

CANADA / JUDGMENT

Nagy-Kessler v. Wilson

2005 BCCA 532

COURT

British Columbia Court of Appeal

DECIDED

17 October 2005

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

2005 BCCA 532 Nagy-Kessler v. Wilson COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Nagy-Kessler v. Wilson, 2005 BCCA 532 Date: 20051017 Docket: CA032581 Between: Agnes Nagy-Kessler, Executrix of the Estate of Ilona Helen MacLeod, Deceased Respondent (Petitioner) And Steven George Ernest Wilson Appellant (Respondent) And Philip Warren MacLeod Respondent (Respondent) Before: The Honourable Madam Justice Southin The Honourable Madam Justice Newbury The Honourable Mr. Justice Low Oral Reasons for Judgment G. Holeksa Counsel for the Appellant, Steven George Ernest Wilson S.M. Smith Counsel for the Respondent, Agnes Nagy-Kessler Place and Date: Vancouver, British Columbia 17 October 2005

- [1] SOUTHIN J.A.: This is an appeal from the judgment of Mr. Justice Curtis pronounced on 19 October 2004, upon a proceeding brought by petition on 23 March 2004. The order in issue was in these terms: THIS COURT ORDERS:
1. That the Petitioner is entitled to register the judgment granted June 19, 2003 against Philip Warren MacLeod in British Columbia Supreme Court Action S016835 against the property legally described as PID 011-316-063 Parcel "One" (Reference Plan 10926) Lot 4 Plan 8635 and of Lot "A" Plan 6898 Division "H" New Westminster District (the "Lands").
 2. The Petitioner shall be at liberty to apply to sell the said lands if the said judgment is not satisfied by Respondent Steven George Ernest Wilson.
- [2] In broad terms, Mr. Wilson and Mr. MacLeod had some financial dealings. Mr. MacLeod was in serious financial difficulties and in 2002 he and Mr. Wilson entered into an agreement in which Mr. Wilson agreed to advance funds to, among other things, pay off the mortgage on Mr. MacLeod's house, which was then some \$95,000, that mortgage being the subject of a foreclosure action.
- [3] Some arrangement was made between the two men which I think, if they had come to outs themselves, a judge would have found created in Mr. Wilson an equitable mortgage against the property for the amount which he had paid out. If it were difficult for the judge to say exactly what the terms of that mortgage would be, there would, I think, have been little difficulty in his applying the modern doctrine of constructive trust to award to Mr. Wilson for what he had done for his friend an interest in the property in priority to any other

interests that were subsequently created.

- [4] In 2004, the petitioner below obtained a judgment against Mr. MacLeod for some \$19,000, plus costs, plus interest. But prior to that time, Mr. MacLeod and Mr. Wilson had made another agreement, which might be said to reinforce the notion of the deal that had been made between them the year before; or, perhaps, was going a little bit further and giving Mr. Wilson, in effect, a right to a conveyance of the property in full settlement of the obligations of Mr. MacLeod. But the terms are not exactly clear and the learned judge did not think they were either. In any event, the property was conveyed to Mr. Wilson, at which point the petitioner brought these proceedings in which she asserted that the transfer of the lands was a fraudulent preference.
- [5] Now, it is unfortunate that these two statutes about preferring creditors and so forth contain the word "fraudulent" because that certainly conjures up ideas of all manner of dishonest things and I do not really think that there was any deliberate dishonesty in this case in any way on the part of the respondent, Mr. Wilson. He and Mr. MacLeod were proceeding without legal advice and, as such, did things that on the surface might seem to be a bit odd, but resulted from their ignorance.
- [6] In my mind, there is no question that Mr. Wilson had a perfect right to an equitable interest in these lands which was created in 2002 for the very substantial sum of money which he had advanced in order to save this property from foreclosure. And, for that amount, he should stand ahead of the petitioner below. For had it not been for what he did, there would be nothing for the petitioner to have judgment against. It would all long since have gone to the mortgage company, Opal Investments I think.
- [7] A complication to this case is that this property has now been sold; it realized a substantial sum of money. Had it not been sold, I think the proper order in this case would have been an order on Mr. Wilson to re-convey, and a declaration that he was entitled to a first charge against the lands in whatever the proper sum is. Then an order that the judgment be registered and then an order that the property be sold. That would have resulted in Mr. Wilson getting his money and the petitioner getting hers to the extent that there was some left over.
- [8] So that leaves us only with the question of, "how much?" There are various figures that have been put forward here, but in the instrument of May 2003, the amount advanced is shown to have been \$106,152.18. I think it is fair to say that the \$700 a month that is shown on page 25 of the appeal record is a reasonable interest amount on a balance of that kind. So one arrives at the time that this matter was before the learned judge below at \$113,882.18 and about another 18 months of the same amount. So what we are talking about is about \$130,000 - but someone can do the arithmetic. In other words, the amount is to be calculated at \$106,152.18 plus \$700 a month up to and including 17 December 2004. That is the amount of the "equitable mortgage" which is to go to Mr. Wilson and the remainder is to go to the petitioner. I would say that there ought not to be any costs in this Court.

[9] NEWBURY J.A.: I agree.

[10] LOW J.A.: I agree.

[11] SOUTHIN J.A.: If counsel have difficulty drawing the order, they may make submissions. They may find it possible to solve all of this without drawing up any more pieces of paper. "The Honourable Madam Justice Southin"

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/ca/05/05/2005bccca0532.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/nagy-kessler-v-wilson-2005>

Prepared on 29 October 2026 · Esheria