

CANADA / JUDGMENT

Johnson v. Johnson

2025 BCSC 337

COURT

Supreme Court of British Columbia

DECIDED

28 February 2025

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2025 BCSC 337 Johnson v. Johnson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Johnson v. Johnson,

2025 BCSC 337

Date: 20250228

Docket: S2464234

Registry: Prince George

Between:

Michele Katherin Johnson

Petitioner

And

Arnette Rose Johnson

Respondent

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

Counsel for the Petitioner:

G.A. Petrisor, K.C.

Counsel for the Respondent:

M.G. Miller

Place and Date of Hearing:

Prince George, B.C.

November 4 and 22

and December 12, 2024

Place and Date of Judgment:

Prince George, B.C.

February 28, 2025

- [1] The petitioner, Michele Katherin Johnson, seeks orders related to the removal of a Certificate of Pending Litigation filed on May 14, 2008 (the "CPL") by the respondent, Arnette Rose Johnson, against lands situated at 10315 Birchwood Road, Prince George, British Columbia (the "Property").
- [2] The respondent is opposed to the relief sought by the petitioner.

Background

- [3] The petitioner was the common-law spouse of Russell Dale Johnson from approximately 2008 until approximately 2011. Russell Dale Johnson died on October 2, 2023 (the "Deceased").
- [4] The petitioner and the Deceased were registered as joint tenants of the Property. After the Deceased passed away, the petitioner was left as the sole registered owner of the Property.
- [5] The respondent began living with the Deceased in a marriage-like relationship in 1975. The respondent and the Deceased were married on April 7, 1990 and they separated on December 14, 2005.
- [6] The respondent commenced divorce proceedings in the Prince George Registry of the Supreme Court of British Columbia - Court File No. 0526185 (the "Divorce Proceedings") against the Deceased.
- [7] The respondent caused the CPL to be issued in the Divorce Proceedings on May 14, 2008.
- [8] On October 7, 2009, after a five-day trial, Mr. Justice Meiklem pronounced a final order in the Divorce Proceedings which included a term that the Deceased pay the respondent a compensation/equalization payment in the amount of \$520,250.25 for the respondent's interest in family assets (the "Divorce Order").
- [9] The Divorce Order also included a term that the Deceased pay spousal support to the respondent and a term that each party would keep all of the assets in their respective possession.

- [10] The Deceased did not initially pay the compensation/equalization payment as pronounced in the Divorce Order. The respondent commenced collection proceedings against the Deceased in 2010. On March 24, 2011, the respondent and the Deceased entered into a Forbearance Agreement which described the manner in which the Deceased would make payments to the respondent.
- [11] On October 20, 2022, the Deceased filed a notice of application in the Divorce Proceedings seeking an order terminating the payment of spousal support and an order that the charges registered against title to the properties in the name of the Deceased be cancelled.
- [12] On March 14, 2023, Madam Justice Forth pronounced reasons with regard to the October 20, 2022 notice of application filed by the Deceased in the Divorce Proceedings. Among other things, Forth J. ordered that the Deceased's application to remove all charges filed against the Property be dismissed.
- [13] Madam Justice Forth found that the Deceased still owed the respondent \$52,922.13 for the equalization payment and the costs award.

Position of the Parties

Petitioner

- [14] The petitioner seeks the cancellation of the CPL on the Property because the respondent has no interest in the Property. When the Deceased died, the petitioner became the sole owner of the Property.
- [15] The petitioner was not a party to the Divorce Proceedings. The petitioner argues that she can apply pursuant to s. 252(1) of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA] to have the CPL cancelled because there have been no steps taken in the Divorce Proceedings for over a year.
- [16] The petitioner argues that a CPL is an extraordinary remedy which limits the rights of the landowner.
- [17] The petitioner argues that the respondent is not pursuing any claim against the Property and there is no likelihood that ownership of the Property will change.
- [18] The petitioner argues that CPLs are designed to preserve land claims which is not the case here. The petitioner also argues that a CPL should not be used to leverage the respondent's ability to collect the judgment against the Deceased's estate.
- [19] The petitioner says that once the Deceased died the respondent had no more than a "charge" or "encumbrance" against an interest which no longer existed: *Young Estate (Re)*, 1968 CanLII 574 (BCCA) at page 604.

- [20] The petitioner argues that there is no claim against her or the Property by the respondent. Further the Divorce Proceedings in which the CPL was filed were resolved without the respondent having been awarded a propriety interest in the Property.
- [21] The petitioner says that because there is no chance of success in respect of the respondent being awarded an interest in the Property, therefore, no security should be required to be paid by the petitioner to cancel the CPL.
- [22] The petitioner argues that she has experienced hardship and inconvenience, or is likely to experience inconvenience and hardship as a result of the registration of the CPL because she is unable to sell the Property or to mortgage the Property.
- [23] The petitioner also argues that the respondent does not have a legal basis to continue the registration of the CPL, yet the respondent has refused to cancel it. The petitioner argues that it would be appropriate for the court to grant an injunction prohibiting the respondent from registering a further CPL against the Property.
- [24] The petitioner argues that injunction can be ordered pursuant to s. 39 (3) of the Law and Equity Act, R.S.B.C. 1996, c. 253 [LEA].
- [25] The petitioner also seeks special costs of this hearing because the petitioner says that this hearing was unnecessary.

Respondent

- [26] The respondent argues that the order of March 14, 2023 pronounced by Forth J. dismissed the Deceased's application to have the charges registered against the Property cancelled. Madam Justice Forth concluded that the Deceased still owes the respondent \$52,519.99 plus interest pursuant to the Divorce Order
- [27] The respondent argues that the petitioner does not get clear title to the Property because the respondent is still owed money in accordance with the Forbearance Agreement and the Divorce Order.
- [28] The respondent says the court has a discretion whether or not to cancel a CPL where no steps have been taken in the litigation for a year. The respondent says that the court has to consider what is fair and equitable in the circumstances of the particular case.
- [29] The respondent argues that her claim is an interest in the Property because the CPL was filed before the Divorce Order was made and the Deceased was ordered to pay the respondent an equalization payment.
- [30] The respondent argues that if the CPL is cancelled then the appropriate order would be to cancel the CPL on terms which would include security being ordered.

Decision

- [31] The parties find themselves in a difficult situation after the death of the Deceased. The respondent, pursuant to the Divorce Order, is still owed money by the Deceased. The petitioner, who is not a party to the Divorce Proceedings and is the sole registered owner of the Property, finds herself in the position that she cannot sell or mortgage the Property because of the CPL.
- [32] There is no evidence, nor has there been any argument on this application, that the petitioner and the Deceased's joint tenancy on the Property was severed.
- [33] Joint tenancy will be severed by an assignment into bankruptcy for the benefit of creditors, however, joint tenancy is not severed by the registration of a judgment or a mortgage: *R. v. Ford*, 2010 BCCA 105 at paras. 30-31.
- [34] When the Deceased died the petitioner became the sole registered owner of the Property and the Deceased's estate no longer had any interest in the Property because of the joint tenancy.
- [35] The respondent argues that Forth J. already considered whether or not the CPL should be cancelled in an application brought by the Deceased on October 20, 2022.
- [36] Madam Justice Forth in her reasons which are indexed as *Johnson v. Johnson*, 2023 BCSC 370 (the "Reasons") stated the following at para. 90 with regard to the removal of the charges filed against the Property:
- [90] Until the respondent has paid the outstanding amount owed for the Equalization Payment and the Costs Award, it would not be appropriate to order the removal of all the charges filed against the title of the Birchwood property. I do not have copies of the various charges filed, but it appears to me that the claimant is entitled to the judgment that she has filed and renewed.
- [37] It is not clear in the Reasons whether or not the CPL was specifically considered. In any event, after the Deceased's death, the petitioner, who is not a party to the Divorce Proceedings, became the sole registered owner of the Property. In my view, the relief sought by the petitioner is not the same as that sought by the Deceased in his October 20, 2022 notice of application.
- [38] Section 215 of the LTA reads:
- Registration of certificate of pending litigation in same manner as charge
- 215 (1) A person who has commenced or is a party to a proceeding, and who is
- (a) claiming an estate or interest in land, or
- (b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the Court Order Enforcement Act, a copy of the notice of application or other document by which the claim is made.

[]

(6) A party to a proceeding for an order under the Family Law Act respecting the division of property may register under this section a certificate of pending litigation in the form approved by the director in respect of any estate or interest in land the title to which could change as an outcome of the proceeding.

[39] In discussing s. 215 of the LTA and the cancellation of a CPL, the Court of Appeal for British Columbia in 1332404 B.C. Ltd. v. 1266685 B.C. Ltd., 2025 BCCA 46 stated the following at para. 14:

[14] Accordingly, where the pleadings on which a CPL is claimed are incapable of supporting a claim to an interest in land, the CPL should be cancelled pursuant to s. 215. But, if a claim is supported by the pleadings, any cancellation of a CPL would need to rely on other sections of the LTA. In short, a CPL cannot be cancelled for failure to comply with s. 215 if the pleadings claim an interest in land. It is not for a judge, acting under s. 215, to assess the merits of a claim, or determine whether there is a triable issue, or, as here, to interpret pleadings that assert a claim to an interest in land and conclude that that is not the "true" nature of the claim.

[40] There is no question that the CPL was properly registered against the Property because the respondent claimed an interest in the Property in the Divorce Proceedings. There is no basis to cancel the CPL pursuant to s. 215 of the LTA on this application.

[41] The petitioner argues that the CPL should be removed pursuant to s. 252 of the LTA because there has been no steps taken in the Divorce Proceedings for over a year.

[42] The last step taken in the Divorce Proceedings was the pronouncement of the Reasons on March 14, 2023.

[43] Section 252(1) of the LTA reads:

Cancellation of certificate of pending litigation

252 (1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

- (2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought

[]

- (b) by petition, if the applicant is not a party.

[44] In discussing s. 252 of the LTA, Mr. Justice Gomery (as he then was) in *Lebarr v. Pearl*, 2020 BCSC 1638 stated the following at para. 10:

[10] Where the preconditions are satisfied, an order to cancel a CPL under s. 252 is discretionary. Prejudice to the owner of the land is presumed and the party opposing cancellation of the CPL bears the onus of showing that the prejudice is not serious or is outweighed by other factors that would make it unjust to cancel the CPL; *Wiest v. Middelkamp*, 2005 BCSC 1626 at para. 12; *Lawn Genius Manufacturing (Canada) Inc. (Drainmaster) v. 0856810 B.C. Ltd.*, 2016 BCSC 1915 [*Lawn Genius*] at para. 12. The purpose of s. 252, which is to keep property from being tied up in dormant litigation, must be kept in mind; *Lawn Genius* at para. 13. Relevant considerations include any explanation offered by the respondent for the delay in prosecuting the action, the presence or absence of actual prejudice, as opposed to the prejudice that is presumed, and the claimant's prospects for success in making out a claim for an interest in land; *Wiest* at para. 13.

[45] The pre-conditions to an order being made pursuant to s. 252 have been met as the petitioner is the registered owner of the Property, there have been no steps taken in the Divorce Proceedings for over a year and the petitioner has brought her application by way of a petition.

[46] The respondent has not offered any explanation for the delay in prosecuting the Divorce Proceedings. The petitioner has deposed that because of the CPL she has endured hardship because she cannot sell or refinance the Property.

[47] An application pursuant to s. 252 of the LTA is discretionary and the respondent, who is opposing the cancellation of the CPL, bears the onus of showing that the prejudice is not serious or is outweighed by other factors that would make it unjust to cancel the CPL.

[48] In my view, because the petitioner is the sole registered owner of the Property, who was not a party to the Divorce Proceedings and who has suffered hardship as a result of the registration of the CPL, in conjunction with the lack of any evidence from the respondent as to why there was delay in pursuing her remedies pursuant to the Divorce Proceedings militates in favour of making of an order cancelling the CPL pursuant to s. 252 of the LTA.

[49] The petitioner also argues that the CPL can be cancelled pursuant to s. 256 of the LTA.

[50] Section 256(1) of the LTA reads:

Cancellation of certificate of pending litigation on other grounds

256 (1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit

- (a) particulars of the registration of the certificate of pending litigation,
- (b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
- (c) the grounds for those statements,

apply for an order that the registration of the certificate be cancelled.

[51] Section 257 of the LTA reads:

Power of court to order cancellation

257 (1) On the hearing of the application referred to in section 256 (1), the court

- (a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on
 - (i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and
 - (ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or

[]

- (3) In setting the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of pending litigation was registered.

[52] The petitioner is the registered owner of the Property. She has provided an affidavit which sets out the particulars of the registration of the CPL and the grounds for the hardship and inconvenience the petitioner has suffered as a result of not being able to sell or obtain a mortgage on the Property.

[53] In my view, the petitioner has established that the CPL should be cancelled pursuant to s. 256 of the LTA as well.

- [54] Based on the evidence on this application, there is no prospect of success in respect of the respondent being awarded an interest in the Property because the petitioner, as a joint tenant of the Property, became the sole owner of the Property after the death of the Deceased. Further, the respondent was not awarded any interest in the Property in the Divorce Order. For those reasons, no security is required to be paid by the petitioner to cancel the CPL.
- [55] The petitioner seeks an injunction pursuant to s. 39(3) of the LEA which reads:
- (3) If an injunction is requested either before, at or after the hearing of a cause or matter, to prevent any threatened or apprehended waste or trespass, the injunction may be granted if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.
- [56] When the respondent filed the CPL on the Property this was in relationship to the Divorce Proceedings and the Deceased was one of the registered owners of the Property. Upon the CPL being cancelled, the respondent would have no legal basis to file a subsequent CPL against the Property.
- [57] In *Porter v. Porter*, 2023 BCSC 2181, Madam Justice Shergill, in discussing the cancellation of a CPL, stated the following at para. 23:
- [23] It is common ground that the court may exercise its inherent jurisdiction to cancel a CPL where it finds that the pleadings do not support a claim to an interest in land: *NextGen Energy Watervliet TWP, LLC v. Bremner*, 2018 BCCA 219 at para. 7.
- [58] An essential requirement for a CPL is that it is to protect an interest in land: *Drein v. Puleo*, 2016 BCSC 593 at para. 8.
- [59] There is no outstanding cause of action against the petitioner and there is no basis for the respondent to now assert an interest in the Property. In my view, it is appropriate to grant an order that the respondent be restrained from filing any further CPLs against the Property.

Summary

- [60] In summary, I make the following orders:
1. The CPL is cancelled pursuant to ss. 252 and 256 of the LTA;
 2. The Registrar of Titles of the Cariboo Land Title Office shall, on application by the petitioner for registration of this order and production of a court certified copy of this order, cancel the registration of the CPL filed on May 14, 2008 against the Property; and
 3. The respondent is restrained from filing any further Certificates of Pending Litigation against the Property pursuant to s. 39 (2) of the LEA.

Costs

- [61] The petitioner seeks special costs of this hearing because it was unnecessary.
- [62] The respondent initially had a basis to file the CPL in the Divorce Proceedings, however, that changed upon the death of the Deceased and the petitioner becoming the sole registered owner of the Property.
- [63] In my view, the respondent's actions in defending this petition were not reprehensible and do not warrant an award of special costs.
- [64] The petitioner has, however, been substantially successful and is entitled to her costs of this petition.

"R.S. Tindale J."

TINDALE J.

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