IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hughes v. Lanuk,*
2024 BCSC 2339

Date: 20241223
Docket: S95514
Registry: Nanaimo

Between:

Sharon Jayne Hughes

Plaintiff

And

Nathan Emery Lanuk

Defendant

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

The Plaintiff, appearing in person:	S. Hughes
Counsel for the Defendant:	K. Hornquist
Places and Dates of Trial:	Nanaimo, B.C. March 12-15, 2024 Duncan, B.C. July 16, 2024
Place and Date of Judgment:	Nanaimo, B.C. December 23, 2024

INTRODUCTION

[1] This is a dispute between a mother, Ms. Sharon Hughes, age 65, and her son, Nathan Lanuk, age 35. It concerns a residential property at 249 Allsbrook Road, Parksville B.C. ("the property") on which, since August 2015, the parties have been registered as owners in joint tenancy. In 2020 they had a falling out. They no longer live together on the property or speak to each other except through Nathan's lawyer, Mr. Hornquist. Ms. Hughes has represented herself throughout the litigation.

[2] In February 2021, Nathan filed a petition under s. 6 of the *Partition of Property Act*, R.S.B.C. c. 347 (the "*PPA*"). He sought an order for the property to be sold and the proceeds divided in parts reflecting the parties' relative contributions to equity, or divided equally. In April 2021, Ms. Hughes filed a notice of civil claim seeking a declaration that Nathan holds his interest in the property on trust for her, or for her estate, an order that he be removed from title, and an order that he repay the sum of $88,000 drawn for his benefit from a joint line of credit secured by the property. On May 24, 2022, I ordered consolidation of the two proceedings with directions that Nathan should file a response to civil claim and a counterclaim.

[3] Nathan's defence to his mother's claim is that no trust arises in her favour from their dealings with each other, and that he owns an indefeasible joint interest in the property. He relies on the statutory presumption created by s. 23(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250 ("the *LTA*") that indefeasible title is conclusive evidence at law and in equity that a property owner has an estate in fee simple that accords with his registered interest in the land. In his counterclaim, Nathan seeks the same s. 6 PPA relief set out in his earlier petition, the declaration of a constructive trust in his favour, or damages for unjust enrichment.

[4] Nathan concedes that he has contributed nothing to the upkeep and maintenance of the property since he left it in October 2020, and that he is solely liable to repay the $88,000 drawn from the joint line of credit which, with interest included, now has a balance of $117,287.09.

RELEVANT STATUTORY PROVISIONS

[5] Section 6 of the *PPA*, under the heading “Sale of property where majority requests it”, reads as follows:

> 6 In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.

[6] I would also refer to s. 8(1)-(2) of the *PPA*, which permit the court to order a sale of property on application of non-majority owners:

> 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.

[7] Section 23(2) of the *LTA* provides that:

> 23(2) An indefeasible title, as long as it remains in force and uncancelled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title…

EVIDENCE AND FINDINGS

[8] The property was purchased in 1997 by Ms. Hughes and her former husband, Randy Lanuk. The purchase price was $185,000. It is not disputed that Ms. Hughes made the down-payment of $130,000 with money inherited from her father. The remainder of the purchase price, plus some extra cash for a hot tub ($60,000), was borrowed from a bank. Total initial borrowing, then, was approximately $115,000. Ms. Hughes and Randy Lanuk were registered on title as joint tenants.

[9] Ms. Hughes has four children. One of them, T.B., born 1984, came from a previous relationship. The others – Nathan born 1988, Rebecca born 1991, and

Hannah born 1992 – are from her marriage to Randy. Ms. Hughes was a stay-at-home mother until 2007, when she started working in residential homecare and enrolled in a licenced practical nurse's training program. She began contributing cash for the household bills once she took paid employment in 2007, but Randy was in control of the family's finances. He took care of all the fixed costs related to the property – the mortgage payments, insurance, taxes, and so on.

[10] Just after Ms. Hughes graduated with her nurse's certification in 2009, it came to light that Randy had been sexually abusing his stepdaughter, T.B. Randy was arrested, charged with sexual assault, and pled guilty. In 2010 he was jailed for two years less one day. Before he went to prison, he gave Ms. Hughes and few hundred dollars of support here and there, but thereafter these modest contributions stopped for good. Nathan, Rebecca and Hannah continued to live on the property with Ms. Hughes. By then, for reasons that Ms. Hughes was unable to explain, the principal amount of the mortgage loan that she and Randy were jointly liable to repay had risen to $320,000 with monthly payments of $1,703.18.

[11] Ms. Hughes agreed on cross-examination that until 2018 her net monthly income from nursing was only $2,000 per month. It was in these straitened financial circumstances that she was forced to take charge of all the household bills. Nathan had begun paying rent in 2007. According to Ms. Hughes, he paid the equivalent of one-third of his employment income to a maximum of $1,000 per month. She testified that Nathan paid an average of $600 per month in 2007, $600-$800 per month in 2008, and $1,000 per month starting in 2009, the same year that Randy's crimes against T.B. came to light. She seems to have had a more informal arrangement with her daughters, who helped her out financially when their circumstances permitted. I find as a fact on all of the evidence that, after Randy's arrest and incarceration, Ms. Hughes would not have been able to keep or maintain the property without these financial contributions from her children.

[12] In 2015 Ms. Hughes resolved to remove Randy from title to the property. She wanted to keep the place for herself and her children and to ensure that Randy

would never have any claim to it. Randy had already agreed in 2009 to transfer his interest to Ms. Hughes for a small amount of cash and the return of his power tools. It was only in 2015, however, that the transfer was actually completed, and then, at Ms. Hughes' instigation, it took the form of a $1 transfer from herself and Randy to herself and Nathan as joint tenants. In his evidence, Randy called this "a peace offering for [T.B.]". He testified that, as far as he was aware, the transfer was part of Ms. Hughes' "estate plan", and was intended to benefit "the entire family". He said that Ms. Hughes and Nathan were going to "work together" to keep and maintain the property.

[13] Ms. Hughes testified that she invited Nathan to join her on title because he was already living on the property and paying rent. She claims that part of her motivation for doing this was to avoid probate fees if the property formed part of her estate when she died. Ms. Hughes' version of their agreement was that, in recognition of Nathan's anticipated services to the family, which were intended to include his contribution to the ownership and operating costs of the property throughout the remainder of Ms. Hughes' lifetime, and thus to maintain a permanent "sanctuary" for the whole family, he would inherit 50 percent of the property on her death, and her three daughters would share the other 50 percent in equal portions. Her handwritten last will and testament executed in 2019 confirms this intention. She claims, in effect, that she and Nathan struck an oral trust agreement with these estate planning objects in mind.

[14] Nathan denies that there was ever such a discussion or agreement. He says that his mother persuaded him to come on title as a joint tenant because, without Randy, she needed his credit to obtain a replacement mortgage, as well as his long-term financial assistance to keep the place going. Their agreement, he says, was that they would co-own and manage the property during the remainder of Ms. Hughes' lifetime, and that he would become its sole owner by right of survivorship when Ms. Hughes died. He insisted that no part of the deal involved splitting the equity in the property with his sisters – he told me that he would never have agreed to accept an ownership interest on this basis.

[15] Ms. Hughes' main point of emphasis is that Nathan received his interest in the property gratuitously. As between Randy and Nathan, I do not doubt that this is true, but Randy's donative intention was clearly established in his testimony. He gave up his interest as a "peace offering" and clearly expected nothing in return. Nathan received his portion of Randy's interest in the property as a gift. There is no question of a resulting trust in Randy's favour. It seems to me that what Randy voluntarily and absolutely gave away was his undivided 50 percent interest in the property to Ms. Hughes and Nathan jointly, such that Nathan became the owner of at least a 25 percent share.

[16] It is obvious, furthermore, that in order to achieve Ms. Hughes' objective of removing Randy from the picture entirely, the financing arrangements for the property had to be reorganised. Randy was a co-signatory on the existing mortgage loan and was jointly liable to repay it. The amount owing at the time was $303,000, a sizeable sum which the evidence clearly establishes Ms. Hughes, in her financial circumstances at the time, could not have repaid or kept current by herself. If she wanted to keep the property she needed help. She turned to Nathan, and although she now refuses to acknowledge it, Nathan came through for her.

[17] In evaluating Nathan's position, it is not merely a matter his having received a 25 percent interest in the property by means of an outright gift from Randy. He also pledged his credit as a co-signatory on the required replacement mortgage. At the time, the assessed value of the property was only $345,000. Nathan thus assumed the steep liability associated with ownership of an asset with a $303,000 to $42,000 debt to equity ratio – less than 17% of equity. Ms. Hughes' position that Nathan is a bare title holder for her benefit not only overlooks Randy's outright gift to him, but also fails to recognise that Nathan, as an incident to joining her in ownership, gave her the solid consideration of his pledge of credit and the assumption of joint responsibility for the repayment of a large debt that she and Randy had accumulated over almost twenty years. It must also be factored in that he used up his first-time homebuyer's credit to take his share of title to the property.

[18] In light of these various factors, in my view Nathan entered into ownership with Ms. Hughes on terms of equality. I accept Nathan's claim, moreover, that after the transfer he held up his end of the bargain with his mother by paying her at least $1,000 per month for his half of the $1,727.44 mortgage payment and other expenses such as the municipal taxes, which at the time amounted to around $170 per month. Ms. Hughes' position, which I consider to be completely untenable, is that "nothing changed" after the transfer – she insists that Nathan remained a tenant, and his monthly payment was merely rent. She placed emphasis on the fact that all the bills were paid from her personal bank account. This may be true, but it does not alter the fact that she was using Nathan's money to do it, or that in default of payment Nathan would be jointly liable to pay the mortgage loan in full.

[19] Ms. Hughes claims that she could have qualified for re-financing in 2015 without Nathan. She called as a witness a mortgage broker, Gillian Falk, who testified that she would have recommended Ms. Hughes to any lender as an acceptable risk for the entire $303,000 replacement loan required, and Ms. Hughes let on in her evidence that Nathan joined in re-financing the property merely because the bank thought it would be a "good idea". I do not accept any of this. The new mortgage loan required monthly payments of only a few hundred dollars less than Ms. Hughes' entire net monthly employment income at the time. She needed to take on a partner in ownership of the property because otherwise she would not have qualified for a loan of the size required to finance it.

[20] Ms. Hughes seems to think it relevant, as well, that she could have chosen someone else to help her – one of her daughters, perhaps – but this has no bearing on the matter. The fact is that she chose Nathan. She drafted him to help keep the property in the family when she did not have the financial wherewithal to do it on her own. She was able to hang on by using Nathan's credit and taking his money every month for five years. Nathan thus performed a service that has benefitted her significantly. His contributions gave her the time to become better established in her line of employment and earn a higher income, all while property values in the local market ratcheted ever-upwards. The property's present assessed value is $919,000

and the mortgage is down to $236,130 – a dramatic improvement to approximately 75 percent of equity.

[21] I accept Ms. Hughes' evidence that she is now able to manage all the costs associated with the property's ownership, but this was manifestly not the case in 2015. Nathan's assistance was the key to her survival, and it has substantially enriched her. There is no doubt at all that Nathan is lawfully entitled to a share of the property, and to be compensated for it now that the parties' relationship has broken down. It is all a matter of evaluating the underlying equities. As far as I am concerned, at the upper end of the scale of Nathan's entitlement is the undivided half-interest presumed to belong to him by virtue of s. 23(2) of the *LTA*, and at the lower end the 25 percent that Randy Lanuk transferred to him absolutely as a gift.

[22] Nathan testified without contradiction that over the roughly 60-month period from when he acquired title in August 2015 until his permanent departure from the property in October 2020, he paid his mother cash amounts of $1,000 per month approximately 40 times, and $1,200-$1,300 approximately 20 times, which included any amounts that he spent on "projects" around the house and property. Ms. Hughes' position, as I have said, is that Nathan was a tenant, and that he did no more around the house than might reasonably be expected from any adult family member getting a good deal living full-time at home. She denies that Nathan performed any significant renovations or improvements, and Nathan's evidence more or less confirms this.

[23] It must be weighed in the balance, of course, that Nathan was paying a monthly amount that covered only half the mortgage and some incidentals. Ms. Hughes paid the other half of the mortgage plus insurance, utilities and taxes, possibly with the help, here and there, of her daughters and their common law partners. As well, Nathan has contributed nothing to the finances or upkeep of the property since leaving it over four years ago. Ms. Hughes has been paying for everything herself. I accept, as well, that during the interval between Nathan's departure and now, Ms. Hughes has made some value enhancing improvements to

the family home. Her evidence about this sort of thing was corroborated by photos and videos, as well as by the testimony of her friend Michelle Morris, who with her husband did much of the renovation work for free.

[24] As is often the case in family affairs, unfortunately, the parties never came to any written agreement. They had no clear plan about how future costs would be shared or accounted for – although I have seen text messages indicating that Ms. Hughes expected them to be shared equally. They gave no thought to what would happen if their living arrangements or personal circumstances changed, or if one of them died or became ill or incapacitated, or if they had a falling out or disagreed about the operation or disposition of the property. In the end, serious disagreements arose and relations between Ms. Hughes and Nathan deteriorated to the point where they could no longer live together. Ms. Hughes claims that it was Nathan's fault: all of a sudden, she says, he began acting aggressively toward her and demanding to be bought out of "his 50% of the property". Nathan blames Ms. Hughes, of course, claiming that she became secretive and untrustworthy about money, and turned his sisters and their partners against him, creating tension and ill-will.

[25] In the end, there was a major blow-up on May 10, 2020, during a Mother's Day celebration. The whole family became embroiled in a heated argument about ownership of the property, and about money, expenses, and so on. Nathan demanded to be bought out of what he claimed to be his half-interest. He and one of his brothers-in-law actually came to blows over it. Nathan stormed off the property. He returned sometime later and stayed for a few months but left for good on October 1, 2020. Since then, Nathan has fallen on hard times. His relationship with his common law spouse has ended, his physical health has declined to the point where he is unable to work, and he claims to be living in a trailer somewhere on property owned by a friend.

[26] I conclude overall that Ms. Hughes was the driving force behind a vague and ill-considered property transaction that has brought on an estrangement with Nathan and a rift within her family that may well be permanent. She says that she did not

understand the effect of a transfer of joint tenancy, but I am not sure that I believe her. The evidence suggests that she consulted with a notary who explained the concept to her. Closer to the truth, I think, is her evidence that she "expected Nathan to do the right thing", by which I infer her to have meant that he would help her out with running and paying for the property over the long-term, and that he would share it with his sisters after she passed, never mind the joint tenancy.

[27] There were aspects of Ms. Hughes' evidence, particularly about the origin and nature of her agreement with Nathan, that I do not believe or accept. In my view, her claim that she did not require the intervention of a partner in 2015 to maintain ownership of the property is obviously false, and her contention that Nathan continued to be merely a tenant after the transfer is completely disconnected from reality. Her determined insistence that the only just resolution would be an order removing Nathan from title without any compensation is counter intuitive, unrealistic, unreasonable and unfair, as is her alternative argument that Nathan holds the entirety of his registered ownership interest in the property on a resulting trust for her.

[28] The fact that Nathan has come out of the whole mess in pretty desperate shape and living in poverty does not seem to bother Ms. Hughes one bit. Judging by their attitude and demeanour in court, it would seem that her total indifference toward Nathan is now shared by her daughters, Hanna and Rebecca. I find their attitude towards him to be cold and unkind. On all of the evidence, however, I accept that it was never any part of Ms. Hughes' plan to exclude her daughters from their fair share of her estate, of which the property is the only valuable asset. She told me repeatedly that her sole ambition has always been to treat her four children fairly and equally. I find as a fact that, regardless of the careless and destructive way that she has gone about things, she never intended for Nathan to receive more than a 50 percent interest in the property.

[29] Hannah and Rebecca testified that this was always their understanding of the arrangement between their mother and brother. They thought that a 50 percent

share for Nathan would be fair enough in light of his long-term commitment to help their mother to stay on the property for life and to do whatever was necessary to keep the place in the family. They testified that this was the common appreciation of the agreement or plan amongst all family members, including Nathan. There was never any mention, they both testified, of Nathan becoming the sole owner and title holder through survivorship after Ms. Hughes died. They told me that they would consider such a result to be grossly unfair, especially since, as things turned out, Nathan's contributions to equity were limited and short-lived.

DISCUSSION

[30] I will start with s. 23(2) of the *LTA* which, at the risk of repetition, sets up a presumption that the information registered on the face of the title is conclusive evidence of the true state of ownership. This presumption was explained by this court in *Lindquist v. Waring*, 2007 BCSC 205 at paras. 48-49 (citations omitted):

> [48] …The Torrens land registration system in this province creates a statutory presumption of indefeasible title in a registered owner of property and places the onus on the party seeking to rebut this presumption to provide evidence that the registered owner holds their interest in trust for that party or another…
>
> [49] The presumption of indefeasible title may be displaced by evidence that it is contrary to the parties' agreement, or to the intention of the parties, and that to uphold the title will result in an unjust enrichment…

Nathan is entitled to the benefit of this statutory presumption unless Ms. Hughes is able to rebut it. The Court of Appeal recently confirmed in *Freeland v. Farrell*, 2022 BCCA 99, at para. 26, that one way for her to do this is to establish that, given the underlying equitable interests of the parties, the application of the presumption would result in Nathan's unjust enrichment.

[31] Taking the property's present-day assessed value of $919,000 less the mortgage balance of $236,130 makes for equity of approximately $682,870. Divided equally this comes to $341,435. Simply put, given the equities underlying this case, Nathan does not deserve to be paid such a sum. As previously mentioned, he came into the deal with a 25 percent interest from Randy, along with the additional consideration of his pledge of credit and the assumption of a substantial debt, and

he performed his end of the bargain over for five years. That said, his monthly contribution of $1,000 amounted to not much more than half of the monthly mortgage payment, and Ms. Hughes, in addition to the other half of the mortgage, must have paid most of the other operating costs, including taxes, insurance, utilities, and basic maintenance. A more significant factor is that Nathan left the property in October 2020, over four years ago, and since then he has contributed nothing to the upkeep of the property, leaving Ms. Hughes alone to shoulder all the burdens of ownership.

[32] Given these factors, the s. 23(2) *LTA* presumption is rebutted because its application would result in Nathan's unjust enrichment. However, the same result – unjust enrichment – would accrue to Ms. Hughes if I disposed of the case as she thinks appropriate. As I have said, her position that Nathan is entitled to nothing is a complete non-starter. First of all, it ignores the obvious fact that Randy's interest in the property was transferred to Nathan as a gift, and he owns that interest outright every bit as if he had purchased it for fair market value. Secondly, by paying a portion of the property's mortgage and operating expenses over five years, Nathan contributed substantially to equity and provided funds that were instrumental in permitting Ms. Hughes to retain the property in a sharply rising real estate market.

DISPOSITION

[33] My approach to the equitable resolution of this matter is to do a rough calculation of the bills payable on the property since refinancing and go from there. Especially given the absence of any property appraisal evidence, it is in the nature of an assessment and not intended to be akin to a forensic accounting. For illustrative purposes I will work with the assessed value, although fair market value will be different, and perhaps markedly so. The percentages, I think, are what matter.

[34] The monthly mortgage payment is $1,727.44, the property taxes come in at around $170 per month, and I will assume – because no evidence was led about it – that insurance, utilities and incidentals might be somewhere in the neighbourhood of $600 per month, for basic monthly fixed costs of $2,497 or so. It follows that, from

taking title in August 2015 and leaving the property for good in October 2020, a period of roughly 5 years and 3 months, Nathan paid monthly amounts (from a low of $1,000 to a high of $1,300) equivalent to roughly 40 to 50 percent of these costs. Ms. Hughes' contributions took care of any shortfalls. Had this case come to me for decision in the autumn of 2020, I might well have declared the nature of Nathan's interest to be the statutorily presumed joint ownership shown on title with a modest downward adjustment to account for the fact that Ms. Hughes had paid a higher percentage of the aggregate bills.

[35] Such a downward adjustment will have to be made now, and it must certainly come into the assessment that Nathan has paid nothing at all in the four years and 3 months (51 months) since he left. I repeat for ease of reference that, assuming the present-day assessed value to be accurate, there is approximately $682,870 of equity in the property, or $341,435 each if shared equally. From this, I would deduct from Nathan's share the following amounts:

- $25,000 as the approximate amount that Ms. Hughes paid more than Nathan for fixed costs between August 2015 and October 2020;
- $51,000 for the 51 monthly payments since October 2020 that the parties agreed Nathan would pay as an incident of ownership. As I have just mentioned, this amount represents roughly 40 percent of fixed costs.
- $25,500 for the approximately $500 per month that Ms. Hughes has laid out over the same period to cover the remaining 10 percent of fixed costs on top of her own 50 percent share.
- $20,000 for renovations, which may be conservative based on the pictures and videos showing substantial and attractive improvements to the kitchen and upper floor of the house; fairness requires, I think, that I should ascribe a value to these improvements, but in the absence of an appraisal or other evidence, this perhaps modest amount is as far as I am prepared to go.

[36] By crediting Ms. Hughes with these amounts, Nathan's presumptive equal share is reduced to $219, 935, which is roughly 32 percent of equity. In my

assessment, all things considered, this would be a fair and equitable re-apportionment.

SUMMARY & CONCLUSION

[37] While Ms. Hughes' claims are dismissed, she has succeeded in rebutting the statutory presumption in s. 23(2) of the *LTA*. Nathan would be unjustly enriched if it were applied. Instead, having considered all of the underlying equities between the parties, I hereby declare and order that Nathan owns an indefeasible 32 percent of the property. A just, proportionate and equitable settlement of this litigation will be achieved if Ms. Hughes pays him that percentage of the property's present-day fair market value less the amount that remains to be paid on the mortgage.

[38] I cannot make an order to sell the property under s. 6 of the *PPA* because I have determined that Nathan's equitable interest in it falls well short of 50 percent. However, I will make such an order under s. 8 of the *PPA* unless Ms. Hughes purchases Nathan's 32 percent interest by no later than February 14, 2025. This interval is to permit the completion of a professional appraisal of the property's present market value, and for Ms. Hughes to secure the refinancing required to pay Nathan his share, if possible. The parties may return to court if further directions are required.

[39] I hereby order, as well, that Nathan is solely liable to repay the $117,287.09 owed on the secured line of credit registered against the property. This amount will come out of his share of the buy-out or sale and must be paid in full before the balance is remitted to him.

COSTS

[40] Nathan has been prevailingly successful in this litigation. Unless there was a formal settlement offer or some other factor I have not appreciated, Ms. Hughes will pay his costs on Scale B throughout.

"Baird J."