

Indexed as:

R. v. W.

**Between
L.G.R., applicant, and
E.W., respondent**

[2001] O.J. No. 4322

22 R.F.L. (5th) 407

109 A.C.W.S. (3d) 451

Court File No. 01-CV-218120

Ontario Superior Court of Justice

Rivard J.

Heard: October 19, 2001.

Judgment: November 9, 2001.

(24 paras.)

*Family law -- Husband and wife -- Marital property -- Matrimonial home, orders respecting -
- Right of wife to interest in -- Real property -- Title, removal of encumbrances by court order.*

Application by R. for a declaration that W. had no interest in property W. registered as her matrimonial home and for an order deleting that Document General from title. R. inherited a property from her mother in 1990. W. was married to R's son and the two lived on the property until their separation in 2001. R and her son had signed a License Agreement, witnessed by W, expressly stating that the son occupied the property as a licensee and not as a tenant. W claimed that she had been told R and her son that the property was owned by the son and his two brothers, and they would share the proceeds of any sale. She also claimed to have made improvements to the property, giving her an interest in the property. When R sold the property, she undertook to have the Document General removed from title.

HELD: Application allowed in part. The License Agreement entered into between R and her son may have been a lease agreement disguised as a license agreement for the purpose of defeating W's claim to an interest in the property. If W's evidence was accepted, the husband was a beneficial owner of the property and had an interest in the proceeds of the sale. It could not be said that W had no interest in the property and that it was not a matrimonial home. A trial was required to determine the issues. The Document General was to be deleted upon payment into court by R of her son's one-third share of the proceeds of the sale of the property.

Statutes, Regulations and Rules Cited:

Family Law Act, ss. 18(1), 20.

Counsel:

Lawrence S. Crackower, for the applicant.
Steven D. Benmor, for the respondent.

1 RIVARD J. (endorsement):-- The Applicant L.G.R. applies for a declaration that the Respondent E.W. has no interest in property municipally situate at 450 G.A. in Toronto.

2 The Applicant also asks for an order declaring that the Document General registered by E.W. to designate 450 G.A. in Toronto "as a matrimonial home" is no longer an encumbrance against the said property, and requiring the Registrar of the Registry Office to delete the Document General from title.

3 The Applicant is the mother-in-law of the Respondent. The Respondent married the Applicant's son, A.S.R, on (DOB). The Respondent and A.S.R. separated on or about January 1, 2001.

4 In 1990, the Applicant inherited from her mother's estate the property at 450 G.A.

5 In March of 1997, the Applicant's son, A.S.R., and the Respondent E.W. moved into the house at 450 G.A., where they lived together continuously until their separation.

6 By "License Agreement" dated April 1, 1997, the Applicant and her son A.S.R. entered into a written agreement which provided that the Applicant permitted her son to occupy 450 G.A. as a licensee only and not as a tenant. As "licensee", the son agreed to pay all utility accounts for hydro, water, heating, air conditioning, cable t.v. and telephone. He was also to be responsible for all maintenance and repairs to the property "during the term of his occupancy", save for damage by fire, lightning and tempest.

7 This "license agreement" was to continue "from month to month" and could only be terminated by either party after giving at least 60 days written notice.

8 This "Licensing Agreement" was signed by the Applicant and by her son. Their signatures to the agreement were witnessed by the Respondent who signed the Agreement as witness.

9 It is the Respondent's position that from the beginning of her relationship with A.S.R., both the Applicant and her son told the Respondent that 450 G.A. was owned by A.S.R. and his two siblings, each as to a one-third interest. The Respondent further alleges she was told by the Applicant and her son that if the Respondent and her husband ever wished to sell the property, the proceeds would have to be divided with her husband's two siblings.

10 The Respondent also alleges she made significant financial contributions to the upkeep, improvement and preservation of 450 G.A.. As a result, she claims an interest in the property and she has asserted such a claim against her husband in a Petition for Divorce issued on August 13, 2001.

11 Subsequent to her separation from her husband, the Respondent caused a Document General to be registered against the property municipally known as 450 G.A., to designate this property "as a matrimonial home" pursuant to section 20 of the Family Law Act, R.S.O. 1990, c. F-3, as amended.

12 On August 15, 2001, the Applicant sold 450 G.A. to a third party. On closing, the solicitor for the purchaser demanded and received an Undertaking from the Applicant requiring her to take steps to delete this Document General from title.

13 Under section 20 of the Family Law Act, "One or both spouses may designate property owned by one or both of them as a matrimonial home ...".

14 The Respondent alleges that her husband was a beneficial owner of 450 G.A., which property they occupied as their matrimonial home. In the event he was in fact a beneficial owner of the property, the Respondent was entitled to designate the property as a matrimonial home. Section 18(1) of the Family Law Act defines "matrimonial home" as "every property in which a person has an interest and that is or, if the spouses have separated, was at the time of separation ordinarily occupied by the person and his or her spouse as their family residence is their matrimonial home."

15 My concern here is whether 450 G.A., on the facts of this case, was a "matrimonial home".

16 The Applicant and her son had signed a License Agreement, witnessed by the Respondent, expressly stating that the son occupied the property as a licensee and not as a tenant.

17 A license does not generally create an interest in land. Black's Law Dictionary, Abridged 6th Edition 1991, defines a License as "A personal privilege to do some particular act or series of acts without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable".

18 Does the "License Agreement" in this case take the property outside the definition in section 18(1) of the Family Law Act?

19 In *Counsel Trust Co. v. Witkinderen Investments Inc.* [1985] O.J. No. 1585, Master Duncan, in interpreting section 39(1) of the Family Law Reform Act, which contained wording similar to that contained in section 18(1) of the Family Law Act, said that a license could constitute an interest in land.

20 On the material before me, it appears that the License Agreement entered into between the Applicant and her son may have been a lease agreement disguised as a license agreement for the purpose of defeating the Respondent's claim to an interest in the property. If the Respondent's evidence that the property was in fact owned by her husband and his two siblings is accepted, the existence of a license is not relevant since the husband was a beneficial owner of the property which is sufficient to meet the requirement of section 18(1) of the Family Law Act that he had an interest therein.

21 On the evidence before me, I cannot declare that the Respondent has no interest in the property. That will depend on the determination of a number of issues including whether or not her husband was a beneficial owner, a tenant or a mere licensee. It will also be dependent on whether or not the Respondent's claims based upon constructive and resulting trust succeed. A trial is required to determine those issues and such a proceeding should include the Applicant as a party.

22 I am also unable to declare that the designation of the property as a matrimonial home is of no effect because that is also dependent on how the issues I have discussed will be decided, after a trial.

23 The Application will, therefore, be dismissed. However, in light of the position of the Respondent to the effect that her husband owned only a one-third interest in the property, I am prepared to order that upon payment into Court of one-third of the net proceeds of sale of 450 G.A., Toronto, Instrument Number TR079696 registered on July 20, 2000 at the Registry Division of Toronto (No. 64) is to be removed from title to the lands described in Schedules "A" and "B" attached to the Application.

24 The Respondent will be entitled to recover her costs of this Application which I fix at \$1,200.00.

RIVARD J.