
CANADA / JUDGMENT

Little v. Johal

2020 BCSC 1755

COURT

Supreme Court of British Columbia

DECIDED

23 October 2020

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2020 BCSC 1755 Little v. Johal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Little v. Johal,

2020 BCSC 1755

Date: 20201023

Docket: E201620

Registry: Vancouver

Between:

Susan Frances Little

Claimant

And

Harvinder Singh Johal

Respondent

Before: Master Cameron

Oral Reasons for Judgment

Counsel for Claimant:

W.A. McLachlan

Counsel for Respondent:

T.R. Bell

Place and Date of Hearing:

Vancouver, B.C.

October 23, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 23, 2020

- [1] This is an application brought pursuant to Supreme Court Family Rule 15-8(1) for an order that the former matrimonial home of the parties located at 1717 Grand Boulevard, North Vancouver, British Columbia be listed for sale.
- [2] The relevant provision of the Supreme Court Family Rules reads as follows:
 - (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.
- [3] The background factual circumstances, other than for a significant issue that has recently arisen respecting the respondent's father's financial involvement in the purchase of the home, are not controversial.
- [4] The parties began to live together in a marriage-like relationship in March of 2008. They were married on July 11, 2009, and separated on December 19, 2018. There are two children of the marriage, namely E., born April 4, 2014, and E.K., born February 5, 2018. Since separation, the claimant has resided in the former matrimonial home with the two children.
- [5] The parties went through a collaborative process in an effort to resolve the family law issues and unfortunately, they were not successful, and in August of 2020, a notice of family claim was filed. The action is in its early stages, and in fact, although the respondent received the appropriate exemption to bring this application, a JCC has not been scheduled, and a trial date has not been obtained.
- [6] For the purchase of the former matrimonial home, the parties received help from a parent. It is not unusual that a parent or parents of one or both of the two spouses provide assistance with the purchase of a home, but when the terms upon which the assistance is provided are not clearly recorded then when the marriage dissolves and the parties begin to focus on their own financial interests there is fertile ground for disagreement. That appears to be the case here.

- [7] The parties purchased the property in May 2010. They each owned a condominium and they each contributed the net sales proceeds of the sale of those two condominiums to the purchase of the home. Together those funds amounted to approximately \$630,000.
- [8] They obtained conventional first mortgage financing in the sum of \$320,000 that was secured by a line of credit on the home. The balance of the purchase price came from the respondent's father in the sum of \$500,000.
- [9] There is some documentation that could support that the contribution was a gift to the parties and whether that is in fact so will have to be determined. Since this family law action was commenced, the respondent's father has commenced a civil action in August 2020 claiming a beneficial interest in the property based on his provision of \$500,000 to its acquisition in 2010.
- [10] On this application, the respondent took the view that the contribution of his father was not a gift but a loan and the claimant says that it was a gift. The parties will need to resolve that issue expeditiously as there is a certificate of pending litigation registered on title by the respondent's father.
- [11] An unusual feature to this application is that the parties listed the home for sale in July of 2020. At that time the financial picture appeared as follows:
- 1) there was clear title to the property;
 - 2) the market was healthy for the sale of a residence in the community; and
 - 3) the claimant, who is unfortunately suffering from a disability and is only earning a portion of her full-time salary as a teacher, had located another property in North Vancouver that she wished to purchase and to occupy with the two children of the marriage.
- [12] The equity calculation that was done at the time was such that based on the anticipated sale price of the Grand Boulevard property; the claimant would net sufficient funds to purchase the other property outright. That was her motivation to cooperate in having the property sold.
- [13] Circumstances changed in August of 2020, after Mr. Johal filed his civil claim claiming a beneficial interest in the property. The property was soon thereafter taken off the market.
- [14] What was open to the parties to be able to do on their own, that is, sell the property on terms they considered most appropriate, is no longer so. The other action complicates what would otherwise have been an expedient decision that was made by the parties to sell the matrimonial home.
- [15] The question I need to decide on this application today is whether at this time is it necessary or expedient that the property be sold.

- [16] Counsel for the applicant rests his application principally on the premise that if the property is not sold now, it will be sold sometime in the future in a declining market.
- [17] The evidence as to current market value and the forecast for property values in the near term for the greater Vancouver region offered by the applicant, was in my view no better than a projection that by its very nature was subject to future events, that may or may not come to pass. Our current circumstances with the COVID pandemic make any prediction of change of value going forward very difficult to gauge with any degree of confidence. Accordingly, in my view the potential change in market value is not a sound basis to make an order that the sale of the property is, at this time, necessary.
- [18] While it may well be that, this property will need to be sold in the future as the evidence supports that neither party can purchase the interest of the other, I must determine whether that the sale is necessary at this time. I am not satisfied that is the case.
- [19] In terms of whether or not it is expedient that the property be sold, from the claimant's perspective it would require her to move to rental accommodation with the two children as an interim step before purchasing another home in the community. That would be disruptive for her and the children and not expedient or in the best interests of the family as a whole.
- [20] Importantly, the respondent does not take any issue with the claimant continuing to reside in the matrimonial home other than accounting for monthly expenses to maintain the property. That is a matter to be addressed if necessary on a future application after the judicial case conference has been held.
- [21] Accordingly, I exercise my discretion in keeping with the authorities referred to by both counsel to resolve any doubts about the justice of an order for sale on an interim application, in favour of maintaining the status quo. Of course, this order speaks from the date of pronouncement and circumstances may change, and if they do, the parties may either agree once more that the property be sold or another application may be brought based on those changed circumstances.
- [22] The application is dismissed with costs to the claimant.

"Master Cameron"

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