# COURT OF APPEAL FOR ONTARIO

CITATION: Inniss v. Blackett, 2022 ONCA 166
DATE: 20220224
DOCKET: C68681

Strathy C.J.O., Roberts and Sossin JJ.A.

BETWEEN

Paul Inniss

Plaintiff (Respondent)

and

Celestine Blackett

Defendant (Appellant)

Edward J. Babin and Brendan Monahan, for the appellant

Yan David Payne and James R. D. Clarke, for the respondent

Heard: February 18, 2022 by video conference

On appeal from the judgment of Justice Mario D. Faieta of the Superior Court of Justice, dated July 6, 2020.

REASONS FOR DECISION

**OVERVIEW**

[1] This appeal arises from a dispute over the ownership of a property as between the respondent, Paul Inniss, and his grandmother, the appellant, Celestine Blackett.

[2] In 2002, following the purchase of the house at 470 Donlands Ave. in Toronto (“the house”), both parties were listed on title as joint tenants. The parties lived in the house between 2002 and 2008. In 2008, the relationship between the parties deteriorated, and the respondent moved out of the house.

[3] On March 1, 2016, the respondent brought this action for partition and sale. The appellant defended against the action and counterclaimed on the basis that the home was always hers alone.

[4] The trial judge accepted the respondent’s evidence over the appellant’s evidence with respect to the shared nature of contributions to the purchase, mortgage and maintenance of the house during the period the parties lived there together.

[5] The trial judge also accepted that the respondent’s attempt to sell his interest in the property was reasonable and rejected the appellant’s evidence that a sale of the property would result in hardship.

[6] The trial judge found that the appellant’s contribution was greater than that of the respondent (with the appellant holding an 89.93% interest in the house and the respondent holding the remaining 10.17%). The trial judge provided the appellant with an opportunity to buy out the respondent or else the property could be sold pursuant to s. 2 of the *Partition Act,* R.S.O. 1990, c. P.4.

[7] On October 6, 2020, the appellant filed her notice of appeal.

[8] We dismissed the appeal at the hearing with reasons to follow. These are those reasons.

**ANALYSIS**

[9] The appellant raises four grounds of appeal:

1) The trial judge failed to find that the respondent's interest in the house is subject to a resulting trust (or, alternatively, a constructive trust) in favour of the appellant;
2) The trial judge erred by finding that the respondent contributed $51,200 towards the carrying costs of the house and that such contributions entitled him to a beneficial ownership interest in the house;
3) The trial judge erred by finding that the house should be sold pursuant to s. 2 of the *Partition Act*; and
4) The trial judge erred in awarding trial costs to the respondent.

[10] We address each ground of appeal below.

[11] Before turning to the grounds of appeal, however, it is important to emphasize the standard of review. This case involves findings of fact and findings of mixed fact and law. These findings are entitled to deference, absent a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 10.

**The trial judge did not err in rejecting that the respondent's interest in the house is subject to a resulting or constructive trust**

[12] Applying the principles set out by the Supreme Court in *Pecore v. Pecore*, 2017 SCC 17, the trial judge rejected the argument that a presumption of a resulting trust applied in these circumstances, as he found that the respondent gave value for the property. The trial judge found that the respondent paid $3,275.13 toward the closing costs of the house. The respondent also contributed to the purchase by becoming liable on the mortgage.

[13] The appellant argues that the payments toward the closing costs and becoming a co-signatory to the mortgage were insufficient to meet the threshold of adding value to the property for purposes of the resulting trust analysis, citing *Karen Patterson et al. v. Nadeen Patterson and The Estate of Barbara Patrick*, 2018 ONSC 6884, at para. 49. We do not accept this submission. Taken together in the context of the house purchase, both the respondent's contribution to the closing costs and assumption of risk in co-signing the mortgage made the house purchase possible. As the trial judge concluded, the parties each played a necessary role in making their shared goal of home ownership possible: at para. 64.

[14] The appellant also argues no financial contributions to the closing costs by the respondent were documented and that corroborating evidence is required to rebut a presumption of a resulting trust.

[15] The trial judge preferred the evidence of the respondent to the evidence of the appellant. The trial judge's factual findings include findings of credibility. The trial judge stated, at para. 65, "The Defendant's evidence was wildly inconsistent, self-serving and simply not credible".

[16] The finding that the presumption of a resulting trust did not apply was available to the trial judge on the record. The trial judge considered the respondent's testimony in the context of his bank statements and other evidence.

[17] The trial judge similarly rejected the argument that a constructive trust had been established. He found no basis for the appellant's unjust enrichment claim.

[18] We see no error in these findings by the trial judge.

**The trial judge did not err by finding that the respondent's contributions toward the carrying costs of the house entitled him to an ownership interest**

[19] The trial judge made a finding of fact that the respondent contributed $800 per month toward the mortgage payments and maintenance of the house during a 64-month period, for a total of $51,200. As a result, the trial judge calculated that the respondent was entitled to a 10.17% interest in the house.

[20] The trial judge conceded that there was a “dearth” of evidence to support these payments by the respondent but concluded that it would not have been possible for the appellant to carry the house over this period without the respondent’s assistance.

[21] The appellant argues there was indeed an alternative explanation for how the appellant could meet her financial obligations.

[22] Again, the trial judge’s finding was open to him on the record and is entitled to deference. There is no basis to interfere with this finding.

**The trial judge did not err in ordering that the house should be sold by virtue of the *Partition Act***

[23] Joint tenants have a *prima facie* right to force a sale of a property under s. 2 of the *Partition Act*: *Davis v. Davis*, [1954] O.R. 23 (C.A.), at p. 29. The onus is on the party resisting the sale of the property to demonstrate that the property should not be sold. To exercise its discretion not to approve a sale, a court must be satisfied that the party seeking the sale is acting in a malicious, vexatious or oppressive fashion: *Brienza v. Brienza*, 2014 ONSC 6942, at para. 25.

[24] The trial judge concluded that the respondent’s desire to sell his interest in the house was reasonable and was not malicious, vexatious or oppressive. The trial judge also rejected the appellant’s argument that her age and illness justified refusing the partition and sale.

[25] The trial judge did not err in ordering the sale of the house if the appellant is unable or unwilling to purchase the respondent's interest.

**The trial judge did not err in awarding costs to the respondent**

[26] The trial judge found the respondent to be the successful party at trial and we would not interfere with this determination.

[27] The plaintiff's actual costs were close to $70,000, and, inclusive of taxes and disbursements, his costs were nearly $85,000.

[28] In the context of this four-day trial, the trial judge found a costs award against the appellant of $35,000 to be reasonable, proportionate and fair.

[29] This issue was not pursued in oral argument by the appellant, but, in any event, we see no basis to interfere with the trial judge's exercise of discretion with respect to costs.

**DISPOSITION**

[30] For these reasons, the appeal was dismissed.

[31] The respondent is entitled to his costs, which are set at $9,500, all-inclusive.

G.R. Strathy CJO

I.B. Roberts JA.

L. Sossin J.A.