
CANADA / JUDGMENT

LeBarr v. Pearl

2020 BCSC 1638

COURT

Supreme Court of British Columbia

DECIDED

3 November 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1638 Lebarr v. Pearl

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lebarr v. Pearl,

2020 BCSC 1638

Date: 20201103

Docket: E170200

Registry: Vancouver

Between:

Nicole Kathrine LeBarr

Claimant

And

Russell Allan Pearl

Respondent

In Chambers

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

Counsel for the Claimant:

M. Cheema

Counsel for the Respondent:

W. DeWolf

Place and Date of Hearing by Written Submissions:

Vancouver, B.C.

October 30, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 3, 2020

Introduction

- [1] The parties cohabited in a marriage-like relationship for almost eight years and separated in February 2016. They have two children.
- [2] Mr. Pearl owns residential property (the "Home") in Halfmoon Bay, near Sechelt, B.C. He lives in the Home. I gather that Ms. LeBarr now lives elsewhere.
- [3] Pursuant to Part 5 of the Family Law Act, S.B.C. 2011, c. 5 [FLA], Ms. LeBarr is presumptively entitled to an interest in the Home equal to 50% of the increase in the value of Mr. Pearl's equity in the Home over the course of the relationship.
- [4] Ms. LeBarr commenced this action on January 19, 2017, seeking a division of property and claiming an interest in the Home. She obtained a certificate of pending litigation ("CPL") and registered it against title to the Home.
- [5] Mr. Pearl filed a counterclaim in which he seeks orders addressing parenting issues. Ms. LeBarr did not reply to the counterclaim. She has not sought to address the parenting issues in this action. To date, the parties have litigated their parenting issues in separate proceedings in the Provincial Court.
- [6] The only substantive steps taken in this proceeding after Mr. Pearl filed his counterclaim on May 12, 2017, were two judicial case conferences on November 29, 2018, and March 31, 2019.
- [7] By notice of application filed on August 24, 2020, Mr. Pearl applies for an order cancelling the CPL pursuant to s. 252 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA]. Ms. LeBarr opposes the application in a written submission belatedly filed on October 27, 2020.

Legal framework

- [8] Section 252(1) of the LTA provides:

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.

- [9] The preconditions to an application under s. 252(1) - that a CPL has been registered and no steps have been taken in the proceeding for one year - are satisfied in this case.
- [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.

Analysis

- [11] At the second judicial case conference on March 21, 2019, the parties agreed to a case management plan. It includes the following consent order:

By consent the parties to jointly retain an Appraiser to provide a market value of the Half Moon Bay home in June 2008 and February 2016 and the cost of that appraisal to be shared equally between the parties. The parties agree to share equally the increase in the equity in the home and the Claimant will be responsible for 50% of the current amount outstanding on the Line of Credit.

- [12] The parties' consent order has not been incorporated into an entered order of the Court.
- [13] Mr. Pearl swears in an affidavit that he obtained the contemplated appraisal on January 22, 2020. Apparently there were separate appraisals as of June 2008 and February 2016. Mr. Pearl says that, on January 28, 2020, his lawyer sent Ms. LeBarr's lawyer a letter, including the appraisals and the case management plan, and proposed that the CPL be removed. Ms. LeBarr did not respond to the proposal.
- [14] In her written submission, Ms. LeBarr's counsel asserts that Mr. Pearl has not provided the appraisal (or appraisals) to her. This assertion, contradicting Mr. Pearl's sworn statement, is not substantiated by an affidavit. In the circumstances, I must find that appraisals have been obtained and the value of Ms. LeBarr's interest in the Home is now determinable by the appraisals and the amount owing under the line of credit on March 21, 2019, as contemplated by the consent order at the judicial case conference.

- [15] Ms. LeBarr's first substantive objection to cancellation of the CPL is that there is ongoing litigation concerning the parenting issues in the Provincial Court. Counsel submits that "therefore, it is prudent to have the continuation of the CPL registered against the property until at least there is final resolution and order on the issues in the family proceedings".
- [16] Ms. LeBarr's argument misses the point of a CPL. It is an exceptional remedy offering pre-judgment security in respect of a claim for an interest in real property. It is not obtainable as security for a claimant's other claims. Ms. LeBarr is not entitled to claim or maintain a CPL as security for any claims she may assert in the Provincial Court proceedings. The only basis for refusing to cancel the CPL could be potential prejudice arising from the loss of protection of Ms. LeBarr's interest in the Home.
- [17] Ms. LeBarr's second substantive objection to cancellation of the CPL is that "prejudice to the landowner cannot be simply presumed". This submission is legally misconceived. As established by the authorities reviewed above, prejudice is presumed where the preconditions to an order under s. 252 are satisfied. Ms. LeBarr has not tendered evidence to satisfy the onus upon her to show that the prejudice is not serious or is outweighed by other factors. She has not offered an explanation for her failure to address Mr. Pearl's proposal of January 28, 2020, nine months ago, or take other steps to complete the division of property that is the subject of this action.
- [18] Mr. Pearl states, in his affidavit:
24. I cannot access the equity in my home, which is creating unnecessary financial hardship for me. The Claimant agreed that her share of the cost of the Hear the child report would be paid from her interest in the Halfmoon Bay Property, but she will not respond to my proposal to finalize the property division. I have paid for the report, but I cannot be reimbursed from the Claimant until we finalize the division of property in these proceedings.
- [19] I accept this evidence and find that Mr. Pearl is suffering actual prejudice, in addition to presumed prejudice, from the continuing presence of the CPL on title, because he is hampered in his ability to borrow money against his equity in the Home.
- [20] On the other hand, the evidence discloses potential prejudice to Ms. LeBarr if the CPL is simply cancelled. Ms. LeBarr's interest in the Home is undisputable. The parties' agreement at the judicial case conference addressed how her interest is to be valued, but did not address how she will realize its value.
- [21] Mr. Pearl concludes in his affidavit:
25. The Claimant and I agreed to a final order regarding the division of property at the March 28, 2019 JCC, therefore there is no risk that the Claimant's interests will not be compensated for her share in the Halfmoon Bay Property if the CPL is cancelled.

- [22] I do not accept Mr. Pearl's assertion that there is no risk to Ms. LeBarr that she will be paid less than the full value of her interest in the Home if the CPL is cancelled. Regrettably, litigants do not always fulfill their commitments.
- [23] Mr. Pearl has proposed that he will buy out Ms. LeBarr. It is common ground that the parties agreed that Ms. LeBarr's share of the cost of a report required in the Provincial Court proceedings will be paid from her share of the Home. That agreement implies a common understanding that Mr. Pearl will buy out Ms. LeBarr with Ms. LeBarr's share of the cost being deducted from the payment to her. While I cannot address the final division of property on this application - it is not an application for judgment on a summary trial - it is fair, in the circumstances, that I decide whether the CPL should be cancelled on the basis of the parties' common understanding that Ms. LeBarr will give up her interest in the Home in exchange for a cash payment from Mr. Pearl.
- [24] In my view, the appropriate order in the circumstances is one that cancels the CPL on terms. Having established that the value of Ms. LeBarr's interest is determinable and that both parties expect that she will surrender her interest in the Home in exchange for a cash payment, the order that minimizes prejudice to both sides is one that cancels the CPL, enabling Mr. Pearl to borrow against his equity in the Home or otherwise deal with it as he wishes, while providing Ms. LeBarr with security for the value of her interest in the Home until she is paid.

Disposition

- [25] For these reasons, I order that the CPL may be cancelled, at Mr. Pearl's option, on the following terms:
- a) Mr. Pearl will pay to Ms. LeBarr the net value of her interest in the Home, determined according to the consent order of March 21, 2019, less (1) her agreed contribution to the cost of the Hear the Child Report, and (2) costs of this application as set out below;
 - b) The parties or their counsel will jointly certify the amount of the payment Mr. Pearl must make to Ms. LeBarr and, failing agreement as to the terms of a joint certificate, there will be liberty to apply to settle the amount of the payment;
 - c) Within 30 days of receipt of determination of the amount owing by a joint certificate or court order, Mr. Pearl will pay to Ms. LeBarr the amount owing;
 - d) Upon payment of the amount owing, the CPL will be cancelled; and
 - e) Mr. Pearl's payment to Ms. LeBarr will be without prejudice to either party's ability to claim that further payments or adjustments are necessary to finally conclude the division of property between them pursuant to Part 5 of the FLA.

[26] This application should not have been necessary. Ms. LeBarr failed to address Mr. Pearl's request to finalize the division of property and cancel the CPL until very late in the day, and advanced untenable arguments in opposition to this application. She will pay Mr. Pearl's costs in the amount of \$2,500.

"Gomery J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/16/2020BCSC1638.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lebarr-v-pearl-2020>

Prepared on 27 October 2026 · Esheria