

SUPREME COURT OF NOVA SCOTIA

Citation: *Proost v. Ferncroft Equities Ltd.*, 2014 NSSC 302

Date: 20140806

Docket: Hfx No. 416894

Registry: Halifax

Between:

Michaela Amalie Elizabeth Zoe Mauricia Molhant Proost

Applicant

v.

Ferncroft Equities Limited, Giuseppe Costantino, Brunello Donati, Zeus Holding SA, and Dominic Anthony Max Dolph Claude Gregory Edward Bunford

Respondents

DECISION

Revised Decision: The text of the original decision has been corrected according to the attached erratum dated August 14, 2014.

Judge: The Honourable Justice Gerald R. P. Moir

Heard: August 6, 2014

Transcribed and

Edited on: August 12, 2014

Counsel: John A. Keith, for Applicant
Andrew Fraser and Scott Campbell, for Respondent Dominic Bunford
William Mahody, for Mary Claude Bunford

Moir J. (Orally):

[1] The parties have been involved in several proceedings in Nova Scotia, an earlier proceeding in Belgium, and a very recent proceeding in Belgium. The disputes have been all about the transfer by Madame Bunford to her daughter, Ms. Proost, of her shares in a Nova Scotia corporation. Mr. Bunford initiated some of the proceedings, and he defended in the others. His notice of contest in this proceeding, his submissions to the court on various motions, and his affidavits have put in issue whether the share transfer resulted from undue influence, whether his mother was mentally competent, and, more broadly, I would suggest that his stance has raised an issue of fraud.

[2] Despite the allegations in the notice of contest, briefs, and affidavits from Mr. Bunford, he recently withdrew his notice of contest and, through counsel, he advised that there are no longer any factual controversies in this proceeding. In light of that concession by Mr. Bunford, and on my assessment of the evidence as a whole, I am prepared to grant the declaratory relief that was claimed.

[3] At the same time as he assured the court that there are no longer any factual controversies in this proceeding, Mr. Bunford was turning to legal remedies in the Kingdom of Belgium that would contradict the factual underpinnings for the relief that he effectively consented to. This is not the first time Mr. Bunford exhibited

such duplicity to the court. In light of that, I think it necessary that the declaration be broad enough to include the findings of fact and the procedural history underlying it.

[4] I want to say now that having made the concession and having communicated it to this court, Mr. Bunford nevertheless instituted contradictory proceedings before the Court of First Instance in the Kingdom of Belgium. With that behaviour in mind, one looks back at his approach to this case and the related cases in a different light than some other judges may have seen, not knowing that he was capable of this sort of trickery. One concludes that in this, and the other Nova Scotia proceedings, Mr. Bunford has behaved maliciously.

[5] So, I will grant a declaration that Ms. Proost is the sole and rightful owner of the shares in question. I will grant a declaration that the court has found there was no fraud, no undue influence, and no mental incompetence. I will grant a declaration that makes clear the procedural history, including the evidence that shows that Mr. Bunford attorned to the jurisdiction of this court in this proceeding and the others.

Moir J.

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ERRATUM

Judge: The Honourable Justice Gerald R. P. Moir

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Erratum: August 14, 2014

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William Mahody, for Respondents Giuseppe Costantino and Brunello Donati

Erratum:

[6] On page 1 of the decision, the words “for Respondents Giuseppe Costantino and Brunello Donati” are changed to “for Mary Claude Bunford”.

Moir J.