

CANADA / JUDGMENT

Mion Estate v. Mion

2013 BCSC 2070

COURT

Supreme Court of British Columbia

DECIDED

15 November 2013

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2013 BCSC 2070 Mion Estate v. Mion IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Mion Estate v. Mion, 2013 BCSC 2070 Date: 20131115 Docket: S134648 Registry: Vancouver Between: Sonia Marina Corra and Sonia Marina Mion, as personal representative of the Estate of Lorenzo Giovanni Oscar Mion, deceased Petitioners And Angelo Mion, Rose Angela Mion, Paola Mion and Larpa Construction Ltd. Respondents Before: The Honourable Mr. Justice Bowden Reasons for Judgment Counsel for the Petitioners: D.R. Urquhart M. Schissel Counsel for the Respondents: K.G. McKenzie Place and Date of Chambers Petition: Vancouver, B.C. November 7, 2013 Place and Date of Judgment: Vancouver, B.C. November 15, 2013

- [1] The petitioners are seeking an order that the respondents, or Larpa Construction Ltd. alone, purchase all of the shares of the petitioner in Larpa Construction Ltd. ("Larpa") pursuant to s. 324 and s. 227(3)(h) of the Business Corporations Act, S.B.C. 2002, c. 57 [BCA], and the inherent jurisdiction of the Court. Alternatively, the petitioners ask for an order that Larpa be liquidated and dissolved under s. 324 of the BCA.
- [2] Larpa was formed by Angelo Mion to purchase real property, build or refurbish houses and rent or sell them for profit. Forty-six per cent of the shares of Larpa were issued to his son, Lorenzo Mion, who worked in the business of Larpa with his father. Lorenzo died in 1994. His estate continues to own those shares. The remaining shares are owned by Lorenzo's parents, Angelo and Rose Mion, together with Lorenzo's sister, Paola Mion.
- [3] The petitioner, Sonia Corra, was married to Lorenzo until his death. In 1991 and in return for a promissory note payable on demand without interest, Angelo and Rose paid \$100,000 to Lorenzo and Sonia to help them purchase a house ("Skeena Street Property"). Sonia Corra currently resides there with her husband and three children.
- [4] In 1997, Angelo and Rose commenced an action to recover the \$100,000 payment. Sonia, on her own behalf and as the personal representative of Lorenzo's estate, counterclaimed seeking the liquidation of Larpa on the basis that its business was being carried on in a manner that was oppressive to Lorenzo's estate. In the alternative, Sonia claimed that it was just and equitable that Larpa be wound up. In July 2001, this Court gave judgment in favour of Angelo and Rose and ordered Sonia, in her own capacity and as the personal representative of Lorenzo's estate, to repay \$100,000 together with Court ordered interest

from January 21, 1997. This Court also ordered that execution on the judgment be stayed until an audit of Larpa was conducted and the counterclaim was resolved.

- [5] A Certificate of Judgment was registered against the Skeena Street Property on February 26, 2009.
- [6] The counterclaim was heard by Justice Affleck and on February 23, 2012, the counterclaim was dismissed and the stay of execution was removed.
- [7] Angelo and Rose proceeded with an application under the Court Order Enforcement Act, R.S.B.C. 1996, c. 78, to obtain an order for the sale of the Skeena Street Property. A learned master of this Court determined that the hearing of that application should be deferred until this petition was heard.
- [8] The petitioners assert that there are other assets available to satisfy the 2001 judgment. In particular, they say that their shares in Larpa could be acquired by the respondents in satisfaction of the judgment.
- [9] The amount of the judgment with interest is presently about \$175,000. There is no evidence as to the fair market value of the petitioners' shares in Larpa. There is also no evidence regarding the financial position of the petitioners. In particular, there is no evidence to indicate whether they have other means by which to pay the judgment such as a mortgage loan against the Skeena Street Property.
- [10] In essence the petitioners are asking the Court to order that their shares in Larco be purchased by the respondents and that the amount of the judgment be set off against the value of the shares. If it is necessary to achieve a purchase of their shares, the petitioners say that Larpa should be wound up.
- [11] In my view, the petitioners are not entitled to the orders sought. My reasons are as follows.
- [12] The issue of whether it is just and equitable that Larpa be wound up was in the counterclaim considered by Justice Affleck, and he ordered that the stay of execution of the judgment come to an end. I also note that Justice Affleck said the very lengthy delay of 14 years from the time that proceedings were commenced is a factor militating against the Court making the order sought under s. 227 of the BCA. Now that some 16 years have passed, I would make the same observation.
- [13] Even if it were open to this Court to consider whether it would be just and equitable that Larpa be wound up, I am not satisfied that the evidence supports such an order. It appears that the petitioners, as shareholders of Larpa, have been treated no differently than the respondent shareholders in that company. Further, there is no evidence of oppressive conduct on the part of the controlling shareholders of Larpa.

- [14] The thrust of the petitioners' argument is that the judgment debtor should not execute against the petitioners' home and should instead purchase their shares in Larpa. The petitioners say that this would end a difficult relationship that has persisted between the petitioners and the respondents over many years.
- [15] It is well known that a minority shareholder does not have a ready market for the sale of their shares, and merely because the petitioners wish to extricate themselves from this company is not a reason for the Court to order that the respondents purchase their shares.
- [16] The petitioners did not provide any evidence to suggest that they had no assets other than the Skeena Street Property or their shares in Larpa to discharge the judgment debt. There is no evidence to indicate that execution by the judgment creditor against the Skeena Street Property would be prejudicial to the petitioners. Indeed, there is no evidence to suggest that the petitioners are not in a position to discharge that debt by various other means such as a loan secured by a mortgage against the Skeena Street Property. The only charge against the title to the Skeena Street Property appears to be the judgment itself.
- [17] On the other hand, it is apparent that the winding up of Larpa may not be in the best interests of any of its shareholders. As its sole asset is a rental property that it has held for a number of years, the winding up or sale of that property would likely create significant tax consequences as would the distribution of any proceeds of sale to the shareholders.
- [18] By ending the stay of execution, it is clear that Justice Affleck was allowing the judgment creditor to proceed to execute its judgment against the assets of the petitioners. I agree with the respondents' counsel that the judgment debtor is not entitled to choose the asset or assets that a judgment creditor is entitled to proceed against.
- [19] The petitioners did not cite any case authority that a court may assist a judgment debtor, assuming such assistance is necessary because of some prejudice to them, by requiring a judgment creditor to proceed only against a particular asset of the judgment debtor. In my view, even if the Court has that discretion, the evidence before me does not support the exercise of discretion in that way.
- [20] The orders sought by the petitioners are denied with costs to the respondents at Scale B. "Bowden J."

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