

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Punjani v. Dhanani*,
2024 BCSC 1157

Date: 20240628
Docket: S238596
Registry: Vancouver

Between:

Rahim Ramzan Punjani

Petitioner

And

Malek Aminmohamed Dhanani

Respondent

Before: The Honourable Justice Branch

Reasons for Judgment

Counsel for the Petitioner:

D. Barber
E. Chapman, Articled Student

Counsel for the Respondent:

S. Visram

Place and Date of Hearing:

Vancouver, B.C.
May 13 and 15, 2024

Place and Date of Judgment:

Vancouver, B.C.
June 28, 2024

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I. INTRODUCTION

[1] The petitioner and respondent are joint tenants of a property. The petitioner and respondent disagree about their respective equity interests in said property. In terms of the issue driving the parties to Court on this application, the petitioner wishes to sell the property, but the respondent refuses to do so. This is an application to sever the joint tenancy and require that the property be sold.

[2] For the reasons expressed below, I find that the application should be granted.

[3] Any net sale proceeds shall be paid into court so that the parties may still litigate the outstanding issue of their respective ownership shares in the property and its proceeds.

II. BACKGROUND

[4] The petitioner is the respondent mother's only son. The petitioner's father died on April 14, 1992. The respondent subsequently married Amin Dhanani, who passed away on May 11, 2023.

[5] The petitioner son works in the financial services industry. The respondent mother is a 73-year-old widow with a limited educational history. She has an array of health problems, including osteoarthritis, degenerative disc disease, anxiety and depression. She deposes that her late husband handled all their financial affairs. She has always been a homemaker.

[6] This petition concerns a property located at 14721 72 Avenue, Surrey, BC (the "Property"). The Property was purchased for \$675,000 on December 22, 2015. The petitioner and the respondent are both registered on title. They are also co-mortgagors on a Royal Bank of Canada mortgage registered on the Property (the "Mortgage").

[7] The petitioner says that he advanced the down payment of \$132,000 to purchase the Property, the \$11,200 property purchase tax, as well as the closing

adjustments of \$3,800. The petitioner says that the respondent was only listed as a joint tenant for estate planning purposes and to reduce the tax burden, since the intention was that the respondent would reside at the Property with Mr. Dhanani, allowing them to claim the Property as their principal residence.

[8] Just prior to the purchase of the Property, approximately \$400,000 in proceeds were realized from a July 6, 2015 sale of the home where the respondent and Mr. Dhanani previously resided, which is located at 3374 Marquette Crescent, Vancouver (“Marquette”). Marquette was also registered in the names of both parties. The respondent alleges that at the time of the Marquette sale, the petitioner was looking to purchase two new properties. Rather than requiring the petitioner to secure a large mortgage to finance these purchases, the respondent alleges that she and her husband said that the petitioner could use the Marquette proceeds for that purpose. She asserts that the provision of these funds was merely a loan, although there is no paperwork supporting this structure. No payments have ever been made on this alleged loan.

[9] The two properties purchased by the petitioner (the “Two Properties”) were sold as part of the petitioner’s separation in December 2016. The respondent complains that the respondent did not repay the alleged loan at that time.

[10] I note that the sales of the Two Properties occurred after the purchase of the Property, likely explaining why the respondent is not pursuing a tracing remedy, nor does she advance an express or resulting trust argument. Neither the Marquette’s proceeds nor the Two Properties’ proceeds could have been used directly to finance the purchase of the Property.

[11] Nonetheless, the respondent alleges that the Property is her property, and that the petitioner has no equitable interest in the Property notwithstanding his position on title.

[12] The practical difficulty with this assertion by the respondent is that the petitioner is not only on title, but he has also paid all of the mortgage payments,

insurance, property taxes and utilities associated with the Property. He has also paid for repairs. He estimates that he has incurred \$239,271.11 for mortgage payments, \$24,000 in property taxes, \$18,000 in insurance premiums, \$4,200 in utility bills, \$17,000 in garbage and water payments, and \$10,000 for maintenance and repairs.

[13] The respondent seeks to explain away the petitioner's substantial expenditures on the Property by alleging that the respondent agreed to pay these expenses because she and her husband were senior citizens and Mr. Dhanani was in poor health. The respondent also alleges that:

- a) she and Mr. Dhanani also put money into improving the Property;
- b) the petitioner obtained lines of credit secured against the Property that she did not approve, and from which she saw no personal benefit; and
- c) the petitioner has not needed to pay property taxes since 2021 because the respondent was able to secure a deferment from the provincial government.

[14] The petitioner responds that any "improvements" made by the respondent were not performed properly by licensed trades and that, in fact, it will take about \$35,000 to put the Property back into a proper state.

[15] The respondent now lives at the Property with her friends, Nitin Thukral, Prerana Thukral, and their son. She also has tenants living in a basement suite.

[16] The respondent has not paid any rent to the petitioner, nor has she forwarded to the petitioner any portion of the rent paid by the tenants.

[17] The petitioner says he can no longer afford to cover the expenses on the Property. In particular, he currently faces a potential \$40,000 expense to replace the roof to maintain the Property's insurability. As noted above, he now wishes to sell the Property. The respondent accepted at the hearing that she is also not able to carry the expenses required to maintain the Property on her own.

[18] The Property has a 2023 BC Assessment value of \$1,676,000.

III. LEGAL FRAMEWORK

[19] The *Partition of Property Act*, R.S.B.C. 1996, c. 347 [Act] provides as follows:

Parties may be compelled to partition or sell land

2 (1) All joint tenants, tenants in common, coparceners, mortgagees or other creditors who have liens on, and all parties interested in any land may be compelled to partition or sell the land, or a part of it as provided in this Act.

(2) Subsection (1) applies whether the estate is legal or equitable or equitable only.

...

Sale of property where majority requests it

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.

[20] Given that each party is registered as a joint owner of one-half of the Property, s. 6 must be applied to allow the sale unless the respondent shows a “good reason” why the Property should not be sold. A joint owner of at least 50% has a *prima facie* right to an order for sale unless justice requires that no order should be made: *Bindley Estate v. Quartermaine Holdings Ltd.*, 2017 BCSC 672 at para. 21.

[21] In terms of the nature of this test, the Court in *Ryser v. Rawlings*, 2008 BCSC 1050, stated:

[34] A party who does not wish to “suffer partition or sale” bears the onus of demonstrating to the court that justice requires that the order for partition or sale not be made. As mentioned, the court’s discretion is quite narrow: *Bard v. Bird*, supra. Failing such a demonstration, the court must enforce the interested party’s *prima facie* right to partition or sale...

[22] The Court previously suggested that its discretion to refuse partition in these circumstances was “severely limited”: *Reitsma v. Reitsma*, [1975] 3 W.W.R. 281, 1974 CanLII 1786 at p. 283. However, the Court of Appeal has arguably softened

this position, broadening the judicial discretion to allow courts to ensure justice between the parties. The Court of Appeal has now indicated that “the discretion conferred by s. 6 is broad and unfettered”: *Sahlin v. The Nature Trust of British Columbia, Inc.*, 2011 BCCA 157 at para. 24.

[23] The Court of Appeal stated in *Bradwell v. Scott*, 2000 BCCA 576, that a good reason for refusing such an order can include serious hardship to a respondent, lack of good faith, vexatiousness or maliciousness. The list is not closed:

[45] To the extent that "serious hardship" was said in *Dobell* to be the test for "good reason to the contrary" I would respectfully disagree. Serious hardship to a respondent may be a proper ground for refusing an order for sale, as might lack of "good faith, vexatiousness or maliciousness" on the part of the petitioner. But these are not the exclusive measure of "good reason". I agree with Mr. Justice Seaton that we should not limit the discretion by creating a general rule that might serve to justify refusal in any given case. The facts and circumstances of each case must be examined to determine whether a good reason, of whatever sort, exists for refusing the order.

[24] Examples of cases where the courts have found “good reason” not to order a sale include the following:

- a) *Lona Enterprises Ltd. v. Eurocan Industries Inc.*, 2018 BCSC 842: The respondent opposing partition had a written right of first refusal over any sale of the property that had not yet been complied with.
- b) *Nguyen v. Pham*, 2023 BCSC 1246: The Court refused to order a sale because there was a concurrent civil action for specific performance brought by the respondent. Ordering a sale would have effectively determined the specific performance claim without a trial of the issue. As in *Lona Enterprises Ltd.*, the Court found that pre-existing contractual agreements between parties governing the sale of property can be a good reason to refuse a sale, or at least a significant factor: para. 50.
- c) *Fournier v. Broatch*, 2010 ONSC 2768: In this family case, the petitioner applying for sale did not actually assert an ongoing interest in the property, but rather was simply seeking to have his name removed from the

mortgage. Further, any sale would have resulted in a large mortgage prepayment penalty for the respondent.

- d) *Holman v. Brooke*, 2022 BCSC 526: The Court refused to order the sale of a co-owned duplex for various reasons. The property was never intended to be an investment property, as both parties envisioned that it would be their residence for the rest of their lives. There was an ongoing mutual intention to treat the halves of the duplex separately. The respondent would suffer hardship if she had to leave. The duplex was readily divisible into two lots, making a forced sale of the entire property unnecessary. The Court described the home as an “idiosyncratically personal residence”: para. 33. The Court did acknowledge that a long-term relationship between the parties, without more, is not a good reason.

[25] Conversely, situations where courts have not found the existence of a “good reason” include the following:

- a) *Sundberg v. Sundberg*, 2022 BCSC 2188: It was insufficient that the respondent had an “emotional attachment” to a property, the inability to purchase the opposing parties’ share, and an inability to buy a comparable property.
- b) *McRae v. Seymour Village Management Inc.*, 2014 BCSC 714: The Court stated that “significant hardships that affect people at a fundamental level” are insufficient, without more, to justify refusing to order a sale: paras. 39, 45. A small minority of strata owners opposed a sale, but were forced to sell and move from their homes. Justice Fenlon, as she then was, acknowledged the respondents’ difficult position but stated that shared ownership has significant disadvantages – “a forced sale by the other co-owners is one of them”: para. 44.
- c) *Ryser*. The fact that the respondent was claiming more than a 50% entitlement to the value of the property was insufficient.

- d) *Bradwell*: It was insufficient that the respondent alleged that:
- i. the claimant was not acting with clean hands,
 - ii. the respondent was 70 years old and had spent substantial time at the property.
- e) *ter Borg v. Morris*, 2012 BCSC 554: The respondent's desire to settle the accounting between the parties before any sale and the potential need to pay a mortgage prepayment penalty did not prevent the sale from going forward.
- f) *Zimmerman v. Vega*, 2011 BCSC 757: The respondent's desire to hold the property long-term was insufficient, particularly where there was no written agreement confirming how long the property would be held. The fact that there was also an allegation of unequal contributions did not alter the outcome.

IV. ANALYSIS

[26] The question whether to refuse to issue an order for sale under the *Act* is a discretionary one. On the facts of this case however, I see no practical alternative other than to grant the petitioner's request for partition.

[27] First, there is no evidence of a "binding or enforceable agreement between the parties" to hold the property for a specified term: *ter Borg* at para. 48. Nor does the respondent claim a right of first refusal: *Lona Enterprises Ltd.*

[28] Second, the respondent does not suggest there was an express or resulting trust under which the petitioner agreed to hold the Property for her. Indeed, the respondent struggled to explain the legal basis for her claim to the Property. Her counsel eventually suggested that it would likely be in the nature of a constructive trust/unjust enrichment argument. I find that the respondent's intention to advance such an argument is an insufficient basis upon which to refuse the requested relief. This is particularly so given the apparent weakness of this intended argument based

on the present state of the record. There was little evidence that would support a proprietary rather than a monetary remedy, even if the respondent's claim was successful.

[29] In terms of the potential hardship, the respondent relies on her age and health and, to a more limited extent, her financial situation. However, refusing the application for sale will not save the respondent from hardship. The reality is that neither party has both the desire and the resources necessary to maintain the Property. It would not be appropriate to require the petitioner to continue to pay the expenses on a home in which he does not live. If neither party is willing and able to maintain the Property, then the respondent is almost inevitably going to have to move. She will face certain financial and emotional challenges irrespective of the outcome of this application.

[30] Further, any potential prejudice or hardship from a partition and sale to the respondent is more than offset or undercut by the following considerations:

- a) The respondent's evidence of personal financial hardship is quite limited;
- b) Looking at it from the other direction, the petitioner may sustain potential financial hardship if the order is not issued because he may have to maintain a property in which the respondent argues he has no interest: *ter Borg* at para. 52;
- c) The respondent could not "reasonably think" that the petitioner would continue to pay all expenses associated with the property when he is not living at the Property and his legal title is under attack: *ter Borg* at para. 50;
- d) The respondent will still be entitled to participate in any sale process if she wishes to continue to live at the Property and can afford to purchase the petitioner's interest; and

- e) Any proceeds of sale will be held in court, allowing the respondent to claim against the entire residue should she be successful in convincing a court that she is entitled to the whole amount.

[31] I am prepared to grant an order that the property be sold and that the sale take place consistent with the terms set out in the Petition.

V. CONCLUSION

[32] The petitioner's application is granted. Unless the parties seek to make further submissions on costs, the petitioner shall have its costs in the cause. Any request for a different costs order should be made within 30 days of this judgment.

"The Honourable Mr. Justice Branch"