

CANADA / JUDGMENT

Knelsen v. Knelsen

2024 BCSC 1060

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Supreme Court of British Columbia

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2024 BCSC 1060 Knelsen v. Knelsen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Knelsen v. Knelsen,

2024 BCSC 1060

Date: 20240306

Docket: S2261343

Registry: Prince George

Between:

Larry Jacob Knelsen and Floyd Darrell Isaac Knelsen

Petitioners

And

John Leo Knelsen aka John Leo Knelson and Caroline Deane

Respondents

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

G.A. Wright

Counsel for the Respondent, John Leo Knelsen aka John Leo Knelson:

A.R. Purgas

Place and Dates of Hearing:

Prince George, B.C.

February 22-23, 2024

Places and Dates of Judgment:

Prince George, B.C.

February 28, 2024

Cranbrook, B.C.

March 6, 2024

Table of Contents

Introduction.. 3

Background Facts. 4

Governing Law.. 6

Forced Sale Under PPA ss. 2 and 6. 6

Petition or Trial?. 7

Analysis. 9

Has John Knelsen raised a triable issue regarding the order for sale?. 9

John's financial contributions to Uncha Lake Road. 10

Hardship. 15

Access and Services. 16

Should John Pay Occupation Rent?. 16

Conclusion.. 18

Introduction

- [1] The petitioners, Larry and Floyd Knelsen, seek an order for the sale of two properties located in the Southbank area, just south of Burns Lake. They own the properties with their brother, the respondent John Knelsen, one-third each as co-tenants.

- [2] The brothers and their three other siblings inherited the properties from their mother in 2000. The three brothers bought out their siblings' shares, and registered their one-third-each ownerships. One of the properties is bare land. The other is the family home, which the parents built in 1980.
- [3] Larry and Floyd Knelsen's uncontested evidence is that, in 2014-2015, their brother, John Knelsen, evicted them from the family home property, and he has lived there ever since with the respondent Caroline Deane. John Knelsen continues to exclude them from the property without any compensation. Larry and Floyd Knelsen wish the properties sold so they can either buy out their brother or extract their share of the equity.
- [4] John Knelsen opposes the sale. He says that deciding whether a sale is in the interests of justice raises numerous triable issues, arising primarily from his alleged greater financial contributions and the hardship of losing his home. He says the case must therefore be decided by a trial or at least include some hybrid procedures, as described by the Court of Appeal in *Cepuran v. Carlton*, 2022 BCCA 76.
- [5] Under s. 6 of the Partition of Property Act, R.S.B.C. 1996, c. 347, given that Larry and Floyd own 50% or more of the properties, a sale and distribution of the proceeds is to be ordered unless there is "good reason to the contrary."
- [6] For the reasons that follow, I find that there is sufficient evidence to determine that John Knelsen's defences do not raise any triable issues or good reasons not to sell the properties, and that a trial or hybrid procedure would not be in the interests of justice.
- [7] The orders for sale are therefore granted under s. 6.

Background Facts

- [8] The Knelsen brothers are in their late 50s and 60s. As their counsel did during the hearing, for clarity I will refer to them by their first names.
- [9] Starting in around 1979, John and Larry went into business together as owners and operators of heavy equipment for logging and road building. Floyd became an accountant and did the bookkeeping for their businesses and assisted in other ways as well.
- [10] The family home property in issue is around 5 acres on Uncha Lake Road, which runs along the south shore of François Lake where the ferry from Burns Lake lands.
- [11] The other property in issue is around 10 miles away. It is bare land, and the parties refer to it as the "Keefe's Landing" property. There was little said about the second property, and John does not appear to oppose its sale.

- [12] Starting in around 1980, the brothers' parents began building the home on Uncha Lake Road for their retirement. The home was constructed from what was called a "Nelsen lumber kit". The parents also owned the adjacent property, where they ran a general store and post office and raised pigs. Jacob Knelsen, the brothers' father, also worked on the ferry. This adjacent property was sold to John in 1990.
- [13] Jacob Knelsen died in 1982 and was never able to move into the Uncha Lake house. Their mother, Nettie Knelsen, moved in that same year with the three brothers. Ms. Knelsen lived there until her death in 2000. In her will, she left the two properties equally to her six children. As mentioned above, the three brothers bought out their siblings and took their respective one-third interests.
- [14] Larry lived in the Uncha Lake house from 1982 to 2014, until John moved in. Floyd lived there from 1982 to 1997, and then moved to Prince George for work. His work schedule gave him four days off on weekends, and he came to Southbank to stay with his mother, while she was alive, and Larry. His visits home also ended in 2014 when John moved in.
- [15] From 1982 to 1990, John came and went from the family home property. As already mentioned, in 1990 he bought the adjacent general store property from his parents for \$40,000. He built an addition on the store where he and Caroline lived until 2015. In 2015, he and Caroline moved into the Uncha Lake property where they remain today.
- [16] Starting in around 2007, John underwent cancer treatment. Floyd and Larry's uncontradicted evidence is that this unfortunate situation caused behavioural changes such that, ever since that time, he has been angry and abusive with them and has become, in Larry's words "impossible to deal with. There is no possibility of doing things cooperatively." Larry and Floyd have other lawsuits with John regarding other properties and the winding-up of John and Larry's businesses.
- [17] Up until April 2014, all three brothers had keys to the Uncha Lake home and used it as they wished. Larry and Floyd's affidavits allege that, in a series of confrontations from April 2014 to September 2015, John ousted them from the family home where Larry had been living since the 1980s and Floyd was still spending some weekends. John's affidavit did not contest the descriptions of what occurred.
- [18] Floyd's affidavit described being at the house in April 2014 to do bookkeeping for the partnerships when John became angry and pushed him through a door, knocking it off its hinges. Floyd described himself as much physically smaller than John.
- [19] Next, in July 2014, when Larry was pulling his truck up to the side of the road by the property, John came by in his own truck, pulled over, walked over to the side of Larry's window, and accused Larry of stealing tools and said, "if you set foot on my property again, you won't leave."

- [20] Both Floyd and Larry described, on December 21, 2014, John telling Floyd to remove all of his belongings from the house and get off the property, as he had no right to be there. The two brothers' evidence is that they responded by saying they did have a right to be there because they each owned the house too, but they left to avoid further conflict and have not since returned. Larry, who had lived in the house since 1982, found a new place to live, and Floyd, a new place to spend his weekend visits. Both brothers abandoned various personal belongings in their old home.
- [21] The final episode was on September 17, 2015. While driving by the Uncha Lake property, Larry saw fallen trees, blown over by a storm. He came back with a loader to remove them. While there, he saw Ms. Deane's car and went to the door. He found the locks changed. From inside the house, Ms. Deane told him to leave and phoned the police, who attended and briefly handcuffed Larry before releasing him and advising that he speak with a lawyer.
- [22] John's affidavit does not contest any of this evidence from his brothers about his ousting them from Uncha Lake, except to say that they left "voluntarily." On the evidence, this can only mean that they chose to accept his aggressive insistence that they do so, rather than confront him. On the uncontested evidence, which I see no reason not to accept, he assaulted Floyd in the house, ordered them both to leave and not come back, threatened Larry about what might happen if he did return, and changed the locks.
- [23] When Larry came on the property to deal with the trees, Ms. Deane called the police. John and Ms. Deane have had exclusive possession of Uncha Lake since late 2014, and have paid John's brothers nothing for their exclusive use of it.

Governing Law

Forced Sale Under PPA ss. 2 and 6

- [24] Where one or more tenants in common who own 50% or more of a property wish it sold, ss. 2 and 6 of the PPA govern.
- [25] Section 2 provides that all tenants in common may be compelled to partition or sell the land, or a part of it, by a proceeding for partition in this court.
- [26] Section 6 says that, if parties owning 50% or more request a sale and a distribution of the proceeds instead of a division of the property, the court must order the sale unless it sees good reason to the contrary, and may give directions.
- [27] There is no general rule or formula for determining when a sale would not do justice between the parties: *Sahlin v. The Nature Trust of British Columbia, Inc.*, 2011 BCCA 157, at para. 24. *Bradwell v. Scott*, 2000 BCCA 576, provides some of the key principles governing an application for sale under the Act:

[35] The section says the court must order sale of the property "... unless it sees good reason to the contrary". This language is neutral in terms of onus. It is for the court to assess the evidence and to determine whether justice requires that such an order be denied. In practical terms, it would be for those opposing the application to put before the court evidence tending to establish a good reason for refusing it.

[45] Serious hardship to a respondent may be a proper ground for refusing an order for sale, as might lack of "good faith, vexatiousness or maliciousness" on the part of the petitioner. But these are not the exclusive measure of "good reason".

[Emphasis in original.]

[28] Personal or commercial inconvenience is not sufficient reason to prevent owners legitimately realizing on their interests. A forced sale often causes inconvenience, upset, and disruption. The forced sale of co-owned property has been part of our law for a very long time. Shared ownership has advantages. It lets those who might not otherwise be able to own a home to do so, but it also has significant disadvantages. A forced sale by the other co-owners is one of them: *McRae v. Seymour Village Management Inc.*, 2014 BCSC 714.

Petition or Trial?

[29] Rule 1-2(4) of the Supreme Court Civil Rules says that, where an enactment such as the PPA authorizes an application to the court, it must be brought by petition.

[30] The starting point is that the Rules contemplate that a summary procedure will be appropriate. This is different than the starting point for an action. There should be good reason for dispensing with a petition's summary procedure in favour of an action: *Cepuran*, at para. 158.

[31] The factors to consider in converting a petition to an action are well established (See, e.g., *Capital Now Inc. v. Munro*, 2023 BCSC 197). They are:

- (a) the undesirability of multiple proceedings;
- (b) the desirability of avoiding unnecessary costs and delay;
- (c) whether the particular issues involved require an assessment of the credibility of witnesses;
- (d) the need for the Court to have a full grasp of all the evidence; and
- (e) whether it is in the interests of justice that there be pleadings and discovery in the usual way to resolve the dispute.

[32] While all factors are important, the most significant factor is the interests of justice: *Taj Park Convention Centre Ltd. v. Sher-A-Punjab Community Centre Corporation*, 2022 BCSC 473, at para. 38.

- [33] Both parties referred to *Kerfoot v. Richter*, 2018 BCCA 238, regarding the test for when a case raises triable issues not suitable for decision by hearing of petition, and so should be converted to an action or allow for hybrid procedures to assist in determination pursuant to *Cepuran*, at para. 160. In *Kerfoot*, Justice Fisher said for the Court:
- [27] In my view, the Saputo test precludes a judge from weighing evidence. Applying *Robertson v. Dhillon*, 2015 BCCA 469, this Court confirmed that the test is akin to the test to be applied for summary judgment: whether, on the relevant facts and applicable law, there is a bona fide triable issue. In the context of this case, where there are factual disputes, the chambers judge was to determine whether Mary, as the party requesting the trial, was bound to lose; more particularly whether there was a triable issue with respect to Bernice's testamentary capacity or the issue of undue influence.
- [29] Where there are disputed facts in the pleadings, the party who seeks either summary judgment or dismissal bears the evidentiary burden of showing that there is no genuine issue to be tried, and that is proven through evidence: *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at paras. 36–39. In considering evidence, however, the court must not weigh it but is limited to assessing whether it establishes a triable issue. As this Court explained in *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500:
- [12] If sufficient material facts have been pleaded to support every element of a cause of action, but one or more of those pleaded material facts are contested, then the judge ruling on a Rule 18(6) application is not to weigh the evidence to determine the issue of fact for the purpose of the application. The judge's function is limited to a determination as to whether a bona fide triable issue arises on the material before the court in the context of the applicable law. If a judge ruling on a Rule 18(6) application must assess and weigh the evidence to arrive at a summary judgment, the "plain and obvious" or "beyond a doubt" test has not been met.

[Emphasis added in *Skybridge Investments*.]

- [31] While a judge is not to weigh evidence, he or she may draw inferences that are strongly supported by undisputed facts. Importantly, a party seeking to establish that there is a triable issue cannot rely on mere allegations but must establish the existence of material issues: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 11. It is this latter requirement that precludes a matter from being referred to trial on the basis of mere assertions.

[Emphasis added.]

- [34] When faced with credibility issues and other bona fide triable issues that make summary procedures inappropriate, the court may consider the use of hybrid procedures without transferring the matter to trial. Such procedures may include limited discovery or cross-examination on affidavits to investigate triable issues: *Cepuran*, at para. 160.

Analysis

Has John Knelsen raised a triable issue regarding the order for sale?

[35] On behalf of John, Mr. Purgas argued that, in order to assess whether there are good reasons not to order sale of the properties, the following issues require a trial, or at least a hybrid process involving document production and discovery or cross-examination, so they can be investigated sufficiently to be fairly determined by the court.

John's financial contributions to Uncha Lake Road

[36] John asserts that he contributed substantially more than his two brothers towards the property over the years. He says this consideration raises two triable issues:

- 1) Whether Larry and Floyd even have a 50% equitable interest in Uncha Lake; and
- 2) Whether John's disproportionate expenditures are a good reason not to force a sale of the property.

[37] During oral submissions, Mr. Purgas relied on the latter issue far more than the former, and as I understood it, in effect withdrew the former issue. I expect this is because of s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250, which says indefeasible title is conclusive evidence at law and in equity of being indefeasibly entitled to the estate in fee simple described in the title, subject to various exceptions, none of which Mr. Purgas argued.

[38] John's evidence is that he paid for the foundation of the Uncha Lake house, the house kit for the house itself, and "the majority of the expenses in relation to the house, including the property taxes, insurance, utility bills, and maintenance costs." He also says, "Floyd did not financially contribute to the acquisition of the two properties," but rather only he and Larry did. He provides no documentary evidence to support any of this.

[39] I will consider this evidence, firstly, in the time period of 1980-2000. In other words, from the time the parents built the Uncha Lake house until their mother passed away and title was transferred to the three brothers. It was in this period that John asserts he paid for construction of the house and that he and Larry paid the money to buy out the other three siblings from the house while Floyd paid nothing.

[40] In my view, this evidence does not raise a triable issue regarding a good reason not to sell the properties.

[41] First, and most importantly, the evidence is clear that, in 2000, the three brothers understood their respective contributions, financial and otherwise, to their parents' properties, John and Larry's businesses, the buyout of their siblings, and their other financial dealings up to that point. Understanding all of that at the time, their assessment was that the property should be owned one-third each. John himself, as his mother's executor, signed the Form A transfer of the property from his mother's estate to the three of them.

- [42] The evidence therefore is clearly that, at the time, this was all of their views, including John's, of their respective entitlement to the properties. John has provided no evidence to suggest that this is not precisely what occurred or that there was anything material about their respective contributions that John was unaware of at the time. I therefore see no basis for there being a triable issue regarding John's alleged disproportionate contributions before 2000. For the same reason, I find no triable issue regarding John being entitled to more than his registered one-third interest in the property, although as mentioned, that was not pursued during the hearing.
- [43] Second, what documentary evidence the brothers have been able to locate contradicts John's assertions about his contributions in important ways.
- [44] Floyd has provided documentary evidence demonstrating his financial contribution to buying out his siblings from the properties, which contradicts John's assertions. The banking records which Floyd attached showed John and Larry providing approximately \$102,000 from their businesses to buy the properties from their mother's estate.
- [45] The undisputed evidence is that the six siblings accepted this as a fair market value for the two properties at the time. This \$102,000 was then paid equally to each of the six siblings, or \$17,000 each. As Floyd and Larry attest in their affidavits, and the banking records show, John, Floyd, and Larry each then paid their \$17,000 back to the businesses and took joint title to the properties.
- [46] Thus, contrary to John's assertion, Floyd did pay something towards his share of the property, in that he paid his share of its market value back to John and Floyd, unlike the other three siblings.
- [47] John and Floyd contributed more than he did, as they each put in their \$17,000 but also funded the \$51,000 buyout of the other three siblings. Floyd's evidence, confirmed by Larry and not denied by John, is that, by this time, Floyd had provided years of unpaid accounting services and other work for John and Larry's businesses, which is part of why they required him to put in less than they did at the time towards buying out the other siblings.[1]
- [48] Floyd's evidence, supported by Larry, is that from around 1986 to 2014, he spent around 30-35 hours every two weeks working for the businesses, or around 20,000 hours of unpaid services. He also put in evidence of having paid property taxes and other expenses for Uncha Lake, which I come to later. Larry says Floyd was never paid for that work. John says Floyd was repaid \$126,000 by the businesses for costs expended on the house from 1987 to 2014 but provides no explanation of how he knows this, what it is based on, details of what expenses he is referring to, or backup for his assertion.
- [49] Floyd's evidence is that his mother paid her own expenses for the home while she was alive. He was able to find some limited documentary evidence, albeit only from 1988 to 1999, showing his mother writing cheques for the house's taxes, hydro, propane, and telephone in these years.

- [50] Finally, the uncontested evidence is that the Uncha Lake house was built as his parents' retirement home. John offers no explanation for why, in those circumstances, he paid for its construction when he was just out of high school, or why if he did and also paid most of the home expenses over the years, his mother did not repay him or make arrangements to compensate him in her will rather than leaving the properties to all six children equally. John's claim to have paid is also contradicted, albeit circumstantially, by Mr. Giesbrecht, a brother-in-law who was married to one of his sisters before she died. His evidence is that he was present when the house was built, and the parents were fully in charge of the process and John was not involved.
- [51] As another example of the financial considerations counting against John's position regarding his disproportionate contributions, both Floyd and Ben Giesbrecht attest that John never paid either of them the \$10,000 each he was supposed to when his mother transferred the old shop property to him in 1990.
- [52] For all these reasons, I do not see John having raised a triable issue or good reason not to sell the property by his bare assertion that he paid the disproportionate expenses, as alleged, before 2000.
- [53] I also see the costs and delay of a trial or hybrid proceedings, requiring the parties to litigate who paid which expenses, going back all these years, as contrary to the interests of justice for other reasons, namely:
- (i) John's lack of any concrete evidence that he paid significantly more;
 - (ii) the evidence that there are not good records of who paid what going back those 40-plus years; and
 - (iii) the contribution differential in John's favour would need to be extreme before becoming a good reason not to order the sale of the properties in circumstances where, on the uncontested evidence, John has caused the total breakdown of the relationship and has illegitimately excluded his brothers from the property since 2014, which up until that time had for decades been Larry's home and Floyd's weekend home .
- [54] The next time period is 2000-2015. Over these years, Larry was living in the Uncha Lake house, and Floyd was often staying there on the weekends. John was living next door in the old store property but using Uncha Lake from time to time. They all had keys, and they used the Uncha Lake house as they wished.
- [55] John's assertion in his affidavit that he paid "the majority" of household expenses would appear to extend to this period, but he provides no evidence to support that bare assertion. He provides no details of what he means by "the majority" of expenses, no specifics of what the arrangements or understandings about expenses were with his brothers or what he says he paid versus what they paid, and no explanation for why he was doing so despite Larry living in the house, Floyd using it on the weekends, and him living next door.

- [56] Larry and Floyd deny John's version of events in this time period. Floyd's evidence is that, for example, he paid the property taxes throughout this time, and he was able to locate records to support this for 2002-2007, plus a few other payments he made for things such as heat and garbage disposal.
- [57] In my view, John's bare assertion, completely devoid of supporting evidence, specifics, or explanation, is the type of evidence that in these circumstances should be found not to raise a triable issue. Kerfoot, at para. 31. I also repeat the considerations mentioned in paragraph 53, above, regarding why a trial or hybrid process is not in the interests of justice.
- [58] The final time period is 2015 to the present. For this period, Floyd and Larry do not contest that John paid the Uncha Lake expenses, except for the 2021 property taxes of \$1,900, which Floyd paid when he discovered that the Uncha Lake house was uninsured. Floyd has provided uncontested documentary evidence showing that payment.
- [59] John's affidavit asserts that he made improvements to the house in 2015, but once again provided no description, details or supporting documents. Larry denies seeing any evidence of such work despite driving by the property two or three times a month.
- [60] The fact that, since 2015, John paid the expenses and may have done some undisclosed improvements nine years ago, is not a good reason to deprive his brothers of the sale in circumstances where he evicted them with violence and threats, and has paid them nothing for his exclusive use of the home which they also own during this entire period. To the contrary, these circumstances make a sale the only fair and reasonable outcome.
- [61] I therefore find that John has not raised a triable issue for the 2015-to-date time period either.

Hardship

- [62] I find no triable issue raised by John's assertion that a sale would cause him hardship.
- [63] First, John provides no evidence of actual hardship other than saying he intends to live in the property for the rest of his life. In my view, this consideration carries no weight given that his brothers never agreed he could do so to their exclusion. Rather, his expectation is based on his improper conduct in evicting them, in circumstances where the property had been Larry's home for 32 years, and still was before the eviction, and had been Floyd's home for 16 years and continued to be where he often spent weekends. He has paid them no rent nor offered them any other form of compensation. All of this undermines any form of hardship to him from now being forced to sell the property so his brothers can either buy it or withdraw their share of the value.
- [64] Second, any hardship he could establish would need to outweigh, in an equitable sense, his conduct in unlawfully evicting Larry and Floyd from the property and paying them nothing for his exclusive use for over ten years.

- [65] Third, given the uncontested evidence of Floyd and Larry about how they were evicted, there is no possible merit to John's frankly absurd submission that they somehow acquiesced in a way which should count against a sale or that they are acting in bad faith by, after all these years, seeking to evict him now from where he wishes to live.
- [66] Fourth, there is evidence of alternative accommodations for him which he has not contested. His brothers attest that his prior residence next door at the old store, where he and Caroline lived for 24 years until 2014, is still available and remains in good condition. They also attest that he has another house on a nearby property on Campbell River Road, also in good condition and unoccupied. John has not denied any of this or provided any evidence of anything uniquely important to him about the Uncha Lake property or why these others are inadequate substitutes.

Access and Services

- [67] John alleges that another good reason not to order the sale is because the water line to the home on the old store property comes via the Uncha Lake property.
- [68] I do not see this as raising a triable issue or a reason not to order the sale because, on the evidence, it is complete speculation whether it raises any sort of significant issue for the old store property.
- [69] John has provided no evidence that there are material costs or obstacles to obtaining water another way, such as digging a well or installing a water line. He has not addressed the water line which goes to the old store, which was there before the Uncha Lake house was built.
- [70] There is also, of course, the possibility of an easement with the new owners of Uncha Lake, whoever they are, which might also involve allowing the Uncha Lake property to continue using the access road across the old store property for access from Uncha Lake Road rather than building its own access road.

Should John Pay Occupation Rent?

- [71] Larry and Floyd seek occupation rent of \$800/month. Because of Limitation Act, S.B.C. 2012, c. 13, issues, they seek it for two years pre-filing of their petition, or 41 months total, for a total of \$32,800.
- [72] They rely on the principle that, where one co-tenant is ousted by another co-tenant in occupation as occurred here, the latter is liable for occupation rent. *Kostiuk (Re) (Trustee of)*, 2002 BCCA 410, paras. 41, 52, 83; *Dennis v. MacDonald*, [1981] 1 W.L.R. 810 (Fam. Div.), pp. 817, 821; *Pelikan v. Quarry*, 2006 BCSC 269, para. 28. John provided no authorities to the contrary.

- [73] The petitioners have abandoned their claim for occupation rent from Ms. Deane on the authority of *Volovsek v. Boisvenu Alter-Ego Trust #1*, 2021 BCCA 179, para. 68, which says that in circumstances such as this, occupation rent may be due from a co-tenant but not an arm's length party. They seek occupation rent from John pursuant to paragraph 5 of the petition.
- [74] The \$800 they seek is two-thirds of the \$1,200 figure, which they say is the midpoint of what Larry and Floyd receive in rent for the two houses on a property they own adjacent to the Uncha Lake property. One is rented for \$925 per month and one for \$1,500. Each house is small, around 1,100 sq. ft., compared to the Uncha Lake property, which is approximately 1,800 sq. ft. Larry's uncontested evidence is that Uncha Lake is a better overall quality house.
- [75] John swore his affidavit two and a half months after Larry's affidavit put in this evidence of market rent. John included no evidence to dispute the appropriateness of these comparables or evidence of any others. He put in no evidence of efforts to consult a realtor or appraiser on market rent or any desire to do so. I was told by counsel for the petitioners that, to his knowledge, there is not even an appraiser in Burns Lake and the closest would be in Prince George or Vanderhoof.
- [76] I find no triable issue raised about fair occupation rent given the uncontested evidence indicating that \$1,200 is a reasonably conservative estimate of the market rent for Uncha Lake. Further, I do not see a trial, or further investigation of this issue, as in the interests of justice because of the absence of any competing evidence from John of fair market rent, the relatively small amounts involved, and the circumstances by which John became liable for this occupation rent.
- [77] I therefore accept \$800/month as a fair and reasonably conservative estimate of John's two-thirds share of the market rent and find John is liable to the petitioners for \$32,800 occupational rent up to February 29, 2024. It seems to me -- and I will hear from counsel on this at the end because it was not discussed at the hearing -- that the \$800/month should continue to accrue until the sale of the house completes, if John is continuing to reside on the property.

Conclusion

- [78] The petitioners are granted an order for sale of the two properties under ss. 2 and 6 of the PPA.
- [79] Under s. 6, I may give directions regarding the sale, and I will do so by reference to Mr. Wright's proposed form of order in his letter to Mr. Purgas of February 22, 2024.
- [80] [LENGTHY DISCUSSIONS REGARDING TERMS OF THE ORDER.]

[81] THE COURT: All right. Mr. Purgas? And I take it -- just so we are clear, so in other words that was the hearing of the petition. So you would ask for costs of the proceedings to your clients at Scale B but only against Mr. Knelsen, not against Ms. Deane? Is that the order?

[82] CNSL G. WRIGHT: Yes.

[83] THE COURT: All right. Mr. Purgas.

[84] CNSL A. PURGAS: In -- in light of Justice's decision, I do not have -- frankly, I do not have grounds to object to that.

[85] THE COURT: All right. Thank you. So I will, then, order costs of the proceedings to the petitioners at Scale B from John Knelsen.

[86] All right. Counsel, thank you very much for your help on this. I hope it goes smoothly from here. I have left in the order that either of you is at liberty to apply for further directions or orders as necessary. I am not seized of that. If you want to try to see if you can get me because it might be more efficient, of course you are welcome to do that. But if that is not desired or it is not achievable, then I am certainly not seized.

[87] CNSL G. WRIGHT: Very good.

[88] THE COURT: All right. Thank you both.

[89] CNSL A. PURGAS: Thank you.

"Coval J."

[1] Mr. Purgas argued it was problematic to consider this in this case because it was also raised by Floyd in a separate unjust enrichment counterclaim against John, in John's litigation regarding a property owned by Floyd. I agree with Mr. Wright that this does not make it an illegitimate consideration in this case. Though of course the fact that Floyd has relied on it here, and I have accepted its relevance, may now be a relevant consideration in the other proceedings.

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