IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jones v. Centrone,*
2024 BCSC 1516

Date: 20240723
Docket: S21341
Registry: Nelson

Between:

Michael Jones and Bernice Jones

Plaintiffs

And

Glenda Centrone, Marian Jones, and Glen Jones

Defendants

Before: The Honourable Madam Justice Lyster
In Chambers

Oral Reasons for Judgment

Counsel for the Plaintiffs: M.D. Scheffelmaier

Counsel for the Defendant Glenda Centrone, appearing by videoconference: L. Kozak (as Agent for J. Frame)

No other appearances

Place and Date of Trial/Hearing: Nelson, B.C.
June 10, 2024

Place and Date of Judgment: Nelson, B.C.
July 23, 2024

2024 BCSC 1516 (CanLII)

[1] **THE COURT:** These reasons were delivered orally. I have reviewed the transcript to ensure that any editorial issues were addressed. The reasoning and the result have not changed.

2024 BCSC 1516 (CanLII)

Introduction

[2] Michael and Bernice Jones apply for directions arising out of the final order made by me after trial in this matter on October 12, 2022. My reasons are indexed as *Jones v. Centrone*, 2022 BCSC 1816. The relevant terms of the final order are as follows:

> 1. Michael and Bernice Jones pay $10,000 to Glen and Marian Jones;
> 2. Glenda Centrone, upon payment by Michael and Bernice Jones of $10,000 to Glen and Marian Jones, will take all steps necessary to transfer the west side of Duhamel Creek down to Duhamel Creek Road to Michael and Bernice Jones;
> 3. All parties are to take all steps reasonably necessary to effect this transfer;
> 4. All parties are at liberty to apply to the Court should further directions be necessary to carry out the intention of this Order.

[3] Since that order was pronounced, Michael and Bernice Jones have paid the $10,000 to Glen and Marian Jones. Michael has taken steps to cause the subdivision necessary to effect the transfer of the west side of Duhamel Creek, incurring $25,182.25 in survey and related costs. Michael has requested payment of the costs incurred from Glenda, but Glenda has refused to pay them. The west side of Duhamel Creek has not been transferred to Michael and Bernice.

[4] This situation has led Michael and Bernice to make the present application by which they seek a number of orders related to requiring Glenda to pay the costs associated with the subdivision and to transfer the west side to them.

[5] Glenda opposes the application. She submits that the question of who was to bear the costs of the transfer is an essential term of the agreement, and that that burden ought not to be placed on her, a non-party to the agreement. She submits that there is sufficient evidence that the intention was that Michael was to bear the costs. In this regard, she refers to two without-prejudice letters from Michael and

Bernice's counsel to Glenda's counsel in 2019, which indicate that he was, at that time, prepared to bear the costs. She further submits that if she is a trustee holding the west side in trust for Michael and Bernice, then she ought not to be required to bear the costs of transferring the property.

2024 BCSC 1516 (CanLII)

[6] Glen has sadly passed away since the trial of this matter. Neither Marian nor any representative of Glen's estate responded to this application or appeared at the hearing.

[7] Of note, Glenda filed a notice of appeal of the trial decision. On May 3, 2024, the Court of Appeal dismissed her application to remove the appeal from the inactive list: indexed as *Centrone v. Jones*, 2024 BCCA 177. The Court held that Glenda failed to take any steps to advance her appeal for over a year and that she did not provide adequate reasons for the inordinate delay. The Court further held that Michael and Bernice's submissions regarding prejudice had significant merit. In so holding, the Court found, at para. 35, that Michael and Bernice had taken steps to effect the transfer, and had made improvements to the property, and that it was reasonable for them to do so, given Glenda's failure to take any steps to prosecute her appeal.

[8] Finally, the Court declined to examine the merits of the appeal in any detail. The Court noted at para. 39 that the appeal had sufficient merit to meet the low threshold on an application to reactivate, but that it appeared to be a "challenging appeal". One of the two grounds for appeal put forward by Glenda related to the order that she "take all steps necessary to transfer" the property, with Glenda arguing that I erred in finding that the agreement contained a term in which the defendants agreed to bear the entire cost of the transfer.

[9] This is an application for directions. It is not an application to vary the order. I must therefore determine what the term of the order requiring Glenda to "take all steps necessary to transfer" the property means, within the context of the order as a whole. As I mentioned earlier, Michael and Bernice have fulfilled their obligation under the order to pay Glen and Marian $10,000. I also find that to date they have

fulfilled their obligation to take all steps reasonably necessary to effect the transfer, having retained a surveyor and taken other steps necessary for the transfer to occur. The real question is: who is required to pay the costs associated with the transfer?

[10] I find that the plain meaning of the order that Glenda take all steps necessary to transfer the property is that Glenda is obliged to pay the costs necessary to achieve that end.

[11] I will address each of Glenda's arguments to the contrary. First, she submitted that there was no evidence Michael and Bernice had paid the $10,000, but the evidence before me is clear that they have done so.

[12] Second, Glenda submitted that she was not a party to the contract between Glen and Marian on the one hand and Michael and Bernice on the other, and therefore, she could not have any obligations imposed on her pursuant to that contract.

[13] Michael and Bernice agreed with the general proposition of law that a non-party cannot have obligations imposed upon them in a contract. They submitted that Glenda had, however, accepted the obligation, pointing to para. 248 of the trial decision, where I noted that Glenda had indicated, through her counsel, that if the agreement was found to sell without the “Panhandle”, then she would agree that Michael and Bernice had an equitable interest in the property, and would agree to convey it to them upon delivery of the $10,000 to Glen and Marian. The problem with this argument is that Glenda's agreement was conditional on the “Panhandle” not being included, and I found that it was. She cannot be held to an agreement she was prepared to make on a different factual basis than was held to be the case in the trial decision.

[14] Glenda submitted, third, that as a trustee, she should not be obliged to pay the costs associated with the transfer. In this regard, she relies on *Pallot v. Douglas*, 2017 BCCA 254. At para. 56 of that decision, the Court referred to "the

2024 BCSC 1516 (CanLII)

long-established rule in equity that a trustee is entitled to be indemnified by the *sui juris* beneficial owners of the trust property for expenses properly incurred."

[15] In reply on this point, Michael and Bernice rely on *Graybriar Industries Ltd. v. South West Marine Estates Ltd.*, 1988 CanLII 3070 (BCSC). At para. 6, Justice Macdonald held:

> [6] While the "general rule" gives rise to an obligation to indemnify a trustee for losses incurred in the administration of the trust, a careful reading of the cases discloses that the "general rule" only applies in the absence of a contrary intention. The situation is analogous to the implication of a contractual term, something which will not be done by the court where there is cogent evidence that the parties rejected such a term either expressly or by necessary inference.

[16] Michael and Bernice submit that Glenda accepted the obligation to transfer the west side, thereby displacing the "general rule", again relying on para. 248 of the trial decision. For her part, Glenda denies that she accepted the obligation.

[17] For the reasons I have already given in dealing with the contractual argument, I do not think para. 248 of the trial decision can be relied upon to establish that Glenda accepted the obligation as trustee to transfer the west side.

[18] Fourth, Glenda submitted that Michael and Bernice had, in without prejudice offers made through counsel prior to trial, indicated that they would bear the subdivision costs and that they should be held to that position.

[19] Michael and Bernice did not take any issue with the admissibility of the without-prejudice letters, which they had included in their list of documents. I agree with their submission that, while the letters are admissible, the offers made should be considered within the context in which they were made, which was settlement negotiations. A party seeking to settle a dispute will usually be prepared to make compromises. Those compromises should not, in my view, be converted into with-prejudice positions which the party making them is held to after those settlement discussions fail.

2024 BCSC 1516 (CanLII)

[20] I return to the fundamental proposition that this is an application for directions, not an application to vary the order made after trial. Further, Glenda filed a notice of appeal which, as I have already explained, was dismissed by the Court of Appeal. In the circumstances, my findings and the orders which flow from them are not open to challenge.

[21] In this regard, I note my findings on credibility and reliability at paras. 181-198 of the trial decision. In sum, I found Michael's evidence both credible and reliable. I found Glen to be credible but generally not reliable. I expressed significant concerns about the credibility and reliability of Glenda's evidence. I found Marian to be credible and generally reliable, but that her evidence about the terms of the agreement could not be given much weight. Glenda took me to various parts of the trial decision in the course of her submissions in support of her position that she did not agree to bear the costs of the transfer. In considering my references to the witnesses' evidence, these general conclusions regarding the credibility and reliability of the witnesses must be kept in mind. In other words, the fact that Glenda or Glen, in particular, testified to something does not mean that I accepted that evidence as true. It is my findings of fact and the application of the law to those facts which govern.

[22] My findings on whether there was an enforceable contract on terms sufficiently ascertainable are important for the purposes of this application. At para. 201, I wrote:

> [201] In their responses to civil claim, all the defendants took the position that there was no enforceable agreement. In their oral evidence, all of the defendants effectively abandoned those positions. Glen and Marian's evidence was unequivocal that there was an agreement reached in the summer of 2016 with a purchase price of $100,000 and the boundaries set out on the Map. Glen testified that the transfer would be by way of a boundary adjustment. He was also unequivocal in his evidence that Glenda was aware of the deal before the entire Farm was transferred to her in 2018. Both Glen and Marian believed the land was already Michael's, and would eventually be put into his name by Glenda as she was now the legal owner, and it was her responsibility to do so.

2024 BCSC 1516 (CanLII)

[23] In other words, Glen and Marian believed it was Glenda's responsibility to put the west side into Michael's name.

[24] At para. 230, I concluded:

> [230] I conclude that there is an enforceable agreement with sufficiently ascertainable terms. That agreement is that Glen and Marian are to transfer the entirety of the west side of the Creek including the Panhandle down to Duhamel Creek Road to Michael and Bernice, with the transfer to be effected by a boundary adjustment. The total purchase price is $100,000, of which [Michael and Bernice] have already paid $90,000. They are to pay the final $10,000 upon the property being transferred.

[25] In other words, Glen and Marian were to transfer the west side to Michael and Bernice by way of boundary adjustment. There is no suggestion that Michael and Bernice were responsible for the costs of doing so.

[26] In considering whether specific performance should be ordered, I wrote at paragraphs 254-256:

> [254] Of course, Glen and Marian no longer own the Remainder, and cannot directly transfer the land to Michael and Bernice. It is clear on all of the evidence that Glenda purchased the Remainder with full knowledge of the agreement between Glen and Marian, and Michael and Bernice. While she equivocated at times in cross-examination on whether there was an enforceable agreement, or whether she knew the terms of the agreement, she signed the Map that says "the property outlined in yellow belongs to Mike & Bernice Jones (10,000 owing to Mom & Dad)". While I have found the property boundary to be different from that outlined in yellow, in that the Map fails to include the Panhandle, the Map is strong evidence of the fact Glenda knew when she bought the Remainder from her parents that Michael and Bernice owned (or at least were entitled to own) the west side of the Creek.
>
> [255] Michael and Bernice submit that Glenda is Glen and Marian's agent to carry out the agreement. I find that the more appropriate way to express Glenda's obligation is that, while she is the legal owner of the property in question, the beneficial owners are Michael and Bernice, and on payment of $10,000 to Glen and Marian, Glenda is under an obligation to effect the intended transfer.
>
> [256] I therefore order Glenda, upon payment by Michael and Bernice of $10,000 to Glen and Marian, to take all steps necessary to transfer the west side of Duhamel Creek down to Duhamel Creek Road to Michael and Bernice. All parties are to take all steps reasonably necessary to effect this transfer. All parties are at liberty to apply to the court should further directions be necessary to carry out the intention of this order.

2024 BCSC 1516 (CanLII)

[27] I found that Glenda purchased the "Remainder" in full knowledge of the agreement between Glen and Marian and Michael and Bernice. I did not accept Michael and Bernice's characterization of Glenda as Glen and Marian's agent. She is obliged on payment of the $10,000, which has been made, to effect the transfer of the property as Michael and Bernice are the beneficial owners of it. From this flowed the order at the heart of this application for her to take all steps necessary to transfer the west side.

[28] I have concluded that the intention of that order is that Glenda is responsible for the costs associated with effecting the transfer. The circumstances surrounding the agreement, as set out at length in the trial judgment, are more than sufficient to displace the general rule that, as trustee, she would be entitled to be indemnified for those costs.

[29] In their notice of application, Michael and Bernice sought a number of orders. I grant the declaration sought that Glenda is required to pay the costs associated with the subdivision and transfer, including the costs generally attributable to a seller of property. This includes all costs incurred to date by Michael and Bernice necessary to effect the subdivision and transfer. No issue was taken by Glenda with respect to the amount claimed of $25,182.25, so I grant that order.

[30] I accept Glenda's submission, relying on *Kepke v. DeGagne*, 2011 BCSC 285 at paras. 30-31, that this court cannot grant the declaration sought that Glenda transfer the west side, as it is beyond this court's authority to direct the approving officer to approve the subdivision, which will be required for her to do so. In this regard, I do not think it is necessary to expand upon the order already made, that Glenda is required to take all steps necessary to transfer the west side.

[31] Michael and Bernice have been substantially successful on this application for directions and are entitled to their costs of this application.

2024 BCSC 1516 (CanLII)

[32] That concludes my reasons for decision.

"L.M. Lyster J."

LYSTER J.

2024 BCSC 1516 (CanLII)