

SUPREME COURT OF YUKON

Citation: *S.L.H. v. A.W.H.*, 2019 YKSC 71

Date: 20191205
S.C. No.: 18-D5076
Registry: Whitehorse

BETWEEN:

S.L.H.

PLAINTIFF

AND

A.W.H.

DEFENDANT

Before Chief Justice R.S. Veale

Appearances:
Shaunagh Stikeman
A.W.H. (by telephone)

Counsel for the Plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] VEALE C.J. (Oral): This is an application by S.L.H. for a court order that:

- S.L.H. have exclusive possession of the family home, by February 1, 2020;
- S.L.H. have the control of the sale of the property and the ability to accept any offer that is \$629,000 or greater;
- the signature of A.W.H., the defendant, be dispensed with to execute any documents to complete the sale;
- A.W.H. shall leave the family home in a clean state and good repair so that it is suitable for immediate occupation;

- A.W.H. shall leave all appliances at the property to be included in the sale of the property;
- A.W.H. pay forthwith the mortgage, insurance, utilities, and any other expenses related to the property until exclusive possession;
- A.W.H.'s signature be dispensed with on the order;
- A.W.H. shall pay costs for this application not to exceed \$5,000; and
- should there be a sale to a third party, the proceeds of the sale would be held in a trust account by Mr. Graham Lang.

[2] I am going to indicate that I am going to make that order. The factual reasons that I am going to do so are this. Mr. Justice Aston, after a five-day trial in July 2019, made an order — and I will just do the specific aspects of that order, but para. 6 says:

The Family Home and the Rental Home are to be listed for sale forthwith according to the terms of this judgment and any subsequent order of the Court for any directions to accomplish the sale and equal division of the proceeds of sale.

[3] Paragraph 11 reads:

The defendant [A.W.H.] shall maintain the Family Home in a state of repair, tidiness and cleanliness conducive to its sale and shall cooperate reasonably with any real estate agent and any prospective purchaser. Beyond the required disclosure of deficiencies in the listing, the defendant shall not discourage the sale by word or deed.

[4] I think those are the two primary terms of the order from July 19, 2019, which was filed on August 12, 2019.

[5] I am also going to read from Mr. Justice Aston's reasons for judgment filed August 13, 2019:

[21] Because of my concern that A.W.H. will obstruct a sale of that property, I want to specifically say that I have

considered granting S.L.H. exclusive possession of the family home pending a sale. I have decided not to do so at this time, but the judgment today is specifically without prejudice to her right to seek that relief if, in fact, A.W.H. does interfere with efforts to sell the property or does not maintain it in a manner suitable for prospective purchasers.

[6] With respect to the interference, I think the interference has been well-established in court today, in terms of the affidavit evidence of Mr. Meger, who is the real estate agent on the property, and the evidence of S.L.H. I find as a fact that there has been interference with the process of selling the property as ordered by Justice Aston. Mr. Meger makes a number of statements, which are uncontested, but he simply says in his affidavit filed November 25, 2019, that A.W.H. has not allowed him to show the property at that date and he has made attempts to do so since September 2019.

[7] The result is that I think it appropriate to make the order that I have suggested that I will make. I have been general and not specific, but I take it that Ms. Stikeman will make efforts to put the terms of the order as I have said them and as she has pleaded in Tab 7, which is the draft order.

[8] I think there should be two orders: one will be this order that I have just made about the sale and of the consequences; and then the second order will be — just to separate and make them simple — will be on items 8 and 9, and the date that we have set of March 5 and March 6 to make those determinations.

[9] Do you understand?

[10] MS. STIKEMAN: Your Honour, with respect to the second order, would it be sufficient to file a notice of hearing for that date or what would you imagine that the order would look like with respect to 8 to 9?

[11] THE COURT: The order will have the hearing dates in it. You can set out the two items that it will deal with — the child support issue that you have put forward and the issue of proceeds from the other house — and then you can say, "These matters are to be heard on the respective dates", so you do not need to file a notice of hearing on that.

[12] On each order, you are putting in that they can be filed on your signature alone, but I am going to ask you to email them to A.W.H. If there is some big issue that A.W.H. raises that you have missed or something like that, you can come back here, but A.W.H. should know that there are consequences if you come back again.

VEALE C.J.