
CANADA / JUDGMENT

Dixon v. Morgan

2020 BCSC 1329

COURT

Supreme Court of British Columbia

DECIDED

19 March 2020

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2020 BCSC 1329 Dixon v. Morgan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dixon v. Morgan,

2020 BCSC 1329

Date: 20200319

Docket: S192431

Registry: Victoria

Between:

Adele Louise Dixon

Petitioner

And

Joshua William Ivor Morgan

Respondent

Before: The Honourable Madam Justice Choi

Oral Reasons for Judgment

Counsel for the Petitioner:

M. Hundleby

(Via telephone conference)

Counsel for the Respondent:

D. Mildenberger

(Via telephone conference)

Place and Date of Trial/Hearing:

Victoria, B.C.

March 5, 2020

Place and Date of Judgment:

Victoria, B.C.

March 19, 2020

Introduction

- [1] I reserve the right to edit and amplify these reasons to better reflect the intention of these reasons if the transcript of these reasons is ordered.
- [2] The petitioner, Adele Dixon, is the mother of the respondent, Joshua Morgan.
- [3] Ms. Dixon seeks an order to sell the property at 1351 Glenridge Drive, Victoria, British Columbia, legally described as Lot 29, Section 90, Esquimalt District, Plan 25120 (the "Property"), pursuant to the Partition of Property Act, R.S.B.C. 1996, c. 347. Ms. Dixon and Mr. Morgan each own an undivided one-half interest in the Property as tenants in common. Mr. Morgan opposes the sale.
- [4] The Property was purchased on July 14, 2016, for \$524,900. Ms. Dixon paid the \$10,000 deposit and \$275,467.25 towards the purchase price, using a portion of the \$372,000 she received from the proceeds of the sale of her previous home. The previous home was sold on June 2, 2016. Mr. Morgan did not contribute financially to the purchase of the Property.
- [5] A five-year mortgage was taken out for \$250,000 in the name of both Ms. Dixon and Mr. Morgan. There is no written agreement between the parties dealing with the Property. The 2019 tax assessed value of the Property was \$674,000.

Positions of the Parties

Ms. Dixon

- [6] Ms. Dixon no longer wishes to co-own the Property with Mr. Morgan. She says that the arrangement has not worked well for her. She would like to have the Property sold, with each party receiving half of the net proceeds. She argues that the law strongly supports her application.

- [7] Ms. Dixon deposed that, in 2016, she and Mr. Morgan discussed purchasing a two-level home for both their benefits. Mr. Morgan, his wife, and two children could live on the main floor of the house while she would live in a ground floor suite. Mr. Morgan and his family could provide her with assistance when needed, and Mr. Morgan and his family would be able to live in a home that they owned. Mr. Morgan and his family were previously living in cooperative housing. Since Ms. Dixon would have funds from the proceeds of sale of her residence, she would have capital to pay for the deposit and down payment while Mr. Morgan would pay the ongoing mortgage payments.
- [8] The parties purchased the Property, a two-level home with a suite on the ground floor.
- [9] Ms. Dixon's counsel prepared a co-ownership agreement which was presented to Mr. Morgan the day before the closing, but which was not signed by him. The Property was registered in the name of Ms. Dixon and Mr. Morgan, each as an undivided one-half interest.
- [10] Ms. Dixon has made a number of payments towards the Property, including \$10,000 in repairs, and \$1,200 for her share of the 2018 property taxes. Ms. Dixon deposes that she also paid the 2017 property taxes, but there was no evidence of the quantum. The property tax notice payable July 2, 2019, shows arrears of \$1,744.56.
- [11] Ms. Dixon moved out of the Property on May 1, 2017, less than a year later, to an assisted living facility. In October 2018, she wished to return to the Property; she deposes that Mr. Morgan refused.
- [12] Ms. Dixon deposes that her relationship with Mr. Morgan has broken down and she no longer wishes to live in the Property. Ms. Dixon has multiple sclerosis and uses a wheelchair. She says that she needs the equity from her half share of the Property for her daily expenses. She deposes that:

My health is suffering and I require my money presently tied up in the property to secure more suitable accommodations. I presently rent an apartment at an amount I cannot afford, and Josh and his family are receiving benefit from my interest in the property that I am not receiving.

Mr. Morgan

- [13] Mr. Morgan opposes the orders sought for sale. He argues that, through a gift or agreement, he is the beneficial owner of Ms. Dixon's one-half interest in the Property. Mr. Morgan also argues that this case is not suitable for disposition by petition, and ought to be converted to an action because of the factual disputes surrounding whether he is the beneficial owner of Ms. Dixon's legal, one-half interest in the Property.
- [14] In support of his position, Mr. Morgan has sworn an affidavit on July 18, 2019, and has tendered an affidavit from his wife, Sandra Morgan, sworn July 18, 2019, and his father, Ivor Morgan, sworn July 17, 2019.

- [15] Mr. Morgan deposes that Ms. Dixon's motivation to purchase the Property was to protect herself from her own destructive behaviour, and from others who had taken advantage of her previously. By purchasing this property with Mr. Morgan, she could ensure that she could leave an estate for her children. Mr. Morgan says that his sister Genai persuaded Ms. Dixon to move out of the Property and into the assisted living facility in May 2017. He disagrees that he refused to let Ms. Dixon return to the Property; he deposes that she no longer wishes to live there in any event.
- [16] Mr. Morgan argues that he and Ms. Dixon had an oral agreement relating to the Property. He says he "never would have purchased the Property if it was just a co-ownership that [Ms. Dixon] could collapse at any time". He argues that he relied on this oral agreement, and he is prejudiced by that reliance. Mr. Morgan deposes that his family was living in cooperative housing prior to moving into the Property, and that they gave up their tenure in that housing. He deposes that the parties paid the 2017 property taxes equally, a conflict in the evidence, given that Ms. Dixon deposes that she paid the 2017 property taxes.
- [17] Some portions of the affidavits in support of Mr. Morgan's position, including the affidavits of Sandra Morgan and Ivor Morgan, contain inadmissible evidence, including hearsay, double hearsay, and speculation. Consequently, little weight can be placed on those portions of the affidavits.
- [18] As an example, Mr. Morgan's affidavit sworn July 18, 2019, deposes:
22. Genai began persuading the Petitioner to go into a low-income assisted living facility. The Petitioner agreed and moved out in May 2017 to a facility called Jesken Aerie. Genai already had an in-law living there and was familiar with the facility and the terms to qualify for residency. The Petitioner declared her assets to be between \$80,000 and \$100,000 and that the Property belonged to me.
23. The Petitioner was accepted into the housing based on those representations as well as her physical need and her income level. The rent is based on the resident's monthly income.
24. After moving out of the Property, the Petitioner collected \$500 per month in cash by renting her former premises to her ex-husband Ivor Morgan. Initially the Petitioner asked that the money go towards taxes and insurance as she did not need the income and could not accept the income because it would disqualify her from her housing and her disability benefits.
- [19] Mr. Morgan also disputes that Ms. Dixon requires the sale of the Property to meet her daily living expenses. He says she had \$100,000 in savings from the sale of her previous home after paying for the purchase of the Property.

The Law

- [20] Ms. Dixon relies on the following authorities: Sections 6 and 7 of the Partition of Property Act; British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P. / Saputo Produits Laitiers Canada S.E.N.C., 2017 BCCA 247; Canadian Imperial Bank of Commerce v. Grigg, 2017 BCSC 1711; Hedrick v. Graham, 2012 BCSC 1760; McKendry v. McKendry, 2017 BCCA 48; and Rayworth v. Prefontaine, (1997), 45 B.C.L.R. (3d) 251 (S.C.).
- [21] Mr. Morgan also relies on the same sections of the legislation and British Columbia (Milk Marketing Board). Additionally, he relies on Chung v. Chung, 2018 BCSC 1126; H & W Investments Ltd. v. George, 2017 BCSC 2150; Kerfoot v. Richter, 2018 BCCA 238; Lona Enterprises Ltd. v. Eurocan Industries Inc., 2018 BCSC 842; and Sorochan v. Sorochan, [1986] 2 S.C.R. 38.
- [22] Sections 6 and 7 of the Partition of Property Act state:

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.

Sale in place of partition

7 In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if it appears to the court that because of the nature of the property involved, or of the number of parties interested or presumptively interested in it, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the interested parties than a division of the property, the court may

- (a) on the request of any of the interested parties and despite the dissent or disability of any other interested party, order a sale of the property, and
- (b) give directions.

[23] Ms. Dixon emphasizes that under s. 6 of the Partition of Property Act, the court must order the sale of the Property except where there is good reason to the contrary.

[24] The test to determine whether a petition should be converted to a trial is whether there is a bona fide triable issue: British Columbia (Milk Marketing Board) at para. 44; Kerfoot at para. 27.

- [25] In McKendry, the Court of Appeal held at paras. 31-32 that, to enforce a gift, one must prove the intention of the giver at the time of the transfer, and that the giver has done everything necessary to render that gift legally enforceable against the giver. The Court of Appeal also noted in McKendry at paras. 37-38 that transfers of land are subject to statute, in particular, the Law and Equity Act, R.S.B.C. 1996, c. 253. Contracts respecting land must be in writing to be enforceable: s. 59(3)(a) of the Law and Equity Act.

Conclusion

- [26] For the reasons that follow, I find that Ms. Dixon is the legal and beneficial owner of a one-half interest in the Property, and I order the sale of the Property.
- [27] First, I find there is no bona fide triable issue to convert the petition into an action. There is no evidence, even on Mr. Morgan's affidavit, as to the terms of any agreement, oral or otherwise, between the parties respecting the Property.
- [28] Second, the law is clear that if the court finds that Ms. Dixon owns a one-half legal and beneficial interest in the Property, the court must order the sale of the Property pursuant to s. 6 of the Partition of Property Act unless the court sees good reason to the contrary.
- [29] I reject Mr. Morgan's argument that his situation amounts to a "good reason" not to order the sale. Mr. Morgan deposes that he was prejudiced by moving into the Property because he gave up his tenure at a cooperative housing development. I also do not find any reliance or prejudicial action taken by him as set out in s. 59(3)(c) of the Law and Equity Act. In any event, there is no written contract between the parties respecting the Property.
- [30] Third, there is no evidence that Ms. Dixon gifted her beneficial interest in the Property to Mr. Morgan. Much of the affidavits in support of Mr. Morgan's position focused on Ms. Dixon's spending habits as well as the relationships between the parties and Mr. Morgan's sister Genai. Further, there is no evidence that Ms. Dixon had the required intent or took the required action to part with her share of the Property as per McKendry. Ms. Dixon, therefore, owns a one-half legal and beneficial interest in the Property.
- [31] Fourth, the cases cited by Mr. Morgan are significantly factually distinguishable from the case at bar. For example, in Lona Enterprises Ltd., the parties had a written agreement respecting the sale of the property in question. In the case at bar, the parties do not have a written agreement, and there is no evidence they had an oral agreement either.
- [32] Fifth, Mr. Morgan seems to assert that Ms. Dixon does not require the money from her share of the Property because she has savings from the sale of her previous home. Even if this would amount to a "good reason" not to order the sale of the Property, which it does not, I find that Ms. Dixon's savings have been further depleted since the sale of her previous home. I accept that, in addition to the amount that Ms. Dixon has paid towards the purchase of the Property, which is not disputed, she has also paid \$10,000 in repairs to the home, \$1,200 in property taxes for 2018, and \$26,124.27 for Mr. Morgan's car. She also paid at least 50% of the

2017 property taxes. I note that Ms. Dixon is not seeking the return of these funds relating to the car loan. I make these findings only to reflect that, whatever proceeds remained from Ms. Dixon's previous home after the purchase of the Property, her capital was further depleted by these other amounts in addition to her daily living and other expenses. I, therefore, accept that she has now much less than the \$100,000 left from the proceeds from her previous home. In any event, I do not accept the argument that Ms. Dixon must show that she has few funds before a sale of the Property can be ordered.

[33] Although Ms. Dixon seeks an order for joint conduct of sale, I will order sole conduct of sale to Ms. Dixon, because given the evidence, I am concerned that those living in the Property may thwart the marketing and sale of the Property.

Orders

[34] I make the following orders to assist with the sale of the Property:

- I order that the Property be listed for sale within 30 days. Ms. Dixon will have sole conduct of sale.
- The realtor chosen by Ms. Dixon shall be entitled to show the Property between the hours of 9 a.m. and 9 p.m. on 24 hours' notice to Mr. Morgan, such access not to be unreasonably withheld.
- Any offer will require 60 days' vacant possession.
- All offers must be presented to Mr. Morgan forthwith, and he will have 24 hours to respond to the offer. If he responds in the negative, Ms. Dixon will have the option to seek the approval by the court on five days' notice.
- The parties may seek directions from the court respecting the sale. I will be seized of any directions sought by the parties plus any application to approve the sale.
- The net proceeds of sale, after payment of any mortgages, property taxes, including any arrears, real estate commissions, conveyancing fees, shall be distributed as follows: \$296,667 to Ms. Dixon and the remainder to the parties equally. The \$296,667 is comprised of the following, \$10,000 deposit and \$275,467.25 down payment, \$1,200 towards the 2018 property taxes, and \$10,000 for the repairs to the property. I note that the quantum for the 2017 property taxes is not in evidence, so it was not taken into account.

[35] If, on application, the court becomes satisfied that Mr. Morgan is thwarting any aspect of the sale, including the marketing of the Property, the court is at liberty to make other orders, including removing him and his family from the Property.

[36] Ms. Dixon is entitled to her costs at Scale B against Mr. Morgan's portion of the net sale proceeds.

"Choi J."

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