

CANADA / JUDGMENT

Feng et al v. Chan and Woo

2007 BCSC 251

COURT

Supreme Court of British Columbia

DECIDED

28 February 2007

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

2007 BCSC 251 Feng et al v. Chan and Woo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Feng et al v. Chan and Woo,

2007 BCSC 251

Date: 20070228

Docket: S102070

Registry: New Westminster

Between:

Zhi Tu Feng, Jin Zhu Li, and Lun Ling

Plaintiffs

And

Gordie Yuk Sun Chan

Defendant

And

Polly Pui-Yin Woo a.k.a. Polly Pui-Yin Chan

Third Party

Before: The Honourable Madam Justice D. Smith

Reasons for Judgment

Counsel for the plaintiffs:

J.B. Rotstein

Counsel for the defendant:

T.E. Hoover

Date and Place of Trial/Hearing:

February 14, 2007

New Westminster, B.C.

- [1] On July 21, 2006, the plaintiffs, Zhi Tu Feng, his wife Jin Zhu Li, and his mother-in-law Lun Ling, purchased a single family dwelling ("the property") from the third party, Polly Pui-Yin Woo, for \$525,000 cash. A certificate of indefeasible title was issued to the plaintiffs in joint tenancy on September 13, 2006.
- [2] Ms Woo had been the registered owner of the property and the estranged wife of the property's sole occupant, the defendant Gordie Yuk Sun Chan. Although separated for four years, neither Ms Woo nor Mr. Chan had commenced legal proceedings to divide their assets and accordingly no Certificate of Pending Litigation ("CPL"), s. 57 declaration crystallizing Mr. Chan's claim for an interest in the property, or s. 67 order restraining the disposition of assets including the property, had been secured at the time the plaintiffs purchased the property.
- [3] Mr. Chan was notified of the property's sale on July 25, 2006, when the plaintiffs served him with a notice to vacate the property by September 25, 2006. He immediately conducted a land title search and learned that on July 21, 2006, the property had been sold to the plaintiffs for \$525,000.
- [4] In spite of having received this information, Mr. Chan believed that Ms Woo and the plaintiffs had conspired to defeat any claim he might have made for an interest in the property, and that no monies for the purchase of the property had been exchanged. The only basis for that belief was: (1) his observation on July 26, 2006, after returning home from work at 11:00 p.m., of a man whom he now knows as the plaintiffs' realtor. Mr. Chan said this man approached him in his vehicle and advised him that he was a friend of the plaintiffs who had purchased the property for \$525,000 and who wanted to know when Mr. Chan was going to move out; and, (2) the plaintiffs' attempts to obtain an order through the Residential Tenancy Office forcing Mr. Chan to vacate the property and seeking \$1,500 per month rent from him from August 1, 2006, through to the end of November 2006. The Arbitrator ruled there was no tenancy agreement between the parties and therefore no jurisdiction in the Residential Tenancy Office to adjudicate the matter.
- [5] Mr. Chan still would not surrender possession of the property and on October 3, 2006, retained counsel. No attempts were made to contact the realtor who had sold the property to the plaintiffs, or the lawyer who had acted for the plaintiffs in the transaction, in order to confirm the bona fide nature of the transaction. Instead, Mr. Chan commenced a family law

proceeding ("FLP") enjoining the plaintiffs and Ms Woo as defendants and claiming that Ms Woo had transferred the property to the plaintiffs, without consideration, to defeat his claim under the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA").

- [6] On the same date, Mr. Chan also filed a CPL against the property in order to secure his claim. He did not plead or attest to any fact in support of a claim of fraud or in support of a claim of right to file a CPL against the property after the certificate of indefeasible title had been issued.
- [7] On October 11, 2006, Mr. Chan obtained a s. 67 order under the FRA restraining Ms Woo from disposing of the net proceeds or sale of the property.
- [8] On November 3, 2006, the plaintiffs commenced this action seeking an order of ejectment, occupational rent, aggravated and punitive damages for trespass, for continued occupation of the property without colour of right, and for wrongful filing of a CPL against the property.
- [9] On December 16, 2006, Mr. Chan filed a Statement of Defence claiming relief against the plaintiffs pursuant to s. 66(3) of the FRA and claiming the plaintiffs took possession of the property subject to his continued occupation of the property. Section 66(3) of the FRA provides:

If the Supreme Court, on application, is satisfied that a spouse has made or intends to make a gift of property to a third person, or has transferred or intends to transfer property to a third person who is not a purchaser in good faith for value, for the purpose of defeating a claim to an interest in the property the other spouse may then or in the future have under this Part, the Supreme Court may make an order under this section to restrain the making of the gift or transfer, or vest all or a portion of the property in, or in trust for, the other spouse.

- [10] In December 2006 there was a Judicial Case Conference in the FLP. As defendants in that action, the plaintiffs and their counsel were forced to attend. During the conference Mr. Chan obtained a s. 57 declaration of irreconcilability from Ms Woo and at Mr. Chan's insistence the plaintiffs' provided documentary proof of the monies they paid for the purchase of the property.
- [11] Even after receiving this information, Mr. Chan continued to maintain his right to occupy the property. In this summary trial application, he took the position that the plaintiffs had an obligation to prove they were bona fide purchasers for value without notice before he had to vacate the property. After receiving that proof he continued to maintain that he was not obliged to vacate the premises until the FLP was concluded.
- [12] I am not aware of any authority in law or at equity to support Mr. Chan's position.
- [13] At the outset of this summary trial, counsel for Mr. Chan made a preliminary objection to the court's jurisdiction to cancel the CPL. She submitted the application for that relief had to be made in the FLP action. The court rejected that argument on the grounds that the plaintiffs in this action had pleaded that Mr. Chan had wrongfully filed a CPL against the

property when he had no colour of right to do so, and were seeking relief for that wrongful registration. Clearly, the issue of the validity of the CPL was before the court in this action and if successful, the plaintiffs would be entitled to an order discharging the CPL.

- [14] At the conclusion of the summary trial, the Court made an order ejecting Mr. Chan from the property by the end of February 2007, an order discharging the CPL, and reserved judgment in regard to the plaintiffs' claims for occupational rent, aggravated and punitive damages. Herein are the Court's reasons for the orders made and on the damages sought.
- [15] The plaintiffs were good faith purchasers for value without notice, of the property owned solely by Ms Woo. No proceedings had been commenced in relation to the property and no CPL was registered against it when Ms Woo sold the property to the plaintiffs. She was the legal owner of the property and there was no registered lien or caveat against the property that prevented her from selling it, unfortunately without notice to Mr. Chan.
- [16] The plaintiffs had no notice of Mr. Chan's wish to pursue an FRA action for an interest in the property by reason of the breakdown of his marriage. Moreover, even had they been aware of such an interest, in the absence of any registered lien or caveat against the property, they had no duty of care to Mr. Chan to ensure that he pursued his claim in a timely manner.
- [17] Mr. Chan's remedy is against Ms Woo in the FLP, where he is claiming a share of the net proceeds of sale of the property. Those proceeds are being held in trust pending the outcome of that action. In this action, Mr. Chan's continued occupation of the property after September 25, 2006, constitutes a wrongful trespass, for which the plaintiffs are entitled to be compensated.
- [18] Before filing the CPL, Mr. Chan knew from his search of the property in July 2006 that the plaintiffs had purchased the property on July 21, 2006, for \$525,000 cash. He was apprised of that information when he filed the Statement of Defence in this action, claiming that there was no consideration for the transaction. Moreover, that information was confirmed by the plaintiffs at the Judicial Case Conference in December 2006. Yet, Mr. Chan took no steps to confirm the legitimacy of the sale with the realtor or the purchasers' lawyer, and continued to maintain his misguided position in the absence of any evidence.
- [19] Mr. Chan insisted the plaintiffs prove to him that their purchase of the property was bona fide as a condition precedent to vacating the property. While he had no legal grounds to make such a demand, even after the plaintiffs had complied with it, Mr. Chan continued to maintain his right of occupancy to the property until the FLP was completed and refused to vacate the property. He took no steps to rectify his wrongful filing of the CPL, or amend his pleadings in this action and in the FLP knowing they were misleading. In short, Mr. Chan has continued to maintain a right of occupancy to the property without any legal foundation to do so.

[20] Once the plaintiffs notified Mr. Chan on July 25, 2006, to deliver up occupancy by September 25, 2006, it was incumbent upon Mr. Chan to quit the property. His right to occupy the property ended on September 25, 2006. See *Webb v. Attewell* (1993), 88 B.C.L.R. (2d) 1 (C.A.) at ¶11-18.

[21] In *Terbasket v. Co-ordination Services Ltd.*, 2003 BCSC 17, Quijano J. set out the criteria to be met in an action for ejectment at ¶16:

1. That the plaintiff has title to the property;
2. That the defendant currently possesses the property; and
3. That the plaintiff intends to regain possession of the property.

[22] Once these requirements are met, Quijano J. stated, at ¶17:

[T]he burden shifts to the defendants to demonstrate "a title or right to possession consistent with the fact of ownership vested in the plaintiff". *Portland Managements Ltd. v. Harte*, supra, p. 316.

[23] Mr. Chan has demonstrated no right of possession consistent with the plaintiffs' title to the property. He is not in occupation of the property pursuant to a tenancy agreement. At the time of the property's sale, he had no court order in the FLP giving him exclusive occupancy of the property or a prima facie interest in the property. The fact that he was in possession of the property when it was sold to the plaintiffs does not permit him to remain in possession after being given notice to quit: *Webb v. Attewell*.

[24] I am satisfied that the plaintiffs have established their claim for occupational rent for the period October 1, 2006, to February 28, 2007. While evidence of the property's rental value is very limited, I have concluded that the best evidence available on this issue is the amount of rent claimed by the plaintiffs in the proceedings before the Residential Tenancy Office. At \$1,500 per month, I find that Mr. Chan owes the plaintiffs \$7,500 as occupation rent for the period from October 1, 2006 to and including February 2007.

[25] Aggravated and punitive damages are sought in this action. The distinction between these two heads of damages was discussed by McIntyre J. in *Vorvis v. I.C.B.C.*, [1989] 1 S.C.R. 1085 at 1099:

Aggravated damages are awarded to compensate for aggravated damage. As explained by Waddams, they take account of intangible injuries and by definition will generally augment damages assessed under the general rules relating to the assessment of damages. Aggravated damages are compensatory in nature and may only be awarded for that purpose. Punitive damages, on the other hand, are punitive in nature and may only be employed in circumstances where the conduct giving the cause for complaint is of such nature that it merits punishment.

- [26] The plaintiffs have each deposed to the aggravating effects of Mr. Chan's actions. That evidence includes their frustration at not being able to move into their new home after having fully paid the purchase price, having to insure both the home they are currently occupying and the property, wanting to sell the home they are currently occupying but afraid to do so without having secured occupation of the property, and having received no rent from Mr. Chan's illegal occupancy of the property.
- [27] I am satisfied that the plaintiffs' claim for aggravated damages is warranted and I assess that amount at \$10,000.
- [28] In support of their claim for punitive damages, the plaintiffs point to the following evidence: Mr. Chan's filing of a CPL against the property when he had no claim in law or at equity to do so; Mr. Chan's filing of the CPL long after the certificate of title registering the property in the names of the plaintiffs on September 13, 2006, had been issued, when he knew or ought to have known that the plaintiffs were bona fide purchasers for value without notice; Mr. Chan's failure to rectify his wrongful filing of the CPL, his misleading allegation in his Statement of Defence, and his insistence on pursuing a misguided claim for continued occupancy of the property, even after the plaintiffs had provided proof of the legitimacy of their purchase of the property.
- [29] In all of these circumstances I find that Mr. Chan has abused the process of the Court for an improper purpose and that the plaintiffs are entitled to punitive damages of \$15,000.
- [30] The plaintiffs are entitled to costs at Scale B.

"D. Smith, J."

The Honourable Madam Justice D. Smith

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/07/02/2007bcsc0251.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/feng-et-al-v-chan-and-woo-2007>

Prepared on 29 October 2026 · Esheria