IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Smith v. Croft,*
2024 BCSC 263

Date: 20240215
Docket: S133753
Registry: Kelowna

Between:

Ronald John Coventry Smith

Plaintiff

And

Tracy-Lyn Croft and Lori-Ann Purvis

Defendants

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

Counsel for the Plaintiff:	M.A. Koochin
The Defendant, on her own behalf:	T.L. Croft
The Defendant, on her own behalf:	L.A. Purvis
Place and Dates of Trial/Hearing:	Kelowna, B.C. January 29, 31 and February 1, 2024
Place and Date of Judgment:	Kelowna, B.C. February 15, 2024

Introduction

[1] The 83-year-old plaintiff claims a one-half interest in a condominium property civically described as #219-4380 Lakeshore Rd., Kelowna, BC, V1W 5W3 ("Third Home"), where he lived with the defendants' deceased mother Linda Willis ("Ms. Willis") from 2018 until her death at the age of 76 on December 21, 2021. The Third Home was purchased in 2018, and despite having continuously lived with the plaintiff in a marriage-like relationship for 18 years, it was registered solely in Ms. Willis' name. Approximately ten months prior to her death, Ms. Willis transferred title of the Third Home to herself and her daughters, the defendants, in joint tenancy. On Ms. Willis' death, legal title to the Third Home transferred to the defendants by right of survivorship.

Summary of Decision

[2] For the following reasons, the plaintiff's claim is allowed with costs to be spoken to. I declare that the defendants hold an undivided one-half interest in the Third Home in trust for the plaintiff.

Background

[3] The plaintiff and Ms. Willis each had previous long-term relationships and have adult children from those relationships. The plaintiff's wife was deceased, and Ms. Willis was divorced.

[4] The two met in a grocery store in Edmonton in 2003 and began dating. The plaintiff was then aged 63 and Ms. Willis aged 58. The plaintiff was employed as a crane and rigging supervisor in an oil patch in Northern British Columbia and Alberta, which took him out of town usually three weeks of every four. Ms. Willis did not work.

[5] Soon after they began dating, the plaintiff moved into Ms. Willis' Edmonton condominium, where they began living in a marriage-like relationship. Both expressed their disinterest in remarrying. Their relationship carried on continuously from 2003 to December 2021, when Ms. Willis passed away.

[6] In 2005, the couple travelled to the Okanagan area of British Columbia and decided to look for a home to purchase. By the summer of 2006, they found and together decided to purchase a ten-year-old, double-wide home in a mobile home park near Oyama, BC overlooking Kalamalka Lake, civically described as Unit #19-17610 Rawsthorne Road, Lake Country, BC ("First Home"). The purchase price was $190,000 and they moved into it in September 2006.

[7] Ms. Willis had previously entered into a separation agreement with her ex-husband, Mr. Purvis, which required him to pay her spousal support indefinitely, with liberty to apply to vary his spousal support obligations in the event Ms. Willis began permanently cohabiting with another person. Ms. Willis did not work and the spousal support payments represented most of her income.

[8] The plaintiff cashed in $119,000 of his approximate $140,000 RRSPs, netting approximately $100,000 which he used as his one-half contribution to the First Home's purchase. Ms. Willis, who according to the plaintiff was somewhat strong-willed, insisted that the First Home be registered in her sole name because of her fear that Mr. Purvis would apply to reduce or cancel the spousal support she was receiving if he found out that she was living with the plaintiff. The plaintiff trusted Ms. Willis, acceded to her request, and transferred $100,000 to her. He considered it as an investment in the First Home. He denies the $100,000 was a gift to Ms. Willis.

[9] The plaintiff and Ms. Willis' plan at the time was to live in the First Home for a while, waiting for real estate prices in the Kelowna to drop. While living there, they renovated and made upgrades to the property inside and out.

[10] Throughout their relationship, the couple enjoyed casino gambling (Ms. Willis more than the plaintiff) and incurred substantial losses which were covered by the plaintiff from his employment earnings. While the plaintiff was working out of town, Ms. Willis would often attend casinos and typically lost money. This was a source of frustration for him because he considered gambling a waste of money. However, he tolerated her gambling, and it became their main source of entertainment when he

was home from work. Throughout the relationship, the plaintiff contributed to household and other expenses by transferring funds to Ms. Willis monthly.

[11] The couple lived in the First Home until July 2011, when they decided to move closer to Kelowna where they felt more comfortable. Together, they found and decided to buy a new two-bedroom condominium civically described as #102-580 Sarsons Road, Kelowna, BC ("Second Home"). The purchase price was approximately $385,000 including HST and property purchase tax. The First Home was sold privately for $235,000 and a combination of its net sale proceeds and a Royal Bank mortgage of approximately $146,000 was used to complete the purchase. Once again and on Ms. Willis' insistence, it was registered in Ms. Willis' name solely. Neither party put any additional money into the purchase of the Second Home. The plaintiff contributed to the monthly mortgage payments of $664.08 and paid for other living and Ms. Willis' gambling expenses. When the Royal Bank mortgage was to be renewed, Ms. Willis arranged a $160,000 CHIP mortgage and used most of the proceeds to discharge the Royal Bank mortgage.

[12] The plaintiff retired from his employment in 2015 at the age of 75 and his income reduced significantly.

[13] The plaintiff and Ms. Willis lived together in the Second Home until August 2018, when they decided to down-size and purchased the Third Home, a new smaller one-bedroom condominium with a den, for the purchase price of $340,000. The Second Home was sold for $505,000 and its net sale proceeds were used to purchase the Third Home. The CHIP mortgage was paid out, but Ms. Willis wanted some cash and arranged a TD Bank $45,000 line of credit secured by a mortgage against the Third Home ("TD Mortgage"). Title to the Third Home was, once again on Ms. Willis' insistence, registered in her sole name. Despite the plaintiff's frustration with Ms. Willis' spending habits, their relationship remained happy and loving.

[14] In 2020, Ms. Willis' health began to decline. She was a smoker, was diabetic for many years and was a cancer survivor. She died on December 12, 2021, at the

age of 76, with the plaintiff at her side. At the time of her death, he had been living with the plaintiff continuously for over 18 years with no periods of separation.

[15] On March 16, 2021, and unbeknownst to the plaintiff, Ms. Willis prepared a will leaving her estate to the defendants, who had both resided in Alberta throughout the plaintiff's relationship with Ms. Willis. On the same day, she also gratuitously transferred title of the Third Home into hers and the defendants' names as joint tenants and entered into a joint tenancy agreement with them. The joint tenancy agreement stated that Ms. Willis wanted the defendants to become the sole and beneficial owners of the Third Home on her passing. There was no mention of the plaintiff in either document.

[16] Accordingly, when Ms. Willis passed, the defendants took immediate steps to have the Third Home transferred to them and they became its registered owners on December 22, 2021. They then promptly demanded that the plaintiff vacate the premises. While they initially wanted him out by January 1, 2022, they extended the time to the end of March 31, 2022. With his family's help, the plaintiff vacated the Third Home and moved to Edmonton where he resides with his son in a rented apartment.

The Evidence

[17] The plaintiff and his stepdaughter, Ms. Rhonda Karst, were the only witnesses to testify. In addition, the plaintiff read in portions of Ms. Croft's examination for discovery evidence given on October 23, 2023.

[18] The defendants called no evidence.

[19] In addition to documentary evidence filed by both parties, there is a joint appraisal of the Third Home dated December 7, 2023, valuing it at $485,000.

The Parties' Positions

[20] The plaintiff asserts that he was a beneficial one-half owner of the three properties that he purchased together with Ms. Willis. He says he paid one-half of

the First Home's purchase price as an investment, and this investment followed to the subsequent purchases of the Second Home and the Third Home. He contends that, given the circumstances, the Third Home is subject to a resulting trust in his favour as to an undivided one-half interest. Alternatively, he claims that it is subject to a constructive trust. He says he agreed to Ms. Willis' demands that the three homes they purchased together be registered solely in her name because of her concern about losing spousal support, because he trusted her, and because he was five years older and assumed that he would die first.

[21] The defendants did not testify and were content to rely on facts elicited in cross-examination of the plaintiff, Ms. Karst and the exhibits. They argue that the plaintiff's claim should be dismissed because he was complicit in Ms. Willis' fraud on Mr. Purvis by deliberately hiding the fact that they were cohabiting together while improperly collecting spousal support from him. As another example of the plaintiff's dishonesty, they point to the plaintiff's tax returns over the years of his relationship with Ms. Willis, saying he was single. They assert that the plaintiff intentionally kept his name off title to the three homes to hide the fact that he was living with Ms. Willis, which resulted in Ms. Willis being legally responsible to fund all mortgage, utility and other related expenses in her name. They also argue that the plaintiff's evidence should not be trusted because, according to their calculations, if he cashed in $119,000 of his RRSPs in 2006, he would have only received $65,000 net of taxes and not the $100,000 he suggests.

Discussion

[22] The plaintiff was a credible witness and I accept his evidence without reservation. I accept that the plaintiff and Ms. Willis cohabited in a relatively happy, continuous, marriage-like relationship from 2003 through 2021 when she died. I also accept that they were committed to each other as common law spouses.

[23] Further, I accept that the plaintiff and Ms. Willis intended to invest in the First Home together. The plaintiff paid Ms. Willis $100,000 as his one-half share of the purchase price and that the plaintiff was intended by both to be a one-half beneficial

owner. Simply put, the plaintiff and Ms. Willis intended to purchase the First Home together as an investment, with each investing one-half of its purchase price.

[24] The $100,000 the plaintiff provided to Ms. Willis was not a “gift”, nor does the law presume that it was: *Pecore v. Pecore*, 2007 SCC 17 [*Pecore*]. Equity presumes bargains, not gifts.

[25] A resulting trust will presumptively arise any time a person purchases property, or part of a property, and that property is registered in another person’s name: *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 at paras. 21-22.

[26] The plaintiff’s main argument is that of a resulting trust, namely that, despite the Third Home (and the First Home and Second Home) being registered in Ms. Willis’ sole name, she held a 50% interest in trust for him. He maintains that she cannot transfer what she does not own and when she purported to transfer the Third Home to herself and the defendants, she did so subject to the trust.

[27] I completely agree with the plaintiff’s submissions.

[28] At law, a gratuitous transfer of property underlies the presumption of a resulting trust. Where there has been a joint contribution by two persons to the acquisition of property, title to which is registered in the name of only one of them, the transfer is gratuitous because there was no consideration for the contribution to the acquisition of the property by the registered party. Here, the presumption of resulting trust operates and presumes that the joint contributor intended to convey only legal title and not beneficial title. The key is to ascertain the transferor’s actual intention: *Swanstrom v. Wuest*, 2018 BCSC 2299 at para. 37, citing from *Suen v. Suen*, 2013 BCCA 313 at para. 36, quoting from *Kerr v. Baranow*, 2011 SCC 10 at paras. 17-19.

[29] The plaintiff’s evidence was that his intention was to invest in the purchase of the First Home together with Ms. Willis and that he intended that he would be a 50% beneficial owner. He did not intend to gift or transfer 50% of that ownership to Ms. Willis. This is not a case where the plaintiff’s intention cannot be ascertained.

Rather, his evidence, which I accept, that he never intended to gift the initial $100,000 investment to Ms. Willis.

[30] While the plaintiff and Ms. Willis kept their respective finances separate and maintained separate bank accounts, I accept that, throughout their relationship, the plaintiff paid Ms. Willis monthly and contributed to the couples' living expenses. I also accept that the plaintiff covered Ms. Willis' routine gambling losses.

[31] I am also satisfied that neither defendants had much of a relationship with their mother, Ms. Willis. Neither knew any details about the purchases of the homes or her finances. Neither visited Ms. Willis much over the time the plaintiff cohabited with her.

[32] The defendants' argument that the plaintiff's claim should fail because he does not come to court with clean hands due to his participation in fraud on Mr. Purvis or for other reasons, is misguided. Even if the argument had relevance to the plaintiff's trust claim, which it does not, the plaintiff's evidence on this point, which I accept, was that he never either hid or attempted to hide the fact that he was cohabiting with Ms. Willis. If anyone is to be faulted, it was Ms. Willis, who apparently wanted to keep Mr. Purvis in the dark about the relationship. In any event, the scope of the clean hands doctrine is limited. It only applies in respect of misconduct which has an immediate and necessary relation to the equity sued for. The doctrine is narrowly applied and does not entitle a court to canvass all aspects of the party's behaviour known to the court: *De Angelis v. Siermy*, 2022 BCCA 401 at para. 37.

[33] I conclude that the plaintiff and Ms. Willis purchased the First Home together as an investment. Although title to it was registered solely in Ms. Willis' name, there was a rebuttable presumption of a resulting trust as to a one-half interest in the plaintiff's favour: *Pecore* at para. 24; *Swanstrom* at para. 35. The resulting trust flowed to the Second Home when it was purchased using the sale proceeds from the First Home, and again to the Third Home when it was purchased using the

proceeds of the sale of the Second Home. The Third Home exists today because of the plaintiff and Ms. Willis' initial investment.

[34] The presumption of a resulting trust in the plaintiff's favour has not been rebutted. Accordingly, the plaintiff's claim must succeed.

[35] Given my finding of a resulting trust, there is no need to consider whether a constructive trust was created.

Decision

[36] The plaintiff is entitled to an undivided one--half beneficial interest in the Third Home.

[37] Accordingly, there shall be a declaration that the defendants hold an undivided one-half interest in the Third Home, civically described as #219-4380 Lakeshore Road, Kelowna, BC, and legally described as:

> PID 030-357-233
> Strata Lot 148
> District Lot 167
> Osoyoos Division Yale District
> Strata Plan KAS3313 together with an interest in the common property
> In proportion to the unit entitlement of the Strata Lot as shown on Form V

in trust for the plaintiff.

[38] The defendants shall have 30 days from the date of these reasons to purchase the plaintiff's one-half interest in the Third Home for $242,500 representing one-half of the appraised value of $485,000 less one-half of the balance outstanding on the TD Mortgage.

[39] Should the defendants fail or be unable to purchase the plaintiff's one-half interest, there will be an order that the Third Home be sold with the parties having joint conduct of sale, with liberty to apply should they be unable to agree on the listing price, sale price or other logistics.

Costs

[40] Subject to matters to which I am unaware, the plaintiff is entitled to party and party costs. Should the parties wish to speak to costs, they have liberty to request to appear before me. Such request is to be made through Supreme Court Scheduling within 30 days of the date of release of these reasons.

"G.P. Weatherill J."