limited*, 2002 BCCA 138 at para. 28, see also *Noramco Capital Corp. v. Lee* (1998), 110 B.C.A.C. 229 (B.C.C.A.) at para. 4).
- [24] In *Bank of Montreal v. Schriber*, 1999 BCCA 764, the Court of Appeal stated that a trial judge may refuse to decide a case by way of summary trial where the evidence is contradictory, but is not obliged to do so. In *Pitt Air Ltd. v. Pitt Meadows Airport Society*, 2006 BCSC 578, the court offered some guidance as to when issues of credibility necessitate a full trial:

10 Conflicts in the evidence do not necessarily render a matter inappropriate for summary trial. Even where credibility is in issue, the court may rely on undisputed documentary evidence in finding the facts necessary to give judgment. As McEachern C.J.B.C. stated in *Inspiration Management*, at pp. 215-216:

... a judge should not decide an issue of fact or law solely on the basis of conflicting affidavits even if he prefers one version to the other. It may be however, notwithstanding sworn affidavit evidence to the contrary, that other admissible evidence will make it possible to find the facts necessary for judgment to be given.

[25] In the present case, there is no undisputed documentary evidence that can be relied upon. If I were to find that the parties intended to share the equity equally, I would simply be preferring the Claimant's affidavit evidence to that of the Respondent's. If I found that the Respondent had a clear intention at the time of the purchase that the Claimant was to hold his share in trust for him based on their proportionate contributions, I would simply be preferring the Respondent's evidence. Neither of these conclusions are appropriate on a summary trial, as I would be making bald findings of credibility, not supported by any undisputed documentary evidence.

Disposition

[26] As the issue will, of necessity, turn on findings of credibility, I conclude that it is inappropriate to decide this matter by way of summary trial.

[27] The application is accordingly dismissed.

"Maisonville J."

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