

SUPREME COURT OF YUKON

Citation: *Jones v. Duval*, 2018 YKSC 33

Date: 20180723
S.C. No. 18-A0016
Registry: Whitehorse

BETWEEN

CATHERINE MELISSA JONES

PETITIONER

AND

ODILE JEANNE DUVAL

RESPONDENT

Before Madam Justice E.M. Campbell

Appearances:

André W.L. Roothman
Odile Jeanne Duval

Counsel for the petitioner
Appearing on her own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] The petitioner, Ms. Catherine Melissa Jones, seeks an order from this Court pursuant to s. 34 of the *Judicature Act*, R.S.Y. 2002, c. 128, as amended (the “*Act*”), and Rule 46 of the *Rules of Court* of the Supreme Court of Yukon to have the property described as Lot 1323-2 Quad D/14, Plan #2014-0079, Yukon Territory (the “*Property*”) sold; that she be granted conduct of the sale of the *Property*; that any person in possession of the *Property*, including any tenant, shall permit access to the *Property* to the petitioner’s agent(s) to inspect, appraise, show or conduct any business in relation

to the sale; and that the sale price be subject to the approval of the Court unless agreed to in writing by all parties. She also seeks that a summary accounting be ordered after all money owed to third parties in relation to the Property have been paid and that she be at liberty to seek further order or direction from the Court. The petitioner seeks costs on a special costs basis. This application was before me on July 11, 2018, I delivered my decision orally on July 12th, and these are my written reasons.

FACTS

[2] The petitioner and the respondent, Ms. Odile Jeanne Duval, are joint tenants of the Property.

[3] The parties purchased the Property in the spring of 2016. They financed part of the purchasing price through a mortgage they jointly contracted with the Canadian Imperial Bank of Commerce (“CIBC”). On April 21, 2016, a CIBC mortgage in the amount of [redacted] was registered on the Property as per the copies of the certificate of title that were filed as Exhibits to Ms. Jones’ first affidavit.

[4] The parties also have two joint personal loans with CIBC that were apparently obtained in relation to the Property. However, these loans have not been registered against the Property. The parties also have two other joint personal loans, one with the Royal Bank of Canada and one with Fairstone.

[5] The Property appears to have been purchased both as a residence for the parties and as a base for the operations of the parties’ company, Alligator Lake Aurora Lodge Inc., a Yukon-based canoeing/hiking/snowmobiling tour company. However, there is no written agreement between the parties and the company concerning the use of the Property by the company.

[6] Mr. Eric Gaillard who appears to have been in an intimate relationship with the petitioner up until last December, as well as being a friend of Ms. Duval, also resides at the Property. Mr. Gaillard and Ms. Jones were not married nor is there any evidence before the Court that they had a cohabitation agreement. Mr. Gaillard appears to have spearheaded the founding of the tour company as well as being heavily involved in its operations. Even though not a named party, Mr. Gaillard was served by the petitioner with the notice of application on May 22, 2018, as evidenced by the affidavit of service of Deputy Sheriff Mark London sworn on the same day and filed with the registry on June 12, 2018. To date, Mr. Gaillard has demonstrated no intention to participate in this proceeding.

[7] Over the year and a half subsequent to the purchase, the parties' finances deteriorated to a point where payments on the joint mortgage and personal loans fell in arrears. In the fall of 2017, the petitioner started talking about the possibility of selling the Property but Ms. Duval and Mr. Gaillard were opposed to the sale. Emails between the parties dating back to January and February 2018 reveal that the respondent was not responsive to the petitioner's stated desire to sell the Property to pay off their joint debts. Ms. Duval acknowledged during the hearing that it was not until the spring of 2018 that she felt ready to consider selling the Property. The emails between the parties in March and April 2018 also reveal that Ms. Duval restricted Ms. Jones' access to the Property, at least, from then on.

[8] As there is no evidence of Ms. Duval being engaged in any discussions concerning the sale of the Property prior to her first appearance in this matter on June 12, 2018, I find that it took the filing and service of this application in May 2018 for Ms. Duval to seriously consider her options with regard to the sale of the Property.

[9] The parties' personal and professional relationship has followed the same downward path as their finances. The situation deteriorated to the extent that, in December 2017, the petitioner left the Property and went to Ontario for a few months. She came back to the Yukon in the spring of 2018 but no longer resides at the Property.

[10] The respondent continues to reside at and occupy the Property.

[11] The parties are no longer on speaking terms and the evidence filed on both sides clearly leads to the conclusion that they can no longer reside nor own a house together. They need to sever ties.

[12] The parties agree that they are jointly responsible for the mortgage. However, it is unclear, from the parties' evidentiary record, what the terms of their mortgage are, and how many payments each party made towards the mortgage.

[13] The petitioner acknowledges that she stopped making payments on the mortgage in February 2018 and has not made a mortgage payment since then.

[14] In a letter dated June 25, 2018, CIBC notified the parties that their mortgage was past due and that the arrears amounted to [redacted].

[15] On June 25, 2018, CIBC issued a notice to the parties demanding full payment of the outstanding balance of their mortgage in the amount of [redacted] within ten days, failing which the bank would consider commencing legal proceedings.

[16] Ms. Duval filed a bank receipt showing that on June 25, 2018, she paid her share [redacted] of the parties' monthly mortgage payments. The respondent indicated that she is in regular contact with CIBC and doing her best to pay her share of the monthly payments toward the mortgage in order to avoid further action from the bank.

THE LAW

[17] Section 34 of the *Act* provides that:

34 When in any cause or matter relating to real estate or any interest therein it appears necessary or expedient that the real estate or interest or any part thereof should be sold, the Court may order it to be sold and any party bound by the order and in possession of the estate of interest, or in receipt of the rents or profits thereof, shall deliver up the possession or receipt to the purchaser or any other person thereby directed.

[18] The term “cause” is defined at s. 2 of the *Act* to include: “an action suit, or other original proceeding between a plaintiff and a defendant.”

[19] The term “matter” is defined at s. 2 of the *Act* to include: “every proceeding in the Court not in a cause”.

[20] The term “Court” is defined under the *Act* as the Supreme Court of Yukon.

[21] The application brought before the Court clearly constitutes a matter relating to real estate over which this Court has jurisdiction pursuant to ss. 2 and 34 of the *Act*.

[22] Furthermore, regarding procedure and practice, Rule 46 of the *Rules of Court* provides for the manner upon which this Court exercises its jurisdiction regarding court-ordered sales of property.

[23] Rule 46(3) provides that: “where an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner as the person thinks just or as the court directs.”

[24] Rule 46(4) provides that the court may give directions it thinks just for the purpose of effecting the sale including, but not limited to, the directions listed in that paragraph.

[25] Finally, Rule 46(5) provides that the person having conduct of a sale may apply to the court for further directions.

POSITIONS OF THE PARTIES

[26] At the hearing, the respondent indicated that, considering the parties' difficult financial situation and relationship, she was not opposed to the Court ordering the sale of the Property. However, for the same reasons, she is opposed to Ms. Jones being granted sole conduct of the sale. She asked that a neutral third party be appointed instead. She further submitted that all of the parties' joint debts be paid with the proceeds of the sale. She asked the Court to order Ms. Jones to produce company records she allegedly has in her possession. She also requested that the Court appoint an accountant who would have access to all personal and business accounts to allow for a full accounting of the company's and the parties' financial situation, to ensure that all the remaining money from the sale of the Property be divided fairly between them according to the accountant's report. She made this request as she alleged that the company's records show that the petitioner diverted money away from the company for her own benefit. Those documents would also allow the company's accountant to finalize the company's financial statement for 2017.

[27] The petitioner submitted that the only relevant accounting in relation to the distribution of the proceeds of the sale is a summary accounting of the parties' respective contributions toward the mortgage.

[28] The petitioner agreed with the appointment of a third party, as it would facilitate the sale of the Property considering the fact that the parties are no longer on speaking terms. Counsel for the petitioner suggested that Mr. Graham Lang, a partner of the law firm Lamarche & Lang, be appointed to have sole conduct of the sale of the Property. Mr. Lang appeared before the Court and confirmed that he was agreeable to act as a neutral third party to conduct the sale of the Property. Mr. Lang's firm has experience in

real estate law. Mr. Lang noted that his firm acted for the petitioner when she bought another unrelated property in Whitehorse, but indicated that his firm was not privy to any information regarding the petitioner outside of that transaction.

[29] After having a chance to discuss the matter with Mr. Lang, the respondent agreed to him being appointed by the Court to have conduct of the sale of the Property.

ORDER FOR SALE

[30] For the Court to order the sale of a property, it needs to find that it is either necessary or expedient to do so pursuant to s. 34 of the *Act*. Considering the evidence filed in this proceeding, which demonstrates the parties' untenable financial and personal situation, the submissions made by both parties, as well as the parties' agreement that the Property should be sold as soon as possible, I have no difficulty finding that it is both necessary and expedient to order the sale of the Property.

[31] Considering the difficult relationship between the parties and the fact that they are no longer in speaking terms, it is appropriate in the circumstances to appoint a neutral third party to have exclusive conduct of the sale. Considering the representations made by Mr. Lang at the hearing and that both parties consent to Mr. Lang's appointment, I direct that Mr. Lang have exclusive conduct of the sale of the Property. I also order that he be at liberty to list the Property for sale and do all things reasonably incidental thereto, including paying to any real estate agent or firm retained by him pursuant to this order, a commission on the gross selling price, plus GST, that commission to be paid from the proceeds of the sale. I also order that his reasonable fees, plus GST, for his services regarding the conduct of the sale of the Property be paid from the proceeds of the sale. Mr. Lang shall communicate with the parties on a regular basis to inform them of the progress of the sale. Mr. Lang shall also ensure that

both parties are aware of or included in all communications between him and one or both parties regarding the sale of the Property.

[32] As the third relief sought by the petitioner in her notice of application is not contested and would, in fact, facilitate the conduct of the sale, I order that any person or persons in possession of the Property, including any tenant or tenants, shall permit any duly authorized agent of Mr. Lang to inspect or appraise the Property and the interior thereof and show the Property between the hours of 10 a.m. and 8 p.m. on any day, including Sundays and statutory holidays upon receiving 24 hours' notice; and to place a sign on the Property indicating that the Property is offered for sale.

[33] As consented to by the parties, any sale price shall be subject to the approval of this Court unless agreed to in writing by all parties.

[34] It is also advisable in the circumstances of this case to order that Mr. Lang be at liberty to apply for further order or direction from the Court concerning the process of the aforementioned sale.

[35] All proceeds of the sale remaining after payment of the real estate commission, Mr. Lang's fees, the mortgage, legal fees, and the property taxes shall be paid into the court in the Supreme Court File 18-A0016. These funds shall be held in court and not paid out until further order of this court.

[36] As pointed out by the respondent, the parties have intermingled their personal finances with those of the company. However, the company is not a party to this proceeding. The Court is not seized with a claim involving the company but with a fairly restricted application to sell the Property that the parties jointly own. The parties are the joint owners of the Property and the only ones who are personally and jointly liable for the debt. The Court is unable, in the context of this application, to make any order

forcing the petitioner to provide documents to the company. Nor would it be permissible to make any determination regarding the finances of the company or money owed, if any, by any of the parties to the company. It is for the company, which is a separate entity, to take any action it may deem appropriate regarding any claim it may have against the petitioner and/or the respondent. As this is not the proper forum to settle the parties' business relationship nor to settle the company's financial statements, affairs or potential claim, I decline to make an order regarding the appointment of an accountant or the production of financial documents relating to the company's finances as sought by the respondent.

[37] I further order that the parties shall contact the Trial Coordinator of the Supreme Court of Yukon within one month of the sale of the Property being concluded to set a date for a case management conference to set timelines for the parties' submissions regarding the distribution of the money paid into court.

[38] The issue of costs will be deferred to the end of this proceeding.

CAMPBELL J.