
CANADA / JUDGMENT

L.L.E. v. R.P.E.

2022 BCSC 639

COURT

Supreme Court of British Columbia

DECIDED

15 March 2022

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2022 BCSC 639 L.L.E. v. R.P.E.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.L.E. v. R.P.E.,

2022 BCSC 639

Date: 20220315

Docket: E52165

Registry: Vernon

Between:

L.L.E.

Claimant

And

R.P.E.

Respondent

Before: The Honourable Mr. Justice Riley

(appearing via videoconference)

Oral Reasons for Judgment

In Chambers

Counsel for Claimant appearing by videoconference:

C.R. Christiansen

Counsel for Respondent appearing by videoconference:

K.B. Greenough

Place and Date of Hearing:

Vernon, B.C.

March 10, 2022

Place and Date of Judgment:

Vernon, B.C.

March 15, 2022

- [1] THE COURT: This is a renewed application by the claimant, L.L.E., for an order regarding the interim sale of an acreage property that was the site of the former family residence, which I will refer to as the "Property".
- [2] L.L.E.'s original application for interim sale of the Property was before me on 23 November 2021, and on the following day, 24 November 2021, I dismissed it but gave L.L.E. leave to renew it if R.P.E. was unable to provide a commitment letter showing that he could obtain a mortgage in the amount of \$1.1 million to buy out L.L.E.'s interest in the property by 28 January 2022. Since that ruling there have been a number of developments.
- [3] First, R.P.E. has obtained a commitment letter for a mortgage of \$1,085,000 subject to terms and conditions that were not specified in the letter. To underline the obvious, this commitment letter was for less than the \$1.1 million required to buy out L.L.E.'s interests and it was also subject to unknown or unspecified conditions.
- [4] Second, there is updated or more recent information with respect to R.P.E.'s income. In an earlier ruling Justice Betton had imputed R.P.E.'s income at \$176,000 per year. In December of 2021, R.P.E. provided his filed 2020 tax return and assessment indicating a 2020 income of \$315,600. This development has several implications and it cuts both ways. On the one hand, it can be anticipated that R.P.E.'s support obligation will increase based upon the new income figure. On the other hand, based on R.P.E.'s new income figures and his company's 2021 financial information, he is now able to qualify for a higher mortgage. Thus, R.P.E. stated in his more recent affidavit, or his most recent affidavit, that he obtained verbal approval for a mortgage in the amount of \$1,120,000. R.P.E. has since filed a commitment letter confirming that he has a commitment for a mortgage in that amount, \$1,120,000, on certain terms and conditions.

- [5] Third, L.L.E. has presented evidence with respect to increases in value of the property since the date of the last appraisal. The property was formerly appraised in June of 2021 for \$1.45 million. L.L.E. has obtained an opinion from a real estate agent that the property now has a market value of \$1.575 million dollars. So the property has increased in value by some \$125,000 over the last nine months or so.
- [6] Fourth, L.L.E. has presented evidence with respect to the current balance of the mortgage on the property. At the time of the last hearing the outstanding balance on the mortgage was said to be \$544,000. L.L.E. has presented evidence indicating that the current balance is \$529,000. So the outstanding amount of the mortgage has gone down by some \$15,000.
- [7] Fifth, L.L.E. has presented evidence with respect to the status of R.P.E.'s unpaid arrears of child support and spousal support. As of the beginning of March, R.P.E.'s arrears of support were some \$77,000. In early March of 2022, R.P.E. made a lump sum payment of \$30,000 towards his outstanding support obligations. So now R.P.E.'s arrears of support are some \$47,000.
- [8] Based on all of these developments, specifically the increase in property value, reduction in the outstanding mortgage balance, and the amount of the outstanding arrears of support owed by R.P.E., L.L.E. says that in order to come up with enough money to buy out her interest in the Property R.P.E. would have to obtain a mortgage in the amount of \$1,156,000, and she stresses that this is a minimum amount which does not take into account the arrears of support and what I will call residual property division claims that may be made by L.L.E. at trial.
- [9] Where does that leave us? I will summarize the situation as follows in three points, (a) though (c):
- (a) L.L.E.'s initial application for interim sale of the Property was adjourned, sorry, was dismissed with leave to renew it if R.P.E. could not provide proof that he was eligible for a mortgage in the amount of \$1.1 million;
- (b) R.P.E. was initially unable to provide proof that he was eligible for financing in that amount;
- (c) Since that deadline has passed a number of developments have occurred, the net result of which is that: (i) R.P.E. will actually require a mortgage in the amount of at least \$1.156 million to buy out L.L.E.'s interests without accounting for some of her claims; and (ii) R.P.E. has only been able to obtain a commitment letter for a mortgage in the amount of \$1.12 million.
- [10] In my earlier ruling I set out the legal test, the applicable legal principles, and the factors to be considered in deciding whether to order interim sale of the family property under the Family Law Act, S.B.C. 2011, c. 25 and the Supreme Court Family Rules, B.C. Reg. 169/2009. I am not going to repeat any of that in this subsequent ruling.

- [11] At this point in time, many of the relevant factors weigh heavily in favour of L.L.E.'s position that the Property should be sold, and against the position of R.P.E. that he should be allowed to retain it with a view to buying out L.L.E.'s interest. The key consideration is that R.P.E. does not appear to be in a position to buy out L.L.E.'s interests and he has really given no reason to believe that he will be in a better position to do so in perhaps one year, when the matter comes on for trial.
- [12] So there is quite a compelling argument to be made that sale of the property is a practical inevitability. There are other factors weighing in L.L.E.'s favour including the fact that L.L.E. is currently having to live in rental accommodation with the child, Hunter, who is now six years old while R.P.E. continues to live in the former family residence, and the fact that R.P.E. has failed to pay support on time and still owes a considerable amount in child and in spousal support.
- [13] At this point really the only factor weighing against L.L.E.'s position is the concern that R.P.E. uses the property for his business such that interim sale could affect the profitability of the business. I would not underestimate the significance of this concern because, of course, R.P.E.'s business is the sole source of income for him and thus the sole source from which he would be able to provide both child support and spousal support on an ongoing basis. In this regard both parties have an interest in the continued profitability of the business. If interim sale of the Property affects the profitability of the business, it could have a significant financial impact for both parties. There is evidence that if the Property is sold, R.P.E. would have to lease a comparable property for use in the business and the lease payments could be some \$90,000 to \$96,000 per year, in a two year lease, after which he might have to find yet another property. All of this will clearly affect the profitability of the business.
- [14] However, at the end of the day I must consider that this one factor cannot be dispositive of the current application. On the evidence that has been presented to me on this application, I must conclude that sale of the Property is a practical inevitability. In this sense, sale of the property is necessary and the only question is the timing of the sale. Sale of the property now is advantageous in a number of respects which I reviewed above. Allowing R.P.E. to hold onto the property for another year is not likely to improve the situation at all. R.P.E. himself says in his most recent affidavit that his current financial situation is unsustainable and that if he continues to make draws on his company to meet his ongoing financial obligations he may cause the company to go under. Above and beyond this, dismissing L.L.E.'s interim sale application and simply kicking the issue down the road may well stand in the way of any likelihood of resolving this case without a full trial.

- [15] So I must conclude, with some degree of trepidation due to the effect on R.P.E.'s business, that the application is granted. I am granting the application on the basis that interim sale of the property is necessary and that on balance interim sale is more advantageous than simply deferring the matter to trial. On the facts of this case, that would really just be kicking the ball down the road with no real prospect of changing the outcome.
- [16] So the application for interim sale of the property is granted. The parties are to have joint conduct of sale. The real estate agent list price and other details are to be agreed upon by the parties, and if they cannot agree these issues can be dealt with by further court order, and then obviously from what I have just said, based on this model, the actual sale of the property would not occur without approval of the court or written agreement of both parties down the road.
- [17] So I think that concludes the application. I should give each party a chance to address any need for clarification in the ruling.

[DISCUSSION RE COSTS]

- [18] THE COURT: My conclusion is that it should be costs to the claimant, L.L.E., of the application in the cause. So what the means is, if L.L.E. is successful in the result, she will have her costs of this application. If she is not ultimately successful in the result, there will be no costs of this application.

"Riley J."

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