

CANADA / JUDGMENT

Farwell v. Johnson

2025 BCSC 564

COURT

Supreme Court of British Columbia

DECIDED

27 March 2025

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2025 BCSC 564 Farwell v. Johnson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Farwell v. Johnson,

2025 BCSC 564

Date: 20250327

Docket: S15383

Registry: Campbell River

Between:

Ashley Farwell, as the Administrator of the Estate of

Steven John William Johnson, Deceased, and in her personal capacity

Plaintiff

And

John Steven Johnson

Defendant

Before: The Honourable Justice Thompson

Reasons for Judgment

Counsel for the Plaintiff:

J. Mansfield

Counsel for the Defendant:

H. Wenngatz

Place and Dates of Trial:

Campbell River, B.C.

March 4-7, 2025

Place and Date of Judgment:

Campbell River, B.C.

March 27, 2025

- [1] This trial concerns beneficial ownership of a residential property on Galerno Road in Campbell River. At the time of his death by accidental overdose at age 29, the deceased Steven Johnson and the plaintiff Ashley Farwell, his wife, lived in the home on the property. The property was registered to the deceased and the defendant, his father, in joint tenancy. The deceased son and his father were co-borrowers on the mortgage charging the property, but the mortgage payments up to the date of death were paid solely by the son. The plaintiff continues to live on the property.
- [2] The deceased left no will and no children. The plaintiff has a grant of administration of her husband's estate. Her position is that his estate is entitled to the entirety of the beneficial interest in the property, and she seeks a declaration that the defendant holds the legal interest on trust. In the alternative, she alleges the defendant is unjustly enriched and she seeks remedies in that connection.
- [3] The defendant acquired his interest in the property from his son in July 2017, after the defendant agreed to his son's request to be a co-borrower on the mortgage. The critical issue of fact in this case is the intention behind the transfer. Was a true joint tenancy intended, with its incident of survivorship in favour of the father? Was the pledge of credit by the father gratuitous, or was it in exchange for joint ownership of the property - including a beneficial interest?

Hearsay

- [4] Each party gave some evidence about statements made by the deceased. Where a party seeks to have such statements admitted for their truth, they are hearsay. Hearsay statements may be admissible on the basis of the state of mind exception, including as to intentions; other statements may have sufficient threshold reliability to be admitted under the principled approach to hearsay: see *Harshenin v. Khadikin*, 2015 BCSC 1213 at paras. 30-36.
- [5] Neither party pressed admissibility objections to testimony of the other party relaying the deceased's statements. This is understandable because there is nothing in the evidence that reveals any reason to be concerned about either the reliability of the parties relaying the statements or the reliability of the deceased. In any event, there are no notable disputed

facts in this case - or, for that matter, any disputes about the law. This case turns on the inferences to be drawn from the facts about what was intended at the time of the 2017 transfer of the property.

Background Facts

- [6] Before his relationship with the plaintiff, the deceased was in a relationship with Raya Beetstra. The Galerno Road property was owned by Ms. Beetstra's parents, and in 2012 was purchased by Ms. Beetstra and the deceased. Their purchase was financed with a Royal Bank of Canada mortgage. They held the property in joint tenancy, and each was a co-borrower on the mortgage.
- [7] The deceased and Ms. Beetstra lived in the home on the property until their relationship broke down in early 2013 because of the deceased's drug abuse. There was little equity in the Galerno property when Ms. Beetstra moved out. On separation, the deceased and Ms. Beetstra agreed that he would assume full ownership of the property and sole responsibility for the mortgage loan and the balance on an RBC line of credit.
- [8] The plaintiff and the deceased began a dating relationship in the spring of 2013.
- [9] The deceased's continuing struggle with substance abuse brought him into contact with a variety of "unsavoury individuals," some of whom were staying at the property. A crisis developed in December 2013 when the deceased was threatened by a person in the drug trade. The deceased followed his father's advice and moved from the property into a basement suite at his parents' home on S. Alder Street in Campbell River.
- [10] The deceased managed to get a handle on his addictions during the four years that he lived with his parents. The plaintiff spent most nights there, and the defendant credits her with an important role in his son's recovery.
- [11] The deceased's sister and her husband also lived in the S. Alder Street home. The parents did not ask either of their children (or the plaintiff) to pay rent or contribute to the cost of utilities.
- [12] After some repairs, the Galerno property was rented by the deceased to a series of tenants while he lived with his parents. The rental income kept the deceased's mortgage current, but he was consistently in arrears on the property taxes. He also ignored various other financial obligations. Some of these debts were in the hands of collection agencies, and as time went on the plaintiff began helping the deceased organize the repayment of these debts.
- [13] In December 2016, the plaintiff and the deceased became engaged to be married.

- [14] In March 2017, the deceased and Ms. Beetstra formalized their property division in a written separation agreement. The deceased's plan thereafter was to transfer title to the Galerno property from Ms. Beetstra and himself to the plaintiff and himself, and for the plaintiff to take Ms. Beetstra's place as a borrower on the mortgage. To this end, the plaintiff and the deceased had meetings with an RBC representative. However, the bank was not content to refinance on the basis proposed, or on the basis of the deceased's covenant standing alone.
- [15] In May or June 2017, the plaintiff suggested that the deceased ask his father to be a co-borrower. The defendant asked and his father readily agreed. On 28 July 2017, the property was transferred from Ms. Beetstra and the deceased to the deceased alone, and that same day it was transferred from the deceased alone to the deceased and his father in joint tenancy. The RBC concurrently registered a mortgage, with the deceased and his father as co-borrowers.
- [16] The plaintiff and the deceased moved into the home on the Galerno property in January 2018, and were married in August 2018.
- [17] On 18 July 2019, the deceased died by overdose.
- [18] After his death, a mortgage payment or two came out of the deceased's bank account. In August 2019, the plaintiff transferred to the defendant the balance in that account - at this time, the defendant was the remaining borrower on the mortgage. The mortgage was life insured, and a claim was made in that respect. In the meantime, the defendant was attending to the mortgage payments. In February 2020, the mortgage insurance claim was denied on the basis that the death involved use of a controlled substance.
- [19] The plaintiff transferred funds in March and April 2020 to the defendant to reimburse him for payments to the RBC for the mortgage and a line of credit. Then, in the spring of 2020, the RBC froze the obligation to pay the mortgage for six months because of the COVID pandemic.
- [20] Each party gave evidence about discussions, before the commencement of this action in November 2020, regarding a possible sale of the Galerno property and disposition of the proceeds. Unfortunately, these discussions culminated in the destruction of the parties' close relationship.
- [21] The plaintiff continues to live on the property. She has paid the property taxes, and other bills associated with the property other than the mortgage which has been paid by the defendant since the obligation to pay resumed after the COVID freeze lifted in October 2020.

Analysis

- [22] Section 23(2) of the Land Title Act sets up a presumption that title reflects the underlying beneficial interest in real property:

23(2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title

This statutory presumption is rebuttable. In *Suen v. Suen*, 2013 BCCA 313 at para. 34, Justice D. Smith outlined three bases on which the presumption may be rebutted:

The central issue to be determined by the trial judge was whether the statutory presumption of indefeasible title as to the joint ownership of Capstan Way was rebutted by either of the parties. This Court has endorsed three considerations for determining this issue:

- (i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;
- (ii) the operation of an agreement between the parties that is contrary to the registered legal title; or
- (iii) taking into account the underlying equitable interests between the parties (e.g., considerations that arise in claims for unjust enrichment).

[23] *Bajwa v. Pannu*, 2007 BCCA 260 is one of the authorities cited in *Suen* as authority for these various ways in which the statutory presumption may be rebutted. The *Bajwa* case is instructive. Mr. Pannu did not make a financial contribution to the property purchase, but he held a joint tenancy interest. Justice Low's majority judgment held that the purchase could not have proceeded without Mr. Pannu pledging his credit (para. 13). Low J.A. held that the evidence supported the trial judge's implicit finding that Mr. Pannu was one of three co-purchasers of the property, and not merely a trustee (paras. 16-17). Further, Mr. Pannu was not unjustly enriched on the facts of that case by receiving a one-third share of the proceeds of sale in accordance with their respective registered interests (para. 18). Justice Hall, dissenting in part, was of the opinion that the facts did not support an agreement that Mr. Pannu would obtain a beneficial interest (paras. 26-27). However, he would have recognized that it would be inequitable if Mr. Pannu did not receive some reward for services provided as facilitator of the transaction and the risk he undertook as a co-borrower, and would have found him entitled to a one-sixth interest (para. 28).

[24] In the case at bar, I agree with the defendant that no presumption of a resulting trust arises. The father pledged his credit and the transfer from Ms. Beetstra and his son was made possible because he agreed with his son's request to be a co-borrower. I appreciate that pledging credit, per se, does not rule out a presumption of resulting trust. There are cases where the pledge of credit is not a tangible benefit: *Freeland v. Farrell*, 2022 BCCA 99 at paras. 59-62. However, the case at bar is not one of them.

[25] I find that the father's pledge of credit was a tangible, i.e. real or material, contribution to the purchase. It is true that when he agreed to be a co-borrower, the father thought of the Galerno mortgage loan as only a contingent liability: it was understood that his son that

would be paying the mortgage. However, the father took on risk at a level that was much more than theoretical. The father was confident that his son would attend to the mortgage payments (because of his good and secure employment), but his son's addiction and history of relapses and his track record of poor money management increased the odds that the father's covenant could come into play. The father's financial position may not have been precarious, but he was not a wealthy man and he had other significant debt. And, the equity in the property at the time of the transaction was not substantial; the stated value on the transfer document was \$260,000, which would leave equity of less than \$60,000. If the property tax assessment is taken as accurate, the equity was still less than \$80,000.

- [26] However, the absence of a presumption of resulting trust does not end the analysis. The effect of the absence of the presumption is to place an onus on the plaintiff. In *Freeland*, at para. 59, Chief Justice Marchand referred to *Bajwa* as recognizing the possibility of adducing evidence that a party became a co-covenantor for a mortgage debt on a gratuitous basis. On the totality of the evidence, I find that the plaintiff has established on a balance of probabilities that the defendant and his son shared the understanding that the father's pledge of credit was a gratuitous gesture and the understanding that the father was not acquiring a beneficial interest in the property.
- [27] The deceased's parents were generous to him in his adulthood. I accept the father's evidence that he contributed, albeit in a minor way, to the down payment when his son and Ms. Beetstra - who he testified were engaged to be married and "just starting out" - bought the Galerno property, and that he did so without expectation of receiving any interest in the property. The parents allowed their son and the plaintiff to live in their home for years without paying rent, even though their son and the plaintiff were both employed. The father frequently gave cash to his son, and on occasion transferred funds to him to help pay his bills. When the son and his sister's grandmother passed away, he and his sister were each given \$5000 by their parents.
- [28] This backdrop of parent-to-child generosity is relevant, but I understand that it is not necessarily determinative. I must consider the possibility that the father drew the line at taking on the risk of being a co-borrower on this mortgage without consideration. I do not lose sight of the father's evidence that he paid the solicitors' bill for the conveyance, or that he was assessed and paid some property purchase tax in connection with the transaction, or that the transfer was stated on its face to be for consideration (albeit "\$1.00 and other good and valuable consideration"). Counsel for the defendant relies on these pieces of evidence as indications of the father acquiring a beneficial interest. However, on weighing the whole of the evidence I think it is highly likely that father and son had the same understanding: that the father's name was on title only to facilitate the transaction including the refinancing, and that the entire beneficial interest in the property was to be his son's.
- [29] I find that the through-line on the defendant's connection to the Galerno property was helping his son to acquire and keep the property. He contributed to the down-payment in 2012. In 2013, after Ms. Beetstra moved out, the defendant helped his son with the mortgage

payments: "I didn't want him to fall into any kind of arrears with anything, especially with the mortgage . . . I wanted to help him keep his home." When the defendant was asked to co-sign in 2017, he agreed instantly. "There was no question. He fought so hard to keep his home, through renters and everything else, I wasn't about to let him lose it now just because he couldn't afford a mortgage. That conversation when he asked me to go on title with him, I said no problem, yes." And, the father testified that his name was on title because it was his understanding that the bank required this for him to be a co-borrower on the mortgage.

- [30] Shortly after his son died, the defendant and the plaintiff went to the RBC and met with a representative. The defendant asked if the plaintiff should be added to the property title. He testified that he thought this was the proper thing to do.
- [31] Approximately one year after his son died, and before he and the plaintiff had their falling out, the father wrote a cheque for the outstanding Galerno property taxes (for which he was promptly reimbursed by the plaintiff). On that cheque, he wrote the memo: "Steve & Ashley property tax"; when asked whether this reflected his understanding of ownership, he said: "Well, it was their home. I had no intention of taking it from them. That's not the way we do things."
- [32] I conclude that the father gratuitously and without reservation pledged his credit in July 2017. My conclusion about the father's donative intention, i.e. his resolve to pledge his credit gratuitously, is not based on an outmoded view that the father ought to be presumed to be gratuitously advancing his son's financial interests. It is rooted in the evidence of this case, in the many examples of the father's generosity to his son over many years, and my impression from the father's evidence that his agreement to be a co-borrower on the mortgage was yet another gratuitous gesture - another in a series of gifts - in favour of his son.
- [33] The defendant wanted to see his son keep his home. The defendant's name was on title only because it was his understanding that the bank required this. I think it likely that the first time he began to adopt a different orientation to the July 2017 transaction was in February 2020, at a time when the defendant was 60 years old and felt burdened by debt.
- [34] In February 2020, he was in the midst of shutting down the family locksmith business and he had business loans outstanding. That same month, he heard that the Galerno mortgage insurance claim had been denied. He had a mortgage on their S. Alder home and a "considerable" line of credit. The defendant testified to the need to clear debt. He testified about his plan, which he executed in mid-2020, to sell S. Alder, to use the proceeds to clear debt, and some of what remained to help his daughter purchase a home, and then move in with her.
- [35] Indeed, the defendant was asked what had changed from when he seemed not to regard himself as having an interest in the Galerno property to when, in 2020, he was suggesting a sale and taking part of the net proceeds. His answer focused on his desire to get out of debt, to "give everybody a fresh new start." (The defendant testified that these discussions

occurred in August 2019, but said that they happened in the midst of their move to Comox to live with their daughter; this move was in September 2020 - on all of the evidence it is clear that the discussions referred to by the defendant occurred in 2020 not 2019.)

- [36] Counsel for the defendant argues that during the meetings with their solicitor, the father and son would have had joint tenancy explained to them. I think this is a fair assumption, and at one point in his evidence the defendant said that it had been explained to him that joint tenancy meant that if either was to die, "it would slide over." However, when asked if the lawyer explained anything about the right of survivorship, the defendant said: "Yes, he did explain that if I died it was 100% Steven's, and that is the way I thought it was going to go and so did Steven. We didn't see this coming." Counsel for the defendant submits that there were alternatives that would not have the father on title as a joint tenant that were not pursued - such as the father's guarantee without being on title - and that this points to the intention that the father would acquire a beneficial interest. The answer to this submission is the defendant's evidence that he understood that the bank required his name on title for the refinancing. There may have been alternatives discussed during meetings with the solicitor, and between the solicitor and the bank, but the record is devoid of any details and I decline to draw the inference sought by the defendant.
- [37] The defendant testified that just before the July 2017 transfer he broached the idea with his son about adding the plaintiff to the title, but his son said no - and he said his son used a definite tone so it was not pressed further. This evidence is equivocal: the plaintiff and the deceased had just been through an unsuccessful process of trying to get the plaintiff's name on title and on the mortgage, and the RBC was willing to proceed with the transaction when it involved the father. It would be natural if the deceased was quite unenthused about the idea of trying to modify the transaction to involve the plaintiff.
- [38] I have considered whether it would be appropriate to take account of the change in circumstances represented by the death of the defendant's son, and his perceived need to access some of the equity in the Galerno property as part of giving he and his wife a "fresh start." It might be argued, in line with the dissenting judgment in *Bajwa*, that the son's estate would be unjustly enriched if the father did not receive some reward for services provided as facilitator of the July 2017 transaction and the risk he undertook as a co-borrower.
- [39] I think a hindsight effort to engineer a "just" result is problematic. The intention at the time of the July 2017 transaction is critical. The father intended to pledge his credit as a completely gratuitous act, consistent with his customary generosity to his son. Neither party to the transaction believed that the father was acquiring a beneficial interest in the property. The father may have pledged his credit gratuitously without thinking through all of the possibilities or on assumptions about the future which have not been borne out, but he essentially delivered a gift to his son. He may regret it now, having assumed that he would precede his son in death, but I can see no basis in law or equity to allow his completed gift to be rescinded.

- [40] If approached using the framework of unjust enrichment doctrine, it might be argued that the son's estate is enriched by holding the beneficial interest in the property and the father correspondingly deprived. If so, then the juristic reason for the enrichment is that it arose out of the father's donative intent. See *Kerr v. Baranow*, 2011 SCC 10 at para. 41. In other words, if there is an enrichment, it is not an unjust enrichment.
- [41] However, the plaintiff properly acknowledges that the estate would be unjustly enriched if it receives the equity in the property without accounting for estate debts paid by the defendant (e.g., paying off the truck loan and payments on the RBC line of credit) including all payments associated with the property paid after the death of the deceased (e.g., RBC mortgage payments), plus court order interest.

Summary

- [42] This was not a true joint tenancy. The defendant holds his interest in the Galerno property on trust for his son's estate.
- [43] I will leave the parties to do the necessary accounting for payments made by the defendant, and to contemplate the form of order that reflects these reasons for judgment, the results of the accounting, and the reality of the continuing presence on title of the RBC mortgage with the defendant as sole surviving covenantor. Unless there are circumstances of which I am unaware, the plaintiff in her capacity as administrator of the estate is entitled to costs on Scale B, other than the costs of the application to transfer the court file to Campbell River.
- [44] Liberty to apply.

"Thompson J."

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