

CI08-01-57416

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

LIONEL ANDRE BOUCHARD,

Applicant,

- and -

ANDRE LIONEL BOUCHARD and
JACK BOCK,

Respondents.

TRANSCRIPT OF PROCEEDINGS before The Honourable
Madam Justice Greenberg, held at the Law Courts Complex,
408 York Avenue, in the City of Winnipeg, Province of
Manitoba, on the 16th day of July, 2008.

APPEARANCES:

W. SMITH, Q.C., for the Applicant
MS. R. SMITH, for the Respondent

1 JULY 16, 2008

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4 THE CLERK: Number 9, Lionel Bouchard versus
5 Andre Bouchard.

6 MR. SMITH: Good morning, My Lady. I appear for
7 the applicant, and obviously, you appear for the
8 respondent.

9 THE COURT: And, Mr. Smith, I know who you are,
10 but you're -- I'm sorry?

11 MS. SMITH: Ms. Smith, initial R, My Lady.

12 THE COURT: Oh, another Smith. Okay. No
13 relation?

14 MS. SMITH: No.

15 MR. SMITH: No relation.

16 THE COURT: Okay. And firm, do I have a firm
17 name, then. And you're with ...

18 MS. SMITH: Chapman, Goddard, Kagan.

19 THE COURT: Okay.

20 MR. SMITH: This is an application, as you no
21 doubt know, have read, for possession and I -- on the basis
22 of a life estate, and Mr. Bouchard, my client, 84 years of
23 age, is here today. We need to have a resolution fairly
24 quickly. He needs to get into his house, and he needs to
25 get on with his job.

26 And I have to apologize. I spoke to Kelly Land.
27 I wasn't aware, and you and I haven't met. So, I can
28 understand you not making yourself known to me, but we
29 haven't had an opportunity to talk. And if you had some
30 sort of proposal, maybe we should hear it before we speak
31 to the court.

32 MS. SMITH: The respondent is seeking an
33 adjournment for a week.

34 THE COURT: Okay. And you act for Mr. Bouchard,
Jr.

1 MS. SMITH: For -- that's correct, My Lady.

2 THE COURT: And Mr. Bock, I gather there was an
3 attempt to serve him, and the letters were returned or the
4 correspondence returned. He's named as a respondent. I'm
5 not sure what the plan is.

6 MR. SMITH: He was, he was served.

7 THE COURT: Oh, he was served.

8 MR. SMITH: I can, I can hand up -- it was my
9 oversight, My Lady. I hand up the affidavit of Patrick
10 Robson. I think in that brief that I filed that I refer to
11 Marilyn Robson, but we had a husband and wife team going
12 out to do service, and I was out of the office when I was
13 putting that together.

14 In any event, Bock has been served.

15 THE COURT: All right.

16 MR. SMITH: And he was served within the time --
17 or over four days. So, he's not here today, and he should
18 -- if he wanted to be represented, he should have been.

19 THE COURT: Just by way of curiosity. Is he in
20 the house?

21 MS. SMITH: He's a tenant in the home, My Lady.

22 THE COURT: He, he is in the house. I was just
23 curious if he was there and he didn't get the mail that was
24 sent to that -- or whatever.

25 So that you're not representing him; you're just
26 representing --

27 MS. SMITH: No.

28 THE COURT: -- Mr. Bouchard, Jr. Okay.

29 MS. SMITH: That's correct, My Lady.

30 THE COURT: And you need a week's adjournment.

31 MS. SMITH: That's correct.

32 THE COURT: Is there any problem with that,
33 Mr. Smith?

34 MR. SMITH: There really is. I had, I had, I had

1 spoken to Mr. Land ahead of time, before we made service,
2 telling him our involvement, because on another matter,
3 there was a 30 day notice issued for an -- as an unpaid
4 vendor, issued on a caveat. So, I made a call to Mr. Land,
5 who we know and we deal with, and indicated my involvement
6 in this case, as well, and said, you know, you can't keep
7 an 84-year-old gentleman away from his home. You've got to
8 put him in, and you've got a tenant there that has no right
9 to be there, as the affidavit material shows. I said we're
10 really anxious to get this on. I know it goes onto the
11 uncontested list. So, I made him aware of that, and what I
12 did do is on Monday, I sent him my brief and my argument.
13 I haven't heard peep from him.

14 I was out of the office on Tuesday. We had a
15 power failure yesterday morning, in the office, but I mean
16 our phones were down, but that was the only break. And I
17 have not heard from Mr. Land, which surprises me, at least
18 to give me some heads up that, that Ms. Smith was coming
19 down here, so that I could say to Kelly, we want to
20 proceed. Here's the brief and here's the points. We're
21 short date service on, on your client, but you've been
22 advised. And I think the court can approve that service,
23 and we can get on with the urgent matter of putting this
24 man back in his house.

25 I don't know what the week will do. I take it
26 some affidavit material and so on, but unless they disposed
27 of, unless there's somehow been a disposition of the life
28 estate, which has been admitted by the respondent, he
29 should be back there.

30 THE COURT: Do you have any idea -- I mean, are
31 you just being sort of sent down here with no information,
32 or do you -- are you familiar with the file?

33 MS. SMITH: I do have -- I am familiar with the
34 file, My Lady.

1 THE COURT: Do you know what position your
2 clients may be taking?

3 MS. SMITH: I do know that the respondent would
4 like the opportunity to put evidence before the court
5 regarding the life interest. He has evidence that the life
6 interest is no longer valid and would like the opportunity
7 to provide that evidence to the court.

8 We were -- the respondent was served with the
9 notice of application and three supporting affidavits on
10 July 10th in the afternoon, and it is the respondent's
11 position that seeking the one week for respondent materials
12 is justified as well as the fact that it is the
13 respondent's position this is not an urgent matter. The
14 applicant has not been residing in the home or occupied the
15 home since February of 2006 and it is not an urgent matter
16 at this point, that it needs to proceed today.

17 THE COURT: Well, I mean, I guess from his
18 perspective, he's living with a friend, so I guess every
19 day is --

20 MR. SMITH: Eighty-four years of age.

21 THE COURT: -- is very aggravating and stressful
22 for him.

23 MS. SMITH: Absolutely, My Lady.

24 THE COURT: So, I, I -- one of the things that
25 concerns me about this, and I gather you're going the
26 contested route if you're filing responding affidavit. I
27 mean, we're talking about a family situation here. I don't
28 know whether --

29 MS. SMITH: There are extenuating circumstances.

30 MR. SMITH: There's been wars, just so you know.

31 THE COURT: Pardon me?

32 MR. SMITH: There, there's been battling between
33 various people.

34 THE COURT: I gather that. I gather that, and it

1 is an unfortunate situation but, is there -- I mean, two
2 things that concern me. One is, is getting this thing
3 dealt with quickly because Mr. Bouchard is living at a
4 friend's, and that's not a good situation. The second is
5 whether there is some way of dealing with it outside of the
6 litigation process, to have the matter resolved.

7 MS. SMITH: I, I'm not --

8 THE COURT: I don't know if that's something
9 that ...

10 MR. SMITH: And that's fair comment. I spoke to
11 Mr. Land about it, who was going to canvass it with his
12 client, and then when we talked subsequently, again before
13 the service took place, he indicated that as Ms. Smith
14 indicates that the, the life estate was forfeited. And
15 while -- you either transfer a life estate or you quit
16 claim it, but you don't lose it by default. I mean, we're
17 talking real, real estate law here, and unless you have
18 some evidence that he has specifically transferred that
19 property or the interest, the life estate, which I'm not
20 aware of, then I would have thought they would have said it
21 to me. If there had, if there had been a transfer, send it
22 to me so we can see it and look at it.

23 THE COURT: I guess there's the, there's the --
24 that's the one issue. But the second issue is that even
25 assuming he doesn't have the life estate, there was some
26 agreement to pay the rent, which I gather hasn't been
27 followed up on. So, that would be the other issue, as
28 well.

29 MS. SMITH: The rent was to be paid for his
30 apartment in Elie. He, he moved out of the province
31 between February and June of this year and has since
32 cancelled his apartment in Elie. There was no agreement
33 for rent to be paid in the home and the property at issue
34 itself. And there is a subsequent agreement. The life

1 estate agreement that is attached to the applicant's
2 materials is not the most recent life estate agreement.
3 There is a further subsequent agreement in place that would
4 show why it is the respondent's position that there is not
5 a valid life interest at this point.

6 THE COURT: Well, I guess in view of the fact
7 that there is -- it's contested, I mean, there's not much I
8 can do. The respondent is entitled to file material, and
9 it is not unreasonable to allow you the week to do so. And
10 I'm assuming, because you've only asked for a week's
11 adjournment that you will be able to get the material
12 together by next week so that ...

13 MS. SMITH: If I -- if we can have until Monday,
14 July 21st, I believe is the date on Monday, to file the
15 responding materials, then we can be prepared for next
16 week.

17 THE COURT: So, if we adjourn this one week from
18 today, you will have your material filed by Monday?

19 MS. SMITH: That's correct, My Lady.

20 THE COURT: And you will be in a position to know
21 what the next step is, whether it is going to be set for a
22 contested hearing or not.

23 MS. SMITH: Absolutely, My Lady.

24 MR. SMITH: You know what, and, and this is
25 really too bad. If you've got a document, send it to us,
26 and, and -- but I certainly -- My Lady is correct. If
27 there is some position to take and evidence, then you have
28 to hear it. If we adjourn to a week today is the twenty-
29 third, and I'll tell you what. I will -- I've got a
30 problem next week, and the court is sitting Wednesday and
31 Thursdays, right?

32 THE COURT: In the summer, yeah.

33 MR. SMITH: So, I don't have any objection if we
34 go to the following Wednesday, and that will give you lots

1 of time to get the material together, because I'm, I'm tied
2 up otherwise.

3 THE COURT: In, in the meantime, what you might
4 do is at least send over the recent version of the
5 agreement right away so that Mr. Smith can start looking at
6 that with his client to see if that sort of changes their
7 position at all, and it will give them -- rather than
8 waiting for the affidavit material to come in, that would
9 be, I think, of some help.

10 MR. SMITH: And Your Ladyship certainly said it.
11 This is a family - son, father, sell land. You can't get
12 back on it. You'd better think about that.

13 MS. SMITH: There are a lot of extenuating
14 circumstances.

15 THE COURT: I know. It's just that it's
16 unfortunate it has to go through a court process.

17 MS. SMITH: Absolutely, My Lady.

18 MR. SMITH: Exactly.

19 THE COURT: It would be helpful if --

20 MS. SMITH: Yeah.

21 THE COURT: It would be in everybody's interest
22 to try to resolve it outside of the court process.

23 MS. SMITH: Absolutely, My Lady.

24 THE COURT: So, I strongly encourage you to take
25 it up with your clients.

26 So, it's adjourned, then, to the --

27 MR. SMITH: Sixteen, twenty-third. I think
28 that's the thirtieth, is it?

29 THE CLERK: July 30th is Wednesday.

30 THE COURT: And you will have your material filed
31 by Monday.

32 MS. SMITH: By the Monday.

33 MR. SMITH: My Lady, in that affidavit of Lionel
34 Bouchard, is there an Exhibit "H" attached? And I really

1 -- it's the caveat. It should be a long document.

2 THE COURT: Exhibit "H".

3 MR. SMITH: Exhibit "H", the last exhibit on that
4 affidavit.

5 THE COURT: No.

6 MR. SMITH: That, again, is my fault. You've
7 seen the caveat, but there you have it again. But if I can
8 just have this thrown into the pocket with the affidavit.
9 It was completed. It just didn't get attached. It's the
10 caveat that was filed. Sooner or later I'll get myself
11 together.

12 THE COURT: Okay. And I actually noticed that,
13 that -- I know you filed this affidavit of Patrick Robson
14 this morning, but the brief refers to --

15 MR. SMITH: Marilyn Robson.

16 THE COURT: -- three other affidavits that
17 weren't in the pocket: Michael Sleager (phonetic) -- no,
18 just a second. That one is in. Two, I guess: Colleen Owen
19 (phonetic) and --

20 MR. SMITH: Gee, they all went down to the court.
21 Colleen Owen, Sleager's --

22 THE COURT: Oh, no, I'm sorry. No, I've got
23 that. I thought that that wasn't filed. It is filed.

24 MR. SMITH: And then you should have Kerry Aliard
25 (phonetic), my assistant, just to deal with the service
26 issue.

27 THE COURT: Yeah, I've got that one. There was
28 one that I thought was missing. Maybe it was the Marilyn
29 Robson one.

30 MR. SMITH: Right.

31 THE COURT: And that should be the Patrick
32 Robson. I see. Okay. That's what confused me. Okay.
33 Then, it's all there.

34 MR. SMITH: Thank you for wading through that.

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THE COURT: Okay.

THE CLERK: And just to confirm, My Lady, the material filed by this next Monday, the twenty-first?

THE COURT: Yes.

THE CLERK: Okay.

MR. SMITH: We don't need orders, do we, on that?
No.

THE COURT: Thank you.

MR. SMITH: May we be excused. Thank you.

(PROCEEDINGS ADJOURNED TO JULY 30, 2008)

CERTIFICATE OF TRANSCRIPT

I hereby certify the foregoing pages of printed matter, numbered 1 to 9, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill and ability.

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