

CANADA / JUDGMENT

George v. Vossen

2022 BCSC 1924

COURT

Supreme Court of British Columbia

DECIDED

3 November 2022

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

2022 BCSC 1924 George v. Vossen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

George v. Vossen,

2022 BCSC 1924

Date: 20221103

Docket: S-235149

Registry: New Westminster

Between:

Mary Ann George

Plaintiff

And

Patrick Vossen and Rodger Ivan Vossen

Defendants

Before: The Honourable Justice Elwood

Reasons for Judgment

Plaintiff Appearing in Person:

M.A. George

Counsel for the Defendants:

J.M. Jutras

Place and Date of Hearing:

New Westminster, B.C.

June 27, 2022

Place and Date of Judgment:

New Westminster, B.C.

November 3, 2022

Table of Contents

I. INTRODUCTION.. 3

II. BACKGROUND.. 3

III. ANALYSIS.. 6

A. Section 6 of the Partition of Property Act 6

B. Positions of the Parties. 7

C. Rodger's Standing to Request a Sale. 8

D. Is There a "Good Reason" Not to Order a Sale?. 9

IV. CONCLUSION.. 11

I. INTRODUCTION

- [1] This is an application for an order that a property be listed for sale and sold. The property is a cabin that has been in the family of Rodger and May Vossen for more than 40 years. (Without meaning any disrespect, I will refer to the litigants and related parties by their first names.)
- [2] The property is registered in Rodger's name. The use and ownership of the property is governed by an undated written agreement between Rodger, May and their 10 children. One of the children, Mary Ann, commenced this action claiming a beneficial interest in the property.
- [3] Rodger applies in that action for order that the property be sold and that he has exclusive conduct of the sale. Rodger wants to sell the property because he and May no longer want to maintain a property they will eventually be unable to use because of their ages.
- [4] Mary Ann opposes the order. She argues that a sale would defeat her interest in the property, which includes a right, she says, to continue using the cabin. She also argues that a sale requires a family vote under the cabin agreement.

- [5] For the reasons that follow, I have concluded that an order for sale cannot be made on a summary judgement or summary trial basis.

II. BACKGROUND

- [6] Rodger is the registered owner of a parcel of land with a cabin located on Lesser Fish Lake in the Lillooet District of British Columbia.
- [7] Rodger is 94 years old. His wife, May, is 88 years old. Rodger and May have 10 children. Mary Ann is the eldest daughter. Patrick is her youngest sibling.
- [8] Rodger and Mary Ann found the cabin in 1981 and verbally agreed to purchase it together. The purchase price was \$55,000. The down payment was \$15,000. The balance of \$40,000 was paid under an agreement between Rodger and the vendor, over time between May 1981 and August 1983. Title to the property was registered in Rodger's name alone.
- [9] Rodger and Mary Ann disagree on how much they contributed to the down payment. Rodger says he made payments totalling \$9,871.31 and Mary Ann contributed \$5,300. Mary Ann says she paid \$10,000 and Rodger contributed \$5,000.
- [10] Rodger drew up an agreement governing the ownership and use of the cabin. Mary Ann did not sign the agreement. She deposes that she was "overlooked" as a signatory.
- [11] The agreement provides that the ownership of the property is in proportion to the monetary contribution of each family member: first, to the original purchase price including legal expenses; and, second, to the on-going expenses, such as taxes, insurance and utilities.
- [12] The agreement further provides that "a vote shall be taken on any issue which affects the property", and sets out a set of voting rules. Under a heading "Property Sale", the agreement provides:

In the event of the sale of the property any owner or group of owners shall have first option to purchase but the owners intending to buy shall have no vote in the decision of the sale.

If someone outside of the immediate family wishes to purchase shares this will only be allowed after a unanimous vote.

- [13] For some time, Mary Ann made use of the cabin and made monthly contributions to the expenses. At some point, however, tensions developed between Mary Ann and her parents. Mary Ann deposes that, from about 2009, Rodger, May and Patrick have excluded other family members from using the cabin. The last time Mary Ann was at the cabin was in the summer of 2009.

- [14] From 1981 to 2009, Rodger kept a record of each family member's financial contributions to the cabin in a handwritten ledger. He did not keep any records beyond 2009. From 2009 onwards, Rodger and May were the only family members to pay the maintenance expenses to operate the cabin. Also, according to the ledger, Mary Ann has not made any financial contribution towards the maintenance of the cabin since about 1996.
- [15] On November 6, 2020, Patrick made an offer to the other members of the family who had contributed financially toward the cabin, including Mary Ann, to purchase the property at its BC Assessment value of \$260,600, and requested their response by November 20, 2020.
- [16] Patrick prepared a table in support of his proposal in which he calculated the percentage ownership of each family member based on Rodger's ledger of their contributions to 2009. According to this table, Mary Ann owned an 11.61% interest in the property.
- [17] Mary Ann objected to the sale to Patrick. Mary Ann deposes that she wanted to visit the cabin again with her family to determine whether they would want to continue using it for the holidays. Mary Ann further deposes that there was no consensus among the family members whether to sell the property to Patrick, and that no meeting was held to discuss and vote on Patrick's offer.
- [18] On January 12, 2021, Mary Ann obtained an appraisal that appraised the value of the property at \$290,000, almost \$30,000 more than Patrick's offer.
- [19] On January 18, 2021, Mary Ann commenced this action against Rodger and Patrick, seeking, amongst other relief, a determination of her interest in the property, a declaration that Rodger holds her interest in trust for her and a declaration that the cabin agreement is null and void. On January 20, 2021, Mary Ann registered a certificate of pending litigation against title to the property.
- [20] Mary Ann claims a minimum of 18.18% ownership in the property. She deposes that the ledger is inaccurate because Rodger only recorded that she contributed \$5,300 toward the down payment. Mary Ann also deposes that she made regular monthly payments from 1982 to 1985.
- [21] In a counterclaim, Rodger and Patrick seek an order under s. 6 of the Partition of Property Act, RSBC 1996, c. 347, that the property be listed for sale and sold.
- [22] On January 27, 2022, Rodger and Patrick gave written notice through counsel to Mary Ann that, should she wish to make a counteroffer to Patrick's offer or other proposal to purchase the property she must do so by March 10, 2022, or she would be "deemed to have waived" the right of first refusal under the agreement.
- [23] Patrick deposes that he no longer wants to purchase the property.

III. ANALYSIS

[24] Rodger applies pursuant to Rule 9-6 (summary judgement) or 9-7 (summary trial) of the Supreme Court Civil Rules for an order under s. 6 of the Partition of Property Act that the property be listed for sale and sold.

A. Section 6 of the Partition of Property Act

[25] Section 6 requires the court to order a sale sought by a co-owner with more than a 50% interest in the property unless the court sees good reason to the contrary:

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.

(emphasis added)

[26] In *Sahlin v. The Nature Trust of British Columbia*, 2011 BCCA 157, the Court of Appeal described the discretion conferred by s. 6 as "broad and unfettered": the court may refuse to order a sale when "having regard to the particular facts and circumstances, such an order would not do justice between the parties" (para. 24).

B. Positions of the Parties

[27] Rodger argues that an order for a sale of the property can be made on a summary judgement application because there is no triable issue that could prevent the sale. Alternatively, he argues that a decision on whether there is "a good reason to the contrary" is suitable for summary trial.

[28] Rodger seeks an order that the property be sold because he no longer wants to maintain the cabin financially. Rodger and May are elderly and do not want to continue paying for the maintenance of a property they are no longer able to fully enjoy. Also, Rodger seeks an end to the dispute over use and ownership of the property. He deposes that Mary Ann's actions and claims have taken an immense emotional toll on him and May.

[29] Rodger argues that Mary Ann's sole interest in the cabin is a contractual right under the Vossen family agreement to a right of first refusal on a proposed sale, which he says she has failed to exercise, or a payout of her proportionate financial contribution toward the purchase and maintenance of the cabin.

- [30] Rodger submits that any concern Mary Ann may have about the value of the property can be resolved by determining what the market will pay and a term of the order that any the sale is subject to court approval or written agreement between Rodger and Mary Ann.
- [31] Although he acknowledges a conflict in the evidence with respect to Mary Ann's entitlement based on her financial contribution, Rodger argues that this issue can be resolved following a sale. If the parties cannot agree on the percentage distributions from the sale, Rodger says the net sale proceeds after real estate commission, taxes and other municipal charges will be paid into his lawyer's trust account pending further court order or agreement of the parties.
- [32] Mary Ann raises a number of reasons why she says a sale should not be ordered at this time. First, she argues that a sale would defeat her interest in the cabin. In the amended notice of civil claim, Mary Ann alleges that Rodger agreed to hold the cabin or her proportionate interest in the cabin in trust for her. Mary Ann also argues that a sale is unnecessary because, if Rodger and May no longer want to own the cabin, under the agreement, they can sell their shares to another family owner. Further, she argues that according to the agreement, a sale to someone outside the family requires a unanimous vote, and this has not taken place. Finally, Mary Ann argues that she wants to use the cabin and she is willing to take over the expenses related to the cabin.

C. Rodger's Standing to Request a Sale

- [33] For the purposes of this application, I will assume that Rodger has standing under s. 6 of the Partition of Property Act to request a sale of the property.
- [34] Rodger is the registered title holder of the property. His application proceeded on the basis he is the only party "interested in the property" within the meaning of s. 6 of the Partition of Property Act.
- [35] Section 23 of the Land Title Act, RSBC 1996, c. 250, provides that Rodger's registration is conclusive evidence at law and in equity of his fee simple title to the land, subject only to the exceptions listed in s. 23.
- [36] However, section 6 of the Partition of Property Act requires that the party or parties requesting a sale be "interested, individually or collectively, to the extent of 1/2 or upwards in the property involved". There may be an argument that the "parties interested" in a property means more than the parties registered on title as the fee simple owners. There may be an argument that interested parties includes those who hold an equitable interest in the land.

- [37] In this case, the Vossen family agreement purports to create an "ownership" interest in the property in proportion to the financial contribution of each family member. According to the table prepared by Patrick in November 2020, based on Rodger's ledger up to August 2009, Rodger owned 31.53% of the property and Patrick owned 9.23%, for a total of 40.76%. There is no evidence of the positions of the other owners, except Mary Ann.
- [38] Rodger and May took on all of the operating expenses after August 2009; however, there was no evidence on this application that their contributions push the combined interests of Rodger and Patrick over 50%.
- [39] In other words, there is no evidence that Rodger and Patrick hold 50% or more of the ownership interest under the agreement, if that is required by s. 6 of the Partition of Property Act to request a sale.
- [40] Mary Ann is currently unrepresented in these proceedings. She did not raise an objection to Rodger's standing to request a sale alone or with the support of Patrick alone. The issue was not argued before me.
- [41] Accordingly, as stated, for the purposes of this application, I will assume, without making a final decision, that Rodger is entitled to request a sale under s. 6 of the Partition of Property Act.

D. Is There a "Good Reason" Not to Order a Sale?

- [42] In my view, there is a triable issue whether there is a "good reason" not to order a sale of the property. I am unable to find the facts necessary to decide the issue on this application. Accordingly, an order for a sale cannot be made, whether on a summary judgement application (see Rule 9-6(5)) or on a summary trial application (see Rule 9-7(15)(i)).
- [43] Mary Ann deposes that she understood when the cabin was purchased that Rodger would hold her interest in trust for her. She argues that Rodger's duties as trustee include an obligation to allow her to use the cabin, which he has breached by refusing her access to the property. She deposes that she wants an opportunity to decide whether to resume using the cabin and recognizes her obligation to contribute to the expenses if she does so.
- [44] It may be, as Rodger argues, that Mary Ann's interest in the property only gives rise to a right to a share of the net proceeds from a sale. However, in my view, a determination of that issue requires evidence of the communications between Rodger and Mary Ann when they purchased the cabin. There is insufficient evidence on this application for me to determine the scope of Mary Ann's interest and the equities between Rodger and Mary Ann.

- [45] Further, I am unable to determine whether the written agreement on which Rodger relies requires a vote of the owners before the property is listed for sale. I do not agree with Mary Ann that the agreement requires a unanimous vote before the property can be sold to someone outside the family. A unanimous vote is only required if someone outside the family wants to purchase shares. However, the agreement also requires that "a vote shall be taken on any issue which affects the property". A sale is something that affects the property.
- [46] In an email to his family on January 16, 2021, Rodger noted that the agreement required family members to make "regular payments" and further provided that persons not making "regular payments" would "not be allowed ownership shares". Rodger argued that, as he and May were the only ones paying expenses on the cabin since 2009, they were the only family members who were allowed to vote on whether they would be selling the cabin.
- [47] In my view, the agreement is ambiguous on the parties' voting rights. First, it is unclear that family members who contributed to the original purchase lose their ownership shares and voting rights if they do not make regular payments. Second, it is unclear that family members who made regular payments in the past lose their ownership shares and voting rights if they do not continue making regular payments. I am unable to properly interpret the agreement on the basis of the evidence and submissions on this application.
- [48] Fundamentally, I am unable to determine whether a sale and distribution of the proceeds is the just and equitable thing to do in the circumstances.
- [49] I appreciate that the current situation is unacceptable to Rodger and May. Understandably, they do not want to continue paying for the maintenance of a property they are no longer able to fully enjoy.
- [50] However, a summary disposition of Mary Ann's objection to the sale is not appropriate on the current evidence. A term of the order requiring court approval would serve to ensure that the sale was provident. However, once the property is sold, Mary Ann's claim to a right to use the cabin or vote on its fate would be moot. These issues can only be decided fairly on a more developed evidentiary record.
- [51] It should be emphasized: I have not decided there is good reason to refuse an order for a sale of the property; I have only decided that a determination of that issue cannot be made on a summary basis on the current evidence.
- [52] Rodger notes that Mary Ann has not taken any steps to prove her claim for over a year. This is concerning because Mary Ann's claim is delaying a decision on whether to order a sale of the property.

[53] While I am unable to grant judgement on this application, I consider that the proceeding ought to be expedited. In accordance with Rule 9-7(17), I will order the parties to attend a case planning conference and establish a case plan to bring the case to trial in a way that promotes as far as possible a just, expeditious and inexpensive resolution of the issues raised by this application.

IV. CONCLUSION

[54] The application for an order under s. 6 of the Partition of Property Act that the property be sold is dismissed.

[55] The parties will attend a case planning conference on a mutually convenient date. I will direct the defendants to request the case planning conference and prepare a case plan proposal. The case plan proposal should include a proposed trial date as soon as possible. Mary Ann must respond to the case plan proposal within 14 days of receipt.

[56] I am not seized of this proceeding; but if it would be of assistance, the parties may ask that the case planning conference be set before me on any mutually convenient morning at 9:00 am.

[57] Mary Ann is entitled to costs of this application in the cause.

"Elwood 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/22/19/2022BCSC1924.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/george-v-vossen-2022>

Prepared on 29 October 2026 · Esheria