

CANADA / JUDGMENT

Grant v. Grant Estate

2025 BCSC 1077

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1077 Grant v. Grant Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grant v. Grant Estate,

2025 BCSC 1077

Date: 20250611

Docket: S195942

Registry: New Westminster

Between:

Dean Andrew Grant and Robyn Sue Schmitz

Petitioners

And

The Estate of the Late Tamy Jenny Laurie Grant

also known as Tammy Laurie Jennie Grant

Respondent

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for the Petitioners:

J. Dhillon

Counsel for the Respondent:

S. Somers

Place and Date of Trial:

Port Coquitlam, B.C.

February 24-26, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 11, 2025

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Introduction

- [1] The petitioners bring this claim under the Partition of Property Act, RSBC 1996, c. 347 [PPA]. Their petition in this matter sets out a variety of relief. However, at trial, the petitioners, Mr. Grant and Ms. Schmitz, sought an order that they be allowed to purchase the respondent's 10% interest in a residential property, at a value determined as of February 2012. The respondent agrees the property should be sold, but submits the valuation should be at the date of trial. At trial, both parties agree that the petitioners should buy out the respondent. The only real issues between them are the valuation date, and the petitioners' claim to certain equitable deductions.

Background

- [2] The petitioner Dean Grant was the brother of Tamy Grant, who passed away in August 2011. Mr. Grant is married to the petitioner Ms. Robyn Schmitz. Ms. Grant was in a common law relationship with Mr. Ivan Mahood prior to her death.

- [3] In 2005, Mr. Grant and Ms. Schmitz were interested in buying a home in Maple Ridge, BC. They talked to Ms. Grant and Mr. Mahood about the four of them purchasing a house together, where Mr. Mahood could have a garage to work on cars, and Ms. Schmitz could operate a daycare. Ms. Grant and Mr. Mahood would live in the basement suite, and Mr. Grant and Ms. Schmitz would live in the upstairs suite.
- [4] Mr. Grant and Ms. Schmitz qualified for a mortgage that would allow them to purchase a home valued at \$295,000. The house they wanted to buy in Maple Ridge cost \$317,000. In order to purchase the home, they needed Ms. Grant to be added as a borrower on the mortgage. They agreed that Ms. Grant would receive a 10% interest in the property, and Ms. Grant would agree to be added to the mortgage.
- [5] The parties purchased the home, with the address 11692 - 215th Street, Maple Ridge, BC. Ms. Grant was registered as holding an undivided 1/10 interest, and Mr. Grant and Ms. Schmitz were registered as joint tenants holding an undivided 9/10 interest.
- [6] The parties reached an agreement on or about March 15, 2005 regarding the purchase and use of the property, that had the following material terms:

Robyn and Dean Grant agree to incur 90% of the cost of maintenance of the property inside and out and Tamy Grant agrees to incur the other 10%.

Dean and Robyn Grant own 90% of the title, with 10% to Tamy Grant. Tamy Grant will pay to Dean and Robyn Grant \$750.00 on the first day of the month for the term of the mortgage. If the total mortgage payment goes up after the five years, then there will be monetary adjustment made, which all parties will agree upon. If the total mortgage payment goes down, then there is no monetary change. After the 21-25 year term of the mortgage is paid in full. The monetary payment will be lowered, equaling 10% of property taxes.

If at any time after five years Dean and Robyn want to sell the property, they will give Tamy Grant four months notice, in writing. Dean and Robyn Grant will receive 90% profit, after all disbursements on the house and property has been made. Example: first mortgage and realtor. Tamy Grant will receive the other 10%.

(the "Agreement")

- [7] The Agreement contained other terms regarding whose responsibility it was to make payments for certain improvements. These obligations were distributed between Robyn and Dean Grant on the one hand, and Tamy Grant on the other hand. The Agreement was signed by the three parties, and witnessed by Mr. Mahood. The petitioners submitted that a later agreement was reached, but no written evidence of such an agreement was produced, and Mr. Mahood denied any such further agreement. I find that the only agreement between the parties was the Agreement made on or about March 15, 2005.
- [8] Ms. Grant and Mr. Mahood moved into the basement suite. They renovated the suite, and Mr. Mahood made a number of improvements to the garage.

- [9] In 2008, the parties refinanced the mortgage in the amount of \$320,000. Following the renewal, Ms. Grant deposited \$346.16 bi-weekly into the HSBC mortgage account. Mr. Mahood testified that the change in payment timing and amount was done because the payments under the new mortgage were made bi-weekly, but the total amount paid over the year was the same amount as was paid when they paid \$750 once a month.
- [10] In the spring of 2011, Ms. Grant became very ill with cancer. She died on August 15, 2011. Mr. Mahood continued to live in the basement suite, and continued to pay \$346.16 bi-weekly into the HSBC mortgage account. In February 2012, Mr. Mahood moved out of the home, and stopped making any contributions towards into the mortgage account.
- [11] Ms. Schmitz testified that the petitioners rented out the basement suite for three years after Mr. Mahood left. Mr. Grant testified that they rented out the suite for two to two and half years. Both witnesses agreed that after they stopped renting the suite, their family began using the basement suite. Their daughter now lives in it with her boyfriend.
- [12] The interest held by Ms. Grant during her lifetime is still registered in her name, notwithstanding the fact that fourteen years have passed since her death. While Mr. Mahood was granted the administration of Ms. Grant's estate in 2019, he is not the registered owner of her interest.

Issues

- [13] This petition was brought in 2017 under the PPA. No claim in contract was pleaded, although the petitioners made breach of contract claims in argument at trial.
- [14] The petition sought an accounting of repairs required following damage allegedly caused by the respondent to the basement of the home. Evidence relating to the renovations took up a great deal of time at trial. Ultimately, however, the evidence established that, one month following Mr. Mahood's move out of the suite, there was a leak in the basement and all of the cabinetry and other materials were completely replaced under an insurance claim. As a result, the petitioners agreed that there was no basis to this claim, and the accounting was abandoned.
- [15] The petition sought orders related to a sale of the property, and the mechanics of how that sale would be effected. Both parties agreed at trial that the petitioners would purchase the respondent's interest in the property, making unnecessary the orders sought to list and sell the property on the market, and divide the proceeds.
- [16] As a result, the issues at trial can be summarized as:
- What is the appropriate date for valuing the respondent's interest in the house?
 - How should the value of the respondent's interest be determined?

- c) Should there be any equitable adjustments to the value of the respondent's interest in the house?

What is the appropriate date for valuing the respondent's interest in the house?

- [17] The petitioners originally submitted that the date for the valuation of the respondent's interest should be the date of her death. In submissions, the petitioners clarified that their claim was not based on an entitlement arising from the death of Tamy; rather their claim was based in Tamy's estate's failure to continue to make financial contributions under the Agreement. As a result, at trial the petitioners submitted that the valuation of the property should be as of February 2012, when Mr. Mahood moved out and stopped making any payments pursuant to the Agreement.
- [18] The petitioners made submissions on two cases with respect to the valuation date. These are *Re Novikoff* (1968) CanLII 633 (BCSC), 1 DLR (3d) 484, and *Morris v Morris*, 1982 CanLII 501 (BCCA), 41 BCLR 239. *Morris* relies on *Re Novikoff*, and so I will refer only to *Morris*.
- [19] In *Morris*, two adult children brought a wills variation application seeking provision for their proper maintenance and support from their father's estate. Their father's will left the entire estate to his wife (not the children's mother). The trial judge dismissed the children's application. The court of appeal found that the testator ought to have made provision for his children, and set about valuing the interests of the children in the estate. The court held that, when determining what is adequate provision for the children, and what is just and equitable, the date of death is the appropriate date for valuation. The reasoning behind this focussed on the changing property values in the years since the date of death, and the concern in that case that the parties sought to introduce new evidence on appeal as to the more recent changes in property values.
- [20] In the case before me, the petitioners advance their case under the PPA. This is not an estate case. The respondent is an owner in fee simple of 10% of the property at issue. The considerations are entirely different than in an estate proceeding.
- [21] The petitioners also submit at trial, but not in their pleadings, that they are relying on the Agreement. They assert that the respondent (through her estate) breached the Agreement in February 2012 when Mr. Mahood stopped making any required payments. This breach of contract, they argue, supports a valuation date as of February 2012 - the date of the breach. No authority for this proposition was provided to me.
- [22] The respondents submit that so long as Tamy has an indefeasible interest in the property, she is entitled to have her interest valued at current market value. The respondents rely on authorities decided under the PPA.

- [23] In *Al-Khafaji v. Innotech Venture Corp.*, 2023 BCSC 324, the court confirmed that the intent under s. 8 of the PPA (purchase of share of person applying for a sale), was for the property to be sold at fair market value following the court's order. As such, where one party purchases the other's interest, the valuation should be at current value - consistent with the intent of s. 8.
- [24] In *Wood v. Walsh*, 2009 BCSC 569 [Wood], in a case brought under the PPA, the court addressed a situation comparable to the case before me. The parties owned a property in joint tenancy until 2007, when the joint tenancy was severed and the parties became tenants in common. At trial there was an issue around whether the parties reached an agreement to have Ms. Wood transfer her share of the property to Ms. Kaitt in 2001; the court found that no such agreement was established on the evidence. In 2001, Ms. Wood moved out of the property, and Ms. Kaitt continued to live in the property, and took over all mortgage payments and costs associated with the property. Ms. Kaitt also rented out a part of the property over the years, and performed renovations to the property. Following 2001, the mortgage was renewed several times. On one mortgage renewal, Ms. Wood refused to sign the renewal and Ms. Kaitt was forced to accept the mortgage rolled over at a higher interest rate.
- [25] In *Wood*, Ms. Wood argued that the valuation date for her interest in the property should be the value at the time of sale, and not the date of separation. Ms. Kaitt argued that fairness required the valuation date to be the date of separation, because after 2001 she assumed all responsibility for the mortgage and improving the house and the property. She argued it would be unfair for Ms. Wood to receive the benefit of her work, which resulted in an increase in property value.
- [26] In *Wood*, the court reviewed the doctrine of indefeasibility of title, as articulated in the Land Title Act, RSBC 1996, c. 250, s. 23(2). The court held that the Act "creates a statutory presumption that persons registered on the title of the property are presumed to hold the legal and equitable interest conveyed by the registrar." (para. 15). The presumption can be displaced by two equitable principles, one of which is the enforcement of an agreement between the parties in order to prevent unjust enrichment. The court relied on *Skender v. Skender*, 2005 BCSC 418, aff'd 2006 BCCA 162, which confirmed that such an agreement is one wherein the parties agreed that the interests on title did not reflect the parties' true interests.
- [27] In the case before me, there is no evidence of an agreement between the parties to terminate Ms. Grant's legal interest in the property at any time before her death, nor by her estate after her death. The Agreement does not provide for a termination of Ms. Grant's interest in the property upon her failure to make the required payments. Rather, the Agreement sets out a process for the buy out of Ms. Grant's interest should the petitioners decide they wanted to sell the property.

[28] As such, I find that Ms. Grant's estate continues to hold indefeasible title to 10% of the property.

[29] Wood held that under the PPA the value of property is determined by the sale price, and not an appraised value. Because Ms. Kaitt remained a holder of an indefeasible interest in the land, and the lands were to be sold under the PPA, the valuation date was the date of sale.

[30] In the case before me, the parties have agreed that rather than sell the property on the open market, the petitioners will purchase the interest of the respondent. Nevertheless, the foundation of this action remains the PPA. I find that the valuation date for the respondent's interest in the property, is the date of trial when the orders for the sale of the respondent's interest to the petitioners are made.

How should the value of the respondent's interest be determined?

[31] No current appraisal was in evidence at trial. In argument, the parties agreed that, should I order a current value for the property, through counsel the parties would agree on one appraiser, and would share the costs of the appraisal equally.

[32] I find that the value of the respondent's 10% interest in the property will be based on an appraisal of the property as of the date of trial, such appraisal to be paid for equally by both parties.

Should there be any equitable adjustments to the value of the respondent's interest in the house?

[33] The petitioners submit that an adjustment to the purchase price should be made to reflect the fact that the respondent ceased contributing under the Agreement in February 2012.

[34] The respondent submits that if the petitioners claim for unpaid expenses, the respondent is entitled to occupational rent for the petitioners' use of its share of the house since 2012.

[35] In Wood, the court referenced the case of *Bernard v. Bernard*, (1987), 12 B.C.L.R. (2d) 75 (S.C.) for the proposition that when a claim for expenses is made, the claimant must submit to being charged with occupational rent. In *Bernard*, the court deals extensively with this issue in the context of a partition action:

[14] The starting point for the first is the general rule that there is no right to charge an occupying owner with an occupation rent. In *M'Mahon v. Burchell* (1826), 2 Ph. 127, 41 E.R. 889 (L.C.), Cottenham L.C. rejected a claim for occupation rent, saying at pp. 134-35:

for the effect would be, that one tenant in common, by keeping out of the actual occupation of the premises, might convert the other into his bailiff; in other words, prevent the other from occupying them, except upon the terms of paying him rent. There is nothing in the Acts of Parliament to lead to that conclusion, which is contrary to the law as clearly established from the time of Lord Coke downwards.

A well recognized exception to that rule is that in a partition action, where the occupying owner claims for expenses, such as mortgage interest, taxes, insurance, repairs and improvements, he must submit to be charged with occupation rent: *Rice v. George* (1873), 20 Gr. 221; *Re Curry*; *Curry v. Curry* (1898), 25 O.A.R. 267; *Mastron v. Cotton*, 1925 CanLII 464 (ON CA), 58 O.L.R. 251, [1926] 1 D.L.R. 767 (C.A.), a unanimous decision of a four-man court. The election to claim for expenses and to be liable for rent rests with the occupying owner: *Grinde v. Grinde* (1977), 1977 CanLII 575 (AB KB), 3 Alta. L.R. (2d) 280, 5 A.R. 561 (T.D.). Thus, where no such claim is made, he will not be charged: *Osachuk v. Osachuk*, 1971 CanLII 997 (MB CA), [1971] 2 W.W.R. 481, 18 D.L.R. (3d) 413 (Man. C.A.); see also *McCormick v. McCormick*, [1921] N.Z.L.R. 384.

- [36] In *Wood*, the court assessed occupational rent at the amount received by Ms. Kaitt from renting out the property. This amount was then deducted from the expenses being claimed:
- [38] Because Ms. Kaitt is claiming for expenses related to the maintenance of the property, including taxes, mortgage interest, repairs, and improvements, she must, therefore, be charged with occupational rent for the period she has resided in the property after separation. I set the occupational rent at \$500 per month from September 2001 through 2002, \$600 per month for 2003 and 2004, \$750 per month for 2005 and 2006, and \$900 per month from January 2007. I base this on the amount Ms. Kaitt has received in rental income, which must be accounted for and set off from Ms. Kaitt's credit for the payments that she has made on the mortgage principal since September 2001.
- [37] In the case before me, the evidence as to the value of the rent received was scant. The petitioners testified that they received \$800/month for some period of time, but did not receive rent for the majority of the time. The respondent provided no evidence of what reasonable rent for the suite would be in the years leading up to trial. The petitioners did have sole use and occupation of the whole property from February 2012 until the present and, as they are claiming expenses, occupational rent must be brought into the calculation. I find that \$750/month is a reasonable amount of rent for the suite. This is the amount the respondent agreed to pay for her share of the house under the Agreement, and I accept that as a reasonable basis for the calculation of occupational rent. From February 2012 to the date of trial is a total of 156 months. As such, the total occupational rent to be set off against expenses is \$117,000.
- [38] The expenses claimed by the petitioners are the respondent's contributions to the mortgage under the Agreement. The parties agreed that the respondent would pay no less than \$750/month. After the first five years of the mortgage, if the total mortgage payment increased on renewal, the respondent's contribution would be adjusted. No specific adjustment formula was included in the Agreement, and it was left to the parties to determine what the amount would be.

- [39] In 2008 the parties refinanced the mortgage, and the maturity date was July 11, 2013. The mortgage payments were made to the bank bi-weekly in the amount of \$755.80. The respondent paid into the mortgage account \$346.16 bi-weekly. In other words, the respondent paid slightly less than one half of the total mortgage obligation.
- [40] I find the respondent's obligation under the Agreement, which can be taken into account in this proceeding, from February 2012 to July 2013 (until the termination of the 2008 mortgage) is \$12,800.
- [41] Following the expiry of the 2008 mortgage, the petitioners were unable to obtain the cooperation of Mr. Mahood in a refinancing. In addition, the petitioners were unable to reach an agreement with Mr. Mahood to remove the respondent from title to the property. As a result, from July 2013 to the date of trial, the petitioners have been unable to obtain a lower fixed rate on their mortgage. Their lender has continued their mortgage, with a variable interest rate that has changed over time. From 2013 to 2015, the rate was prime plus 0.50%. From 2016 to 2018, the rate was prime plus 1%. From 2019 to 2021, the rate was prime plus 1.5%. From 2022 to trial, the rate was prime plus 1.8%.
- [42] The following chart sets out the total mortgage payments made by the petitioners under the variable mortgage since July 2013.

Year

Total amount paid

Comments

2013 (July to Dec)

\$9,100

2014

\$17,500

2015

\$16,800

2016

\$19,712.32

2017

\$18,443.36

2018

\$19,152.72

2019

\$20,008.04

2020

\$21,572.72

2021

\$22,402.44

2022

\$21,197.10

2023

\$20,875.14

2024

\$20,875.14

The evidence established six payments were made in 2024, totalling \$4,817.34. This has been extrapolated to 12 months to determine the annual total.

2025

\$3,211.56

This has been determined as four bi-weekly payments, based on the 2024 payment evidence.

Total paid

\$230,850.54

July 2013 to trial

[43] Including the payments made between February 2012 and July 2013, the petitioners have paid a total of \$243,650.54 under the mortgage since the respondent ceased making any contributions. I am satisfied that the respondent is liable to pay half of these expenses, or \$121,825.27.

[44] The petitioners also submit that, because of Mr. Mahood's lack of cooperation, they lost the opportunity to obtain better mortgage rates when the time came to refinance their mortgage.

[45] Ms. Jill Couture, a mortgage broker and Ms. Schmitz's sister, gave evidence about mortgages she was able to have the petitioners pre-approved for over the years. There is no question that the petitioners would have paid less interest if they had been able to take advantage of the mortgage offers obtained by Ms. Couture.

- [46] There are a number of difficulties with the petitioners' claims, however. First, there is no claim for loss of opportunity in their pleadings. Second, they provided me with no authority that would support a loss of opportunity claim under the PPA.
- [47] Finally, the petitioners' claim rests on the argument that they were unable to deal with the respondent's interest on title until 2025. There was evidence before me that Mr. Mahood was difficult to contact, and was non-responsive to their attempts to negotiate with him over the years. However, the petitioners had tools available to them under the PPA to move this matter forward, even without the cooperation of Mr. Mahood. At the time this claim was filed, they sought the sale of the property. The PPA provides for such orders to be made in the absence of a party (s. 5).
- [48] The petitioners suggested in evidence that their former lawyers told them that that there was nothing that could be done without the consent of Mr. Mahood, and at times told them the matter was on the cusp of being resolved. Of course, the matter was not resolved. None of the evidence about their former lawyers' advice is admissible for its truth. I am left with no evidence that could support a finding that Mr. Mahood's conduct prevented the petitioners from bringing an application under the PPA many years ago. In saying this, I do not mean to fault the petitioners, who I accept were following the advice of their prior counsel. However, to the extent that advice was misguided, it cannot lie at the feet of Mr. Mahood. Under the PPA, the petitioners had the ability to bring this matter forward for resolution many years ago. If they had done so, the issues they bring to the court today arising from the extensive delay between filing the claim and bringing the claim to trial, could have been avoided.
- [49] The petitioners also point to the delay in Mr. Mahood becoming the administrator of the respondent's estate, which took seven years. Again, this is a matter which could have been addressed by the court, had an application been brought years ago to deal with the property.
- [50] The respondent passed away in 2012, and Mr. Mahood left the property in 2013. In delaying the resolution of this matter for twelve years, the petitioners are faced with a significant increase in value for the respondent's share of the property, and have paid higher interest rates on their mortgage than they would have had to pay if they were the sole owners. Notwithstanding the financial impacts on the petitioners from this delay, I am not satisfied that the petitioners have established a legal basis upon which I could pass the consequences of this delay on to Mr. Mahood.

Disposition

- [51] In the result, Mr. Mahood's share of the property is valued at 10% of the current appraised value of the property at trial, less \$4,825.27 which is his share of expenses, net of occupational rent.

[52] If the parties wish to make submissions on costs, they may do so in writing, through the registry. The petitioners may make their submissions within 30 days of this decision. The respondent may make its submission within 20 days of receipt of the petitioners' submissions. The petitioners may reply within 7 days of receipt of the respondent's submissions.

"W.A. Baker J."

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