

CANADA / JUDGMENT

## Vandokkumberg v. Meyer

2006 BCSC 1594

COURT

Supreme Court of British Columbia

DECIDED

15 June 2006

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2006 BCSC 1594 Vandokkumberg v. Meyer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vandokkumberg v. Meyer,

2006 BCSC 1594

Date: 20060615

Docket: S003181

Registry: Vancouver

Between:

Carrie Vandokkumberg

Plaintiff

And:

H. Meyer Construction Ltd., Henry Meyer and

Sandra Meyer also known as Sandra Gammon

Defendants

Before: The Honourable Madam Justice Loo

Oral Reasons for Judgment

In Chambers

June 15, 2006

Counsel for Plaintiff

J.C. McKechnie

Counsel for Defendants

J. Roberts

Place of Hearing:

Vancouver, B.C.

- [1] THE COURT: This is an application by the defendant Sandra Gammon to cancel the certificate of pending litigation registered at the New Westminster - Vancouver Land Title Office on April 30, 2003 against property in her name.
- [2] There is also an application by the plaintiff for leave to add Bosch-Inveka Greenhouses Ltd. and Ted Meyer as defendants in the proceeding and to amend the statement of claim, to add Ted Meyer as a defendant and to refer to a transaction that took place in or about December 2005 when the defendant Henry Meyer allegedly sold his shares in Bosch-Inveka to the defendant Gammon and Ted Meyer. It is alleged in the proposed amendments that the arrangement constituted a fraudulent conveyance.
- [3] This action was commenced in June of 2000. It is a judgment for debt pursuant to two promissory notes, one made by Henry Meyer and the other made by H. Meyer Construction Ltd. which I will refer to as "the Company".
- [4] In January of 2003 the plaintiff obtained judgment against Henry Meyer for \$47,000. Between then and November there were two orders for contempt made against Mr. Meyer. On November 25, 2005 a garnishing order absolute was pronounced against the company.
- [5] On April 24, 2006 Registrar Blok pronounced oral reasons for judgment following a subpoena to debtor hearing that took place over a number of days between October 27, 2005 and April 18, 2006.
- [6] At para. 13 of his Reasons, Registrar Blok stated:

From these examples and from Mr. Meyer's evidence generally, I have concluded that Mr. Meyer is an evasive, litigation savvy and excessively cagey witness, whose evidence was designed to obscure his financial situation, rather than explain it.

- [7] At paras. 14 to 16, he stated:

He [referring to Mr. Meyer] also changed his financial affairs from time to time. Two examples of this were as follows: first, in evidence given on January 19, 2006, this is the second day of evidence in these proceedings, Mr. Meyer said that his company paid the mortgage and property taxes on the home in which he resides only until October 2004 and thereafter the company paid rent of \$1,000 per month for an office in the home. Secondly, in the evidence given on the third day, April 18, 2006, Mr. Meyer revealed that H. Meyer Construction no longer contracted with Polygon, but instead Polygon now pays a company in which he used to be involved and had a

shareholding interest, a company called Bosch-Inveka Greenhouses Ltd., a company now owned by his wife and his brother. Now that company pays him the sum of \$575 a week, or about \$30,000 per year.

When asked why this was done, Mr. Meyer simply said: "It's just an arrangement I made". I find however that it is no coincidence that this change was made after the plaintiff obtained a garnishing order absolute against H. Meyer Construction Ltd.

Thus I find throughout this matter, Mr. Meyer has structured his affairs in such a way as to make himself as judgment-proof as possible, and that he changes his financial arrangements when he perceives that he has become vulnerable to the plaintiff's collection efforts. It is nothing more than a shell game.

- [8] When Registrar Blok was referring to the home on which the company paid mortgage and property taxes, that is a reference to the property against which Ms. Gammon wishes a certificate of pending litigation be cancelled.
- [9] There is no doubt the plaintiff has a reasonable argument that Mr. Meyer and his company have a beneficial interest in the property although it is in the name of Ms. Gammon. Pursuant to s. 215 of the Land Title Act, R.S.B.C. 1996, c. 250 and s. 86(9) of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 the plaintiff is entitled to register a certificate of pending litigation against the land.
- [10] I do not accept the defendants' argument that the certificate of pending litigation ought to be cancelled under s. 252 of the Land Title Act because Mr. Roberts would want me to read into s. 252( 1) as follows:

If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year against any party that person who is the registered owner or owner of an estate or interest in land may apply for an order that the registration of the certificate be cancelled.

- [11] In this case there have been a number of proceedings that have taken place and therefore s. 252 does not apply.
- [12] Dealing now with the proposed amendments. On December 31, 2005 which is shortly after a month the garnishing order absolute was pronounced against the Company, Henry Meyer resigned as director and president of Bosch-Inveka Greenhouses Ltd., and for the sum of \$24 his shares were transferred to his brother Ted Meyer. Nevertheless, Henry Meyer continues to work for Bosch or he did so at the material time and Polygon, instead of paying the Company, pays or did pay Bosch-Inveka.
- [13] On that basis I find that the proposed amendments should be allowed except as they relate to the proposed defendant Ted Meyer. Mr. McKechnie agrees that should he want to examine Ted Meyer, he can do so in his position as the current director and president of Bosch-Inveka Greenhouses Ltd.

- [14] Therefore, the amendments are allowed except for para. 6 of the proposed amendments.
- [15] Mr. McKechnie, is there anything else that needs to be changed then?
- [16] MR. McKECHNIE: I think obviously Mr. Meyer not be added as a defendant in para. 6 as you have noted and I think the rest - none of - nothing else refers to Mr. Ted Meyer specifically. Everything else simply refers to the transaction which is challenged so I don't think there are any other consequential changes.
- [17] MR. ROBERTS: I believe para. 27 isn't relevant to Bosch-Inveka and this contract for property has been transferred
- [18] THE COURT: I am going to allow that because it is referred to in the decision of Registrar Blok so I am going to allow it. At least Mr. McKechnie can examine on it.
- [19] MR. ROBERTS: On what issue would that be, My Lady?
- [20] THE COURT: It has to do with Polygon paying Bosch-Inveka rather than H. Meyer Construction Ltd.
- [21] MR. ROBERTS: Sorry, My Lady, I referred to para. 27.
- [22] THE COURT: I am looking at proposed para. 27. I am at Tab 3 which has the plaintiff's notice of motion and attached to that is the third amended statement of claim, para. 27 at p. 5. Is that where you are at?
- [23] MR. ROBERTS: Yes. 26 refers to the contract with Polygon and then 27 simply deals with the shares of Ted Meyer.
- [24] THE COURT: No, that is not what I am looking at.
- [25] MR. ROBERTS: Sorry, My Lady, my friend has a different proposed amendment than what was provided to me.
- [26] THE COURT: Well, the one I have is attached --
- [27] MR. McKECHNIE: My Lady, I think what has happened is in the pleading apparently - I don't know why this happened but the pleading was attached to the - attached to the motions that were given to my learned friend. There's a paragraph in it that I proposed to delete. My Lady will see that there is a deletion in the amendment. There was a paragraph that is sort of irrelevant that I had proposed to delete. For some reason it remained in the pleading that I gave to my friend.
- [28] THE COURT: Well, here. I will give you what I have so you can see what you are looking at and if you are referring to a paragraph that I do not have, that is fine.
- [29] MR. ROBERTS: I'm sorry, My Lady, the notice of motion I received is slightly different. There was an extra paragraph so the one I am referring to in your paragraph is para. 26 not 27. And that may explain some of the confusion.

[30] THE COURT: Paragraph 26 I am going to allow. I am going to allow all of 23 to 28. And the plaintiff is entitled to her costs of this application.

"L.A. Loo, J."

The Honourable Madam Justice L.A. Loo

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