
CANADA / JUDGMENT

Goodyear v. Akerley

2018 BCSC 1095

COURT

Supreme Court of British Columbia

DECIDED

11 June 2018

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2018 BCSC 1095 Goodyear v. Akerley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Goodyear v. Akerley,

2018 BCSC 1095

Date: 20180611

Docket: S82245

Registry: Nanaimo

Between:

Travis Glen Goodyear aka Travis Glenn Goodyear

Petitioner

And

Carmen Marie Akerley

Respondent

Before: The Honourable Mr. Justice Kent

Oral Reasons for Judgment

Counsel for the Petitioner:

R. Dean Oliphant

Counsel for the Respondent:

Simon A. Gray-Schleihauf

Place and Date of Hearing:

Nanaimo, B.C.

Place and Date of Judgment:

Nanaimo, B.C.

June 11, 2018

- [1] THE COURT: In December 2013, Mr. Goodyear and Ms. Akerley purchased some property at 3755 15th Avenue, Port Alberni. There is some dispute whether the transaction between the parties was a loan agreement where Mr. Goodyear advanced the amount necessary to make the down payment for the purchase, as Ms. Akerley asserts, or whether, as Mr. Goodyear asserts, the transaction was a joint venture in an investment property.
- [2] Ms. Akerley lived in the property following its purchase and made the payments on the mortgage taken out to fund the purchase.
- [3] In July 2017 Mr. Goodyear issued petition proceedings for the sale of the property and the division of any profits that might be realized.
- [4] The matter came on for summary trial before Madam Justice Adair, however, the parties reached a compromise before the trial proceeded on the merits. That agreement was formalized by a consent order issued by Madam Justice Adair on March 26, 2018. I will not recite all of the terms of that order here. Suffice it to say, the order provided options for the parties to buy out each other's interest.
- [5] The first option was granted to Ms. Akerley who was required to pay to Mr. Goodyear the sum of \$46,500 as full and final settlement of his interest in the property on or before 4:00 p.m., April 30, 2018. The order provided the mechanics for the property to be refinanced, the mortgage paid out, and title to be conveyed solely to Ms. Akerley.
- [6] The second option was granted to Mr. Goodyear in the event Ms. Akerley failed to pay the said \$46,500 on or before four p.m., April 30, 2018. That option granted Mr. Goodyear the entitlement to purchase Ms. Akerley's interest for \$40,000. That payment was to be made by 4:00 p.m., May 22, 2018, at which time Ms. Akerley was to provide vacant possession of the property. Similar terms were inserted in the order respecting the mechanics for refinancing and transfer of title.
- [7] It turns out that Ms. Akerley experienced difficulty in securing the refinancing necessary to buy Mr. Goodyear's interest. It appears she was eventually able to secure a loan from First National Financial, verbal confirmation of which was delivered to her on April 25, 2018. On Thursday, April 26, 2018, First National emailed the package of financing documents to Ms. Akerley's solicitor.

- [8] Shortly after 7:00 a.m. on April 27, the solicitor for Ms. Akerley emailed the solicitor for Mr. Goodyear seeking to discuss matters directly. It appears such a discussion occurred around about 8:00 or 9:00 a.m., but there is no evidence before me as to what actually happened until 4:00 p.m., at which time the solicitor for Ms. Akerley emailed to the solicitor for Mr. Goodyear a copy of some correspondence from First National related to the proposed mortgage transaction.
- [9] It should be noted that in the email sent earlier that day at 7:00 a.m. or thereabouts, the solicitor for Ms. Akerley had indicated that everything was in place in respect of the financial arrangements; however, "mechanical challenges to completing by Monday" existed. Evidently there was some discussion thereafter about an extension of the deadline in Ms. Akerley's favour. The mechanical challenges to which her solicitor referred included the preparation and execution of all of the documentation necessary to complete the refinancing and transfer of title.
- [10] April 27 was a Friday. At 12:10 p.m. on Monday, April 30, 2018, the solicitor for Mr. Goodyear emailed advice to the solicitor for Ms. Akerley that his client did not agree to an extension. Rather, Mr. Goodyear wished to buy out her interest pursuant to the order issued by Justice Adair. He advised his client had financing approved and was ready to go for the May 22 closing date, set out in the Adair order.
- [11] The solicitor for Ms. Akerley immediately replied, indicating that he would be returning to court. A few minutes later a formal letter was emailed by the solicitor for Mr. Goodyear to the solicitor for Ms. Akerley. The immediate response from the latter was another brief statement that there would be a court application for relief from forfeiture.
- [12] On May 2, 2018, Mr. Goodyear received a letter from the CIBC approving credit for the purposes of paying out Ms. Akerley. On May 3, a letter was sent to the solicitor for Ms. Akerley respecting that financing. A further follow-up letter occurred on May 14. On May 17, 2018, the notary public who had been retained by Mr. Goodyear to complete the transaction faxed the necessary closing documents to the solicitor for Ms. Akerley. The transaction did not close because Ms. Akerley refused to sign the documents in question.
- [13] That resulted in the two applications before me today. Essentially Mr. Goodyear applies to enforce the sale option in his favour. For her part, Ms. Akerley applies to seek an extension of time to complete her option.
- [14] Ms. Akerley invokes s. 24 of the Law and Equity Act, R.S.B.C. 1996, c. 253, and the common law respecting relief from forfeiture. She also invokes Rule 22-4(2) of the Supreme Court Civil Rules, which grants the court the ability to extend any period of time provided for by an order of the court, referring to the order of Madam Justice Adair.
- [15] Ms. Akerley argues in support of relief from forfeiture that the house is her home and that she will effectively be evicted in the event Mr. Goodyear succeeds. She says this situation is akin to a failure to repay a loan and that it is what might be considered to be the traditional

situation where relief from forfeiture would be warranted if the equitable considerations were in her favour. She emphasizes that there was no intentional default on her part and there is no meaningful prejudice to Mr. Goodyear. The difficulty with securing refinancing lay not with Ms. Akerley's behaviour but, rather, with her qualifications for financing as determined by various institutions.

- [16] For his part, Mr. Goodyear says that as a matter of law his option under the Adair order has been triggered and that his legal rights have accrued in his favour. He has taken all steps necessary to ensure the transaction can close and indeed his notary public issued the correspondence on May 17, 2018, to the solicitor for Ms. Akerley, enclosing the documents that had to be signed to perfect the transaction and setting out the undertakings on which that transaction might be completed.
- [17] *Chancellor v. Chancellor*, 2013 BCSC 1519, stands for the proposition that an agreement between the parties embodied in a court order, such as the dual options found in this case, does not involve a situation where existing rights are being relinquished or extinguished and that therefore s. 24 of the Law and Equity Act does not apply for the purposes of providing relief from forfeiture. *Bray Leasing Ltd. v. Johnson*, 2005 BCCA 379, is to the same effect: the first option automatically expired according to its terms and no question of forfeiture arises.
- [18] If that conclusion was incorrect, the court in *Chancellor* went on in the alternative to state that it would not grant relief from forfeiture on the facts of the case in any event. Relief against forfeiture is discretionary and equitable in nature and in the court's opinion the applicant in that case did not come to court with clean hands.
- [19] Even if I have the equitable jurisdiction, whether under s. 24 or simply through an application of the rule referred to above, to grant the relief that is sought by Ms. Akerley, I decline to exercise it in her favour.
- [20] There was considerable delay on her part in securing refinancing. That is why she found herself in a difficult situation on the eve of the date upon which the transaction was to close. None of that, however, was the fault of Mr. Goodyear. His rights to purchase the home vested when Ms. Akerley failed to pay the money that was due to Mr. Goodyear on the date and at the time required by the Adair order. He has done everything to complete the transaction in a timely manner and it is simply Ms. Akerley's refusal to complete that has resulted in the application today.
- [21] I might add that I am not satisfied with the quality of the evidence that was submitted to me on this application. No formal objection was taken to the hearsay evidence of various persons, including legal assistants from law firms. Some of this evidence related to matters critical to the merits of the case, including, for example, whether or not certain conditions regarding an appraisal had been completed.

- [22] As well, I am not satisfied today that the mortgage refinancing is even still available to Ms. Akerley. The materials that have been provided me today indicate that the refinancing offer to Ms. Akerley expired almost one month ago. There is no evidence in front of me today which allows me to conclude that, from a practical perspective, Ms. Akerley is still able to complete the transaction. That militates very strongly against the exercise of any discretion in her favour today.
- [23] Consequently, I dismiss Ms. Akerley's application filed May 29, 2018.
- [24] I grant Mr. Goodyear's application filed May 24, 2018.
- [25] I order Ms. Akerley to forthwith execute all documents necessary to complete the transaction and to deliver them to either the solicitor for Mr. Goodyear or his notary public.
- [26] In the event Ms. Akerley fails to do so within seven days of today's date, then I order the Registrar of this Honourable Court to sign the transfer and other required documents to ensure the transfer of the property into the name of Mr. Goodyear alone. However, that transaction is to complete on the undertakings and in the manner set out in the letter issued by Clarkstone and Dearin to Shields Harney dated May 17, 2018.
- [27] Costs will follow the event.
- [28] Is there anything further?
- [29] MR. OLIPHANT: The Scale B, My Lord? Ordinary difficulty?
- [30] THE COURT: Yes.
- [31] MR. GRAY-SCHLEIHAUF: Nothing further, My Lord.
- [32] THE COURT: Thank you.

"KENT J."

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