

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bevilacqua v. Robinson*,
2023 BCSC 1548

Date: 20230901
Docket: S172891
Registry: New Westminster

Between:

**Giovanni Alfredo Bevilacqua also known as
John Alfred Bevilacqua**

Plaintiff

And

Lucas William Robert Robinson

Defendant

Before: The Honourable Justice Walkem

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

B.M. Gordon Jr.

Counsel for the Defendant:

G.F.T. Gregory

Place and Dates of Hearing:

Chilliwack, B.C.
July 12-13, 2023

Place and Date of Judgment:

New Westminster, B.C.
September 1, 2023

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BACKGROUND

[1] This chambers application is the latest in a convoluted history of a dispute over an application to order the sale of the defendant's interest in a nine-acre property located at 6053-28th Avenue, Delta, B.C. ("Loranda Farms"). Loranda Farms is an equestrian property, with several residences located on it.

[2] At the centre of the events are two siblings: Lucas William Robert Robinson ("the defendant") and Micaela Lorraine Robinson ("Ms. Robinson"). They jointly own Loranda Farms, which has been in their family for generations. They purchased the property from their mother, and hold it legally as tenants-in-common, each with a 50/50 registered interest.

[3] Giovanni (John) Bevilacqua ("the plaintiff") was the uncle of the defendant and Ms. Robinson. In 2014, at 90 years of age, the plaintiff brought a proceeding claiming that the defendant misused his power of attorney, and sought various forms of relief. In 2018, the plaintiff got an order for \$700,000 against the defendant. Of that amount, approximately \$525,435.48 remains outstanding (as of June, with the accrual of interest). The plaintiff has subsequently passed away and his estate now seeks recovery of the outstanding judgment balance through an order for the sale of the defendant's interest in Loranda Farms.

[4] There are several other claims registered against the defendant's interest in Loranda Farms. In 2012, a judgment was granted in favour of the Director of Civil Forfeiture against the property. The defendant took a mortgage of \$245,000 to pay the Director and then subsequently defaulted on payment to the mortgager.

[5] Mr. Gregory represented the defendant in this matter. On March 21, 2019, Mr. Gregory's law firm, Gregory & Gregory, registered a judgment against the defendant's interest for non-payment of fees. The Gregory & Gregory judgment has subsequently been registered as an additional mortgage against Loranda Farms.

[6] The precise nature and extent of the existing liens and charges against the defendant's interest in Loranda Farms was not clear in submissions.

COURT ORDER ENFORCEMENT ACT

[7] Section 86 of the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, [COEA] provides that:

(3) From the time of its registration the judgment forms a lien and charge on the land of the judgment debtor specified in the application referred to in section 88 in the same manner as if charged in writing by the judgment debtor under his or her signature and seal,

(a) to the extent of his or her beneficial interest in the land...

[8] Relevant portions of the *COEA* include:

Procedure for enforcing charge

92 (1) If a judgment creditor has registered a judgment under this Act, and alleges that the judgment debtor is entitled to or has an interest in any land, or that any land is held subject to the lien created by registration of judgment under section 82, a motion may be made in Supreme Court Chambers, by the judgment creditor calling on the judgment debtor, and on any trustee or other person having the legal estate in the land in question, to show cause why any land in the land title district in which the judgment is registered, or the interest in it of the judgment debtor, or a competent part of the land, should not be sold to realize the amount payable under the judgment.

...

Determination of disputed questions

93 On an application under section 92, the proceedings must be had, either in a summary way or by the trial of an issue, or by inquiry before an officer of the court, as the court thinks necessary or convenient, for the purpose of ascertaining the truth of the matters in question, and whether the land, or the interest in it of the judgment debtor, is liable for the satisfaction of the judgment.

Reference to ascertain land and settle priorities

94 (1) If an order is made on an application under section 92, there must be included in the order a reference to a district registrar of the Supreme Court

- (a) to find what land is liable to be sold under the judgment,
- (b) to find what is the interest of the judgment debtor in the land and of his or her title to it,
- (c) to find what judgments form a lien and charge against the land and the priorities between the judgments,
- (d) to determine how the proceeds of the sale are to be distributed, and
- (e) to report all the findings to the court.

(2) The district registrar must deal with all judgments registered against the land whether registered before or after the judgment on which the proceedings are taken.

(3) Unless good reason is found to the contrary, the creditor first taking proceedings is entitled to his or her costs in priority to all claims under the judgment whether before or after his or her own.

(4) The district registrar must serve all persons affected by his or her inquiries.

(5) The report, when made, requires confirmation by the Supreme Court, and all persons affected by it must have notice of the application for confirmation, and on application the court may confirm all or part of the report, and may alter it or may refer it back to the district registrar.

[Emphasis added.]

[9] Sections 92–97 of the *COEA* contemplate a three-step process for a judgment creditor to apply for the sale of a judgment debtor’s interest in land to satisfy a judgment:

1. A show cause hearing for the judgment debtor to show why their interest should not be sold. If the judgment debtor cannot show why their interest should not be sold, a reference must be made to the Registrar to determine:
 - the interest of the judgment debtor in the land and their title to it;
 - what judgments form a lien and charge against the land and priorities among them;
 - how proceeds of the sale are to be distributed; and
 - to report these findings to the court.
2. A hearing before the Registrar to sign the report prepared by the creditor (“Registrar’s Report”) confirming the above information.
3. An application to the court to confirm the Registrar’s Report. The judgment creditor may then obtain an order to sell based on the Report. There are two options depending on what type of report from

the Registrar sought. On a “certification”, the final decision for appeal purposes is the decision of the Registrar, but on a “report and recommendation”, it is the decision of this Court. It would be a final order at that point.

[10] As discussed below, the matter has stalled at the stage of seeking the court’s approval for the sale that has been negotiated.

History of Applications to Sell the Property Under the COEA

[11] The plaintiff brought an order for sale of the defendant’s interest in Loranda Farms under s. 92 of the *COEA*, filed October 4, 2019. After a show cause hearing on November 6, 2019, where the defendant was duly served but did not appear, Master Dick ordered:

1. pursuant to the provisions of s. 94 of the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, there be a reference to the District Registrar of this court at New Westminster, British Columbia on December 11th, 2019 at 2:00PM.
 - (a) to find what property or interest in the Lands is liable to be sold under the judgment;
 - (b) to find what is the interest of the defendant (judgment debtor), Lucas William Robert Robinson in the Lands and of its title to the Lands;
 - (c) to find what judgments form a lien and charge against the Lands and the priority between the judgments;
 - (d) to determine how the proceeds of sale are to be distributed; and
 - (e) to report all such findings to this court;
2. any person having an interest in the Lands be notified by registered mail of the reference to the District Registrar;
3. the report of the District Registrar be subject to confirmation by this court;
4. the parties may apply to this court for further directions from time to time;
5. the costs of this application and the reference to the district registrar be assessed as special costs on a full indemnity basis and added to the amount of the judgment.

[12] On December 11, 2019, the Registrar’s hearing occurred. The defendant did not appear.

[13] The Registrar’s Report dated December 11, 2019, prepared by then Registrar Nielsen defined the defendant’s interest in Loranda Farms as follows:

2. Interest of the Judgment Debtor in the Lands

The judgment debtor’s interest in the Lands is: Lucas William Robert Robinson, the judgment debtor, is the register[ed] owner of an undivided one half interest in fee simple of the Lands but a beneficial owner of less than an undivided one half interest in fee simple and is indefeasibly entitled to less than an undivided one half interest in the estate in fee simple as at 12:43 on January 24, 2019 the date a certificate of the state of title of the Lands was obtained...

[Emphasis added.]

[14] The Registrar’s Report listed these liens and charges against the Loranda Farms property:

(a) a first mortgage registered against the Lands under no. CA1177117 on July 7, 2009 at 11:15 in favour of The Toronto Dominion Bank in the sum of \$740,000.00. The interest of the Defendant, Lucas William Robert Robinson in the Lands is being sold subject to the Toronto Dominion Bank Mortgage.

...

The judgments registered against the Lands simple as at 12:43 [a.m.] on January 24, 2019 are:

- (a) a Certificate of Judgment for the Plaintiff’s judgment registered against the Lands under no. CA6029392 on May 30, 2017 at 16:03 for \$10,000.00.
- (b) a Certificate of Judgment for the Plaintiff’s judgment registered against the Lands under no. CA7301731 on January 17, 2019 at 15:02 for \$700,000.00 of which the sum of at least \$453,983.11 remains outstanding as of December 11, 2019.
- (c) a Certificate of Judgment for a Crown Debit registered against the Lands under no. WX2105438 on January 21, 2019 at 11:48 for \$807.72.
- (d) a Certificate of Judgment for Gregory & Gregory’s judgment registered against the Lands under no. CA7406301 on March 21, 2019 at 16:55;20.0001 for \$34,579.60.

[15] Priorities for distribution for proceeds of sale were listed as follows:

6. Distribution of Proceeds of Sale

...

first, in payment of the judgments in favour of the Plaintiff Subject to the preferential right of the plaintiff for special costs in these proceedings on a full recovery basis

secondly, in payment of the Crown Debit

thirdly, in payment of the Gregory & Gregory judgment

fourthly, the balance, if any, to the defendant Lucas William Robert Robinson.

[16] On December 11, 2019, the plaintiff applied for approval of the Registrar's Report. That application was heard on January 8, 2020 by Master Keighley. No one appeared on behalf of the defendant, though the court noted that he was duly served. Master Keighley approved the Registrar's Report and ordered that the defendant's interest in the land be sold in satisfaction of the plaintiff's judgment. The sale was made subject to court approval unless all parties agreed.

[17] The Registrar's Report is presumed to be valid and binding. There is an order of this Court confirming it.

[18] On December 1, 2020, the plaintiff filed an application seeking an order approving the sale of the defendant's interest in Loranda Farms to Ms. Robinson for \$400,000. The matter was heard before Justice Riley on June 1, 2021, with reasons delivered on June 9, 2021. Questions were raised about what the value of the defendant's interest in the property actually is, and it was argued that Ms. Robinson had offered an arbitrary price as a non-arms' length purchaser. Ultimately, Justice Riley said that he could not be satisfied on the evidence that the sale was a "prudent one" and dismissed the application.

[19] Justice Riley noted, at para. 11 of his reasons, that "[t]he soundness and validity of the order for sale is taken as a given. It is not open to [the defendant] to attack it in this application." The difficulty with selling the property centres around the way that the Registrar's Report describes the interest held by the defendant as being less than a one-half interest. Justice Riley identified the problem as follows:

[18] ... [T]he challenge here is that the interest is extremely unusual, almost unique. This case does not involve the sale of a single property or even a clearly ascertainable one-half interest in a pot [*sic*], but rather a beneficial interest of something less than one-half interest in fee simple. ...

[19] ... [W]e are not talking here about a clearly identifiable one-half interest in a piece of real property, bur rather a beneficial interest of something less than a one-half interest in fee-simple.

[20] In December 2021, the plaintiff again applied to the court seeking an order that the defendant’s interest in the property be sold to Ms. Robinson for \$400,000. Master Bilawich found, on February 25, 2022, that the plaintiff “has not tendered evidence which adequately addresses whether the proposed purchase price offered by [Ms. Robinson] is provident and prudent in all the circumstances.”

[21] In the present application, the plaintiff has again once brought the matter back before the court seeking to have the sale of the defendant’s interest in Loranda Farms for \$400,000 approved.

ISSUES

[22] Three applications were brought before me:

1. the application of the plaintiff for the sale of the defendant’s interest in the Loranda Farms property to Ms. Robinson for \$400,000;
2. applications on the part of the defendant for orders allowing the cross-examination on the affidavits of Chai Chung (realtor) and Ms. Robinson; and
3. an application brought by the defendant for an order setting aside:
 - a. the order of Master Dick dated November 6, 2019 authorizing the Registrar’s inquiry;
 - b. the Registrar’s Report dated December 11, 2019; and
 - c. the Order of Master Keighley dated January 8, 2020 authorizing the sale of the defendant’s interest in Loranda Farms.

I generally adjourned the application of the plaintiff and those of the defendant seeking to cross-examine Ms. Chung and Ms. Robinson on their affidavits, and heard the defendant's challenge to the Registrar's Report.

DISCUSSION

[23] It is common ground between the parties that Gregory & Gregory, and Mr. Gregory personally, were not provided with notice of the show cause hearing, nor of the Registrar's hearing. The plaintiff argues this was not necessary as he was not an interested party at the time; and, in any case, he argues that three plus years after the Registrar's Report was approved, the defendant is estopped from challenging it so far after the fact. The plaintiff argues the defendant and Mr. Gregory have been aware of the Registrar's Report for several years, and it is not open to them to challenge its validity so long after it was issued and approved.

[24] The priorities listed in the Registrar's Report have shifted subsequently as judgments have lapsed, and Gregory & Gregory's interest has been registered as a mortgage against the property.

[25] Attempts to sell the defendant's interest have not been successful.

[26] Loranda Farms was appraised in 2017 as being worth \$3,100,000. Though no recent appraisal has been done, it is reasonable to assume that the property's value has remained, or more than likely has increased in value in the approximately six years since it was last appraised.

[27] The uncertain nature of the interest which is listed for sale has, for practical purposes, limited the offers made on the property. The interest marketed has been that identified in the Registrar's Report of a "beneficial owner of less than an undivided one half interest [in the estate] in fee simple". Through several marketing processes (which the defendant questions the adequacy of), Ms. Robinson has made the only offer for purchase. Ms. Robinson continues to offer \$400,000 to purchase the defendant's interest in the property.

[28] Mr. Gregory points out that the lawyer representing the plaintiff's estate in this application formerly represented Ms. Robinson in other proceedings related to a conflict between the siblings, and suggests he is representing Ms. Robinson's interest rather than the plaintiff's in the way Loranda Farms was marketed. This argument was also put before Justice Riley in earlier proceedings, and rejected. I therefore do not consider it here.

[29] The defendant's primary argument centres around the difficulty with the identification of his interest in the Registrar's Report, and the ensuing difficulty in marketing that interest. It is safe to say that, nearly four years following the appraisal of the Registrar's Report, the parties are stalled. There is every indication they will stay stuck here because there is a significant difference in the value that the defendant's interest in Loranda Farms can sell for, depending upon how his interest is defined.

[30] Legally, the defendant owns the land 50/50 as tenant in common with Ms. Robinson. However, his interest in the Registrar's Report is defined to reflect the equitable claim that was made on Ms. Robinson's behalf (this claim was raised before the Registrar, though not settled as each of the siblings has claims about what the other paid or collected in relation to the property and what they may owe the other). The Registrar could not have determined the equities between the siblings in the proceeding.

[31] There is likely at least a \$1 million difference (and quite likely significantly more) in value for what the property may be sold for if the defendant is determined to have a one-half interest versus the more undefined less than one-half interest in fee simple as listed in the Registrar's Report.

[32] The definition of the interest to be sold has significantly impacted the potential purchase price. If the defendant's interest is sold, as proposed and currently defined in the Registrar's Report, not enough profit will be realized to satisfy all existing liens and charges.

[33] Ms. Robinson has lived at and operated Loranda Farms. She has been responsible for related expenses, including paying property taxes. The defendant argues she has not accounted for rents she has collected. Ms. Robinson also received an insurance payout of approximately \$450,000 after a barn burned down that the defendant says is unaccounted for. The defendant has brought a separate application for an accounting of Ms. Robinson's handling of Loranda Farms.

[34] The argument about the greater contributions made by Ms. Robinson to Loranda Farms, and thus the beneficial interest in the defendant's share of the property, was before the Registrar and appears to have grounded the finding that the defendant had a less than one-half beneficial interest in Loranda Farms.

[35] In November 2013, the defendant sought an order (Vancouver Registry No. S138186) for partition of the property. That application was not pursued. On September 29, 2021, Ms. Robinson applied to dismiss the Partition Proceeding for want of prosecution. On November 3, 2021, Justice Tammen granted the order sought with costs to Ms. Robinson.

Challenge to the Registrar's Report

[36] The focus of the application before me concerned the validity of the process before the Registrar which led to the Registrar's Report; and then an order for the sale of the defendant's interest in Loranda Farms, under the *COEA*. In particular, the defendant argues that:

- due to the passage of time, the interests against title have changed so significantly that the original report is no longer valid. For example, the Registrar's Report does not recognize the Gregory & Gregory mortgage against title for the defendant's unpaid legal fees, and other judgments have expired or changed;
- the Registrar did not have jurisdiction to make an order that sets out the defendant's interest in the manner described (he argues the undefined or unclear nature of this definition has caused a significant

devaluation of the defendant's interest in the context of a court ordered sale);

- there was no accounting for the fact that the defendant argues Ms. Robinson also owes him money for his interest in Loranda Farms arising from her collection of rents and insurance money; and so the equitable interest in the Loranda Farms as between Ms. Robinson and the defendant is unknown, and
- Section 94(1)(b) of the *COEA* required the Registrar to define what is the interest of the judgment debtor in the lands and of his or her title to it. It is submitted that the finding that the defendant is entitled to a less than one-half beneficial interest fails to meet the requirements for defining the defendant's interest.

[37] For practical purposes, the lack of clarity has locked the parties into a dispute.

Failure to Give Proper Notice

[38] The defendant, represented by Mr. Gregory, argues the Registrar's Report was improperly made as neither Mr. Gregory nor his law firm were served despite that he had a judgment registered against Loranda Farms.

[39] The defendant also says he did not receive proper notice. I do not further consider the argument that the defendant was not served. The defendant did not introduce evidence to this effect, and the record shows he was duly served, though did not appear.

[40] The defendant argues that under s. 94(4) of the *COEA* the Registrar was required to serve all persons affected by their inquiries. At the time, Gregory & Gregory had a judgment and their interests were impacted by the proceedings.

[41] The plaintiff argues that notice was not required as Mr. Gregory's interest, when the Registrar's Report was issued, was not a legal estate in the land in

question per s. 92(1) of the *COEA*. Mr. Gregory points to s. 94(4) requiring the Registrar to “serve all persons affected by his or her inquiries.”

[42] In *Faulkner v. The City of Duncan*, 2015 BCSC 825 at para. 21, Justice Thomas observed the fundamental nature of a right to be heard on matters which impact a party’s legal interest:

... the right to notice and the right to be heard are thoroughly fundamental and in my view justify the conclusion in this case that the failure to observe those rights results in a nullity. ...

That is what is argued here.

[43] In *Jansen v. Donaghy*, 1999 CanLII 15181 (B.C.S.C.), Ms. Jansen claimed she owned a beneficial interest in land ordered sold under the *COEA*. The land had been ordered sold to satisfy a judgment debt of her husband. In considering the issue, the Court found:

[15] The real issue is whether she was a person who might be affected by any order for sale made under the *Court Order Enforcement Act*, and if so, whether she ought to have been given notice of the application for a reference to the registrar, and of the appointment before the registrar, and of the application to confirm the registrar's report.

[16] I conclude that Marianne Jansen was a person who might be affected by the order for sale. ...

[17] Section 94(4) of the *Court Order Enforcement Act* provides that on an inquiry under that section "the district registrar must serve all persons affected by his or her inquiries". Section 94(5) of the *Court Order Enforcement Act* provides that "the report, when made, requires confirmation by the Supreme Court, and all persons affected by it must have notice of the application for confirmation...". Rule 52(12) provides that "if on a hearing of an application the court is of the opinion that a person to whom notice has not been given ought to have had notice, the court may either dismiss the application or adjourn the hearing".

[44] The Gregory & Gregory interest was known as it is listed in the order of priority. Therefore, it seems to fall within the meaning of s. 94(4) of the *COEA* and notice was required.

[45] If the Registrar’s Report was not made with notice to all those whose interests may have been affected, that report and recommendation, although not a final order,

may have been a nullity, in which case it would be necessary to have it set aside and the matter referred back to the Registrar.

[46] Although it is acknowledged there was a period of time in which Mr. Gregory was not counsel on this file for the defendant, the plaintiff argues he has been aware of, and reviewed, the Registrar's Report on January 8, 2020 at the hearing before Master Keighley. The plaintiff says because Mr. Gregory reviewed the Registrar's report on this date, the defendant cannot now make the argument with respect to notice as Mr. Gregory had actual notice and the opportunity to raise the issue previously.

[47] The defendant argues the failure to provide notice renders the Registrar's Report a nullity. He relies on *Craig v. Kanssen*, [1943] 1 K.B. 256, and *Michalakis v. Nikolitsas*, 2002 BCSC 1708, to submit that an order made without notice is a nullity. *Michalakis* was a judicial review and the Court of Appeal declined to hear the argument on the basis that it raised a new issue. I do not agree. Improper service may necessitate the setting aside of the report and recommendation, or even the final order of the court. However, this requires an investigation into when the aggrieved parties became aware, and whether they took steps in a timely fashion to address the lack of notice.

[48] The test for setting aside a default judgment was confirmed in *Andrews v. Clay*, 2018 BCCA 50 at para. 28 [*Andrews*], where the Court of Appeal summarized the framework established in *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58 (Co. Ct.) as follows:

[5] ... in order for a defendant to succeed on an application to set aside a default judgment, he must show:

1. That he did not wilfully or deliberately fail to enter an appearance or file a defence to the plaintiff's claim;
2. That he made application to set aside the default judgment as soon as reasonably possible after obtaining knowledge of the default judgment, or give an explanation for any delay in the application being brought;
3. That he has a meritorious defence or at least a defence worthy of investigation...

[49] While these factors are considerations for a chambers judge to weigh, they are neither mandatory or exhaustive. It is at the discretion of the chambers judge to determine whether it is in the interests of justice to set aside a default judgment: *Andrews* at para. 29; *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, 2020 BCCA 341 at para. 17 [*Forgotten Treasures*].

[50] At the first stage, I accept Gregory & Gregory was not provided notice of the show cause hearing or the Registrar's hearing, and that this was a requirement under s. 94(4) of the *COEA*. This fact is not in dispute amongst the parties. I also accept that at the time of these hearings Mr. Gregory, on behalf of Gregory & Gregory, did not wilfully or deliberately fail to enter a response to the plaintiff's claim. At the time, he was no longer representing the defendant, and he was provided with no notice of the hearings as an interested party.

[51] However, as noted above, Mr. Gregory did become aware of the Registrar's report in January of 2020, when he again came on as counsel for the defendant. It was also in evidence that he was, by happenstance and despite lack of legal notice, present in court at the hearing before Master Keighley approving the Registrar's Report. Despite this, it does not appear on the record that Mr. Gregory or the defendant raised the issue of lack of notice until January 2022, when the defendant filed his application to set aside the Registrar's report and the order of Master Keighley. Of relevance is that in this two-year period, there were three other applications filed in this matter, including those heard and decided by Justice Riley and Master Bilawich.

[52] By waiting two years and following numerous other applications in this matter prior bringing this application, I cannot find this application was brought in a timely fashion. This leaves me to conclude that after receiving notice of the default judgment, the defendant, and Mr. Gregory, failed to take steps to have it set aside in a timely fashion.

[53] Although I find there may be some merit to the defendant's claim worthy of investigation, on the evidence before me, I do not find he has established it would be

in the interests of justice to set aside the Registrar's Report or Master Keighley's order on this basis.

Defined Interest in Title

[54] The defendant further argues title claims against his interest in Loranda Farms no longer bears similarity to that which was issued. Since the Registrar's Report was issued, the plaintiff's judgment lapsed and Gregory & Gregory registered a mortgage. The plaintiff's judgment was then renewed. When the Gregory & Gregory mortgage was registered, there was no judgment on title, therefore the Gregory mortgage takes priority over the renewed Bevilacqua judgment.

[55] The defendant points out that marketing less than a one-half interest is a futile enterprise. For practical purposes, Ms. Robinson is the only purchaser if the interest to be sold remains defined as it is currently in the Registrar's Report. The defendant argues that the less than clear definition of his interest has artificially devalued his interest in Loranda Farms.

[56] As well, the defendant points out that the issue of his beneficial interest in the land was not properly before the Registrar and there was no proper accounting. A party asserting a beneficial interest in land would have to legally establish that interest. The defendant argues that because Ms. Robinson's beneficial interest was presumed, the resultant description of his interest in the property (as a beneficial interest of less than 50%), for practical purposes, limits the perspective purchasing pool to Ms. Robinson, and at a potentially significantly reduced price.

[57] The defendant argues that s. 94(1)(b) requires the Registrar to define the interest of the land. He argues that the interest issue was not certain and so did not meet the requirement of s. 94(1)(b). Defining defendant's interest as "less than 50% interest" is a practical uncertainty and has resulted in a significant devaluation of his interest.

[58] The *Land Title Practice Manual* 3rd ed. Continuing Legal Education Society, October 2022, reflects on this situation as follows:

Under s. 86 of the *Court Order Enforcement Act*, a judgment attaches to the land of a judgment debtor only “to the extent of his or her beneficial interest”. Although s. 23 of the *Land Title Act* provides that a certificate of title is conclusive evidence that the person named is indefeasibly entitled to an estate in fee simple of the described land, judgment creditors are not able to execute against a judgment debtor’s registered one-third interest in a parcel of land where the evidence shows the judgment debtor has no beneficial interest in that land [*Judd v. Tauber*, 1992 CanLII 2365 (B.C.S.C.)] ...

Under s. 86(3) of the Act, a judgment forms a lien and charge on the land of the judgment debtor to the extent of the judgment debtor’s beneficial interest in the property. Any beneficial interest that exists during the existence of the registered judgment is sufficient to create the lien. If no beneficial interest exists, no lien is created [*Lumley v. Lacasse*, 1992 CanLII 2151 (B.C.S.C.)].

[59] The plaintiff argues the law *does* permit uncertainty in title, per *Chichak v. Chichak*, 2021 BCCA 286 at paras. 9–10. *Chichak* in essence held that any interest of a judgment creditor under the *COEA* would be subject to equities and they cannot recover more than the value of the judgment debtor. See also: *Brar v. Kootenay Savings Credit Union*, 2023 BCCA 68 at para. 32.

[60] In *Judd v. Tauber*, [1992] B.C.J. No. 1832, 1992 CanLII 2365 (S.C.), Mr. Tauber was registered as owning a one-third interest in the land. As he had not made any payments towards the mortgage as required by his agreement between the other registered owners, the court found he had no actual beneficial interest, and therefore no judgment could attach under the *COEA*.

[61] The beneficial interest a person is entitled to may be different from their legally registered interest in the land. That is the case here. The judgment debtor’s legal interest in the land is what is sold, but the debts registered under the *COEA* can only be collected to the extent of the judgment debtor’s beneficial interest in the land. The beneficial interest held by other parties in the land is not available to be sold to satisfy the judgment debt registered under the *COEA*.

[62] The difference between the two values – legal title vs. beneficial interest – and the issuance of a Registrar’s Report which cannot determine the defendant’s beneficial interest in the land, has caused this conundrum.

[63] One option is to say that the defendant's full legal interest may be sold, but the proceeds available for recovery under the *COEA* are only those remaining after the beneficial interest has been addressed. This approach does not make sense where the beneficial interest is held by another person on title, who wishes to maintain their interest in the property (rather than have it converted to monetary form which may result in them, practically speaking, losing their interest in the land). That was the case in *Jansen and Judd*, where the court found that the judgment debtor did not fact have a beneficial interest equivalent to their apparent legal title to the land. That may be the case here, as well. Ms. Robinson wishes to purchase the defendant's share in Loranda Farms. She has offered \$400,000. It is unclear if she would be able to purchase the property at 50% of its market value.

[64] In the present circumstances, determination of Ms. Robinson's beneficial interest would seem to be required before the matter can proceed to resolution. For example, if Ms. Robinson was found to have a 25% beneficial interest in the defendant's portion, then she would presumably be able to claim 25% of the sale proceeds, and only the remaining 75% is available for recovery by a judgment debtor, and to fulfill other liens and charges against the property.

[65] I am aware of no provision of the *COEA* which requires the process for sale to occur within a set time of the Registrar's Report being issued, nor was I provided with any authorities on this point. However, the *COEA* clearly reflects that timeliness is an issue.

[66] The object of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], is "to secure the just, speedy and inexpensive determination of every proceeding on its merits" (R. 1-3(1)), with consideration to proportionality. Here, the defendant's undefined interest in Loranda Farms and its value have stalled any further progress. I was not referred to any provision within the *COEA*, in the nature of a correcting provision, or a provision suggesting a Registrar's Report contains the equivalent of a stale date.

CONCLUSION

[67] On consideration of a combination of issues here, including: passage of time (now over 3.5 years since the Registrar's Report was issued); an arguable significant change in the liens and charges against the defendant's interest; and, the lack of clarity about the interest which is subject to sale, I am of the opinion this matter should be referred back to the Registrar for the preparation of an updated Registrar's report setting out the defined interests of the parties in Loranda Farms, and recommendations. This should be undertaken with notice to all parties who have an interest in the property at issue.

[68] I further order that the parties appear before the Registrar for a pre-hearing conference, where they will draw to the Registrar's attention all of the existing reasons issued by this Court on this matter before setting the matter for a hearing.

[69] I reiterate the practical difficulty, as outlined above, in moving this matter forward. The crux of the dispute centres around determination of the equities between the defendant and Ms. Robinson in Loranda Farms. The defendant has an outstanding application for an accounting. Prior to appearing before the Registrar, as outlined above, the parties are directed to set a case planning conference, with notice to all parties on this matter, the matter of the application for an accounting, and any other related matter. At the case planning conference, the parties will discuss the order in which the outstanding matters should proceed (if they are indeed going forward) in a manner that is just, speedy and inexpensive, and makes the best use of the court's time, per the object of R. 1-3.

[70] The applications for leave to cross-examine on affidavits, and for sale of Loranda Farms are generally adjourned.

"A. Walkem J."