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Seek professional advice to keep cottage in the family

The Ontario Court of Appeal has dismissed an appeal by a mother who promised to give her son two family cottages if he renovated them, but then changed her mind.

The story began back in 2000 when Margaret Sheldrake made an agreement with her son Douglas about two cottages she owns in Bancroft.

The cottages were in bad condition but Margaret wanted them to remain in the family. The deal with Douglas was that if he moved into them and renovated them with Margaret's assistance, she would gift them to him on her death or possibly earlier.

At the time of the agreement, the cottages were worth about \$300,000, but are presumably worth considerably more now.

Part of the arrangement was that Margaret would adjust her will so that her other children would be appropriately compensated.

The agreement was confirmed orally in 2001 and later reduced to writing. Margaret gave Douglas the keys and said the cottages belonged to him.

Douglas quit his job in Toronto and moved to Bancroft so he could renovate the cottages. He intended to live in one and rent out the other when the renovations were finished.

During the following two years, Douglas completed extensive improvements to both buildings, both by himself and with the aid of outside contractors. Margaret helped out financially with the renovations.

By late 2003, the relationship between mother and son was going downhill. Margaret wanted to sell the cottages and compensate Douglas financially in her will. Margaret's other son, Donald, got involved in representing his mother, and the relationship between the two brothers became acrimonious.

In spring 2004, Donald took over his mother's affairs using a power of attorney. He emailed Douglas to say, "I own everything now, mom owns nothing... she's given it all to me. She's given me power of attorney and full signing rights. It's all mine!! I'm keeping everything, the rest of you can all die as far as I'm concerned. Mom has given everything to me and after she's gone, I don't care, I'm keeping it all for myself."

Eventually, Margaret secured a court order evicting Douglas from the cottages.

He moved out and sued his mother for a declaration that he was the owner of the property. The trial was held in 2007 and Douglas was the only person to give evidence. Although Margaret was represented by a lawyer, she did not testify, nor did Donald.

Justice A. de Lotbinière Panet decided that Douglas was telling the truth and accepted his evidence. The judge ruled that there was a binding agreement between mother and son, requiring Margaret to hold the cottages in trust for Douglas during her lifetime.

A three-judge panel of the Court of Appeal heard Margaret's appeal in January.

"The evidence of the respondent [Douglas] was uncontradicted and accepted by the trial judge," the court wrote.

The appeal judges agreed the evidence supported Douglas' claim his mother agreed to transfer title to him if he completed the renovations. They dismissed Margaret's appeal and awarded \$10,000 in costs against her.

As a result of the court decisions, Margaret is required to hold the cottages in trust for Douglas during her lifetime. She must pay property tax until the two cottage properties are transferred to him.

For many cottagers, there seems to be a much stronger emotional attachment to the summer home than there ever is to the house in the city.

As cottage season approaches, the Sheldrake case serves as a reminder that cottagers who want the summer home to remain in the family through succeeding generations should seek professional legal and tax advice before it becomes necessary to hire litigators to do it for them.

Bob Aaron is a Toronto real estate lawyer and a director of the Tarion Warranty Corporation. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at <http://aaron.ca/columns/toronto-star-index.htm> for articles on this and other topics.

SEE TRIAL DECISION AT <http://www.aaron.ca/columns/2008-07-19.htm>

Sheldrake v. Sheldrake, 2009 ONCA 58 (CanLII)

Print: ☐ PDF Format

Date: 2009-01-21

Docket: C48283

URL: <http://www.canlii.org/en/on/onca/doc/2009/2009onca58/2009onca58.html>

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- Superior Court of Justice

[Sheldrake v. Sheldrake](#), 2008 CanLII 874 (ON S.C.)

CITATION: Sheldrake v. Sheldrake, 2009 ONCA 58

DATE: 20090121

DOCKET: C48283

COURT OF APPEAL FOR ONTARIO

O Connor A.C.J.O., Goudge and Juriansz JJ.A.

BETWEEN:

Margaret Georgina Sheldrake

Defendant (Appellant)

and

Douglas Kelley Sheldrake

Plaintiff (Respondent)

M. John Ewart and Kourtney O Dwyer, for the appellant

Gordon Wood, for the respondent

Heard: January 20, 2009

On appeal from the judgment of Justice A. Panet of the Superior Court of Justice, dated January 3, 2008.

APPEAL BOOK ENDORSEMENT

[1] The evidence of the respondent was uncontradicted and accepted by the trial judge. The trial judge's finding that the work performed by the respondent was referable to the oral agreement that the appellant would transfer the properties to him was supported by the evidence. We see no basis to interfere.

[2] The appeal is dismissed.

[3] Costs to the respondent in the amount of \$10,000, inclusive of GST and disbursements.