IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Al-Khafaji v. Innotech Venture Corp.,*
2023 BCSC 324

Date: 20230306
Docket: S224180
Registry: Vancouver

Between:

Zeena Al-Khafaji

Petitioner

And

Innotech Venture Corp. and Sonia Al-Khafaji

Respondents

Before: The Honourable Mr. Justice N. Smith

Reasons for Judgment

Counsel for the Petitioner:	T.W. Clifford A. Jacobs
Counsel for the Respondents:	J.T. Dunning
Place and Date of Hearing:	Vancouver, B.C. February 23, 2023
Place and Date of Judgment:	Vancouver, B.C. March 6, 2023

[1] The petitioner, Zeena Al-Khafaji (“Zeena”), owns an undivided 25 percent interest in a development lot in Vancouver’s Southlands neighbourhood. The respondents are the other owners—Zeena’s mother, Sonia Al-Khafaji (“Sonia”) and Innotech Venture Corporation (“Innotech”)—a company owned by Sonia and her husband.

[2] Zeena applied for partition and sale of the property under the *Partition of Property Act*, R.S.B.C. 1996, c. 347. On the day of the hearing, Sonia and Innotech agreed to buy out the Zeena’s interest. However, issues remain about the purchase price and whether certain deductions should be made from it. (I refer to Zeena and Sonia by their first names, as did counsel in argument, simply for the purpose of clarity when parties have the same surname.)

[3] The lot at issue was created in a subdivision that turned two neighboring lots into three. One of the original two lots was owned by Innotech while the other was owned by arms-length parties (the “Thandis”). Those two neighboring owners agreed to equally divide subdivision and building costs.

[4] The subdivision produced one lot (Lot A) now owned by the Thandis, one (Lot B) where ownership is shared equally by the Thandis and Sonia, and one (Lot C) owned 50 percent by Innotech, 25 percent by Sonia and 25 percent by Zeena. Existing buildings were demolished and the property is now vacant, but the plan is to build a duplex on each of the three new lots.

[5] Zeena’s interest arose from an agreement between her, Sonia and Innotech dated September 30, 2019 (the “purchase agreement”). Key provisions of that agreement included:

- Innotech remained responsible for “all expenses relating to the improvement on the lands” and was entitled to receive all rents.

- The parties agreed to co-operate for rezoning and subdivision.

- Innotech was required to keep records of "the costs and expenses incurred relating to the rezoning and subdivision of the lands, which costs are to be shared pro-rata by the parties."

[6] Zeena purchased her interest with the help of a $366,500 interest-free loan from Sonia. However, Zeena refused to become party to a further joint venture agreement governing redevelopment of the property.

[7] After family conflicts arose, the details of which are not relevant, Zeena filed her petition for partition and sale on June 30, 2022. An appraisal dated June 11, 2022 valued Zeena's 25 percent interest in Lot C at $612,500. Zeena says the purchase of her interest should now be based on that value, less the $366,500 she still owes Sonia. She says that value should govern because the respondents could have purchased her interest at that price when she filed the petition, but unreasonably delayed matters for almost eight months before agreeing. The respondents argue that the price must be based on current market value and a new appraisal is required to reflect any changes in the market since June 2022.

[8] Section 8 of the *Partition of Property Act* reads:

> **Purchase of share of person applying for sale**
>
> **8** (1) In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, then if any party interested in the property involved requests the court to order a sale of the property and a distribution of the proceeds instead of a division of the property, the court may order a sale of the property and give directions.
>
> (2) The court may not make an order under subsection (1) if the other parties interested in the property, or some of them, undertake to purchase the share of a party requesting a sale.
>
> (3) If an undertaking is given, the court may order a valuation of the share of the party requesting a sale in the manner the court thinks fit, and may give directions.

[9] The clear intent of s. 8(1) is for property to be sold at fair market value following the court's order. The purchase by other owners under s. 8(2) is an alternative to that sale and, in my view, must equally reflect the property's current

value after the court has made its order. I have been given no authority for fixing a price based on an earlier value.

[10] I therefore direct Zeena to immediately obtain an updated appraisal based on current market value and to provide it to the respondents. The respondents will purchase her interest at that price, subject to liberty to apply in the event of any disagreement on the validity of the appraisal. Any such application by the respondents must be made within 30 days after they receive the appraisal.

[11] In addition to the outstanding loan that must be deducted from the purchase price, the respondents seek further deductions for Zeena's share of expenses that have been incurred in relation to the property. It is common ground, that to the extent Zeena must share in any such costs, she is responsible for one sixth of them, reflecting the fact that the Al-Khafaji family and its company acquired one and a half lots.

[12] The respondents have put forward a list of various expenses totalling almost $300,000. Those expenses cover periods both before and after Zeena entered into the purchase agreement.

[13] The purchase agreement specifically requires Zeena to share in costs related to rezoning and subdivision of the property. Nothing in it makes her responsible for costs related to its redevelopment. The respondents clearly understood that when they asked Zeena to sign the joint venture agreement, which she refused to do.

[14] The list of expenses put forward includes many items that, on their face, appear to relate to development, such as expenses related to demolition of previous buildings on the property. It also includes property taxes for periods before Zeena had any interest in the property and legal fees for matters that are not specified.

[15] The agreement required Innotech to keep records of expenses related to rezoning and subdivision that Zeena was required to share. No records were put forward to support the amounts listed. There is therefore no evidence on which any portion of those amounts can properly be deducted as part of the partition

proceeding. I agree with Zeena's counsel that to the extent that any of those expenses properly related to rezoning or subdivision, the respondents must put forward a demand based on appropriate supporting documentation. If Zeena disagrees or refuses to pay, the respondents will have the option of commencing a separate action for breach of contract.

[16] However, I find that Zeena is responsible to share in a separate expense relating to construction of a lane behind the new lots. Construction of that lane was a condition of the City of Vancouver's agreement to the subdivision and is therefore properly shareable as a subdivision expense under the purchase agreement. The respondents have produced a construction estimate of $126,400 and I find they are entitled to deduct one sixth of that amount, or $21,067, from the purchase price.

[17] The respondents also claim a variety of other deductions, such as notional real estate commission on the purchase, property transfer tax, Goods and Services Tax, and Vacancy Tax. I find those expenses to be either inapplicable, speculative or unsupported by evidence and make no further deductions.

[18] Zeena has, for the most part, been the successful party in this proceeding, most importantly by being able to dispose of her interest in the property. She is therefore entitled to costs, with one exception.

[19] On November 16, 2022, Master Bilawich granted an application by the respondents for adjournment of the petition hearing and gave the respondents leave to file further affidavits. That application arose because Zeena had filed an affidavit that made a number of allegations about her relationship with her parents, including some going back to her childhood. Master Bilawich left costs of that application to be decided by the judge hearing the petition.

[20] Having now seen that affidavit, I find that it was irrelevant to the issues in this petition and potentially prejudicial. Its filing unnecessarily delayed the final

adjudication. The respondents are entitled to costs of the application before Master Bilawich. Zeena is entitled to all other costs of this proceeding.

"N. Smith J."