
CANADA / JUDGMENT

Meleski v. Woodcock

2019 BCSC 935

COURT

Supreme Court of British Columbia

DECIDED

11 June 2019

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2019 BCSC 935 Meleski v. Woodcock

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Meleski v. Woodcock,

2019 BCSC 935

Date: 20190611

Docket: S200053

Registry: New Westminster

Between:

Steven August Meleski and Barbara Saunders

Plaintiffs

And

Ryan Eric Woodcock, Scott Andrew Woodcock and

Katherine Ann Woodcock

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page on June 19, 2019.

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiffs:

K. Sandhu

Counsel for the Defendants, Scott Andrew Woodcock and Katherine Anne Woodcock:

J. Lalonde

The Defendant, Ryan Eric Woodcock appearing in person:

R.E. Woodcock

Place and Date of Trial/Hearing:

New Westminster, B.C.

March 1, 2019

Place and Date of Judgment:

New Westminster, B.C.

June 11, 2019

Introduction

[1] These are reasons for judgment on a summary trial application brought by the plaintiffs. On or about April 18, 2017, the defendant Ryan Eric Woodcock ("Ryan Woodcock") transferred his undivided 98% interest in three properties (the "Properties") to his parents, the defendants Katherine Ann Woodcock ("Katherine Woodcock") and Scott Andrew Woodcock ("Scott Woodcock") (the "Transfer"). The plaintiffs seek a declaration that the Transfer was a fraudulent conveyance designed to prevent execution by the plaintiffs of three judgments against the Properties.

[2] The Properties are legally known and described as:

- PID: 015-903-818; Lot 8 Block 305 District Lot 22 Kootenay District Plan 1231;
- PID: 015-903-826; Lot 9 Block 305 District Lot 22 Kootenay District Plan 1231; and,
- PID: 015-903-800; Lot 10 Block 305 District Lot 22 Kootenay District Plan 1231 except Parcel A (see 139947I).

Background Facts

- [3] The plaintiffs own a residential unit located at 337 Fortier Street in Kimberley, B.C. (the "rental unit"). The plaintiffs entered into a written tenancy agreement to rent the rental unit to the defendant, Ryan Woodcock, and his then partner, Marianne J. Ryan (the "tenants"). The tenancy agreement commenced on August 1, 2016, with a monthly rent of \$1,190.00.
- [4] The tenants failed or refused to pay rent on December 1, 2016. The plaintiffs applied to the Residential Tenancy Branch and on December 29, 2016, the plaintiffs obtained an order that the defendant, Ryan Woodcock, pay the plaintiff, Steven August Meleski, the sum of \$1,190.00 (the "First Order").

- [5] Thereafter, on February 15, 2017, the tenants again failed to pay rent and the Residential Tenancy Branch made an order that the plaintiff, Ryan Woodcock and Marianne Ryan pay the plaintiff, Steven August Meleski, as landlord, the sum of \$2,692.50 (the "Second Order"). The Residential Tenancy Branch also granted the plaintiffs an order of possession for the rental unit.
- [6] On March 9, 2017, the plaintiffs engaged Okanagan Court Bailiffs Inc. to evict the tenants pursuant to the possession order. Ryan Woodcock was present at the rental unit when the bailiffs attended. Given that he called his father by telephone to come to the premises, I find, by necessary implication, he was served by the bailiffs with the documents supporting the eviction. Scott Woodcock attended the rental unit, in response to his son's telephone call, and reviewed the documents presented by the bailiffs. There is absolutely no doubt that Ryan Woodcock knew that the rent was in arrears, and he was indebted to the plaintiffs. The defendant, Scott Woodcock, assisted the tenants in moving out of the rental unit.
- [7] Scott Woodcock admits he was present at the rental unit when his son was evicted from the rental unit. The condition of the rental unit at the time of the eviction was described in considerable detail in the Decision of the Arbitrator from the Residential Tenancy Branch dated August 24, 2017 (the "Decision"). The Decision granted judgment to the plaintiffs for \$8,909.01 (the "Third Order"). At page 2 of the Decision, the following appears:

The Landlord stated that on December 1, 2016 the Tenants stopped paying rent. On February 15, 2017 the Landlord obtained an Order of Possession as well as a monetary order in the amount of \$2,692.50 representing compensation for unpaid rent for December 2016 and January and February 2017 in the amount of \$3,570.00 (the Landlords were also permitted to retain the tenants' security deposit).

The Landlord stated that the Tenants refused to move and they were forced to obtain a Writ of Possession and utilize the services of the court bailiff. The Tenants were removed from the property on March 9, 2017.

The Landlords submitted that the Tenants significantly damaged the rental unit including:

- smoking inside the rental unit;
- writing and scribbling on the walls;
- making holes in the walls;
- urinating on the floors;
- splattering nail polish and paint on kitchen cabinetry;
- burning the countertops with hot parts
- ripping off the toilet seat and cracking the toilet;
- damaging the doors, door handles and windows

- removing all window treatments including curtain rods and all curtains;
- removing the shower head;
- leaving a truck full of garbage as well as belongings which the landlord paid to store[.]

The Landlords also submitted the move in and move out condition inspection report, as well as photos of the rental unit which confirmed the condition at the beginning and end of tenancy.

The landlord testified that due to the condition of the rental unit the property was not re-rented until May 2017. She further stated that they did not receive rent for May 2017 as the new renters agreed to clean the exterior of the rental unit in lieu of rent. She also confirmed that the rent was reduced by \$140.00 per month as the new renters were willing to move in and clean the home and address the damage left by the tenants who are the subject of the application before me. The Landlord stated that while there had professional cleaners clean the inside, they were not able to clean the outside as the ground was frozen and covered in snow; she further stated that the Tenants left dirty diapers and excrement outside and the new renters cleaned that up when the snow melted.

[8] At page 4 of the Decision, the following appears:

Based on the undisputed testimony and evidence of the Landlords, and on a balance of probabilities, I find that the Tenants breached section 37 of the Act by damaging and failing to clean the rental unit. The evidence submitted by the Landlords confirms the Tenants caused extraordinary damage to the rental unit and engaged in outrageous and unacceptable behavior such as putting holes in walls, urinating on the floors, and spreading nail polish on kitchen cabinets. Such behaviour may warrant the award of aggravated damages, although notably such a claim was not before me. I therefore award the Landlords the amounts claimed for cleaning and repair of the rental unit, as well as replacement of the items removed by the Tenants at the end of the tenancy (such as window treatments and door knobs).

I further find that due to the condition of the rental unit, the Landlords were not able to re-rent the unit until May 2017, and they accepted a reduced rent from the new renters including allowing them to clean the rental unit in lieu of payment for May 2017, as well as the lost rental income. I find that in doing so the Landlords satisfied the requirement in section 7 of the Act that they minimize any losses.

[9] The detail from the Decision has been included in these reasons because of the admission by Scott Woodcock that he was present in the rental unit in the presence of the bailiffs. He must have been aware of the deplorable and filthy condition of the premises and would have rightly assumed that a claim would be made against Ryan Woodcock by the plaintiffs based on the condition of the premises, quite apart from the failure to pay rent as recorded in the Decision. The claim for rent, which was in arrears, had already been made and was confirmed by the orders of the Residential Tenancy Branch dated December 29, 2016 and February 15, 2017. Scott Woodcock made no reference to the condition of the rental unit in his affidavit.

- [10] Scott Woodcock and Katherine Woodcock both assert that they had no knowledge of the particulars of the residential tenancy agreement between the plaintiffs and Ryan Woodcock and his girlfriend.
- [11] However, Katherine Woodcock (at paragraph 6 of her first affidavit) swore she "understood" the orders of the Residential Tenancy Branch dated December 2016 and February 2017 to be related to the eviction of her son and his girlfriend. Ms. Woodcock's "understanding" does not have a stated source nor does Ms. Woodcock state when she formed her understanding. As described above, however, the only matter referred to in the first two Residential Tenancy Branch orders was a failure to pay rent under a tenancy agreement. Ms. Woodcock confirms that, as of the date the bailiffs arrived at the rental unit, Ryan Woodcock had not paid the rent owing with funds advanced by his parents for the purpose of paying the rent.
- [12] On or about June 20, 2014, Ryan Woodcock was registered as the owner of an undivided 98% interest in the Properties, and Scott Woodcock and Katherine Woodcock were registered as the owners of an undivided 2% interest as joint tenants. According to the first affidavit of Katherine Woodcock, sworn on February 21, 2019, the Properties were registered in this fashion because the defendant, Ryan Woodcock, could not qualify for a mortgage based on his own financial circumstances. At the time that Katherine Woodcock and Scott Woodcock agreed to assist their son in purchasing the Properties, the banker involved advised them that Ryan Woodcock had a history of arrears and credit card debts with the bank. In other words, Scott Woodcock and Katherine Woodcock were aware that their son was indebted to the bank and was not properly repaying that debt. Likewise, there is no doubt that Ryan Woodcock was aware of these unpaid debts.
- [13] Again, according to the first affidavit of Katherine Ann Woodcock, she and her husband became aware in early January 2017, from an unspecified source, that Ryan Woodcock was in arrears of the mortgage and property tax payments on the Properties. The parents were concerned that the failure to maintain mortgage and property tax payments would negatively affect their credit rating. Clearly, the defendants Scott Woodcock and Katherine Woodcock knew and were aware that Ryan Woodcock was not maintaining payments of indebtedness to third parties in the early part of 2017. There is no doubt that Ryan Woodcock was also aware of these arrears when they occurred.
- [14] On or about March 31, 2017, the plaintiffs applied to register the two judgments for the First Order and the Second Order in the Land Title Office against the Properties.
- [15] On April 3, 2017, counsel for the plaintiffs advised the defendant, Ryan Woodcock, in writing that the said judgments had been filed against his interests in the Properties.

- [16] On April 7, 2017, the plaintiffs' application to register the two judgments against the Properties were rejected by the Land Title Office on the basis that the certificates of judgment had not been attached to the application. The Notice of Defect allowed the applicants until May 21, 2017 to cure the defect. On April 11, 2017, the plaintiffs obtained the certificates of judgment and applied on April 25, 2017 to register those certificates of judgment against the title to the Properties to cure the noted defect.
- [17] On April 18, 2017, Ryan Eric Woodcock transferred his interests in the Properties to his mother and father (the Transfer). On the Form A for the Transfer, the consideration is described as "\$1.00 and natural love and affection".
- [18] On May 8, 2017, the plaintiffs' application to register the judgments was again rejected on the basis that the judgment debtor, Ryan Woodcock, did not have a registered interest in the Properties.
- [19] The Third Order was granted on August 24, 2017 and filed in the Provincial Court of British Columbia on November 10, 2017.

Positions of the Parties

- [20] The plaintiffs allege that the Transfer was a fraudulent conveyance within the meaning of the Fraudulent Conveyance Act, R.S.B.C. 1996, c. 163 [FCA], and is therefore void and of no effect as against the plaintiffs.
- [21] The defendants, Scott Woodcock and Katherine Woodcock, deny that the Transfer was made fraudulently. They claim that they had no knowledge, at the time of the Transfer, of the judgments granted by the Residential Tenancy Branch. They say that the Transfer was made innocently to assist Ryan Woodcock in satisfying his debts to them and so that they could maintain a good credit rating. Ryan Woodcock, for his part, simply states in his response to civil claim that there is "no basis or evidence that the house was transferred fraudulently". Ryan Woodcock did not participate in this summary trial or file any affidavit necessary to support his response to civil claim. His response to civil claim carries no weight whatsoever in the consideration of this matter.

Analysis

- [22] Before discussing the fraudulent conveyance claim, there is a preliminary matter to be considered. At the outset of this hearing, the defendants expressed opposition to a summary trial proceeding being used to decide this case. However, in final submissions, counsel for the defendants stated that the defendants did not oppose this matter being decided as a summary trial. At any rate, based on the factors set out in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31, I am satisfied that this matter is suitable for summary trial.
- [23] I turn, then, to the fraudulent conveyance claim.

[24] The FCA consists of two sections:

Fraudulent conveyance to avoid debt or duty of others

1 If made to delay, hinder or defraud creditors and others of their just and lawful remedies

- (a) a disposition of property, by writing or otherwise,
- (b) a bond,
- (c) a proceeding, or
- (d) an order

is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

Application of Act

2 This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

[25] In short, the plaintiffs submit that s. 1 of the FCA applies and the defendants submit that s. 2 applies.

[26] In *Sutton v. Oshoway*, 2011 BCCA 245 at para. 4, the Court described the proper approach to the application of the FCA:

[4] The proper approach to the application of the Act is summarized concisely in *Chan v. Stanwood*, 2002 BCCA 474, 6 B.C.L.R. (4th) 273:

[20] ... Where the consideration is inadequate or nominal, a creditor need only show that the transferor intended to delay, hinder or defraud the creditor of his remedies. Where on the other hand valuable consideration has passed, the creditor must also show that the transferee actively participated in the fraud. As stated by this court in *Meeker Cedar Products Ltd. v. Edge* (1968), 68 D.L.R. (2d) 294 (aff'd at (1968), 1 D.L.R. (3d) 240 (S.C.C.)):

... it is clear as a matter of interpretation of the statute as a whole and upon authority that where a sale is made for good and valuable consideration the transaction will not be void by reason of the purchaser's having notice or knowledge of the vendor's intent to delay, hinder or defraud creditors and others unless it be proved that the purchaser was actually privy to the fraud, i.e., a party to carrying out the fraudulent intention and purpose. [at 299; emphasis added.]

[21] Where valuable consideration has passed, then, the focus is not on the sufficiency of that consideration but on the intentions of both parties to the transaction. ...

[Emphasis in original.]

Although the word "fraud" is used in the Act, it is now settled that it is not necessary to show a dishonest intent on the part of the transferor. As stated in *Abakhan & Associates Inc. v. Braydon Investments Ltd.*, 2009 BCCA 521, 283 B.C.A.C. 12,

- [73] The only intent now necessary to avoid a transaction under the modern version of the Act is the intent to "put one's assets out of the reach of one's creditors" (per *RBC v. Clarke*). No further dishonest or morally blameworthy intent is required.
- [27] In this case, I find that the consideration for the Transfer was "\$1.00 and natural love and affection" as stated on the Form A. It was not the amount of an earlier loan made to Ryan Woodcock by his parents, as suggested by the defendants: see *Kostiuk (Re)*, [1998] B.C.J. No. 2296, 1998 CarswellBC 2120 at paras. 98-101 (S.C.). The relevant time for assessing the parties' intentions regarding consideration is the time of the Transfer. The notation on the Form A provides contemporaneous evidence of that, which is to be preferred over evidence of a prior loan. Accordingly, the consideration for the Transfer was inadequate or nominal and therefore the relevant intentions are those of the transferor, Ryan Woodcock: Sutton at para. 4 citing Chan at para. 20.
- [28] In the case of *Dexia Credit Local v. Rogan*, 2008 BCSC 1406, the determination of the intention to defeat creditors was discussed as follows:

23 It is a question of fact, for the court to determine, whether the disposition was made with an intention to defeat, hinder, delay, or prejudice creditors. In *Banton v. Westcoast Landfill Diversion Corp.*, 2004 BCCA 293 Braidwood J.A., writing for the court, cited at para. 5 a number of factual indicia of fraudulent intention or "badges of fraud" from *Frimer v. Lurcher*, [1984] B.C.J. No. 728 (S.C.):

- (1) The state of the debtor's financial affairs at the time of the transaction, including his income, assets and debts;
- (2) The relationship between the parties to the transfer;
- (3) The effect of the disposition on the assets of the debtor, i.e. whether the transfer effectively divests the debtor of a substantial portion or all of his assets;
- (4) Evidence of haste in making the disposition;
- (5) The timing of the transfer relative to notice of the debts or claims against the debtor;
- (6) Whether the transferee gave valuable consideration for the transfer.

24 There are other indicia or badges of fraud that include continuing to remain in possession following a conveyance and secrecy respecting the transactions.

25 While not a presumption, there is a suspicion that where a transaction is made between near relatives, particularly husband and wife, the transaction was not made in good faith. The burden of establishing the bona fides of the transaction in such a situation shifts from a plaintiff to the parties to the transaction: *Jennings v. Chow*, 2008 BCSC 110 at para. 18 and *CIBC Mortgage Corp. v. Pender*, [1999] B.C.J. No. 2162 at para. 18 (S.C.).

[29] In this case, the Transfer was made between "near relatives" (parents and son), so there is a suspicion that the transaction was not made in good faith. The burden of establishing the bona fides of the transaction in this situation shifts from the plaintiffs to the parties to the transaction. The issue, then, is whether the defendants have met the burden of establishing the bona fides of the Transfer.

[30] Based on the evidence in this case, it is clear that as early as December 2016, the respondents were fully aware that Ryan Woodcock was not paying various creditors including:

- the City of Cranbrook for property taxes;
- the Landlords, the present plaintiffs;
- credit card lenders and mortgagees; and
- the party providing vehicle financing for a Land Rover.

[31] As noted in the description of the badges of fraud above, the first consideration is the financial circumstances of Ryan Woodcock. It must be noted that despite notice of these proceedings and plenty of opportunity to file factual material in the form of an affidavit which might have explained his financial affairs at the time of the transaction, no affidavit setting out Mr. Woodcock's financial affairs was filed at all. Apparently, Scott and Katherine Woodcock knew that Ryan Woodcock had, in early January of 2017, "recently acquired some significant credit card debt" and could not pay that debt without refinancing his property. No details of this credit card debt were put before the Court in any form whatsoever. However, his mortgage was apparently in arrears and property taxes were believed to be in arrears.

[32] The evidence before this Court demonstrates that Ryan Woodcock was a landlord's nightmare given his treatment of the rental unit recorded in the reasons of the Residential Tenancy Branch. Both of his parents knew he was not paying rent to his landlord in December of 2016 (affidavit #1 of Katherine Ann Woodcock at para. 8 and affidavit #1 of Scott Woodcock at para. 6). Scott Woodcock attended the rental unit on March 9, 2017, and knew his son was being evicted because of the failure to pay rent and because of the sordid condition of rental unit, which condition was there for Scott Woodcock to see. His assumption that the money ostensibly advanced by him and his wife to pay the rent "had resolved the issue" of rent owing was inaccurate (affidavit #1 of Scott Andrew Woodcock at para. 9).

- [33] For reasons that are not clear, the defendants themselves raised the problem with the seizure and sale of a Land Rover vehicle. Ryan Woodcock had financed the purchase of that vehicle and it was effectively repossessed on March 9, 2017 and sold by a bailiff unrelated to the present proceedings. This is simply further evidence of the inability of Ryan Woodcock to pay his debts when the same were due and of which inability to pay debts of which Ryan Woodcock was fully aware.
- [34] The effect of the transfer of the Properties from Ryan Woodcock to his parents effectively divested Ryan Woodcock of his only real estate assets and thereby delayed, hindered or defrauded creditors who were then unable to exercise their just and lawful remedies against his assets. His other significant asset, a motor vehicle, had previously been seized and sold. He was living in rented premises.
- [35] Contrary to the submission of counsel for the defendants, the "badges of fraud" are present in this case. Ryan Woodcock transferred the Properties for the purpose of preventing his creditors, including the plaintiffs herein, from executing against the Properties. Ryan Woodcock made no attempt in this summary trial to demonstrate the bona fides of the impugned transfer of the Properties.
- [36] The law on when a fraudulent intent can be inferred from conduct was not the subject of any submissions before this Court. A helpful decision in that regard is *Mawdsley v. Meshen*, 2012 BCCA 91, leave to appeal to SCC ref'd [2012] S.C.C.A. No. 182, where at para. 71 Madam Justice Newbury wrote:
- [71] I do not agree with Mr. Mawdsley's submission, then, that Braydon did away with the requirement of intention on the part of the transferor for the FCA to apply. In some cases, of course, that intention may be inferred from the effect of the transaction, and indeed a presumption may arise in some circumstances from that effect. If there is no credible evidence to the contrary, the FCA may be satisfied; but there is no rule of law that in every case, an intention to defeat creditors must be inferred from the effect of the impugned transaction. As Freedman J.A. stated in *Mandryk*, evidence that the effect of the impugned transfer was to defeat or delay creditors "is not conclusive." In the result, I cannot accede to Mr. Manson's argument in the case at bar that Ms. Meshen must be taken as a matter of law to have intended to delay or hinder Mr. Mawdsley (assuming for these purposes that he qualifies as a 'creditor or other' under the FCA) in advancing a WVA claim.
- [37] The reference above to is to *Botham Holdings Ltd. (Trustee of) v. Braydon Investments Ltd.*, 2009 BCCA 521, leave to appeal to SCC ref'd [2010] S.C.C.A. No. 26, where the Court of Appeal endorsed the principle that a claimant under the FCA need not show a "dishonest" or "blameworthy" intent on the part of the transferor.

- [38] As interpreted by Mawdsley, it is not a given that there is fraudulent intent in the case of a transfer of the type that occurred in the case at bar. However, on the facts related above concerning the conduct of Ryan Woodcock, I find that the transfer aforesaid by Ryan Woodcock is a fraudulent conveyance within the meaning of s. 1 of the FCA.
- [39] Therefore, it is ordered that the transfer of the Properties which was made to delay or hinder creditors, including the plaintiffs herein, is void and of no effect against the plaintiffs, and that the plaintiffs hold an interest in the Properties to the extent of the three judgments referred to above.

Punitive Damages

- [40] The plaintiffs have claimed punitive damages. Punitive damages are designed to punish behaviour which amounts to a marked departure from ordinary standards of civil behaviour and to achieve objectives of retribution, denunciation and deterrence: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. "Courts should only resort to punitive damages in exceptional cases": *Honda Canada Inc. v. Keays*, 2008 SCC 39 at para. 68 [Keays].
- [41] In the case at bar, I am satisfied that, although the conduct of Scott and Katherine Woodcock had the effect of hindering the plaintiffs from executing the judgments they obtained and constituted support of a fraudulent conveyance, Scott Woodcock and Katherine Woodcock acted out of an ignorant disregard for the effect of their son's misconduct and his failure to pay his debts. The parents' conduct falls short of being "harsh, vindictive, reprehensible and malicious": Keays at para. 68.
- [42] The situation of Ryan Woodcock is different. I find his conduct was "harsh, vindictive, reprehensible and malicious". He acted throughout without regard for the rights of others, in particular the plaintiffs. The plaintiffs cited 1007374 Alberta Ltd. v. Ruggieri, 2014 ABQB 641, aff'd 2015 ABCA 205, and Son v. Kim, [1994] O.J. No. 2713 (Ct. J. (Gen. Div.)) in support of their claim for punitive damages. In Ruggieri, the conduct at issue was characterized by the court as "really amount[ing] to an obstruction of justice" (para. 131). Ryan Woodcock did engage in this level of misconduct, which amounted to an obstruction of justice. In Son, all of the badges of fraud were present (para. 32) and virtually all of those same badges of fraud are present in the case at bar.
- [43] As a result, there will not be an award of punitive damages against Scott Woodcock and Katherine Woodcock but there will be an award of punitive damages against Ryan Woodcock. Ryan Woodcock's actions after he was aware of the judgments owed to the plaintiffs, in transferring the Properties, was designed to deliberately hinder and delay the collection of those judgments. In this case, there was, as noted in Son, a waste of the court's resources. The plaintiffs sought punitive damages in the amount of \$25,000.00, "high enough to cause a 'sting'". Taking guidance from the decision on quantum in Son, the award of punitive damages against Ryan Woodcock shall be \$15,000.00.

Costs

[44] The plaintiffs are entitled to their costs of this action, pursuant to Appendix B, as a matter of ordinary difficulty, payable by the Defendants forthwith after assessment.

"Ball J."

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