

CANADA / JUDGMENT

Virk v. Pannu

2006 BCSC 921

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 921 Virk v. Pannu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Virk v. Pannu,

2006 BCSC 921

Date: 20060616

Docket: S0014744

Registry: Chilliwack

Between:

Baljit Kaur Bajwa also known as Baljit Kaur Virk

and Balwant Kaur Virk

Plaintiffs

And:

Rupinder Pannu also known as Rupinder Singh Pannu

Defendant

- and -

Docket: S79930

Registry: New Westminster

Between:

Rupinder Pannu also known as Rupinder Singh Pannu

Petitioner

And

Baljit Kaur Bajwa also known as Baljit Kaur Virk and

Balwant Kaur Virk

Respondents

Before: The Honourable Madam Justice Arnold-Bailey

Reasons for Judgment

Counsel for the Plaintiffs/Respondents

Wayne Neufeld

Counsel for the Defendant/Petitioner

Adnan N. Habib

Date and Place of Trial/Hearing:

April 20, 2006

New Westminster, B.C.

I. Introduction

- [1] These two actions arise out of the parties' dispute over their respective interests in a single piece of real property, zoned for light industrial use, located at 1828 Queen Street, Abbotsford, B.C. ("Queen Street Property"). By previous order of the Court they were to be heard together.
- [2] The plaintiff/respondent, Baljit Virk ("Baljit"), and the defendant/petitioner, Rupinder Pannu ("Pannu"), were in a romantic relationship from the early 1990s to 2001. During this time they had a child, although Pannu was married to another woman. In January 2001, before their relationship ended, they purchased the Queen Street Property, for a purchase price of \$249,000. The property was purchased for the benefit of Baljit and her mother, Balwant Virk ("Balwant"), who is also named as a plaintiff/respondent, but since Baljit and Balwant alone could not qualify for a mortgage, Pannu became a covenantor on the mortgage. A down payment of approximately \$35,000 was paid for by Balwant, Baljit, and her brother, Gurcharan Virk ("Gurcharan"). The balance of the purchase price was mortgaged by Envision Credit Union. Pannu made no financial contribution towards the property either at the time of purchase or thereafter, but assisted in bringing about the purchase by engaging a realtor, searching for the property and securing the mortgage as a covenantor.

- [3] The Queen Street Property has Baljit Virk, Balwant Virk and Rupinder Pannu registered as owners in fee simple and joint tenants. The plaintiffs/respondents, as well as Gurcharan and his family, reside on the property. The property is also currently being used by Baljit, Gurcharan and a Kulwant Virk to operate a tow truck business.
- [4] Given the separation of Pannu and Baljit in 2001, the Virks now seek a declaration that Pannu holds a one-third interest in the Queen Street Property in trust for them, or alternatively, a determination of his interest in the property; an order transferring the property held in trust to them; a certificate of pending litigation with respect to the property; an injunction restraining the defendant/petitioner from altering or transferring his interest in the property; and costs.
- [5] In response, Pannu has petitioned the Court for a declaration that he holds an undivided legal and equitable one-third interest in the Queen Street Property and an order of partition and sale with one-third of the proceeds to be paid to him, in addition to costs.
- [6] Both the action by the Virks and the petition by Pannu are consolidated in this proceeding. Similar issues relating to another piece of property at #213 - 33668 King Road, Abbotsford, B.C. have been resolved by the parties.

II. Issue

- [7] Is Pannu entitled to an order of partition, sale and equal distribution of the proceeds of the Queen Street Property, or does he hold his interest in the property in trust for the Virks?

III. Law

1. Resulting Trust

- [8] A long-established principle at common law is that a resulting trust occurs in favour of a party who advances the purchase money for a property. The principle was stated by Chief Baron Eyre in *Dyer v. Dyer* (1788) 30 E.R. 42 at 43 as follows:

The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money.

- [9] The common law principle of resulting trust is modified however, by the Torrens land registration system in B.C. and the statutory presumption of indefeasibility. Under the Torrens system, a resulting trust cannot be implied merely by the fact that one registered owner advances the purchase money while another does not. The Torrens system instead places a burden on the party seeking to impugn the existing state of title, to provide evidence that the parties intended that a registered owner hold their interest in trust for another owner or party.

[10] An example of this is *Franssen v. Brown*, 2000 B.C.S.C. 1268. In *Franssen*, supra, the plaintiff and defendant, who were romantically involved, were registered as joint tenants of their property. This occurred as a result of the defendant signing a land transfer conveying an interest to the plaintiff, and acknowledging that he received one dollar and other valuable consideration from the plaintiff in exchange for the joint tenancy interest, although she made no financial contribution to the purchase of the property. The parties later separated and the plaintiff transferred her joint tenancy interest to herself as a tenant-in-common, and then brought an action for partition and sale, with an equal division of proceeds. The defendant counterclaimed that the plaintiff's interest in the property was held in trust for him, on the basis of a resulting trust. The Court concluded that the defendant did not meet the burden of proving either a resulting trust or that the transfer of the interest was not gratuitous. An order for partition and sale was granted with equal division of proceeds.

2. Presumption of Title

[11] The doctrine of indefeasible title, contained within the Land Title Act, R.S.B.C. 1996, c. 250, is at the heart of the Torrens registration system in B.C. Section 23(2) specifically outlines the legal effect of registration and provides in part:

(2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title,

[12] The section operates to create a statutory presumption that persons registered on title of a property are presumed to hold the legal and equitable interest conveyed by the registrar and in so doing, presumes they are indefeasibly entitled to an estate in fee simple. As noted, the burden is on the party seeking to challenge the state of title to prove otherwise.

[13] In *Skender v. Skender*, 2005 B.C.S.C. 418, aff'd 2006 B.C.C.A. 162, the Court confirmed that the statutory presumption may be displaced by two equitable principles, namely:

- (1) the presumption of advancement; or,
- (2) the enforcement of an agreement between the parties in order to prevent an unjust enrichment if the face of the title is upheld.

[14] In *Skender*, supra, the plaintiff son and defendant mother were the registered owners as tenants-in-common. The defendant purchased the property for \$229,000 and the plaintiff contributed \$15,000 towards the down payment. The plaintiff also lived in the house and paid \$1,000 per month towards his share of the purchase price. The house was subsequently damaged in a fire and the defendant received \$83,464 from the insurer. The plaintiff brought an action for partition, sale and an accounting - claiming a one-half interest in the property. The defendant counterclaimed that the plaintiff's interest was only proportionate to his initial contribution or alternatively, that he held his interest in trust for her. The Court found that the statutory presumption of the plaintiff's indefeasible estate was not displaced and in

any event, he would have been able to rely on the presumption of advancement to enforce his undivided legal and equitable one-half interest in the property.

3. Displacing the Presumption

[15] Of the two principles highlighted in *Skender*, supra, the presumption of advancement does not apply to the present case as it only applies between parents and children or between legally married or common law spouses. It therefore does not apply where the parties were never legally married or co-habiting, as is the case here. In any event, even if the presumption were to apply, it would only operate to support Pannu's contention that he holds his interest in fee simple rather than in trust.

[16] The second principle in *Skender*, supra, the enforcement of an agreement to prevent unjust enrichment may be applied to the present case. If the evidence establishes an agreement or an intention between the parties that is contrary to their respective interests in title, the Court may enforce those agreements as opposed to what is registered on title: see *Engelage v. Engelage*, [1995] W.D.F.L. 208 (B.C.S.C.); *Martiniak v. Riley* (1988), 14 R.F.L. (3d) 40 (B.C.S.C.).

[17] In *Engelage*, supra, three parties were all registered owners as joint tenants of the property, having an undivided one-third interest each. The petitioner husband and the respondent wife purchased the property prior to their separation. Since they could not qualify for a mortgage at the time of purchase, the respondent mother agreed to be a covenantor and was therefore placed on title. The second respondent, the mother of the wife, also put down \$5,000 towards the purchase price and the parties agreed that her interest in the property would be limited to the \$5,000 plus any additional amounts she put towards the property. The petitioner applied for a declaration enforcing this agreement and declaring that he held a one-half legal and equitable interest in the property as opposed to a one-third interest. The Court granted the declaration in spite of the title of the property showing the three parties, since the evidence established that all parties agreed that the respondent mother's interest would be limited.

[18] Similarly, in *Martiniak*, supra, the parties were both registered owners, although the respondent had made most of the financial contribution towards the property. After their separation, they agreed that the respondent would pay the petitioner \$10,000 in exchange for the petitioner's interest in the property. The petitioner's subsequent application to set aside the agreement and order partition and sale of the property was refused.

4. Partition and Sale of Property

[19] Section 2 of the Partition of Property Act, R.S.B.C. 1996, c. 347 provides that all joint tenants of any land may be compelled to partition or sell the land, or a part of it, whether the estate is "legal or equitable or equitable only."

[20] Section 7 of the Partition of Property Act allows the Court to order a sale of property despite the dissent of any party. Section 8(1) allows the Court to order a sale of the property and the distribution of the proceeds from the sale.

5. Effect of Financial Contributions

[21] Even if the statutory presumption of indefeasibility is upheld and the parties are found to have equal interests in the property, the equal division of the proceeds of sale to which the parties are entitled may be subject to their respective financial contributions.

[22] In *Farrar v. Walker*, [1982] B.C.J. No. 965 (Q.L.) (S.C.), the petitioner sought an order for partition and sale of a jointly-held property. The Court recognized that joint tenants are presumed to hold equal interests. However, as a result of the parties contributing unequally to the property in question, the Court awarded the petitioner one-third (as opposed to one-half), of the proceeds from sale.

[23] Similarly, in *Aleksich v. Konradson* (1995), 5 B.C.L.R. (3d) 240 (C.A.), the parties purchased a property in joint tenancy. The respondent contributed a total of \$257,000 to the purchase and construction of the property whereas the appellant made no direct financial contribution. The appellant's non-monetary contributions consisted mainly of her own labour in the construction of the home. Upon their separation, the appellant was awarded \$109,000, representing one-half of her interest in the property after the respondent's financial contributions and her non-monetary contribution had been deducted. The award was upheld on appeal.

[24] Consequently, in spite of parties having equal interests in a property as reflected by the face of the title, the Court may take into account their respective contributions to the property when calculating the exact amount to which they are entitled upon partition and sale.

IV. Position of the Parties

1. Position of the Plaintiffs/Respondents

[25] The Virks submit that Pannu holds a one-third interest in the Queen Street Property in trust for them. They submit that the parties agreed that Pannu would go on title with them as an undivided joint tenant and sign a mortgage as a joint mortgagor. However, they say at all times it was the intention of the parties that Pannu hold the property in trust for the Virks. They also add that Pannu has not financially contributed to the Queen Street Property, and nor has he resided, or ever intended to reside there.

[26] Counsel for the Virks acknowledges that there is a striking paucity of independent evidence as to the intention of the parties in their transaction. He says this is because at the time of the transaction, the parties were romantically involved and did not document their intentions. He submits that since their testimony is irreducible, the issue before the Court is the value of the unrealized risk of allowing one's name to stand on a mortgage.

- [27] The primary authority upon which the plaintiffs/respondents rely is *Green v. Buck*, 2003 B.C.S.C. 1690. In that case, the plaintiff brought an action for partition, sale and accounting for one-half of the proceeds of a property of which she and the defendant were tenants-in-common. The plaintiff made no financial contribution but claimed that she assumed liability as a covenantor on the mortgage for the property. The defendant claimed that the parties had agreed the plaintiff's share of the property would be limited to five percent. Section 11 of the Property Law Act, R.S.B.C. 1996, c. 377, presumes that tenants-in-common hold equal interests in property. The burden was therefore on the defendant to prove otherwise. At ¶ 20 the Court accepted the evidence of the defendant that at the material time the parties had intended to limit the plaintiff's interest to five percent.
- [28] The plaintiffs/respondents also rely upon the decision in *Aleksich*, supra, to support their argument that Pannu's interest, if any, should exclude the Virks' financial contributions to the property.

2. Position of the Defendant/Petitioner

- [29] Pannu submits that he is entitled to a one-third legal and equitable interest in the Queen Street Property. In contrast to the Virks' recollection, he says there was an agreement that he would hold a one-third interest in the property as compensation for the risk he assumed in signing a personal covenant on the mortgage, and for the non-monetary benefits he provided by assisting the Virks to find the property, engage a realtor, and to purchase the property, using his credit rating to obtain financial approval.
- [30] Pannu's legal argument rests primarily on the statutory presumption of indefeasibility and the absence of evidence to rebut or displace the presumption in this case. Furthermore, he submits that the evidence illustrates an intention and agreement that he be entitled to a legal and equitable interest in fee simple, as contemplated by the state of title. Finally, counsel for Pannu also points to *Aleksich*, supra, to support his position that non-monetary benefits should be taken into account when determining the exact amount to which he is entitled upon partition and sale.

V. Evidence

1. Title Search

- [31] The title search provided by Pannu indicates that Baljit Virk, Balwant Virk and Rupinder Pannu are all registered owners in fee simple as joint tenants.

2. Affidavit and Discovery Evidence of Baljit Virk

- [32] In her affidavits, Baljit deposes that she was involved with Pannu between 1990 and 2001. She says they never lived together as husband and wife but had a child in April 1996. With respect to the purchase of the Queen Street Property, she says that she contributed \$10,000 and her mother and brother together contributed \$20,000. She deposes that she never entered into any oral or other agreement with Pannu that he have an equitable or beneficial interest in the Queen Street Property in exchange for his assistance in securing financing.
- [33] In her examination for discovery, Baljit said that she and her brother, Gurcharan, made a subsequent mortgage application in 2003 with Maple Trust. She later said that she could not locate the mortgage broker who arranged the 2003 mortgage as he was in India, nor could she locate a copy of the application. She said the application for the mortgage was made to extinguish Pannu's covenant under the existing mortgage, but when Pannu refused to transfer his interest in the property in exchange for the removal of his name from the existing mortgage, this action was commenced and the Maple Trust mortgage was never funded.
- [34] Baljit also said in her examination for discovery that the Queen Street Property was bought for her brother, Gurcharan. She said that she and Balwant made a mortgage application after Gurcharan applied and could not qualify for a mortgage. She said that Gurcharan has made all the mortgage payments by way of rental payments to Baljit and Balwant.

3. Affidavit and Discovery Evidence of Balwant Virk

- [35] The affidavit and discovery evidence of Balwant Virk is essentially the same as that of Baljit Virk. In her examination for discovery Balwant said that her children, Baljit and Gurcharan, took care of everything during the purchase of the Queen Street Property. She said she was not charging Gurcharan rent. She also did not distinguish between the financial contributions made by either herself, Baljit or Gurcharan because she said their money was put down together as a family.

4. Affidavit Evidence of Rupinder Pannu

- [36] In his affidavits, Rupinder Pannu explains that the Queen Street Property was purchased because Baljit wanted a house to live in with her mother and for her brothers' tow truck business. He deposes that Baljit and Balwant were incapable of qualifying for a mortgage, so he assisted them by engaging a realtor, searching for a suitable property and becoming a covenantor on the mortgage. He says that Baljit and Balwant together put down \$20,000 and Gurcharan put down \$15,000. Pannu deposes that the parties entered into an oral agreement that he would hold a one-third interest in the property as compensation for the risk he incurred by signing the covenant, and by virtue of the benefits to be derived by Baljit and Balwant as a result of Pannu's assistance. In return, he says that Baljit and Balwant agreed to bear the cost of the mortgage payments and other expenses. It was understood, he says, that the business income from the tow truck company would assist them in meeting their obligations.

[37] Attached to Pannu's affidavit is the file of the conveyancing solicitor, Peter Hammond, which demonstrates that Pannu was the driving force behind the purchase of the Queen Street Property. In particular, counsel for Pannu points out that the critical documents, including the mortgage application, the statements of adjustments, the property transfer tax form, the form A transfer, the order to pay, the acknowledgment of receipt of standard mortgage terms and the insurance binder, all refer to Pannu as either an owner or a purchaser.

5. Affidavit of John Klassen, Realtor

[38] John Klassen deposes that he was the realtor engaged by Pannu to purchase the Queen Street Property. Attached to his affidavit are the documents pertaining to the purchase, including the contract for purchase and sale and a photocopy of a cheque from Gurcharan Virk for \$10,000. These documents also indicate that Pannu was the driving force behind the purchase of the property.

7. Affidavit of Jesse Gill, Mortgage Broker

[39] Jesse Gill deposes in his affidavit that since Baljit and Balwant could not independently qualify for a mortgage, Pannu had to become a borrower and covenantor in order for Envision to issue the mortgage. Attached to his affidavit is a copy of the mortgage agreement that indicates the three parties are all joint tenants.

VI. Application

[40] I find that there is no cogent evidence upon which to find that the statutory presumption of indefeasibility is rebutted. It is a fact that had a default occurred under the mortgage, Pannu solely could have been held responsible for any shortfall. The evidence also discloses that he was the driving force in terms of finding the Queen Street Property, engaging in negotiations for its purchase, and then facilitating its purchase by way of the mortgage with Envision.

[41] I find this case to be distinguishable from *Green*, surpa, because in that case there was evidence of an agreement to limit the plaintiff's interest to five percent, which was accepted by the judge. Here, there is no evidence of any such agreement regarding Pannu's interest other than as evidenced by the title of the property, and no evidence whatsoever that a trust was contemplated. Furthermore, attempt by the Court to attribute a monetary value to Pannu's unrealized risk as a covenantor on the mortgage would be highly speculative.

[42] I find that Pannu has an undivided one-third legal and equitable interest in the Queen Street Property by virtue of the apportionment of interest as between the parties at the time of purchase. The application for relief brought by the plaintiffs/respondents is dismissed.

- [43] Therefore, Pannu is entitled to an order of partition and sale to realize his one-third interest in the Queen Street Property. However, there must be a fair and equitable division of the proceeds that includes all mortgage or other payments to improve and maintain the property made by the Virks, including any payments by Gurcharan.
- [44] I find that the total down payment by the Virks was \$35,000, given Pannu's evidence that Baljit and Balwant paid \$20,000, and Gurcharan paid \$15,000. Given that Pannu was the organizing force for the purchase, his recollection is to be preferred over that of Baljit, who deposed that she paid \$10,000 and together, her mother and Gurcharan paid \$20,000. I find that once the property was acquired by Baljit and Balwant, Gurcharan made regular payments on the mortgage. To prevent unjust enrichment, and based on my assessment of the evidence, the Virks made their contributions to the property as a collective unit and accordingly, their contributions shall be recognized collectively in the accounting upon the partition and sale.

VII. Conclusion

- [45] Therefore, Pannu is entitled to partition and sale of the Queen Street Property, based on his one-third legal and equitable interest in that property, subject to an accounting that recognizes payments and improvements, if any, to the property made by or on behalf of Baljit and Balwant Virk, including mortgage payments made by Gurcharan Virk. The parties are at liberty to apply to make further submissions as to an equitable distribution of the proceeds in the event that further direction from the Court is required. Pannu is also entitled to his costs at Scale 3.

"E.A. Arnold-Bailey, J."

The Honourable Madam Justice E.A. Arnold-Bailey

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