
CANADA / JUDGMENT

Fraik v. Pilon

2011 BCSC 1915

COURT

Supreme Court of British Columbia

DECIDED

24 October 2011

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2011 BCSC 1915 Fraik v. Pilon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fraik v. Pilon,

2011 BCSC 1915

Date: 20111024

Docket: 08-1106

Registry: Victoria

Between:

Henriete Marie-Louise Fraik,

also known as Mary-Louise Henriette Pilon

Plaintiff

And:

Muriel Mary Anne Pilon, Executor for the Estate of

Maria Diana Theresa Bernard, also known as

Theresa Marie Diana Bernard and Muriel Diane Mary Anne Pilon

Defendants

Before: The Honourable Mr. Justice G.R.J. Gaul

Oral Reasons for Judgment

Counsel for the Plaintiff:

H. Doehring

Counsel for the Defendant:

S. Chapman

Place and Date of Hearing:

Victoria, B.C.

October 24, 2011

Place and Date of Judgment:

Victoria, B.C.

October 24, 2011

- [1] THE COURT: This matter is time sensitive, so I will deliver my reasons now. In doing so, I reserve the right to make editorial revisions to them before their reproduction in final form. In no manner with the result of my decision be affected or changed.
- [2] The defendant executrix seeks an order permitting the appraisal of certain real property which is the subject of this estate litigation. The defendant seeks additional ancillary terms designed to facilitate and secure the appraiser's attendance at the property and the completion of his appraisal.
- [3] On September 21st of this year, Master Bouck directed that an appraisal of the property and premises at 1379 Vista Heights in Victoria take place.
- [4] On or about October 3rd, counsel for the defendant informed counsel for the plaintiff that an appraisal of the property would be conducted during the week of October 17th, and that the exact date would be set by Thursday, October 6th.
- [5] On Thursday, October 6th, counsel for the defendant informed counsel for the plaintiff that the appraisal would take place on Monday, October 17th. There was no mention at that point in time of counsel for the defendant or the defendant herself attending at the appraisal.
- [6] On Thursday, October 13th, counsel for the defendant informed counsel for the plaintiff that she and the defendant would be accompanying the appraiser on the 17th. Counsel for the plaintiff was not able to attend the appraisal on the 17th and asked that it be rescheduled to another date so that he could attend.
- [7] Regrettably, new arrangements could not be made and the appraiser attended at the property on the 17th, as did the defendant and her counsel.
- [8] As the appraiser attempted to enter onto the property, the plaintiff presented him with a written waiver and a direction that the document needed to be signed before he could enter and proceed with his work.

- [9] The appraiser, for understandable reasons, refused to sign the document. He was therefore effectively barred from entering the property. In my opinion, that was a breach of Master Bouck's order.
- [10] In my view, the fact that the defendant and her counsel attended at the property when the plaintiff's counsel could not attend, raised the plaintiff's tension and anxiety levels. However understandable those feelings may have been, they did not provide any legal justification for the plaintiff's actions and in particular her refusal to allow the appraiser onto the property.
- [11] The issue before me today is not whether an appraisal of the property should take place; that has already been addressed by Master Bouck. The issue today is whether the plaintiff should be allowed to stay on the property during the course of the appraisal and whether there should be special costs awarded to the defendant for this application, including the short leave.
- [12] The defendant says the plaintiff intentionally frustrated the first attempt to have an appraisal of the property completed and therefore a new court order with stricter terms is required.
- [13] On the evidence before me, the defendant has persuaded me that there are good reasons to make a further order regarding the appraisal of the property.
- [14] While I do not have specific evidence before me, I do have the representations from counsel for the plaintiff that his client is someone who is inclined to hoarding. That explains the condition of the property and why there are so many items strewn about it. That may also explain her anxiety and somewhat odd behaviour with respect to the process.
- [15] Madam Registrar, if I go too fast, please give me a signal and I will slow down.
- [16] Based on the evidence and the submissions presented on this application, I make the following order. The defendant and any person acting on her behalf, including a qualified property appraiser and legal counsel, are to be granted access to the property between the hours of 1:00 p.m. and 5:00 p.m. today, Monday, 24 October 2011, for the purposes of inspecting and appraising the property.
- [17] There is to be complete and unfettered access to all of the property and any buildings located on the property. By unfettered, I mean unobstructed in any way.
- [18] Moreover, in order to ensure there is complete access, the plaintiff, via her counsel, is to provide counsel for the defendant with the appropriate means of accessing the property and any of its buildings. That access is to include providing the keys and any access codes for locks to any rooms or any doors.
- [19] The plaintiff and her legal counsel are permitted to remain in attendance on the property during the appraisal. The plaintiff is not to speak with or address the appraiser. Let me pause there for a moment. Mr. Chapman, is there any issue or concern about the plaintiff addressing or speaking with you or the defendant?

- [20] MR. CHAPMAN: My Lord, I would prefer that all communications went through plaintiff's counsel, especially with respect to communications between the plaintiff and the defendant executor, because they are not on good terms, My Lord.
- [21] THE COURT: Okay. Mr. Doebling, that seems to makes sense. You are going to be there this afternoon; that is the plan?
- [22] MR. DOEHRING: Yes, yes.
- [23] THE COURT: Then it makes sense that your client be prohibited from speaking with the defendant. It is probably to her benefit, given the picture I am getting of this situation and these proceedings.
- [24] MR. DOEHRING: Yes, it makes sense.
- [25] THE COURT: Okay. The plaintiff is not to speak with or address the appraiser, counsel for the defendant, or the defendant herself during the course of their attendance at the property. There will be one exception: if the appraiser requires information during the course of his work at the property, then he is to first seek the information from the plaintiff's counsel and the plaintiff's counsel is to provide the information if he has it. If the plaintiff's counsel cannot answer the question or address the issue, then the plaintiff can do so herself.
- [26] After allowing the appraiser onto the property, the plaintiff is not to attend within a 15-foot radius of the appraiser. In other words, she is to stay away from him and keep a distance of 15 feet.
- [27] With respect to what I will call the police-assist clauses and the locksmith provisions of the defendant's application, I am adjourning those generally.
- [28] I am seizing myself of any further applications relating to the appraisal of this property.
- [29] Now, if there is a need to come back before me, Mr. Doebling, you said you are available tomorrow?
- [30] MR. DOEHRING: Yes, I'm in Duncan in the morning, so that's not possible, and in the afternoon I expect to be back in this building in a different court, but arrangements can be made, it's a simple guilty plea that I expect --
- [31] THE COURT: Mr. Chapman?
- [32] MR. CHAPMAN: I will be available and in Victoria for the rest of the week, My Lord.
- [33] THE COURT: Okay. If need be, Mr. Chapman, you can have your police-assist clause and locksmith provisions addressed tomorrow. If it does not go well today, you can come back before me and address those two provisions and any other provisions that you deem necessary. All right?
- [34] MR. CHAPMAN: Yes, My Lord.

- [35] THE COURT: Anything to address?
- [36] MR. CHAPMAN: I don't understand my -- any concerns that my friend may raise, My Lord.
- [37] MR. DOEHRING: No.
- [38] THE COURT: Any issues with that?
- [39] MR. DOEHRING: I'm just trying to simplify the process. If we adjourn it to 2:00 o'clock tomorrow afternoon and we don't need you or need to be here, then we just simply take it off the list. Otherwise, my concern is that tomorrow I'm going to be in Duncan, my friend's going to have to shuffle some paperwork around, it just simplifies the process. However, if he's not interested in doing that, I'm quite happy to leave it as is.
- [40] THE COURT: Let us leave it as it is. Your suggestion, Mr. Doehring, is not an unreasonable one. I recognize that your client is in court, and I trust that she is listening to me. You will obviously explain these reasons to her.
- [41] I expect there will be no problems this afternoon and that the appraisal of the property will take place. If, however, there is a problem and for whatever reason the appraiser is again prohibited from doing his work, then the defendant can get back before me tomorrow to address the problem.
- [42] With respect to costs, I find the plaintiff's conduct in prohibiting the appraiser's work on the 17th to have been obstructive. There appears to have been a misguided anxiety on her part regarding the entire procedure. That anxiety was unnecessarily exacerbated by the late announcement that counsel for the defendant and her client would be attending and the fact that the plaintiff's counsel could not attend.
- [43] It would have been preferable if counsel for the defendant had advised counsel for the plaintiff in a timelier manner that she and the defendant would be attending with the appraiser. That greater notice may well have allowed Mr. Doehring to re-arrange his affairs so that he could be present during the appraisal. That would most likely have resolved the issue.
- [44] At this point in time, I am not satisfied that special costs are required. What I will order is that if this matter returns to me on account of the appraisal being frustrated again, for whatever reason, then counsel for the defendant can argue the issue of special costs for this application. If the appraisal takes place this afternoon, then my order is that the defendant is entitled to her ordinary costs of the application, including short leave.
- [45] So another way of saying that is the defendant is entitled to her ordinary costs of this application, including the short leave, with leave to argue, if this matter comes back before me tomorrow, that the order should have been special costs. At that point in time, I will hear from both of you.

- [46] Mr. Chapman, it is your application, so let me address you first. Anything arising? Any clarifications?
- [47] MR. CHAPMAN: The only thing, My Lord, is that the other part of the application, that is the application to have the proceedings dismissed, is adjourned generally.
- [48] THE COURT: Is adjourned generally, yes, thank you, Mr. Chapman.
- [49] Mr. Doehring, anything arising? Any clarifications required?
- [50] MR. DOEHRING: No, I am concerned about getting this order done and -- but I think we'll act on the order and probably get it entered later, because it's now quarter after 12.
- [51] THE COURT: Well, both of you know the terms. The order is effective now.
- [52] MR. DOEHRING: Thank you.
- [53] THE COURT: Your client is here, Mr. Doehring, and I am confident she has been listening to what has been going on. I have every expectation that you and your friend will work in the best interests of your clients to make this appraisal happen.
- [54] MR. DOEHRING: May I just ask my client if she understands the order?
- [55] THE COURT: Yes, that's a good idea. Thank you.
- [56] MR. DOEHRING: I think it's fair to say that my client understands the order.
- [57] THE COURT: Good. Thank you, gentlemen.
- [58] MR. CHAPMAN: My Lord, I'm sorry, there was one point I want to address.
- [59] THE COURT: Yes.
- [60] MR. CHAPMAN: It is, again, a bit late in the day. I wondered if, because we -- it has taken some time to address these affairs, if the time period from 1:00 to 5:00 could be moved to 1:30 to 5:30?
- [61] THE COURT: Mr. Doehring?
- [62] MR. DOEHRING: No, I don't have any problem with that.
- [63] THE COURT: Okay, so be it. I am amending my order so that the window of opportunity for the appraisal is now from 1:30 pm to 5:30 pm.
- [64] MR. DOEHRING: Thank you.
- [65] THE COURT: All right, thank you, gentlemen.
- [66] MR. CHAPMAN: Thank you, My Lord.

"G.R.J. Gaul J."

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