

CANADA / JUDGMENT

Repp v. Butler

2025 BCSC 1379

COURT

Supreme Court of British Columbia

DECIDED

3 July 2025

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2025 BCSC 1379 Repp v. Butler

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Repp v. Butler,

2025 BCSC 1379

Date: 20250703

Docket: S243308

Registry: Vancouver

Between:

Doreen Ruth Repp

Petitioner

And

Richard Butler

Respondent

Before: Associate Judge Nielsen

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

J.V. Payne

Counsel for the Respondent:

A.P. Morrison

Place and Dates of Hearing:

Vancouver, B.C.

June 11 and 12, and July 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 3, 2025

- [1] THE COURT: This is an application pursuant to Supreme Court Civil Rule 22-1(7)(d) to convert the within petition proceeding to an action, and to refer the matter to the trial list.
- [2] The petition proceeding was served on May 22, 2024. The petition seeks to remove the respondent from the title of a condominium located at 1105-1003 Pacific Street, Vancouver, B.C. (the condo). Both the petitioner and the respondent were registered on title as joint tenants until recently, and are now registered as co-owners.
- [3] The petition is brought pursuant to the Partition of Property Act, R.S.B.C. 196, c. 347, and seeks an order giving the petitioner full ownership of the condo.
- [4] The petition alleges that the presumption of indefeasible title established by s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 50, is rebutted and that the respondent holds his legal interest for the petitioner under a resulting trust or, in the alternative, a constructive trust, or in the further alternative, the respondent expressly disclaimed or abandoned any possible interest in the condo in 1999 and 2001.
- [5] The response to the petition alleges that the petition must be dismissed as an abuse of process and that the relief sought in the petition is barred by the passage of time. It is the response to the petition which has precipitated this application.
- [6] By way of background, in 1997, the claimant and the respondent bought the condo and have been registered owners ever since. At the time, they were romantically involved. The petitioner alleges the condo was purchased as the couple intended to reside there with the plan being that they would contribute equally to all the associated expenses. The petitioner alleges the respondent did not keep up his end of the bargain and that they ended their relationship in 2001.
- [7] While the parties remained joint tenants thereafter, that changed in 2023 when the respondent changed the title to make the parties tenants in common. The petitioner alleges that this led her to commencing the petition proceeding and filing a Certificate of Pending Litigation on title.

- [8] The respondent alleges that in 2015, the petitioner divorced her husband, a Mr. Lieberman [phonetic], and alleged in the divorce proceedings, which I am going to refer to as the ("Denver proceeding"), that the petitioner and respondent were co-owners of the condo. The respondent has produced extensive evidence in this regard, which includes an expected summary of evidence in the Denver proceeding, a statement of adjustments in regard to the condo, the state of the title listing the parties as joint tenants, a transcript of an examination for discovery of the petitioner under oath, and sworn responses to interrogatories.
- [9] The petitioner has not filed a responsive affidavit addressing the respondent's allegations of abuse of process, nor has she addressed the timeline underlying the limitation defence. The petitioner submits that the underlying issue in this matter is not suitable for a decision based upon the summary petition procedures, as the allegations of the respondent based upon fraud and abuse of process, and the alleged limitation defence, will require a trial or a summary trial after all the typical pretrial procedures have been completed. Therefore, the court ought to exercise its jurisdiction to convert the petition proceeding to an action.
- [10] The respondent submits their two substantive responses to the petition will be determinative as the matter stands, given the silence of the petitioner. In effect, the only evidence is that of the respondent and, in his view, it is determinative and there is no issue for trial.
- [11] Finally, the respondent submits that the court ought not to grant the order sought, as it is a matter for the hearing judge to decide whether there is a genuine issue for trial and, if so, how it can be most effectively determined. A hybrid approach would be one possibility.
- [12] In *Cepuran v. Carlton*, 2022 BCCA 76, the B.C. Court of Appeal held that a chambers judge is not required to convert a petition to an action upon finding a triable issue exists: see paras.149 to 166. Rather, the chambers judge has a discretion to decide the issue on the basis of the evidence before the court or to order the matter be referred to the trial list pursuant to Supreme Court Civil Rule 22-1(7)(d), or to order some other hybrid process pursuant to Supreme Court Civil Rule 16-1(18) that incorporates some pretrial procedures into the petition process: see *Cepuran*, at para. 160.
- [13] The discretion of the court is broad and to be determined on a case-by-case basis: see *Cepuran*, para. 162.
- [14] In *Cepuran*, the court declined to provide an exhaustive list of factors for consideration, but did note several relevant factors including the statutory context mandating a petition process such as we have here where we have a dispute over the title to property which mandates a petition process. The B.C. Court of Appeal also referenced the case of *Boffo Developments (Jewel 2) Ltd. v. Pinnacle International (Wilson) Plaza Inc.*, 2009 BCSC 1701, and the factors cited therein. And finally, they referenced the object of the Supreme Court Civil Rules and cited Supreme Court Civil Rule 1-3.

- [15] The B.C. Court of Appeal noted that the factors for consideration will evolve over time and depend upon circumstance.
- [16] The petitioner makes three broad submissions; first, the statutory context does not favour summary proceedings; second, the Boffo factors favour conversion to an action; and finally, that a just proceeding is more important than a speedy proceeding in the circumstances.
- [17] With respect to the first submission, the petitioner submits there is no significant policy reason for the matter proceeding by petition, given the fact that the underlying claims are in constructive or resulting trust. The factual matrix is atypical of a Partition of Property Act matter, and it spans some 27 years involving the end of a romantic relationship and evidence from a foreign jurisdiction.
- [18] In regard to the Boffo factors, the petitioner submits that serious allegations of fraud and dishonesty giving rise to an abuse of process allegation are not suited to a petition proceeding. Argument will involve issues of credibility, consideration of the entire factual matrix, intertwined with the limitation evidence that will span decades. Therefore, the petitioner submits fairness will involve the testing of that evidence.
- [19] The petitioner submits fairness in the circumstances trumps any concern over a speedy summary proceeding. Further, the petitioner submits the respondent has done nothing to realize on his alleged interest in the condo for decades.
- [20] The respondent submits that the evidence in relation to the alleged abuse of process is unchallenged. The petitioner could have offered evidence pertaining to her alleged behaviour but has chosen not to do so and therefore, given the factual matrix, the legal requirements of an abuse of process claim are a certainty. In the circumstances, the longstanding principle that a litigant may not advance inconsistent positions in different proceedings applies.
- [21] In this regard, the respondent relies upon *Este v. Esteghamat-Ardakani*, 2017 BCSC 878, which was upheld on appeal at 2018 BCCA 290. The inconsistent position alleged by the respondent here is that the petitioner, for the purpose of this proceeding, alleges she is the owner of the entire condo, whereas in the Denver proceeding, where she was in a divorce proceeding with her former husband, she led sworn evidence to the contrary.
- [22] The respondent submits that insofar as the limitation defence is concerned, the evidence is unequivocal and the petitioner has known of the respondent's claims to the condo for a decade, when the limitation for a claim for resulting or constructive trust is two years. In this regard, the respondent references *Chan v. 0975713 B.C. Ltd.*, 2018 BCSC 872 at paras. 60 and 62, and *Moses v. Lower Nicola Indian Band*, 2014 BCSC 643 at paras. 20 and 21.

- [23] Finally, the respondent submits that the question of whether the petition proceeding ought to be remitted to the trial list is an issue best left to the judge considering the matter. If the judge is of the view that the matter ought to be remitted to the trial list, that option is available, or if a hybrid procedure is best, those allowances can be made. If, however, the judge is of the view that a decision can be rendered on the evidence led, that option remains open.
- [24] In my view, quite apart from the merits of the respondent's position, it would be inappropriate at this stage to grant the order sought now. The judge hearing the matter will be in the best position to decide whether to remit the matter to the trial list, order a hybrid procedure, or render a decision on the evidence. I do not consider this to be an unprecedented procedure. Indeed, in *Purdy v. Pighin*, 2022 BCSC 1499, the hearing judge determined she was able to render a decision concerning whether there was an entitlement to an easement without converting a petition to a trial, despite factual disputes: see paras. 42 to 45 of that decision.
- [25] The application to convert the petition proceeding to an action is dismissed.
- [26] Anything else?
- [27] CNSL A. MORRISON: Costs.
- [28] THE COURT: All right.
- [29] CNSL A. MORRISON: In my respectful view, this was -- this application was misconceived from the get-go and costs ought to be awarded to Mr. Butler in any event of the cause and they ought to be paid forthwith.
- [30] THE COURT: All right. Mr. Payne?
- [31] CNSL J. PAYNE: Your Honour, this application is provided for under the Rules. It is simply an application that was not successful. In my submission, there is no reason to do anything other than order costs in the cause, which is the usual order.
- [32] THE COURT: I agree with Mr. Payne. The ordinary rule is that costs follow the event. The respondent has been successful. They will have their costs of the application in the cause.
- "Nielsen A.J."

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