

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Linde v. Linde*,
2019 BCSC 1585

Date: 20190624
Docket: S112485
Registry: Kelowna

Between:

Howard Dean Linde and Beatrix Lauren Linde

Plaintiffs

And

Kenneth Roy Linde

Defendant

Before: The Honourable Mr. Justice G.P. Weatherill

Oral Reasons for Ruling on Application for Summary Trial

Counsel for the Plaintiffs:

K.D. Rule

Counsel for the Defendant:

D.E. Dent

Place and Date of Trial/Hearing:

Kelowna, B.C.
June 24, 2019

Place and Date of Judgment:

Kelowna, B.C.
June 24, 2019

[1] **THE COURT:** This is my ruling on whether this matter is suitable to proceed by way of summary trial.

[2] This case involves an unfortunate dispute between an 89-year-old father, the defendant Kenneth Linde (“Kenneth”), and his 60-year-old son and only surviving heir, the plaintiff Howard Linde (“Howard”). The other plaintiff, Beatrix Linde (“Beatrix”) is Howard’s wife. The plaintiffs assert that they worked on Kenneth’s ranch for many years for little or no compensation on the understanding and agreement that they would inherit the ranch when Kenneth died. Instead of honouring that understanding and agreement and that in violation of it, Kenneth now proposes to gift his ranch, its water licenses, machinery and equipment to a neighbouring First Nations band.

[3] In 2009, following Kenneth’s wife death the year before and in keeping with his previously stated succession plans, Kenneth arranged for title to his ranch, his bank accounts and his safety deposit box, to be registered jointly with Howard. At the same time, Howard signed a trust declaration that his joint interest in the ranch, bank accounts and the safety deposit box, which then contained some 28 troy ounces of gold, were held in trust for Kenneth and that he would transfer that joint interest back to Kenneth on request.

[4] As a result of a falling out and soured relations between the parties that started in approximately 2014 when Kenneth discovered that the plaintiffs had helped themselves to cash from his bank account and gold from his safety deposit box, he filed a petition in June 2016 in the Williams Lake registry of this court seeking, among other things, a declaration that Howard held his interest in the ranch properties in trust for him. Kenneth made his intentions clear at that point that the plaintiffs were no longer going to inherit his ranch and that he was going to gift it, together with the ranch’s machinery, equipment and water licences, to the neighbouring Esk’etemc First Nations Band (“the Band”).

[5] The plaintiffs responded with a pre-emptive notice of civil claim filed on September 12, 2016, and registered certificates of pending litigation against the four

legal titles comprising the ranch. They sought various forms of equitable relief respecting the ranch and equipment, including a declaration of constructive trust, unjust enrichment, proprietary estoppel, and an order that any purported gift Kenneth intended to make of the ranch and its farm machinery and equipment to the Band should be considered a fraudulent conveyance.

[6] Kenneth filed a response to the claim on November 22, 2016. On April 27, 2017, he carried through with his intentions and purported to gift the ranch and its machinery and equipment to the Band under a land and asset transfer agreement.

[7] Examinations for discovery of the parties were completed in due course and on April 30, 2019, the plaintiffs filed a notice of application for summary trial seeking orders that the transfer to the Band be set aside as a fraudulent conveyance, and that the ranch property's woodlot licence, replaceable grazing licence and water licences, be transferred to them.

[8] The plaintiffs rely on the laws of partnership, constructive trust, unjust enrichment and proprietary estoppel. A number of affidavits sworn by the plaintiffs and members of the Williams Lake community who know the parties were filed in support of the plaintiffs' application. The plaintiffs assert that the law of proprietary estoppel, unjust enrichment and constructive trust is straightforward, and combined with the affidavit evidence that has been filed is all that is required to decide the case.

[9] In *Wolff v. Canada (Attorney General)*, 2017 BCCA 30, our Court of Appeal summarized the questions for determination on the matter of proprietary estoppel, the plaintiffs' primary claim, at paras. 20 and 21:

[20] Before addressing the specific errors alleged by the appellant, it will be useful to briefly outline the general principles of proprietary estoppel. The approach to be taken was set out by Lord Justice Scarman in the seminal case of *Crabb v. Arun District Council*, [1976] 1 Ch. 179 at 192-93:

In such a case I think it is now well settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established?

Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?

[21] In order to determine the question of whether an equity has been established, some cases have posed four sub-questions (see *Idle-O Apartments* at paras. 22 and 24). Those sub-questions were combined into the following two-pronged test by Madam Justice Bennett in *Sabey v. Rommel*, 2014 BCCA 360 at para. 30 (which the summary trial judge set out at para. 21, quoting from *Idle-O Apartments* at para. 49):

1. Is an equity established? An equity will be established where:
 - a. There was an assurance or representation, attributable to the owner, that the claimant has or will have some right to the property, and
 - b. The claimant relied on this assurance to his or her detriment so that it would be unconscionable for the owner to go back on that assurance.

For the purposes of the present case, it is important to note that the assurance or representation need not be express and can be inferred from the conduct of a party, and that acquiescence can amount to an assurance or representation.

[10] In further support of their position that the matter is suitable for summary determination plaintiffs point to the well known cases of *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202; *Mattu v. Mattu*, 2001 BCCA 140; and *Anglo Canadian Shipping Co. v. Pulp, Paper & Woodworkers of Canada, Local 8* (1988), 27 B.C.L.R. 2(d) 378 (C.A.), as those cases were summarized by Justice R.D. Wilson in *Watson v. Watson and Yelich*, 2004 BCSC 1724 at paras. 19 to 24. The plaintiffs also rely on the comments of Justice Rogers in *Barkwell v. Parchomchuk*, 2010 BCSC 951, where he found that any conflicts on the affidavit evidence before him in that case were not significant enough to warrant the matter not proceeding summarily.

[11] Kenneth argues that this case is not suitable for summary determination and will require a full trial to decide the issues. He relies on *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502, where, in a complex multi-issue case mainly involving whether a contract had been entered into, the Court of Appeal held, two-to-one, that the summary trial judge erred in concluding that a summary trial was appropriate. In that case, credibility was the central issue and the only basis upon which the conflicts between the parties could be resolved. It could not be accomplished by a review of

the documents, evidence of non-parties and common sense, as the trial judge had said. At para. 56, the Court of Appeal noted:

[56] A conflict on the evidence is of course not always fatal to a summary trial; again as stated in *Inspiration Management*:

... It may be ... notwithstanding sworn affidavit evidence to the contrary, that other admissible evidence will make it possible to find the facts necessary for judgment to be given. For example, in an action on a cheque the alleged maker may by affidavit deny his signature while other believable evidence may satisfy the court that he did indeed sign it. Again, the variety of different kinds of cases which will arise is unlimited. In such cases, absent other circumstances or defences, judgment should be given. [At 216.]

Nevertheless, in *Morin* the majority of the court held that the trial judge should not have proceeded with the trial in a summary manner and make the findings that he did because credibility could not have been determined without the benefit of having the witnesses testify.

[12] The plaintiffs say that they were given assurances by Kenneth and his wife (Howard's mother) over many years that they would inherit the ranch on the passing of the survivor, and that they relied on these assurances to their detriment. In Howard's case, he asserts that, routinely since the 1960's, he was promised the ranch if he stayed and worked on it. Kenneth does not deny that over the years he made comments to that effect. For example, in his affidavit filed June 19, 2019, he states:

- 8.a. [M]y hopes for a family succession fell entirely on Howard. I had helped Howard to acquire his own ranch but I hoped that if, while still alive, I ceased to be able to operate my own 628 acre ranch, then Howard would be able to operate both his 113 acre ranch and my ranch and provide me with a portion of the revenue from my ranch. In my conception of the situation, I would be providing the equipment and machinery, as I had always done, and Howard would operate the ranch together with his own.
10. It is certainly true that my son Howard participated with me in my ranching business. I don't want to diminish his participation, nor do I want to say, however, that he was always there beside me.
14. I always hoped that, to the greatest extent possible, my ranch could be preserved as a family endeavour after my passing.

[13] In effect, Kenneth's position is that Howard and Beatrix betrayed his trust by taking his money and gold without permission and he therefore no longer wants, nor is he bound to, leave them his ranch, machinery and equipment. He asserts that, because he was betrayed, he is free to dispose of his property as he deems appropriate.

[14] The case law regarding summary trials suggests that their use should be encouraged where possible and that judges should not be timid in using summary trials to decide issues in appropriate cases. While not disputing these principles, Kenneth asserts that a full trial is nevertheless required to properly determine the credibility issues in the case regarding what discussions took place between the parties in relation to the inheritance of the ranch; what assistance Howard gave Howard over the years, and what income Howard derived from other sources besides the ranch. He argues that *viva voce* evidence will be required to determine whether the plaintiffs acted on the assurances they were given respecting the ranch, to their detriment. He argues that the evidence before me on that latter point is in conflict.

[15] The onus is on the Kenneth to demonstrate why the issues in this case are not suitable for a summary trial. The suitability issue in this case depends on whether there is sufficient evidence to find the facts necessary to give judgment.

[16] Mr. Dent pointed to some, what I consider to be relatively minor, inconsistencies and discrepancies in the affidavits of the plaintiffs on the one hand and Kenneth on the other, but in my view they are not related to material facts on the issues of unjust enrichment or proprietary estoppel.

[17] I conclude that there is indeed sufficient evidence upon which I can decide the issues in this case summarily. The matters at issue are relatively discrete. There is not much controversy on the important facts, including that Howard worked on the ranch since he was very young, that Beatrix worked on the ranch after marrying Howard, that Kenneth told Howard and later Beatrix on numerous occasions that

they would inherit the ranch and that the plaintiffs took some of the defendant's money and gold.

[18] The succession plan the plaintiffs rely on was in place until the 2014 timeframe when relations soured between the parties. Put simply, this case is about whether or not Kenneth is able to say, in light of the history of the parties and the circumstances of this case, that he is no longer bound to follow through with his earlier commitment to the plaintiffs that they would inherit the ranch on his passing.

[19] I conclude that this is a case that can be determined on the evidence before me and this matter is suitable for summary determination. There are no significant conflicts in the affidavit evidence on the issues for adjudication. Kenneth's application for an order that this case is not suitable for summary determination is therefore dismissed.

"G.P. Weatherill J."