

CANADA / JUDGMENT

Chung v. Chung

2018 BCSC 1126

COURT

Supreme Court of British Columbia

DECIDED

6 July 2018

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

2018 BCSC 1126 Chung v. Chung

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chung v. Chung,

2018 BCSC 1126

Date: 20180706

Docket: S174676

Registry: Vancouver

Between:

Won Sok Chung

Petitioner

And

Jae Hoon Chung

Respondent

Before: The Honourable Mr. Justice Pearlman

Reasons for Judgment

Counsel for the Petitioner:

D. Dahlgren

Counsel for the Respondent:

L. Hellrung

D. MacLean, Articled Student

Place and Date of Hearing:

Vancouver, B.C.

January 23, 2018

Place and Date of Judgment:

Vancouver, B.C.

July 6, 2018

Table of Contents

INTRODUCTION. 3

Positions of the Parties. 4

BACKGROUND. 5

The Properties and the Trust Agreements. 5

The Terms of the Trusts and Management of the Properties. 7

DISCUSSION AND ANALYSIS. 11

The petitioner's standing. 11

Conversion to an action. 15

CONCLUSION. 19

INTRODUCTION

- [1] The petitioner, Won Sok Chung applies pursuant to s. 6 of the Partition of Property Act, R.S.B.C. 1996, c. 347 (the "PPA") for orders for the sale of two apartment buildings located in Vancouver, British Columbia.
- [2] The petitioner and the respondent Jae Hoon Chung are brothers.
- [3] The petitioner is a real estate developer who resides in Vancouver, British Columbia, while the respondent, a former lawyer, is an investor who resides in Seoul, South Korea.
- [4] In 2006, the parties agreed to acquire investment properties in Vancouver. That year the petitioner and the respondent purchased an apartment building located at 1435 Pendrell Street, in Vancouver, British Columbia, (the "Pendrell Property").

- [5] Don Won Apartments Limited ("Don Won") holds title to the Pendrell Property. Pursuant to a trust agreement made in writing in May 2006 between Don Won, as Trustee and the petitioner and respondent as Beneficiaries, (the "Pendrell Trust Agreement"), the petitioner and the respondent each hold an undivided 50% beneficial interest in the Pendrell Property.
- [6] In or about September 2007, the parties purchased a second apartment building, located at 1623 Haro Street, Vancouver, British Columbia (the "Haro Property").
- [7] Don Won Apartments (Haro) Ltd. ("Don Won Haro") holds title to the Haro Property. By a trust agreement dated September 4, 2007 made between Don Won Haro as Nominee and the petitioner and the respondent as "Owner", (the "Haro Trust Agreement"), the petitioner and the respondent respectively hold 57% and 43% beneficial interests in the Haro Property.
- [8] The petitioner is the sole shareholder of Don Won, which in turn is the sole shareholder of Don Won Haro. The petitioner is also the sole director, officer and directing mind of both corporations.
- [9] The relationship between the petitioner and the respondent has broken down as a result of their differences regarding the management of the Pendrell and Haro Properties. The respondent alleges the petitioner has wrongfully diverted \$1.6 million from the accounts of Don Won and Don Won Haro. By separate proceedings commenced on September 8, 2017 in Vancouver Registry Action S178422, the respondent claims against the petitioner, Don Won and Don Won Haro for breach of fiduciary duty, breach of trust and unjust enrichment.
- [10] The petitioner denies that he improperly diverted or transferred funds from the accounts of Don Won or Don Won Haro. He no longer wishes to be involved in business with the respondent and seeks an order for the sale of the properties in order to recoup his investment.

Positions of the Parties

- [11] In this proceeding, the petitioner maintains that the Pendrell and Haro Trust Agreements are true bare trust agreements, by which he has the immediate right to possession of his interest in each property. The petitioner submits the respondent has not shown any good reason why the Court ought not to make an order for the sale of the properties.
- [12] For his part, the respondent maintains the petition should be dismissed. The respondent contends that by omitting to name the corporate trustees, Don Won and Don Won Haro as respondents, the petitioner has failed to name the correct parties to the petition. Further, the respondent contends the petitioner has no right to immediate possession of either property, and therefore lacks standing under the PPA to seek partition and sale of the properties.
- [13] The respondent says that petitioner's failure to disclose information regarding the management of the properties and his misappropriation of funds from the trusts constitutes good reason to deny relief under s. 6 of the PPA. Alternatively, the respondent submits he

has raised triable issues regarding both the petitioner's standing and whether there is good reason for the Court to refuse to order a sale of the properties. The respondent submits that in these circumstances the Court should refer the petition to the trial list, to be heard at the same time as his action.

- [14] In the further alternative, if the Court orders the sale of the properties, the respondent submits the parties should have joint conduct of sale and that the net proceeds of sale should be held in trust pending determination of the action.

BACKGROUND

The Properties and the Trust Agreements

- [15] The parties agree that they each hold a 50% beneficial interest in the Pendrell Property and that the petitioner incorporated Don Won for the purpose of purchasing and holding title to the Pendrell Property. The petitioner and the respondent financed the purchase of the Pendrell Property through mortgages against that property and from the proceeds of a first mortgage against the commercial property they co-owned in Korea.
- [16] The Pendrell Trust Agreement provides that the trustee, Don Won, holds title to the Pendrell Property as a bare trustee. The relevant provisions of the Pendrell Trust Agreement are as follows:
1. The trustee hereby acknowledges and declares that all rights, title and interest in and to the Trust Assets which the trustee now stands possessed of, or which the Trustee may in the future hold or stand possessed of at any time or from time to time, are held and will be held and possessed of by the Trustee as Bare Trustee for and on behalf of the Beneficiaries, each has an undivided interest therein as follows:

Beneficiary Beneficial Interest (%)

Won Sok Chung 50%

Jae Hoon Chung 50%

2. The Trustee further acknowledges and declares the Trustee as a Bare Trustee and that the Trustee does not have and will not have at any time hereafter any beneficial estate, right, title or interest in and to the Trust Assets or any of them.
3. The Beneficiary acknowledges and confirms the foregoing declaration of trust made herein by the Trustee and further acknowledges and declares that the Beneficiary is the only beneficial owner of the Trust Assets, as to an undivided interest therein in the proportion set forth in paragraph 1 hereof.

4. Each party covenants to execute and deliver such further documents and other assurances as may be reasonably required in order to more fully effectuate or carry out the true intent and meaning of this Trust Agreement.
- [17] The parties also agree that in the case of the Haro Property, the petitioner holds a 57% beneficial interest and the respondent holds a 43% beneficial interest.
- [18] Again, the petitioner incorporated Don Won Haro for the purpose of purchasing and holding title to the Haro Property.
- [19] The petitioner and the respondent financed the purchase of the Haro Property with the proceeds of a mortgage charging that property, with funds raised from a second mortgage charging their Korean property, and by lending funds to Don Won Haro from their respective personal lines of credit. The petitioner loaned approximately \$595,450.01, while the respondent loaned approximately \$345,845.50.
- [20] In 2016, the Pendrell Property and the Haro Property each had an assessed value of approximately \$7 million.
- [21] The Haro Trust Agreement provides in relevant part:
 1. Appointment. The Owner hereby appoints the Nominee as nominee, agent and bare trustee to hold legal title to the Lands for and on behalf of the Owner in accordance with this Agreement, and the Nominee hereby accepts such appointment.
 2. Nominee's Agreements. The Nominee hereby acknowledges and agrees that:
 - (a) the Nominee will acquire and will hold legal title to the Lands as nominee, agent and bare trustee for and on behalf of and for the sole benefit and account of the Owner and the Nominee will have no equitable or beneficial Interest therein, and the equitable and beneficial Interest in the Lands will be vested solely and exclusively In the Owner;
 - ...
 - (d) the Nominee will, upon the direction of the Owner, deal with the Lands and do all acts and things In respect of the Lands at the expense of and as directed by the Owner from time to time and will assign, transfer, convey, lease, mortgage, pledge, charge or otherwise deal with the Lands or any portion thereof at any time and from time to time In such manner as the Owner may determine; and, without limiting the generality of the foregoing, the Nominee will transfer legal title to the Lands to or as directed by the Owner forthwith upon written demand of the Owner;
 - (e) the Nominee will not deal with the Lands In any way or execute any instrument, document or encumbrance In respect of the Lands without the prior written consent or direction of the Owner; and
 - ...

5. Amendment. This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.

The Terms of the Trusts and Management of the Properties

- [22] The parties dispute whether the written provisions of the Pendrell and Haro Trust Agreements set out the complete terms of the respective trusts.
- [23] The petitioner has sworn that he has never agreed to modify or vary the terms of the bare trusts set out in the Pendrell and Haro Trust Agreements.
- [24] The petitioner also says that in 2006 and 2007 he and the respondent agreed that he would personally perform the duties required to manage and operate the Pendrell and Haro Properties. Further, the petitioner maintains that the parties agreed that he would receive a base management fee of 5% of gross annual rental incomes in exchange for "collecting rents and basic day-to-day tenant care". However, according to the petitioner, the parties did not agree that for all services he performed to manage, maintain, improve and preserve the properties his remuneration would be limited to the 5% base management fee. The petitioner also contends that the respondent agreed that he would have full authority to collect and manage all rental monies, and all funds loaned or advanced on behalf of the properties, including the authority to disperse those funds as necessary and to pay all debts and liabilities incurred in managing and operating properties.
- [25] The petitioner says that although the parties agreed to cooperate with each other to ensure the properties were adequately financed, managed and maintained, the respondent has failed to contribute to the maintenance, improvement or preservation of the properties. The petitioner says that from 2006 to the present, he has borne the sole burden of managing, operating, maintaining and preserving the properties. Further, the petitioner asserts in his affidavit filed in support of this application that he at all times had the authority and consent of the respondent to manage and control all of the funds received on behalf of properties. The petitioner denies that he or any of the corporations he controls received any improper or unauthorized loans or payments, either as alleged by the respondent, or at all.
- [26] The petitioner's evidence in this proceeding regarding his agreement with the respondent concerning the management of the Pendrell and Haro Properties is inconsistent with his Response to the respondent's Notice of Civil Claim in Vancouver Registry Action S178422. There, the petitioner pleads that he and the respondent agreed that he and the corporate trustees, Don Won and Don Won Haro, would have "full authority" and the respondent's consent to manage and operate the properties, to collect all rental funds, and to pay all debts and expenses incurred in relation to the management and operation of the properties.
- [27] For his part, the respondent says that around the times of execution of each of the Pendrell and Haro Trust Agreements, the petitioner and the respondent orally varied those agreements to provide that:

- a) Don Won would be responsible for managing the Pendrell Property, including ensuring the rental of units, maintaining the property and overseeing any necessary renovations;
 - b) Don Won Haro would be responsible for managing the Haro Property, including ensuring the rental of units, maintaining the property and overseeing any renovations necessary;
 - c) the corporate trustees would make income distributions from the properties as soon as each of the properties became profitable;
 - d) any mortgage proceeds from mortgages against the properties would be used solely for the administration and maintenance of the properties, unless consent of both beneficiaries was given to use those proceeds for personal purposes; and
 - e) the petitioner, through each of the respective corporate trustees, would be paid a management fee of 5% of the gross annual rental income for that property.
- [28] According to the respondent, he and the petitioner also agreed that the corporate trustees would repay the parties' respective lines of credit from the rental proceeds of the properties.
- [29] Bank statements of Don Won and Don Won Haro showing payment of management expenses related to the properties for utilities, waste disposal, repairs and building maintenance provide some corroboration for the respondent's position that the corporate trustees have managed the properties. Rent cheques payable to Don Won and Don Won Apartments, and rent deposit return cheques issued by Don Won provide further support for the respondent's contention that the corporate trustees manage the properties.
- [30] The financial statements for Don Won disclosed by the petitioner list expenses including a management fee of 5% of rental income. Those documents provide some support for the respondent's assertion that the parties agreed the petitioner would receive a 5% management fee, paid through the corporate trustees.
- [31] The respondent contends that the petitioner has wrongfully refused or delayed the disclosure of financial or banking information regarding the corporate trustees and the properties. The respondent says that ultimately, in August 2017, with the assistance of counsel, he obtained partial disclosure of records controlled by the petitioner relating to the administration and management of the properties. The respondent has sworn that upon his review of those records, he discovered the petitioner, in addition to diverting at least \$1,600,000 from Don Won and Don Won Haro, had repaid personal credit card expenses from the accounts of those corporations. Further, the respondent says the petitioner caused Don Won and Don Won Haro to advance loans for his personal benefit or for the benefit of his companies and caused the corporate trustees to charge management fees in excess of the agreed amount of 5%.
- [32] In his action, in addition to alleging the petitioner has misappropriated \$1.6 million from the accounts of Don Won and Don Won Haro, the respondent claims that:

- a) between 2008 and 2013 Don Won and Don Won Haro improperly reimbursed the petitioner's personal credit card expenses in the amounts of \$40,609 and \$90,280 respectively;
- b) between the years 2008 and 2010 Don Won and Don Won Haro made improper loans to the petitioner and to his companies in the amounts of \$68,120 and \$14,740 respectively; and
- c) the petitioner overcharged the trusts for management fees for the year 2012 in the amount of approximately \$23,000.

[33] By his Notice of Civil Claim, the respondent alleges that the unauthorized and undisclosed diversion of funds from Don Won and Don Won Haro, the improper credit card charges, improper loans and the overcharging of management fees breached the fiduciary duties owed by Don Won and Don Won Haro to the respondent and constituted a breach of trust.

DISCUSSION AND ANALYSIS

The petitioner's standing

[34] Sections 4(1) and 6 of the PPA provide:

Parties to proceeding and persons entitled to notice

4 (1) Any person who, if this Act had not been passed, might have maintained a proceeding for partition may maintain such a proceeding against any one or more of the interested parties without serving the other or others, and a defendant in the proceeding may not object for want of parties.

...

Sale of property where majority requests it

6 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.

[35] Section 4(1) of the PPA codifies the test for standing set out in *Morrow v. Eakin*, [1953] 2 D.L.R. 593 at 594-595 (B.C.S.C.). The test is whether a party could have brought the partition application under English law as it existed in 1858: *Pallot v. Douglas*, 2017 BCCA 254 at para. 17.

[36] In *Pallot*, at para. 20, the Court approved the following description of those entitled to bring a petition for a partition under English law in 1858:

20 A recent summary as to who was entitled to bring a petition for partition under English law in 1858 is found in the British Columbia Law Institute consultation paper *Consultation Paper on the Partition of Property Act* (June 2011) at 5-6:

In order to determine who is eligible to seek partition, therefore, the English law pre-dating the English Partition Act, 1868 [31 & 32 Vict., c. 40] needs to be examined. Specifically, it is the law of England as it existed on 19 November, 1858 that needs to be examined, as the Law and Equity Act [R.S.B.C. 1996, c. 253, s. 2] makes English law as it existed on that date applicable in British Columbia except to the extent it has been altered by laws of the province or is inapplicable to local circumstances. As of that date, the classes of persons eligible to seek partition were coparcenary tenants and those co-owners to whom the statutes of 1539 and 1540 had extended the remedy. As coparcenary tenancy no longer exists, the persons eligible to seek partition or sale in lieu of partition in British Columbia are those described in the 1539 and 1540 statutes, namely:

- (a) joint tenants of the fee simple or a profit à prendre;
- (b) tenants in common of the fee simple or a profit à prendre;
- (c) joint tenants or tenants in common of a life estate;
- (d) co-owners of a leasehold estate (co-lessees).

There is another requirement: anyone seeking partition or sale must have an immediate right to possession of the land. Thus owners of a future interest, such as joint tenants of a remainder following a life estate, cannot claim these remedies.

[Emphasis added, footnotes omitted.]

[37] In order to have standing under the PPA, a petitioner must have an immediate right to possession of an interest in land: Pallot at para. 22.

[38] As the Court explained in Pallot at para. 34: "the interest of the beneficiary under a trust is the right to claim that the trust be performed in accordance with its terms. It is not an immediate right to possession of the trust property".

[39] In Pallot, the trustee, Ms. Douglas, held the leasehold interest in a property subject to a trust in favour of herself and Mr. Pallot. Ms. Douglas and Mr. Pallot were each the beneficial owners of one-half of the equitable interest in the leasehold.

[40] The fact that the trust declaration described Ms. Douglas as a bare trustee for herself and Mr. Pallot was not determinative. Rather, it was necessary for the Court to examine the rights and duties of the parties under the terms of the trust. The trust agreement expressly required Ms. Douglas to manage the property. Mr. Pallot had no immediate right to the use of the property where the trustee's duties included allocating times for herself and Mr. Pallot to use the trust property. In these circumstances, Mr. Pallot lacked the immediate possessory interest in land required for standing.

[41] In Pallot, at para. 36, the Court referred to the rule in *Saunders v. Vautier* (1841), 49 E.R. 282 (Rolls Ct.), aff'd (1841) 41 E.R. 482, [1841] E.W.H.C. Ch. J82, as buttressing the conclusion that Mr. Pallot did not have the immediate possessory interest in land required for standing.

[42] The rule in *Saunders v. Vautier* provides that the terms of a trust can be varied or the trust can be terminated if all beneficiaries of the trust, being of full legal capacity, consent: *Buschau v. Rogers Communications Inc.*, 2006 SCC 28 at paras. 2 and 21.

[43] As the Court emphasized in *Pallot* at para. 37:

37 . . . The beneficiaries do not have a claim to the trust property directly, however; it must be transferred to them from the trustee upon the dissolution of the trust.

[44] In *Pallot*, the rule in *Saunders v. Vautier* did not apply where Mr. Pallot and Ms. Douglas did not agree on the termination of the trust. Mr. Pallot sought to use the PPA to achieve the transfer of his share of the trust property, a result he could not achieve under the rule in *Saunders v. Vautier*.

[45] In concluding that Mr. Pallot lacked standing to seek partition and sale, the Court held, at paras. 42 and 44:

42 In my opinion, the PPA was not intended to broaden the rule in *Saunders v. Vautier* to allow for the collapse of trusts where one or more, but not all beneficiaries, are not satisfied with the manner of enjoyment dictated by the terms of the trust. The PPA is legislation designed to deal with the "numerous inconveniences and absurdities" when "partition was a matter of right, and the court had no discretion to refuse partition or to order sale in lieu thereof": *Jillings* at para. 10.

. . .

44 In summary, the rule in *Saunders v. Vautier* demonstrates the limited circumstances in which trust beneficiaries may collapse the trust to obtain the trust property, thereby avoiding the provisions of the trust dictating the terms on which the beneficiary enjoys the trust property. That circumstance is not present in this case, as Mr. Pallot and Ms. Douglas do not agree. The PPA did not extend the rule in *Saunders v. Vautier* as contended by Mr. Pallot. As a result, Mr. Pallot's interest remains that of a beneficiary of a trust holding a leasehold estate, and is not a possessory interest in the leasehold estate itself.

[46] A bare trust arises where the trustee holds property "without any duty to perform except to convey it to the beneficiary or beneficiaries on demand": *Vallard Construction Ltd. v. Bird Construction Co.*, 2018 SCC 8 at para. 25, citing *Donovan W.M. Waters, Mark R. Gillen, and Lionel D. Smith, Waters' Law of Trusts in Canada*, 4th ed. (Toronto: Carswell, 2012) at p. 33.

[47] If, upon an examination of the terms of the trust, there is a bare trust and the beneficiary is entitled to conveyance of the legal title to the property, then the beneficiary has an immediate possessory interest. Conversely, if the trust gives management and control to the trustee, the beneficiary cannot demand partition and thereby vary the terms of the trust: *Pallot v. Douglas*, 2015 BCSC 1296 at para. 37.

- [48] Here, the petitioner and the respondent have provided conflicting evidence regarding the management of the trust properties. The petitioner claims the corporate trustees have no active role in the management of the trust properties and that the respondent agreed that he has full authority to manage and operate the properties. The respondent maintains he and the petitioner, as beneficiaries of the trust, varied the Pendrell and Haro Trust Agreements to provide for the management of each property by the corporate trustees.
- [49] This case is distinguishable from Pallot to the extent that the written terms of the Pendrell and Haro Trust Agreements confer no managerial duties on the trustees.
- [50] Paragraph 2(d) of the Haro Trust Agreement specifically requires the trustee to transfer legal title "forthwith upon written demand of the Owner". Under that provision, the petitioner and the respondent, acting together as the "Owner", would be entitled to call for the transfer to them of legal title to the Haro Property.
- [51] The requirement of para. 5 of the Haro Trust Agreement for written amendments signed by the parties is a factor weighing against the respondent's assertion that at or about the times of execution of each Agreement, the parties orally varied the trusts to provide for management of the properties by the corporate trustees. However, on the other side of the scale, the respondent has adduced evidence of the payment of management expenses for the properties by Don Won and Don Won Haro, and the collection of rents and repayment of rental deposits by Don Won. I also bear in mind that the petitioner's response in Vancouver Registry Action S178422 is inconsistent with his affidavit evidence in this proceeding, that he is solely responsible for the management of the Pendrell and Haro Properties.
- [52] The parties have not yet conducted discoveries in the respondent's action.
- [53] Without the benefit of viva voce testimony and cross-examination, I am not able to resolve the conflicts in the affidavit evidence regarding the management of the trust properties. Further, if this Court were to make findings of fact concerning the terms of the trusts based on the untested affidavit evidence adduced on this application, there is a significant risk that those findings might be inconsistent with the findings made on the trial of the respondent's action.

Conversion to an action

- [54] Rule 22-1(7) of the Supreme Court Civil Rules authorizes the court to convert a proceeding commenced by petition to an action by ordering a trial of the chambers proceeding:

Power of the court

22-1 (7) Without limiting subrule (4), on the hearing of a chambers proceeding, the court may

- (d) order a trial of the chambers proceeding, either generally or on an issue, and order pleadings to be filed and, in that event, give directions for the conduct of the trial and of pre-trial proceedings and for the disposition of the chambers proceeding.

[55] The court should refer a proceeding brought by petition to the trial list where there are bona fide triable issues of fact or law, unless the party seeking the trial is bound to lose: *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P. / Saputo Produits Laitiers Canada S.E.N.C.*, 2017 BCCA 247 at para. 43.

[56] In *Saputo*, the Court approved the test as stated in *Robertson v. Dhillon*, 2015 BCCA 469, paras. 55-56:

55 On the hearing of a petition, a judge must be satisfied that there is no dispute as to the facts or law which raises a reasonable doubt or which suggests that there is a defence that deserves to be tried: *Douglas Lake Cattle Co. v. Smith* (1991), 54 B.C.L.R. (2d) 52 (C.A.) at 59. If such a dispute exists, the judge may refer the matter to the trial list, pursuant to R. 22-1(7) (former R. 52(11)(d)).

56 The test is not that used to determine a summary trial. Rather it is akin to that on an application for summary judgment under R. 9-6. Mr. Justice Lambert summarized the task in *Montroyal Estates Ltd. v. D.J.C.A. Investments Ltd.* (1984), 55 B.C.L.R. 137 (C.A.) at 138-39:

We were referred by counsel for T & A Holdings Ltd. to the judgment of Esson J. (as he then was) in *Progressive Const. Ltd. v. Newton*, 25 B.C.L.R. 330, [1981] 2 W.W.R. 741, 117 D.L.R. (3d) 591 (S.C.), and particularly at p. 334. There Esson J. summarizes, in my opinion, accurately, the law in relation to establishing a defence on an application for summary judgment in these words [pp. 334-35]:

The cases do not establish an invariable rule as to what steps must be taken to resist a R. 18 application for summary judgment. On all such applications the issue is whether, on the relevant facts and applicable law, there is a bona fide triable issue. The onus of establishing that there is not such an issue rests upon the applicant, and must be carried to the point of making it "manifestly clear", which I take to mean much the same as beyond a reasonable doubt. If the judge hearing the application is left in doubt as to whether there is a triable issue, the application should be dismissed.

In essence, if the defendant is bound to lose, the application should be granted, but if he is not bound to lose, then the application should be dismissed.

[57] The respondent has raised a triable issue regarding the terms of the trust agreements, and specifically, whether the parties agreed the corporate trustees would manage the properties. The respondent has adduced some evidence tending to show that both Don Won and Don Won Haro have actively participated in the management of the Pendrell and Haro Properties. In my view, the respondent is not bound to lose on the standing issue.

[58] The respondent also submits that he has raised a triable issue concerning whether the court has "good reason" to deny a sale of the properties under s. 6 of the PPA.

[59] The petitioner argues that as the beneficial owner of a 50% interest in the Pendrell Property and a 57% interest in the Haro Property, he has a prima facie right to compel the sale of those properties unless justice requires that such an order should be denied: *Bradwell v.*

Scott, 2000 BCCA 576 at para. 29; Harmeling v. Harmeling (1978), 90 D.L.R. (3d) 208 at 212 (B.C.C.A.). As a practical matter, the party opposing an application for sale under s. 6 of the PPA bears the burden of adducing evidence showing a good reason for refusing the order: Bradwell at para. 35.

- [60] Section 6 confers a broad and unfettered discretion that permits the court "to refuse to order of sale when, having regard to the particular facts and circumstances, such an order would not do justice between the parties": Sahlin v. Nature Trust of British Columbia, Inc., 2011 BCCA 157 at para. 24.
- [61] In order to determine whether there is good reason to refuse a sale, the court must conduct a "searching review" of the facts: Dunford v. Sale, 2007 BCSC 1422 at para. 8. In Dunford, the Court held that a dispute between the parties regarding the sharing of revenues and expenses did not constitute good reason for refusing an order for sale of the property. The Court held that the respondent could proceed with his claims against the petitioners even if the order for sale was granted. Similarly, in ter Borg v. Morris, 2012 BCSC 554, the Court held that the petitioner's failure to account for withdrawals from a mortgage account totaling approximately \$10,000 did not constitute good reason for refusing a sale of the property under s. 6 of the PPA.
- [62] The petitioner also referred to as Zimmerman v. Vega, 2011 BCSC 757 and Ryser v. Rawlings, 2008 BCSC 1050. In each of those cases, the Court held that the respondents' claims for extra contributions to the purchase or preservation of the property did not constitute good reason for refusing a sale of the property. In Zimmerman, the Court reasoned that if the respondent had a right to reimbursement for unequal contributions, his claim should be addressed on an accounting of the division of the proceeds of sale (at para. 39).
- [63] For his part, the respondent referred to Kane v. Hanslo, 2017 BCSC 2393. There, the petitioner, as administrator of the estate of his deceased cousin, applied pursuant to s. 6 of the PPA for an order for sale. The petitioner and respondent, Hanslo, held legal title to the property as tenants in common. The respondent claimed he received his one-half interest in exchange for his promise to assist the deceased in converting the property to a farm. The petitioner alleged that Mr. Hanslo had unduly influenced the deceased by persuading him to transfer a half-interest in the property for no consideration. The deceased had commenced an action for a declaration that the respondent held his one-half interest in trust for him. The petitioner, as administrator of the estate, continued that action.
- [64] In Kane, the Court held that the pending trial of the action constituted good reason for not ordering the partition and sale of the property. The Court was unable to resolve summarily in the partition proceedings the issues to be determined at trial. The Court concluded that the respondent's claim to ownership of the property was not bound to fail and was best left for determination by the trial judge.

[65] Here, the parties have presented conflicting evidence regarding the petitioner's role in the management of the properties and the duties and obligations, if any, of Don Won and Don Won Haro respecting management of the trusts. Questions of whether the respondent authorized and consented to the petitioner's withdrawal of \$1.6 million from the accounts of Don Won and Don Won Haro, and whether those corporations made improper loans or payments to the petitioner require findings of fact on contested evidence that can only be made with the benefit of discoveries and trial. Resolution of the disputed issues of fact will require an assessment of the credibility of the petitioner and the respondent. I cannot say that the respondent's assertion of good reason for refusal of a sale under s. 6 of the PPA is bound to fail. Again, the respondent has raised a bona fide triable issue on whether he has met the "good reason" test under s. 6.

CONCLUSION

[66] Accordingly, I order that the petition be converted into an action and referred to the trial list to be heard at the same time as Vancouver Registry Action S178422. The petitioner will fill a notice of civil claim and the respondent will file a response to civil claim.

[67] The conversion of the petition to an action does not preclude either party from bringing a summary trial application pursuant to R. 9-7 following discoveries.

[68] The respondent will have the costs of this application as costs in the cause.

"PEARLMAN J."

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/18/11/2018BCSC1126.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/chung-v-chung-2018>

Prepared on 26 October 2026 · Esheria