

NOTE: Case used successfully at 1998 arbitration – R. Westover v. Green Gables Park, Chilliwack with RTO arbitrator Morrison

1978 CarswellBC 100

McLean v. Pilon
N4cLeati and flavors Dillon & Associates Ltd. v. Pilon
British Columbia Supreme Court
McDonald L.J.S.C.
Judgment: May 19, 1978
Docket: New Westminster No. A780274

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Counsel: 6. A. Meikle, for applicants

N. NV. Dowad, for rentalsman,

Subject: Property

Landlord and Tenant -- Residential tenancies.

Landlord and tenant-- Agreement for lease of trailer with option to purchase at expiration of term-- Agreement registered under the Conditional Sales Act, 1961 (B.C.), e. 9 -- Trailer used for residential purposes -- Application of Residential Tenancy Act-- The Residential Tenancy Act, 1977 (B.C.), e. 61, s. 1.

Statutes--Repugnancy-- Agreement for lease of trailer with option to purchase at expiration of term -- Agreement registered under the Conditional Sales Act, 1961 (B.C.), c. 9 -- Trailer used for residential purposes -- Concurrent application of the Conditional Sales Act and the Residential Tenancy Act, 1977 (B.C.), c. 61.

Under an agreement, the applicant leased to the respondent a trailer for five years on terms including, inter alia, an option in favour of the respondent to purchase the trailer for \$2 at the expiry of the term, and liberty in the applicant to repossess the trailer if the respondent breached the agreement. The agreement was registered pursuant to the Conditional Sales Act. The trailer had wheels, but was not self-propelled, and did not have current licence plates. It was located on a "pad" in a mobile home park in which the applicant had no interest, and was occupied by the respondent as his personal residence. Rental payments under the agreement fell into arrears, and the applicant repossessed the trailer. The rentalsman ruled that, as the parties had entered into a tenancy agreement in respect of the residential premises, the provisions of the Residential Tenancy Act applied, and the applicant was ordered to deliver possession of the trailer to the respondent. The applicant applied for review of the rentalsman's order.

Held, the application was dismissed. The trailer fell within the definition of "residential premises". The applicant fell within the definition of "landlord". He was certainly a person permitting occupation of such residential premises. The agreement was also a tenancy agreement for it was an agreement between landlord and tenant respecting possession of residential premises. Accordingly, the provisions of the Residential Tenancy Act applied. The legislature has recognized the growing tendency of persons to dwell, for economic reasons and because of the increased mobility of citizens, in mobile homes, and accordingly intended that the Residential Tenancy Act should cover such situations. Moreover, there was no repugnancy or conflict between the application of the Conditional Sales Act and the application of the Residential Tenancy Act to this situation. Compliance with both of these Acts was required.

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McDonald L.J.S.C.:

1 The applicants herein have made application to this court pursuant to s. 56(1) of the Residential Tenancy Act, 1977 (B.C.), e. 61, for a review of the order of the rentalsman made 23rd February 1978, ⁱⁱⁱ which it was ordered that the applicants:

forthwith deliver full and peaceable vacate possession and occupation of the said residential premises to the said RAYMOND JOSEPH PILON at Pad C6, Anmore Campground, Sunnyside Road, Anmore, R.R.I., Ioco, British Columbia, and thereby to cease contravening the provisions of Section 14(3) of the Residential Tenancy Act.

2 The applicant McLean owned a 1974 **27-foot "Travelaire" travel trailer** (hereinafter called "the trailer") which he sold to the respondent in August 1976 under an agreement stipulating a down payment and subsequent monthly payments. The respondent defaulted and fell into arrears and the applicant McLean and the respondent entered into a new agreement concerning the trailer.

3 The new agreement was called a lease and refers to the applicant McLean as the lessor and the respondent as the lessee. The term of the lease is Eve years and rent payable is S 128.31 monthly. Material parts of the lease read as follows:

10. In the event of any default in the payment of rent or other breach of the covenants and agreements contained herein on the part of the Lessee, all installments of rent during the remainder of the term hereof shall immediately become due and payable and, in addition, the Lessor may enter upon the premises of the Lessee and repossess the leased trailer

12. Provided that the Lessee is not in default in the payment of rent or performance of the covenants or agreements herein contained, the Lessee shall have the right to purchase the said trailer front the Lessor at the expiration of the term hereof for the sum of Two (\$2.00) Dollars or at any time during the said term at the sum determined by reference to Exhibit 'A.' attached hereto.

4 Exhibit A refers to an amortization schedule attached to the lease in which the diminishing balance due is shown on the 18th day of every month during the said term.

5 The agreement was executed by the parties on 18th March 1977. On 22nd March 1977 the agreement was registered with the Registrar General, Victoria, British Columbia, pursuant to the provisions of the Conditional Sales Act, 1961 (B.C.), c. 9.

6 The respondent defaulted under the terms of the agreement and the applicants repossessed the trailer on 14th February 1978.

7 At all material times, the trailer was located on a "pad" in a mobile home park and the respondent occupied it as his personal residence. The applicants had no connection with, or interest in, the said mobile home park.

8 The rentalsman has ruled that the parties here have entered into a tenancy agreement in respect of residential premises, and consequently the provisions of the Residential Tenancy Act apply. The position taken by the applicants is that the relationship between the parties is that of vendor and purchaser of a chattel and that the transaction should be subject to the provisions of the Conditional Sales Act.

9 I note the following definitions found ins. 1 of the Residential Tenancy Act:

In this Act,

'landlord' includes lessor, sub-lessor, owner or other person permitting the occupation of residential premises, and his heirs, assigns, personal representatives, and successors in title and a person, other than a tenant occupying the premises, who is entitled to possession of the residential premises;

'mobile home' means a dwelling unit that is designed to be mobile and to be used, and that is being used, as a permanent or temporary residence;

'residential premises' means a dwelling unit used for residential purposes and includes, without limiting the generality of the foregoing,

(i) a mobile home,

'tenancy agreement' means an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of residential premises.

10 The trailer that is involved in these proceedings is on wheels hut is not self-propelled, nor does it have current licence plates, indicating that it was not being towed on the highway. It was located on a mobile home pad and was occupied by the respondent as his personal residence.

11 I therefore End that the trailer is a "mobile home" within the meaning of the definition set out in the Residential Tenancy Act. Having been found to be a mobile home, it is therefore within the definition of residential premises quoted above.

12 I also hold that the applicant McLean is a landlord as defined above. The trailer has been found to be residential premises, and McLean is certainly a person permitting the occupation of such residential premises.

13 I have next to determine whether the lease and option executed by the parties comes within the definition of a "tenancy agreement". It is, I find, an express written agreement having a pre-determined expiry date between a landlord and tenant respecting possession of residential premises.

14 The legislature has recognized the growing tendency of many in our society to dwell in mobile homes. This tendency is dictated, no doubt, by economic reasons and by the increased mobility of many of our citizens. It seems clear that the legislature intended that the Residential Tenancy Act should cover situations and relationships as are set out in the circumstances herein related. Section 3 of the Act says in part:

- 3. (1) Notwithstanding any other Act and notwithstanding an agreement to the contrary, hut subject to subsection (2), this Act applies to**
 - (a) residential premises and tenancies of residential premises.**

Subsection (2) lists a number of situations to which the Act does not apply, but mobile homes arc not mentioned in that subsection.

15 I have come to the conclusion that the rentalsman was correct in making the order that he did, as the provisions of the Residential Tenancy Act apply to the parties hereto.

16 .At the hearing it was the contention of counsel for the respondent that the Conditional Sales Act should apply to the parties rather than the Residential Tenancy Act. It is my view that there should be compliance with the Conditional Sales Act as well as the Residential Tenancy Act. They are not repugnant to each other. Although they deal

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with different subjects, they are not in conflict. I quote from Maxwell on the Interpretation of Statutes, 11th ed. (1962), pp. 162-63:

Parallel Acts

It is sometimes found that the conflict of two statutes is apparent only, as their objects are different and the language of each is restricted, as pointed out in a preceding chapter, to its own object or subject. When their language is so confined, they run in parallel lines, without meeting.

17 This application is therefore dismissed and the order of the rentalsman confirmed.

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