IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Eckhart v. Ball,*
2024 BCSC 233

Date: 20240209
Docket: S197113
Registry: New Westminster

Between:

Frances Paula Eckhart

Claimant

And

Sheila Margaret Ball
also known as Sheila Margaret Perry
also known as Margaret Sheila Perry

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Claimant:	M.G. Perry
Counsel for the Respondent:	D.H. Griffith
Place and Date of Hearing:	New Westminster, B.C. June 21, 2023
Place and Date of Judgment:	New Westminster, B.C. February 9, 2024

Table of Contents

INTRODUCTION **3**
BACKGROUND **3**
Respondent's Submissions 6
Claimant's Submissions 7
CONCLUSION **8**

Introduction

[1] These are reasons for judgment on an application by the petitioner for an order that the petitioner's claim for repayment, pursuant to the loan agreement entered into by the parties on October 30, 2004, is not statute barred.

Background

[2] The petitioner, Frances Paula Eckhart, and the respondent, Sheila Margaret Ball, are sisters and were formerly joint owners of a property in Burnaby, British Columbia (the "Property").

[3] A dispute arose between the parties, and the petitioner applied for an order of the court to sell the Property. The application to sell the property was heard before Justice Giaschi and, in written reasons dated September 11, 2019 indexed at 2019 BCSC 1530, the Court ordered the Property should be sold (the "2019 Order"). In the 2019 Order, the Court also ordered that there would be an inquiry, assessment and accounting before the Registrar of the Court regarding several matters including contributions made by various individuals to the mortgage and the Property.

[4] Pursuant to the 2019 Order, and after some delay, the Property was sold with the sale completed on July 5, 2021.

[5] The question which remains to be resolved was whether any claims relating to contributions made by various individuals to the mortgage on the Property are barred by Limitations.

[6] The parties entered into an agreement in writing on October 30, 2004. The text of that agreement is as follows:

> October 30/04
>
> Meeting of Sheila, Terry Ball, Kitty O'Callahan, Frances Eckhart, Steve Norman have agreed that:
>
> 1. Frankie will pay out the imbalance of the mortgage (estimated to be $34,951 at October 31/04).
> 2. Frankie and agree that the responsibility with the $34,951 is 80% Sheila and 20% Frankie.

> 3. It is also agreed that a further meeting needs to be held to refine the 80/20%.
>
> 4. The repayment is to be held in abeyance a payments but will be made if the property is sold or if other repayment agreements are made.
>
> 5. Witnesses [Signatures of the parties and witnesses were affixed here].

[7] Justice Giaschi noted the following in the Reasons for Judgment leading to the 2019 Order:

> [15] In 1997, there were two mortgages on the Property. The first mortgage was the one originally registered on title on May 27, 1981, in favour of the B.C. Teachers Credit Union. The second mortgage was the one registered in 1990 to help finance of the respondent's purchase of the Gilpin Property. The respondent, acting on the advice of her account manager, consolidated these two mortgages into a single fixed rate mortgage (the "Consolidated Mortgage"). In addition, there have been other smaller mortgages from time to time.
>
> [16] In the early 2000s, the respondent experienced financial difficulties and, as a consequence, failed to make all required mortgage payments on the Consolidated Mortgage and include additional mortgage charges. The petitioner was unaware of these missed payments until 2004. The petitioner paid the balance owing on the consolidated mortgage of approximately $34,951 when she discovered that it was in default. The parties signed an agreement on October 30, 2004 in which the respondent acknowledged she was responsible for 80% of the payout amount. That agreement also contained a clause that a further meeting was needed "to refine the 80/20%".

[8] The findings made in para. 16 above, are in direct conflict with the 1st Affidavit of Terry Ball, which asserts at para. 14 thereof that the payments on the Consolidated Mortgage continued to be paid each month. Further, Mr. Ball asserts, at various times, claims for work he is said to have performed on the Property but there is no assertion that he had any contract or agreement with the petitioner to be paid for the work claimed. Further, as the Property was sold, the value of such work would logically have been included in the purchase price paid for the Property.

[9] Later, in the same Reasons for Judgment, after a review of the relevant provisions of the *Partition of Property Act*, R.S.B.C. 1996, c. 347, the Court concluded that it was necessary to consider and assess all admissible evidence in determining whether there was a good reason to refuse an order for sale of the Property. Justice Giaschi reviewed the petitioner's arguments for the sale of the

Property, including the avoidance of further conflict between the parties, the condition of the roof of the Property, the age of the building and the advanced age of the petitioner, who wished to avoid dealing with tenants and financial issues associated with the Property; as well as the respondent's arguments opposing the sale including that she had a "long delayed" intention to return to the Property. Justice Giaschi found that intention, described as "near to wanting", fell short of a definite intention to return to the Property. Justice Giaschi also considered the main ground for opposing: that the respondent would be required to pay capital gains tax on this transaction—a ground considered in *Bindley Estate v. Quartermaine Holdings Ltd.*, 2017 BCSC 672. Ultimately, Giaschi J. found there was no sufficient reason to refuse the sale. Both parties had the right at the outset of ownership to avoid capital gains tax when both held their interest in the Property as a principal residence. The respondent purchased another property on Gilpin Street in Burnaby, which became her principal residence and brought an end to her ability to claim the Property as her principal residence. The Court also considered the possibility of stratification of the Property, but rejected that possibility as completely unreasonable due to further delay and the significant cost. The Court ordered that the Property be sold subject to an immediate appraisal with an order granting to the respondent a right to purchase the petitioner's interest in the Property by paying 50% of the appraised fair market value of the entire Property into court within 14 days of receipt of the appraisal report.

[10] The respondent did not exercise the right to purchase the petitioner's interest in the Property.

[11] On November 30, 2022, upon application by the respondent, and by consent, the 2019 Order was varied as follows:

> a. Prior to proceeding with the inquiry assessment and accounting before the Registrar set out in paragraph 10 of the Order (the "Registrar's Inquiry"), the parties be at liberty to the Court for a ruling on whether one or more of the parties' claims pertaining to the Property defined at paragraph 1 of the Order is barred by operation of the *Limitations Act,* SBC 2012, c. 13 (the "Limitation Period Application");

b. Any ruling in relation to the Limitation Period Application be binding on the Registrar for the purposes of the Registrar's Inquiry and on the Court for the purposes of the hearing related to the final determination of the apportionment of the sale proceeds of the Property referenced at paragraph 11 of the Order (the "Apportionment Hearing");

c. Paragraph 11 of the Order be varied to delete the words "and whether any or all of the disputed amounts are subject to an expired limitation period".

[12] The respondent acknowledged that the payment of $34,951 was made by the petitioner to pay out the balance owing on the Consolidated Mortgage on the Property, and the petitioner submits in accordance with the agreement made October 30, 2004, that repayment of that sum was to be "held in abeyance" until the sale of the Property or a subsequent repayment agreement between the parties. The Property was sold on July 5, 2021. No repayment agreement was made between the parties.

Respondent's Submissions

[13] The respondent submits that there is a presumption that because the payment of the balance of the Consolidated Mortgage, by the petitioner, took place more than 20 years ago, that debt is "presumptively statute barred". The respondent also asserts that the agreement between the parties is incomplete because the meeting in clause 3 thereof had not occurred.

[14] The respondent did not submit any authorities to support the presumption that 20 years was meaningful when, as in this case, there was a condition that the repayment was based on a delayed demand, that is, no payment was due to the petitioner until the Property was sold or there was another agreement between the parties. No other agreement was made between the parties. In the case at bar, the repayment was therefore contingent on the sale of the Property which, as noted, took place on July 5, 2021. Accordingly, the Limitation Period began to run on July 5, 2021.

Claimant's Submissions

[15] For the purpose of determining a limitation period for the bringing of a legal action, the nature of the indebtedness and the conditions for its repayment must be determined. A loan may have a fixed time period for repayment where the time for repayment is fixed to a date specified or repayment is on demand. In the case at bar, the requirement for repayment is based on a delayed demand or contingency, where the beginning of the limitation period is based on a demand or the occurrence of the contingency. The contingency in the case at bar is specified in clause 4, and the event which triggered repayment is the sale of the Property. It is noted, according to the language of the Reasons for Judgement above, that the respondent was unable to pay the regular monthly mortgage payments on the Consolidated Mortgage.

[15] In the case of *Zeitler v. the Estate of Alfons Zeitler*, 2008 BCSC 775, a note was characterized as a "delayed-demand" promissory note, where the limitation period did not begin to run until the demand was made and a further time period expired. In the case at bar an event occurred—the sale of the Property—upon which the limitation period began to run.

[16] *Zeitler* was specifically approved in *Ewachniuk Estate v. Ewachniuk*, 2011 BCCA 510 at para. 36.

[17] In the case of *Gavriel v. Gavriel*, 2017 BCSC 1653, the Court reviewed the authorities respecting the proper characterization of loans and the implications of the same for the running of limitation periods. In *Gavriel* at para. 44, the Court referred to *Berry v. Page*, (1989), 38 B.C.L.R. (2d) 244 at 247, 1989 CanLII 2780 (C.A.), for the principle that:

> …if money is lent to be repaid at a particular time in the future, or upon the happening of a specified contingency, then the cause of action arises at the time specified or upon the happening of the contingency: [cites omitted]. In these circumstances, the cause of action does not arise, and the Statute of Limitations does not run until the contingency is satisfied.

[18] The same proposition was affirmed in *Kong v. Saunders*, 2014 BCCA 508, where at para. 19, the Court of Appeal stated: “The limitation period in respect of contingent loans begins to run on the repayment date or the occurrence of the contingency. This is because an action for repayment of the loan cannot be brought prior to the repayment date or the occurrence of the contingency, as the case may be.” The same proposition was likewise confirmed in *Leatherman v. 0969708 B.C. Ltd.*, 2018 BCCA 33 at para. 23.

Conclusion

[19] The contingency in the case at bar was the sale of the Property, a contingency clear from the language of the parties’ agreement. Another agreement between the parties might also have been a contingency but no such agreement came into being. The sale occurred on July 5, 2021, and the limitation period began to run from that date. The claim of the petitioner is clearly within the limitation period of two years from that date.

[20] The application of the petitioner for a determination that the petitioner’s claim for repayment, pursuant to the loan agreement entered into by the parties on October 30, 2004, is not statute barred is granted.

[21] The petitioner is entitled to the costs of this application pursuant to *Supreme Court Civil Rules*, Appendix “B”, on Scale B as a matter of ordinary difficulty.

“Ball J.”