
CANADA / JUDGMENT

Lit v. Lit

2019 BCSC 924

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 924 Lit v. Lit

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lit v. Lit,

2019 BCSC 924

Date: 20190611

Docket: E180760

Registry: Vancouver

Between:

Harleen Reena Lit also known as Harleen Lit

also known as Harleen Rena Lit

Claimant

And:

Amenjit Singh Lit, also known as Amenjit Lit and Manjit Singh Lit

also known as Manjit Lit and Davina Holdings Corporation and

PRL Construction Ltd. and Rockstone Homes Ltd.

Respondents

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Jamal

K. Blandino

Counsel for the Respondent Amenjit Singh Lit:

J.C. Fairburn

Counsel the Respondents, Manjit Singh Lit, Davina Holdings Corporation, PRL Construction Ltd. and Rockstone Homes Ltd.:

D.B. Kirkham, Q.C.

G.J. Roper

Place and Dates of Trial/Hearing:

Vancouver, B.C.

September 7, 2018

October 31, 2018

December 14 2018

Place and Date of Judgment:

Vancouver, B.C.

June 11, 2019

I. Introduction

- [1] The respondent, Mr. Manjit Lit ("Mr. M. Lit"), brings this summary trial application under Rule 11-3 of the Family Court Rules, B.C. Reg. 169/2009. He seeks an order to dismiss the claim of an interest of the claimant, Ms. Harleen Lit, in the property at 13822 Marine Drive, White Rock ("Property"). He also seeks an order cancelling the certificate of pending litigation ("CPL") filed against the Property. Ms. Lit is Mr. M. Lit's daughter-in-law.
- [2] Mr. M. Lit purchased the Property in 2005 and built a new luxury home on it in 2006 and 2007. He has resided in that home with his wife and has continued to reside there since his wife passed away in 2014. At various points in time, Ms. Lit and her children (Mr. M. Lit's grandchildren) also resided in this home along with others, including Ms. Lit's husband Mr. Amenjit Lit (Mr. M. Lit's son). Mr. Amenjit Lit, who is now separated from Ms. Lit, is currently residing in the home on the Property with his father. Ms. Lit is currently residing on another property nearby, the couple's matrimonial home, which was also purchased by Mr. M. Lit.

- [3] Ms. Lit asserts that Mr. M. Lit gifted a half-interest in the Property to her and her husband Mr. Amenjit Lit in 2005. She also asserts her father-in-law gifted other assets at other times; these are not the subject of this particular application but are part of her larger claim. Mr. M. Lit disputes her assertions that he gifted the Property and other assets to Ms. Lit and her husband. Rather, Mr. M. Lit deposes that no gifts were ever intended, nor were any agreements reached between the parties whereby he agreed to transfer property interests to Ms. Lit and his son.
- [4] As regards the alleged gift of the Property, Mr. M. Lit also relies on the presumption of resulting trust and asserts that Ms. Lit has failed to rebut the presumption. Accordingly, he asserts that his application should succeed and that Ms. Lit's claim against the Property should be summarily dismissed.
- [5] Ms. Lit does not dispute the cancellation of the CPL, provided the proper amount of security is paid into trust; however, the parties cannot agree on the amount to be paid.
- [6] The issues before me may be summarized as follows.
- 1) Is this an appropriate case for summary trial? Embedded in this question is whether Mr. M. Lit intended to gift a half-interest in the Property to Ms. Lit and her husband such that the couple's interest constitutes family property; and, also, whether Ms. Lit has rebutted the presumption of resulting trust.
 - 2) What is the proper amount of security that ought to be paid in order to cancel the CPL filed against the Property?

II. Background

- [7] Ms. Lit and Mr. Amenjit Lit were married on August 25, 2002 in England. Ms. Lit left her parents' home after the wedding and immediately moved in with her husband at his parents' home in England. The couple have two children: a daughter born September 2003; and another daughter, born October 2006 ("Children").
- [8] Ms. Lit deposes that she moved to British Columbia in 2005, along with her husband, her eldest daughter and her husband's parents. She states that the family moved to British Columbia because her sister-in-law lived here and her husband's parents wanted "all of us to be together."
- [9] Ms. Lit alleges that the gift of the half-interest in the Property was made in December 2005. Mr. M. Lit deposes that the Property was purchased by him in December 2005 for \$2.4 million; the Property had a small house which he tore down and rebuilt. It is undisputed that Mr. M. Lit purchased the Property and rebuilt a luxury home on the Property, entirely with his own funds. It is also undisputed that Mr. M. Lit has financed the mortgage on the Property, paid the property taxes, and paid for the upkeep of the Property with his own funds.

- [10] The evidence before me suggests that the property has increased substantially in value since 2005. Mr. M. Lit deposes that he has listed the Property for over \$10 million; there is also some evidence that the Property was listed last year for over \$16 million. The Property has since been taken off the market. No clear evidence on the current value of the Property was placed before me but it is evident the Property is now worth millions of dollars more than when it was first purchased. Mr. M. Lit also asserts that the Property is subject to a \$5 million mortgage.
- [11] Mr. M. Lit explains that at the time he purchased the Property in December 2005, he was living in England. He deposes that he placed the one-half interest in the Property in the names of his son and Ms. Lit because the couple had moved to British Columbia and could more easily deal with the City of White Rock. He states that the sole and only purpose of placing his son and daughter-in-law on title was to assist him with the permitting process required to build the home. He states, however, that after he moved to Canada in early 2006, there was no need to keep his son and daughter-in-law on the title to the Property.
- [12] Mr. M. Lit relies on two general powers of attorney dated July 10, 2006; one power of attorney is from Ms. Lit and the other is from his son. He deposes that he advised his son and daughter-in-law that the general powers of attorney would be used to transfer title from their names to his. Ms. Lit deposes this is not the case and that she was not so advised. Ms. Lit also deposes that she did not know that her name and her husband's name were taken off the title the Property until she retained counsel in early 2018.
- [13] Ms. Lit deposes that after the family moved to British Columbia, her husband and his parents continued to argue "as his parents would put both of us down and try to control everything we were doing." She explains that in or around October 2006, shortly after her second daughter was born, her husband had a big argument with his mother. Ms. Lit further deposes that, following this argument her husband "told me to pack and that we would be moving back to London."
- [14] In November 2006, Ms. Lit and her husband moved back to England with their Children. Ms. Lit deposes and in and around June 2006, her husband's parents travelled to London. They asked her husband to meet with them at Mr. M. Lit's home there; Ms. Lit was not in attendance. During this meeting, Mr. M. Lit and his wife apparently apologized to her husband for their behaviour and told her husband that they wanted them to move back to British Columbia. Ms. Lit deposes that to entice their son (her husband) to move back to British Columbia, they told him that he would be left "to run the PRL business, that they would purchase a new home for us, and that we would not have to worry about expenses. I know this because prior to his meeting with his parents [Ms. Lit's husband] had called me and left his phone on so I could hear what was happening." Mr. M. Lit disputes this evidence.
- [15] Ms. Lit further deposes that shortly after her husband and her parents had this discussion, there was another meeting, this time with the extended family at her parents' home (in England) with her husband, herself, her husband's parents and all four grandparents. Ms. Lit

deposes that at this meeting, her husband's parents apologized for their behaviour and asked that she and her husband move back to British Columbia "to be a united family." Ms. Lit deposes that at this meeting, her husband's parents "again proposed that, if we moved back to BC, they would allow [her husband] more freedom to run the business without interference, they would purchase a new home for us, and [her husband], the Children, and I would not want for anything." Ms. Lit deposes that based on these assurances, she and her husband agreed to move back to British Columbia. Mr. M. Lit disputes this evidence.

- [16] On May 3, 2007, Mr. M. Lit used his general Powers of Attorney to transfer his son and daughter-in-law's half interest in the Property to his daughter, Ms. Sonia Lit.
- [17] Ms. Lit deposes that in August 2007, she and her husband "returned to BC briefly." She states that during this time, she and her husband signed the purchase documents for their matrimonial home, which is located near the Property. Her husband moved back to British Columbia that month; Ms. Lit and the Children followed later that year in October.
- [18] Ms. Lit and her husband separated in around June 2016, reconciled briefly in January and February 2017 and separated again toward the end of February 2017. They have not lived together since.
- [19] On or around February 16, 2018, Mr. M. Lit filed a Notice of Civil Claim seeking to enforce three bare trust agreements which, he alleges, confirm that that he is the beneficial owner of properties registered in the names of Ms. Lit and his son. These bare trust agreements do not refer to the Property.
- [20] On March 19, 2018, Ms. Lit issued a Notice of Family Claim against her husband, Mr. Amenjit Lit, seeking (among other things) the division of family property, spousal support, and child support. Ms. Lit also named Mr. M. Lit as a party, claiming that Mr. M. Lit gifted the Property and also made gifts of other property to her and her husband; Ms. Lit also claims in her Notice of Family Claim that Mr. M. Lit verbally agreed to make these gifts. In response, Mr. M. Lit denies ever agreeing to gift any property or other assets to Ms. Lit and his son. He deposes he never intended to make any gifts.
- [21] Mr. M. Lit also asserts that he wishes to cease paying the "very substantial costs associated with the Property." He explains that the home on the Property "is very large, 14,338 square feet in size" and states that the annual mortgage, insurance, property taxes and maintenance costs are close to \$300,000 per year.
- [22] Mr. M. Lit deposes he has a heart condition and that he has been advised by his cardiac specialist that he should not live alone. He wants to sell the Property and live with his daughter, Sonia, and her family.

III. Issue 1: Is this an appropriate case for summary trial?

- [23] I have considered the legal authorities drawn to my attention by counsel for each of the parties. Cases such as *Inspiration Management Ltd. v. McDermid St. Laurence Ltd.* (1989), 36 B.C.L.R (2d) 202 (C.A.), *Gichuru v. Pallai*, 2013 BCCA 60 and *Jamal v. Jamal*, 2016 BCSC 551 (at para. 29) are particularly instructive. They establish that the court must be able to find the facts necessary to decide the issues raised on a summary trial application and that it must not otherwise be unjust to decide the matter summarily.
- [24] Have carefully considered the issues, I am simply not be able to find the facts necessary to decide the issues in this application based on the materials before me. Furthermore, the case authorities cited above set out a number of factors, other than the issue of credibility, which guide the court's analysis in assessing whether it would be unjust to decide the matters summarily. Having considered these factors and the arguments of all counsel, I have concluded it would not be fair to any party to decide the issues before me on this application.
- [25] Counsel for Mr. M. Lit submits that Ms. Lit can only claim a legitimate interest in the Property through the alleged gift in 2005; however, he argues that the claim to the Property as a gift is without merit such that it ought to be dismissed without the need for a conventional trial. More specifically, he argues that Ms. Lit's claim "is completely without merit" relying on the following set of facts:
- (a) Mr. M. Lit put his son and Ms. Lit's names on title in December 2005 purely as a matter of convenience; he at no time intended to gift his son and daughter-in-law an interest in the Property; further he asserts that all parties were aware of this at the time he purchased the Property;
 - (b) Ms. Lit and her husband granted a general power of attorney to Mr. M. Lit for one express purpose; that is, to permit Mr. M. Lit to transfer the Property out of their names, if and when he wished;
 - (c) Mr. M. Lit's son and daughter-in-law moved back to England in December 2006, which meant there was no longer any convenience in having their names on the title to the Property;
 - (d) When Mr. M. Lit exercised his general power of attorney to transfer the Property out of his son and Ms. Lit's names in May 3, 2007, he advised them that he had done so.
- [26] These allegations of fact are advanced by Mr. M. Lit in his affidavit material and he asserts they are the "basis" of his claim. However, these facts are directly and largely disputed by Ms. Lit in her affidavit material. As such, the determination of Mr. M. Lit's intent as he alleges, including the circumstances surrounding the placing of Ms. Lit and her husband's names on the title to the Property, will turn on Mr. M. Lit's credibility. This is not a determination that this court can readily or justly make on the basis of the affidavit material before it. In addition, the contextual circumstances underpinning the question of Mr. Lit's intentions and his credibility may be informed by the reliability of evidence tendered by

other parties and their credibility as well; this also raises serious questions regarding the fairness of proceeding in a summary fashion.

- [27] To be very clear, I do not intend in any way to malign the integrity of any party, or to suggest that Mr. M. Lit is not credible, or that his allegations and arguments are without merit. He may, indeed, succeed on this issue at the trial of this matter, which I understand is scheduled for the fall of this year. However, at this juncture, the court is not able to make the essential findings of fact required for summary disposition.
- [28] Counsel for Mr. M. Lit submits that, quite apart from Mr. M. Lit's affidavit evidence that no gift of the Property was intended, the presumption of resulting trust has not been rebutted by any evidence whatsoever. While this point was ably argued, I am not persuaded that this issue can be determined summarily. The question of whether the presumption has been rebutted will turn on the facts before the court and those facts, in turn, in my view require an assessment of the reliability of the evidence, tested by cross-examination and a consideration of the entirety of the evidentiary matrix before the court. Justice will be best served if this question is decided at a conventional trial.
- [29] Mr. M. Lit also argues that Ms. Lit's claim is statute barred and ought to be dismissed by virtue of the Limitation Act, R.S.B.C 1996, c. 226 and the doctrine of laches. Ms. Lit, however, deposes that she did not become aware that her name and that of her husband had been taken off title to the Property until last year. Mr. M. Lit contests this fact arguing she is not to be believed. In this context, I cannot readily or justly make a proper assessment of credibility.
- [30] While I am well aware of the line of authorities that would permit the court to make findings of fact in the face of conflicting affidavits, I am not persuaded that this is a case where I should proceed to assess the issues in spite of the conflicting evidence before me: see *Bank of B.C. v. Anglo-American Cedar Products Ltd.*, 1984 CanLII 322 (BCSC) at paras. 4-5; *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at paras. 56-58; and *Jamal* at para 30.
- [31] Other important considerations are also at play, which favour a conventional trial. A great deal of money as well as important interests that affect the well-being of the parties are at stake. Further, there is no urgency in determining the issues before me, or serious prejudice that would result if a determination is not made at this specific juncture in time. As well, and there is a risk that this application will lead to litigation in slices; there are a number of properties at issue in this case that are alleged to have been gifted, which Mr. M. Lit emphatically asserts were not.
- [32] Also instructive is the court's obligation to balance the principles of proportionality and efficiency in considering the appropriateness of proceeding by way of summary trial. I have concluded that these principles militate against a summary process in this case: see *Jamal* at paras. 30-32.

- [33] In light of the above, this is not an appropriate case for a summary trial disposition, and justice would not be served by such a determination.

IV. THE PROPER AMOUNT OF SECURITY TO CANCEL THE CPL

- [34] Ms. Lit is agreeable to the cancellation of the CPL on the Property providing appropriate security is placed in trust pending the outcome of this case. I have considered the matter and have concluded that Mr. M. Lit has satisfied the statutory criteria of hardship and inconvenience, subsumed within s. 256 of the Land Title Act, R.S.B.C. 1996, c. 250. As such, cancelling the CPL upon the posting of proper security would be an appropriate order in this case.
- [35] I am also satisfied, as required by s. 257 of the Land Title Act, that damages would provide adequate relief to Ms. Lit if she were successful at trial. The challenging question, of course, is the amount of security that should be placed in trust.
- [36] Counsel for Mr. M. Lit asserts that there are three significant factors that justify ordering a nominal amount of security. First, he argues that the language of s. 257(3) of the Land Title Act permits me to consider the strength of Ms. Lit's case; he argues her case is very weak. Second, counsel for Mr. M. Lit asserts that his client seeks to recover assets worth millions of dollars in this case, that are held in trust by Ms. Lit and his son including: the matrimonial home, two townhouses and shares in PRL. He submits that these assets total approximately \$5.8 million and are held pursuant to trust agreements with Ms. Lit and her husband. Counsel submits that the value of these of assets ought to significantly reduce the amount of money that his client ought to post as security in order to cancel the CPL. Third, counsel argues that all parties are agreed that his client is very wealthy and has "substantial means". Therefore, he would be readily able to pay any judgement obtained in respect of Ms. Lit's claim. This factor, he submits, also warrants the posting of minimal security. He cites a number of authorities in support of his submissions including *Chiu v. Yee*, 2014 BCSC 742; and *Braich v. Mission Development*, 2008 BCSC 1698.
- [37] Mr. M. Lit asserts that the appropriate amount of security to be placed in trust should only be 1% of the proceeds of sale of the Property. He requests an order that the CPL be discharged upon his undertaking that if the house is sold he would post 1% of the sale proceeds in trust pending the resolution of this claim. Further, he submits that there should be no order for the posting of a significant sum in trust, prior to the sale of the Property. He asserts that since the trial is to proceed in September, if he still owns the house at the time of judgment, the house would be available for execution. If the house is sold prior to the judgment, the security should come only from the proceeds of sale; otherwise, he submits, he would "be paying into trust a sum of money only for the purpose of exercising his right to sell his own house." In this regard, I note that the question of who has an interest in the house remains an open one at this time.

- [38] Ms. Lit submits that the proper amount of security in this case ought to represent 25% of the value of the Property. She proposes "holding security from any sale proceeds in trust until further court order or agreement" and that this "will promote an early settlement and a prompt resolution, consistent with the objectives of the Supreme Court Rules [B.C. Reg. 221/90] and the Family Law Act [S.B.C. 2011, c. 25]". She also relies on a number of authorities including: *Chiu v. Yee*; *Gustafson v. Gustafson*, 2016 BCSC 1089; *Enigma Investments Corp. v. Henderson Holdings*, 2007 BCSC 1379; and *Kertcher v. Kertcher*, 2016 BCSC 1718, para. 32.
- [39] Having reviewed the applicable legislation and the case law cited by the parties, and considering Ms. Lit and Mr. M. Lit's agreement that the CPL be cancelled providing sufficient security is posted from the proceeds of sale of the Property, I am of the view that placing the amount of \$500,000 in trust from the sale proceeds of the Property, would be sufficient. Ms. Lit has specifically submitted that security from the sale proceeds of the Property ought to be held in trust until further court order or agreement in an effort to facilitate a more prompt resolution. I order that if the Property is sold prior to judgment, the sum of \$500,000 is to be held in trust pending the outcome of this matter; once the sum is placed in trust, the CPL may be cancelled.
- [40] While I appreciate the sum of \$500,000 as security is significantly less than requested by Ms. Lit as security, in light of the specific circumstances of this case, I am nevertheless of the view that this amount constitutes appropriate security.

[41] Costs shall be in the cause.

"MORELLATO J."

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