

COURT OF APPEAL FOR ONTARIO

CITATION: Holdstock v. Holdstock, 2015 ONCA 42

DATE: 20150126

DOCKET: C59695

Feldman, Simmons and Pardu JJ.A.

BETWEEN

John Walter Holdstock

Respondent (Appellant)

and

Karen Jean Holdstock

Applicant (Respondent)

Raymond G. Colautti and Anita E. Landry, for the appellant

Robert J.M. Ballance, for the respondent

Heard: January 13, 2015

On appeal from the order of Justice Bruce A. Glass of the Superior Court of Justice, dated November 10, 2014.

ENDORSEMENT

[1] The parties are involved in matrimonial litigation following a long-standing marriage of 35 years. The current appeal relates to a commercial property on which the husband runs his landscaping business. His financial statement shows the business as having a “nil” value. His financial statements for the past two years have also shown the property as owned by the wife. It was purchased in 2003 and she is the registered owner.

[2] After she entered into an agreement of purchase and sale to sell the property for approximately \$80,000 in excess of the valuation-day value, the husband claimed to have found a trust agreement which provides that the wife holds the property in trust for the husband and agrees not to sell it. The stated purpose of the trust is to protect the property in the event of the husband's bankruptcy and provides for the husband to pay \$1,500 a month to the wife. In a subsequent lease document (which referred to the wife's ownership of the property), the wife leased the property to the husband for \$1,500 per month, which amount was paid regularly until recently. The lease also provides that it replaces any prior agreements.

[3] The wife served the husband with a notice to vacate, following which she moved for a writ of possession and declaration of ownership. It was then that the husband claimed he had "found" the declaration of trust a few weeks earlier. Before the motion judge, the wife tendered an unsworn expert report that questioned the authenticity of her signature on the trust agreement.

[4] The motion judge made the following endorsement:

Wife's motion for writ of possession granted. Throughout this litigation i.e. about 2 years Husband has accepted that Wife is the owner. There is a sale in place with a closing date of Dec. 19/2014. Within the past 2 weeks, husband claims ownership through a trust agreement. Alleged signature of wife on trust agreement is refuted by handwriting analyst. Satisfied that wife is the owner who is entitled to writ of possession forthwith.

[5] The formal order does not include a declaration that the wife is the owner of the property. Rather, it simply provides that a writ of possession shall issue in favour of the wife.

[6] On appeal, the husband renews his request for the trial of the issue of the authenticity of the wife's signature on the declaration of trust, claiming that its effect is to make the husband the beneficial owner of the property. He seeks to file fresh evidence of a handwriting expert that the wife's signature is authentic.

[7] In our view, although the motion judge erred by relying on the unsworn report of a handwriting expert, he came to the correct conclusion that a writ of possession should issue.

[8] The trial of the issue of the authenticity of the wife's signature on the trust declaration would not address the further issue of the legal effect of the document, which is the real question. If the trust declaration was executed solely to avoid creditors, its validity may be an issue. Further, the wife's notice of application states that the property was paid for in part with funds from their matrimonial home and put into her name for income-splitting purposes. She collected rent from the husband over a number of years. If he is the beneficial owner, that rent may belong to him. If her funds contributed to the purchase price of the property, she has a claim to a beneficial interest.

[9] In our view, given the wife's status as the registered owner, the husband's position in his financial statements that the wife is the owner of the property, and her reliance on that position in selling the property, together with the unclear effect of the declaration of trust, in all the circumstances, the mere existence of the trust document, even if signed, does not justify jeopardizing the favourable sale of the property at this stage of the proceedings. (The closing date has been extended on consent to February 12, 2015.)

[10] The court was advised that at the motion, the husband did not pursue an amendment to claim ownership of the property at that time. The parties are not precluded from asserting their respective claims to the proceeds of sale as advised.

[11] The appeal is dismissed with costs to the wife fixed at \$12,000, inclusive of disbursements and HST.

"K. Feldman J.A."

"J. Simmons J.A."

"G. Pardu J.A."