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HIGHLIGHTS

* An Alberta Queen's Bench Master in Chambers has summarily dismissed a claim by a son against his mother for specific performance of an oral agreement for ownership of a farm based on the fact that the son had worked the farm for 30 years, and for unjust enrichment. The Master observed that the son had received a two thirds crop share for the farm in the years he had worked it, and had also lived in a house on the farm for free. The Master held that the son's actions were not unequivocally consistent with an agreement that the farm would be conveyed to him and that part performance which would avoid the application of the Statute of Frauds could not be established. The Master also concluded that the son had not established that his mother was enriched, that he was correspondingly deprived, or that there was the absence of a juristic reason for the work he did on the farm. The Master discussed the elements of this type of claim and distinguished Alberta cases in which unjust enrichment claims by a child against a parent had succeeded. (Jordan v. Skwarek, CALN/2016-020, [2016] A.J. No. 708, Alberta Court of Queen's Bench)

NEW CASE LAW

Jordan v. Skwarek;

CALN/2016-020,

Full text: [2016] A.J. No. 708;

2016 ABQB 380,

Alberta Court of Queen's Bench,

Master J.T. Prowse,

July 6, 2016.

Unjust Enrichment -- Farmland -- Claim by a Child Against a Parent.

The Plaintiff, Glenn Jordan ("Glenn") brought an action against his mother, Esther Skwarek ("Glenn's Mother") for farmland which Glenn had farmed for his grandfather, his grandmother and Glenn's Mother.

Glenn alleged that the farm should have been transferred to him as an inheritance following the death of his grandparents. In the alternative, he advanced a claim for unjust enrichment against his mother.

Glenn alleged that he had worked on the farm for 30 years on the basis of an unwritten understanding with his grandfather, grandmother and his mother that he would be entitled to rent the farm on a crop share basis of two thirds to him and one third to them with crop input expenses initially being borne by the same ratio, but later being paid by Glenn in return for his living in the farm house on the land for free.

Glenn's grandfather, who initially owned the farm, passed away in 1983. His grandmother who then owned the farm, passed away in 2002. The farm then passed to his mother. In 2013, Glenn's mother asked Glenn to sign a lease for the farm. Glenn alleged the terms of the lease were contrary to the prior agreement so he left the farm and sued his mother.

Glenn's Mother brought an application for summary dismissal of Glenn's claim.

Decision: J.T. Prowse, Master in Chambers, summarily dismissed Glenn's claims [at para. 55], commenting that even accepting Glenn's assertions as to the promises made to him, Glenn's Mother's claims are "so compelling that the likelihood that they will succeed are very high."

Master Prowse considered the following issues:

1. The Statute of Frauds and Part Performance

Glenn's Mother asserted that the Statute of Frauds 1677 (29 Car.2) c. 3, which requires any contract for the sale of lands to be in writing and signed the party to be charged, applied. Glenn conceded that the Statute of Frauds applied, but argued that his claim was saved by the doctrine of part performance.

Master Prowse relied [at para. 11] on the decision of the Alberta Court of Appeal in B & R Development Corp. v. Trail South Developments Inc., 2012 CarswellAlta 2016, 2012 ABCA 351 in which the Court stated, at para. 35:

> To invoke the doctrine of part performance, the party claiming to have performed a valid contract must demonstrate: (1) detrimental reliance and (2)

> that the acts of part performance sufficiently indicate the existence of the alleged contract such that the party alleging the agreement is permitted to adduce evidence of the oral argument: Erie Sand & Gravel Ltd. v. Seres' Farms Ltd., 2009 ONCA 709, 312 D.L.R. (4th) 111 at para 79. Acts of part performance must be "unequivocally" referable to the alleged oral agreement: Erie at para 32; Deglman v. Guaranty Trust Co. of Canada, [1954] S.C.R. 725 (SCC), [1954] S.C.R. 725 at 733, [1954] 3 D.L.R. 785 (S.C.C.).

Master Prowse observed [at para. 18] that the onus was on Glenn's Mother to show that even if Glenn's evidence as to what he did on the farm is accepted, Glenn's attempt to establish these acts as part performance of an agreement to acquire the farm is highly likely to fail.

Master Prowse then concluded:

> (a) Glenn's evidence that he treated the farm as his own and expended resources in capital accordingly was not sufficient to establish part performance, stating, at para. 21:
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> > [21] These acts are just as consistent with the acts of a long time tenant who was expending funds on the farm in order to maximize income from crops as they are with acts of a prospective owner. There is nothing about Mr. Jordan's expenditure of these funds on farm operations which point to an agreement that the farm would ultimately be conveyed to him.
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> (b) Glenn's evidence with respect to the capital and maintenance expended on both the house and farm buildings located on the farm which included a long list of items including water wells, renovations to the home, a new hot water tank, new light fixtures and switches and many other items, was not sufficient to establish part performance, stating, at para. 23 and 24:
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> > 23] Were these the types of expenditures that only a prospective home owner would carry out, or are they expenditures consistent with a long term tenant? In my view, they are equally consistent with either scenario. In other words, Mr. Jordan is unable to establish that these acts are "unequivocally" referable to the alleged oral agreement to convey the farm to him.
> >
> > [24] It would be different if the capital expenditures were so significant and of such obvious long term benefit that an objective outsider would say that only someone with a prospective ownership interest would have made such capital expenditures. This is not what happened.

Master Prowse observed [at para. 25] that when Glenn finally left the house in 2012, the outbuildings were no longer useable, and the farm house was "tired and worn" and that his expenditures resulted in no residual benefit to the land [at para. 29].

Master Prowse concluded [at para. 30] that Glenn's claim to the farm was defeated by the Statute of Frauds and that it was highly unlikely that he would be able to establish the acts of part performance that take the case outside of the Statute of Frauds. He directed a Certificate of Lis Pendens filed against the farm to be discharged.

2. Unjust Enrichment

Master Prowse observed that even though Glenn's claim was unenforceable as it was defeated by the Statute of Frauds, he may still bring a claim for unjust enrichment, relying on the decision of the Alberta Court of Queen's Bench in Valley v. McLeod Valley Casing Services Ltd., 2004 CarswellAlta 498, 2004 ABQB 302, in which the Court stated at para. 136:

> While the Courts have applied the principles of unjust enrichment to provide relief in those cases where mistakes relate to ownership in the traditional sense, recent case law has extended the principles of unjust enrichment to situations in which one has improved another's land with the reasonable expectation of either compensation or a future property interest in the land...

However, Master Prowse rejected Glenn's unjust enrichment claim on the grounds that:

> (a) Glenn's Mother had not benefitted from any of the alleged capital expenditures in the farm. Although Glenn had paid rent since 1982, Glenn's Mother could have "as easily received those payments from a stranger" [at para. 36] at a "cash rent substantially higher than the average crop share rent which she received from [Glenn] over the years" [at para. 37]. The property had not been improved by any of the capital expenditures Glenn alleged. The farm house was uninhabitable [at para. 38];
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> (b) Glenn had not suffered any deprivation. He had received a two thirds crop share payment and had lived in the house rent free. Master Prowse observed [at para. 40]:
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> > [40] This is quite unlike cases where the claimant has performed years of work for free instead of earning their own living. Mr. Jordan worked on his own farm, worked on other jobs and collected crop share income for this farm. The evidence does not support a conclusion that Mr. Jordan suffered a deprivation.
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> (c) There was a juristic reason for Glenn farming the land and providing upkeep - he received crop share income from the land and housing from the farm house [at para. 41].

Master Prowse referred to other unjust enrichment claims by a child against a parent, observing that some of those cases did succeed, but only in completely different

circumstances: Seward v. Seward Estate, 1996 CarswellAlta 1043, 194 A.R. 348; Valley v. McLeod Valley Casing Services Ltd., 2004 CarswellAlta 498, 2004 ABQB 302.

CREDITS

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