

CANADA / JUDGMENT

Sundberg v. Sundberg

2022 BCSC 2188

COURT

Supreme Court of British Columbia

DECIDED

15 December 2022

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2022 BCSC 2188 Sundberg v. Sundberg

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sundberg v. Sundberg,

2022 BCSC 2188

Date: 20221215

Docket: 96044

Registry: Nanaimo

Between:

David Wayne Sundberg and

Pauline Anne Sundberg

Petitioners

And

Katherine Susan Sundberg

Respondent

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Petitioners:

C. Burkosky

Counsel for the Respondent:

N. Unrau

Place and Date of Hearing:

Nanaimo, B.C.

October 24, 2022

Place and Date of Judgment:

Nanaimo, B.C.

December 15, 2022

INTRODUCTION

- [1] In June 2020, the petitioners, David Wayne Sundberg ("David") and his spouse, Pauline Anne Sundberg ("Pauline"), the respondent, Katherine Susan Sundberg ("Katherine"), and Katherine's common-law spouse at the time, Brenda Leanne Willmore ("Leanne"), purchased a residential property at 2186 Pierpoint Road, Coombs, British Columbia (the "Property") from the estate of Leanne's late father. David and Katherine are siblings.
- [2] In the spring of 2022 Katherine negotiated the purchase of Leanne's share of the Property following the dissolution of their marital relationship. While this process was underway, for reasons not clearly made out in evidence, David and Pauline decided that co-ownership of the Property with Katherine alone was not workable. After failed informal attempts to resolve the matter, David and Pauline now seek an order that the Property be sold pursuant to s. 6 of the Partition of Property Act, R.S.B.C. 1996, c. 347 (the "Act"), which reads as follows:

Sale of property where majority requests it

- (6) In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.
- [3] As things stand, David and Pauline jointly own a half interest in the property, while Katherine owns the other half interest as a tenant in common. The parties agree that s. 6 of the Act applies to their situation. It follows that I must order a sale of the property unless there is good reason not to do so.

BACKGROUND

- [4] Leanne's parents owned the Property until the death of her father, at which time it was transferred to Leanne as executor of her father's estate. Katherine claims that, sometime during the summer of 2019, she and Leanne entered into a verbal agreement with David and Pauline, the terms of which are set out in her pleadings at paragraph 6 as follows:
- a. The parties and Leanne would purchase the Property and live on the Property together;
 - b. The Property would be purchased not as an investment, but rather as each of the parties intended residences where each could live out their retirement;
 - c. In the event that one of the couples dies, the other couple would not be forced to buy them out immediately to enable distribution of the estate. Rather, all other assets would be liquidated and disbursed to beneficiaries with the exception of the Property;
 - d. Upon the demise of the final person in the agreement, or when the final surviving person wants to sell the entire property, 50% of the sale property would go to the estate of the couple who predeceased the final person, and 50% would go to that of the final person.
- [5] The Property was purchased on June 25, 2020 with David and Pauline as joint owners of an undivided half interest, and Katherine and Leanne as joint owners of the other half. As between the two couples, ownership was registered as a tenancy in common. Each couple contributed an equal amount to the purchase price. Improvements on the Property consist of a house with a tenanted rental suite on the lower level, a cottage, a tenanted rental cabin, a pumphouse, and a two-storey garage. With respect to the tenants no argument was addressed to the issue of standing and the petitioners enjoy a right to immediate possession of the property.
- [6] The four owners agreed that David and Pauline would live in the house, which is the largest residential accommodation on the Property, while Katherine and Leanne would live in the smaller cottage. According to the Katherine, David and Pauline took the bigger residence in return for David's agreement to do ongoing general maintenance work on the Property, its facilities and equipment. It is to be inferred from all of the evidence that none of the parties is particularly wealthy, but I was given no specific information concerning their overall financial positions or capacities.
- [7] On March 29, 2022, less than two years after purchasing the Property, Katherine emailed David to inform him that she and Leanne were separating. David says that he and Pauline did not want to "get in the middle" of a marital dispute and, I infer, that they did not want to continue as co-owners of the property if Leanne was not involved. On May 6, 2022, they emailed Katherine proposing to sell their share to her for \$400,000, or to purchase her share for the same amount, or to sell the property and divide the proceeds equally.

- [8] Katherine did not accept any of these proposals. Instead, she continued her negotiations with Leanne leading to a separation agreement finalised on June 21, 2022, through which she bought out Leanne's interest in the Property. She claims to have re-arranged her financial affairs in order to do this, but provided me with no details. She does not wish to sell the property, and says that she cannot afford to purchase David and Pauline's interest in it. She takes the position that David and Pauline have commenced this action "maliciously and in bad faith, in retaliation for refusing to sell my share of the property to Leanne, and [their] desire to support Leanne over me."

GOOD REASON TO THE CONTRARY

- [9] Under s. 6 of the Act, as I have already mentioned, an order of sale is mandatory in the absence of good reason to decline it. In practical terms, the onus rests with the party opposing the sale to establish good reason to the contrary, meaning, quite simply, that "justice requires that such an order be denied": *Bradwell v. Scott*, 2000 BCCA 576 at para. 35; *Dunford v. Sale*, 2007 BCSC 1422 at para. 3. The discretion conferred by s. 6 is broad and unfettered: *Sahlin v. The Nature Trust of British Columbia, Inc.*, 2011 BCCA 157 at para. 24.
- [10] The Court confirmed in *Bradwell* at para. 45 that the grounds for refusing a sale under s. 6 of the Act include, but are not limited to, a lack of good faith or malice on the part of the petitioner. The present case, in my view, has nothing to do with any such misconduct by David or Pauline. Katherine's allegation that they are trying to "drive her off the property" because they perceive that she has committed an injustice against Leanne is not substantiated in evidence. It is a bare assertion that I find to be exaggerated and do not accept.
- [11] The evidence indicates that both of the couples involved in the purchase of the Property intended to enjoy and maintain it over the long-term. But intentions shift, unexpected contingencies arise, and, generally speaking, in our free and mobile society, people must be permitted to get on with their lives, including their financial lives, without unjustifiable interference from others. I find that David and Pauline have decided, quite simply, that in the changed circumstances of Leanne's departure, they do not wish to remain co-owners of the Property with Katherine, with whom they are no longer getting along. The default position, if I could put it that way, is that they should enjoy the freedom to deal with their own property whenever, however and for whatever reason they think fit.
- [12] In my view, Katherine's claim that she would suffer injustice if I ordered a sale of the property is not persuasive. The evidence falls well short of establishing that there was ever a verbal agreement of the nature described in her pleadings, much less that there was ever a trust established under which the co-owners pledged to hold their shares in the property for the benefit of the others. While the evidence confirms that Katherine sought legal advice about how to achieve her own objectives concerning the property, there is nothing to confirm that those objectives were shared by David or Pauline. The lawyer whom Katherine consulted very sensibly encouraged her to negotiate and enter into a written property co-

ownership agreement with David, Pauline and Leanne, but this advice was ignored.

- [13] In real property transactions such as that under contemplation here, there should always be a clear and detailed written agreement setting out the co-owners' respective rights and responsibilities concerning the Property and each other, and providing for such entirely foreseeable contingencies as marital dissolution, insolvency, incapacity and death. The parties to this petition left this vital work undone, and instead entered into co-ownership of what is clearly a valuable piece of real estate without any binding agreement on any of the basics, including how they might transfer, realise or dispose of their shares. The operation of s. 6 of the Act is reserved for precisely these circumstances: it acts as a catalyst to a whole asset sale where co-owners who have no agreement concerning disposition of property come to loggerheads about it.
- [14] Evaluated critically, Katherine's reasons for opposing the sale come down to an "emotional attachment" to the Property and a claim that she will not be able to buy out David and Pauline or afford a comparable property with her half of the proceeds of sale. In my view, these do not constitute "good reason to the contrary" within the meaning of s. 6 of the Act. I have concluded, instead, that although a sale will likely be disappointing and inconvenient for Katherine, it would not be unjust. She is not entitled to bind David and Pauline to indefinite co-ownership of the Property only because she likes it and cannot afford to own or maintain it without them, or because she lacks the resources to acquire a comparable property independently: *McRae v. Seymour Village Management Inc.*, 2014 BCSC 714 at para. 42 and 44.
- [15] In my evaluation of it, *Holman v. Brooke*, 2022 BCSC 526 is distinguishable on its facts from the present case. The dispute between the parties here arose under two years after the Property was purchased, not after more than two decades, as in *Holman*. There is no evidence of a detailed agreement in principle concerning the operation and management of the Property, including the transfer of ownership shares, or that the parties came to a firm consensus that it would be a "forever home". There is no evidence of a mutual intention of the parties to maintain the two halves of the property separately, or to suggest that the Property could be subdivided or stratified. There is no argument that the character of the surrounding neighbourhood is uniquely convivial to Katherine, or that she has invested significant amounts of time and money in the Property, or that there is any specific emotional cause for her to be attached to it.

CONCLUSION

- [16] For all of these reasons I have concluded that an order of sale is mandatory in this case in the absence of good reason to refuse it. I hereby order, specifically, that:
- a) The Property is to be listed and sold;
 - b) The parties will have joint conduct of sale;

- c) The parties and each of them will have the right to make an offer to purchase the Property;
- d) Any costs incidental to the sale of the property, including any real estate commissions, property taxes or other taxes or fees, will be paid from the proceeds of sale before division, followed by equal division of the net proceeds between the petitioners and the respondent;
- e) Until the Property is sold, the parties shall have use of the Property in the manner and on the terms and at the times as may be agreed to between them;
- f) Any of the parties may apply to the Court for directions on the use of the Property pending sale or any aspect of the sale; and
- g) The petitioners will have their costs on Scale B.

"Baird J."

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