

Court of King's Bench of Alberta

Citation: **Cubbon Building Centre Ltd v Vrbanek, 2025 ABKB 703**

Date: 20251202
Docket: 2303 10483
Registry: Edmonton

Between:

Cubbon Building Centre Ltd and Miramar Holdings Ltd

Appellants

- and -

Darren Vrbanek Also Known As Drago Vrbanek, Darren Vrbanek Also Known As Drago Vrbanek Carrying on Business As Darren's Homes and Nancy Vrbanek

Respondents

**Memorandum of Decision
of the
Honourable Justice M. Hayes-Richards**

Introduction

[1] Cubbon Building Centre Ltd and Miramar Holdings Ltd (“Appellants”) appeal the decision of Applications Judge Summers reported at *Cubbon Building Centre Ltd v Vrbanek*, 2024 ABKB 570 (the “Decision”). The Applications Judge dismissed the Appellants’ application for summary judgment to impeach a transaction between a husband and his wife as a fraudulent conveyance. The husband, Darren Vrbanek, is a judgment debtor of the Appellants.

[2] The standard of review on this appeal is correctness on issues of both fact and law: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166. I am to conduct a *de novo* analysis of the issues, reviewing all relevant and material evidence, submissions, and the record: *Alberta Rules of Court*, AR 124/2010 [*Rules of Court*] r 6.14(3). There is no deference to the Applications

Judge's decision: *Fraser v Jeffries*, 2019 ABQB 145 at para 4. The *Rules of Court* permit new evidence to be filed on an appeal of an Applications Judge, but none has been provided here.

Background and Applications Judge's Decision

[3] Darren and Nancy Vrbaneck are spouses. In 2008, Darren gifted a commercial property (the "Parsons Road Property") to Nancy, who sold it in 2009. The proceeds were deposited into an account solely in Nancy's name. In 2010, Nancy used some of those proceeds to purchase a home in Arizona, registered in both Nancy and Darren's names as joint tenants. Nancy and Darren gave evidence that this was done to avoid probate issues in a foreign jurisdiction should Nancy die.

[4] Nancy gave evidence that the Arizona home was purchased by her because of her age and physical condition. She was the primary resident of the Arizona home as Darren was still working. She paid for renovations to the home and paid all utilities and tax bills. The Arizona home was sold in 2021. The proceeds were first deposited into a joint account, then immediately transferred to an account in Nancy's sole name. Nancy gave evidence that the original transfer into a joint account was required given the Arizona home was in both of their names.

[5] In late 2022 or early 2023, Nancy purchased a condominium in Edmonton using money from the Arizona home proceeds and money from Nancy's other savings. The Edmonton condo was registered in Nancy's name alone, though both her and Darren reside there. Darren is financially dependent on Nancy but contributes some pension income toward insurance and utilities.

[6] At the time of these transactions, Darren had significant outstanding judgments against him, including the judgment at issue here. The Appellants brought an application for summary judgment alleging that the Vrbaneck's conduct amounts to a fraudulent conveyance contrary to the *Statute of Elizabeth, 1571* or the *Fraudulent Preferences Act* of Alberta. As a remedy they sought to add Darren to the title of the Edmonton condo as a joint owner, or alternatively, a determination by the Court that there is a constructive or a resulting trust over the Edmonton Condo in favour of Darren. The Respondent's raised a threshold issue as to whether Darren had any exigible interest in the Arizona home or the proceeds from its sale. The Respondents argued that Darren had no exigible interest and therefore there is no basis for a fraudulent conveyance claim.

[7] Applications Judge Summers agreed with the Respondents that Darren had no exigible interest in the Arizona home or proceeds, and therefore the Appellants' fraudulent conveyance claim could not succeed. He found that Nancy provided all funds for the purchase of the Arizona home, paid for all bills and renovations, and that the parties' intent was to add Darren to title for estate planning purposes only – to avoid probate in a foreign jurisdiction. Applications Judge Summers pointed out that there was no challenge to the credibility of Nancy as to her stated intent and therefore found that Nancy had no intention of gifting Darren half of the Arizona home.

Issues

[8] The Appellants grounds of appeal are as follows:

- (a) Does the Vrbaneks' misconduct, viewed cumulatively as a scheme, amount to a fraudulent conveyance?
- (b) If so, should Darren be added to the Certificate of Title as a registered owner and joint tenant of the Edmonton Condo? Or
- (c) In the alternative, should the Court impress a resulting trust, with Nancy as trustee and Darren as beneficiary, over the Edmonton Condo?

[9] However, there is a threshold issue to determine, namely whether Darren had any exigible interest in the Arizona home or its proceeds, such that the impugned transfers could be subject to a fraudulent conveyance claim.

Analysis

Threshold Issue: Does Darren have an exigible interest in the Arizona home or its proceeds?

[10] The Applications Judge found, and I agree, that the issue of exigible interest is determinative. The evidence establishes that Nancy provided all funds for the purchase of the Arizona home, and there is no credible challenge to her testimony that joint tenancy was chosen solely for estate planning purposes.

[11] The Appellants contend that Applications Judge Summers improperly relied on counsel submissions as evidence and argue the Vrbaneks' testimony is inconsistent, self-serving, and lacks independent corroboration, warranting an adverse inference. The Respondents maintain their evidence was properly considered and credible despite minor inconsistencies.

[12] The Appellants allege that Applications Judge Summers made two evidentiary errors. First, relying on counsel for the Appellants' submissions as corroborative evidence of the Vrbanek's credibility, or in the alternative, ascribing them any weight. And second, relying on the Vrbanek's after the fact, self-serving evidence about the transfers, or in the alternative, ascribing it any weight.

[13] Applications Judge Summers committed neither alleged error. He did not rely on counsel's submission on credibility as corroborative evidence of same. Rather, Applications Judge Summers asked Appellants' counsel whether credibility was an issue regarding the Vrbaneks' evidence as to their intentions respecting the Arizona home. Counsel effectively said no. Applications Judge Summers then rephrased his question to ask if he could accept the Vrbaneks' evidence as to what they did and why, and counsel responded that he could in the sense that the Vrbaneks have been consistent about what they did and why. Later in submissions, counsel clarified that what he meant by credible is that the Vrbaneks had been consistent in their story the whole time. On appeal, he now further clarifies that his position is that the Vrbaneks' evidence should not be believed because it is inconsistent, self-serving, and lacks independent corroboration. Regardless of what counsel meant by his submissions before Applications Judge Summers, his argument before this Court is clear, the Vrbaneks' evidence as to their intentions regarding the Arizona home, should not be accepted for the reasons stated above.

[14] There is no impropriety alleged with respect to the transfer of the Parsons Road Property in 2010. Nancy sold that property and bought the Arizona home with some of the proceeds. She did so because of her age and physical condition. She was the primary resident because Darren

was still working. She paid all the bills, including renovation costs, utilities, and property taxes. Once the Arizona home was sold, she immediately transferred the money into an account in her name alone. None of that evidence is disputed by the Appellants. What they dispute is the inference Applications Judge Summers drew from those facts, and Nancy's evidence that she added Darren to title for estate planning purposes only - to avoid probate issues in a foreign jurisdiction.

[15] The Respondents' authorities, including *Drebert v Coates*, 2008 ABQB 684, and *Mitchell v Misener*, 2011 ONSC 6600, both of which were relied on by Applications Judge Summers, support the proposition that where one party contributes all funds but title is held jointly, a resulting trust arises in favour of the contributor unless there is evidence of an intention to gift. An express trust document is not required.

[16] In this case, there is no evidence that Nancy intended to gift any beneficial interest in the Arizona home to Darren. The evidence is consistent and unchallenged: the joint tenancy was for estate planning, not to confer a present interest. The source of the funds used to purchase the home, and Nancy's responsibility for all costs support her claimed intention.

[17] The Appellants' arguments regarding the presumption of advancement are not persuasive in this context. The presumption applies only in the absence of evidence of actual intention, and here, the evidence is clear.

[18] The Respondent's evidence, supported by affidavits and transcripts, demonstrates that the transfers were motivated by legitimate estate planning and financial necessity, not an intent to defeat creditors. Minor inconsistencies in recollection do not undermine the overall credibility of the Respondents.

[19] The evidence does not support a finding that Darren retained any beneficial interest in the Arizona home or its proceeds. The transfer of funds to Nancy's account and the purchase of the Edmonton Condo were consistent with Nancy's ownership and financial independence.

[20] The Respondents' explanations for placing the Edmonton Condo in Nancy's name—to avoid unnecessary interference by Darren's creditors—reflect a desire to protect Nancy's assets, not to conceal Darren's.

Conclusion

[21] The threshold issue is dispositive. Darren did not have an exigible interest in the Arizona home or its proceeds. The Applications Judge's findings in this regard are supported by the evidence and the law. The appeal is dismissed.

Heard on the 23rd day of September, 2025.

Dated at the City of Edmonton, Alberta this 2nd day of December, 2025.

M. Hayes-Richards
J.C.K.B.A.

Appearances:

Cohen Mill, Bishop & McKenzie LLP,
for the Appellants

Paul Greep, Reynolds Mirth Richards & Farmer LLP,
for the Respondents