

No oral contract between brothers over cottage ownership (Poole v. Poole)

Commercial Real Estate | Litigation & Dispute Resolution | Partition Act

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As distasteful as they may be, a written contract between family members over jointly held property may be a prudent way to avoid future disputes. Without evidence of such a written agreement, a family member's efforts to determine how the property is used by other family members may not find any support in the courts or prevent the property from being sold if there is a breakdown in the relationship.

Poole v. Poole, 2026 ONSC 1545 (CanLII), involved a dispute between two brothers (James and Gregory) over a cottage that was purchased by their mother and registered in their three names as joint tenants. The brothers and their families enjoyed the cottage together until they had a falling out after their mother died in 2019.

Due to the deterioration in the family relationship, James offered to buy out Gregory's interest in the cottage, failing which he advised that he would seek a sale under the Ontario *Partition Act*.

Shortly thereafter, Gregory sued his brother and alleged, among other things, that James breached an oral contract to refrain from selling the cottage before 2033. He alleged that James breached a second oral contract regarding their time sharing of the cottage. Gregory claimed that James interfered with his quiet enjoyment of the cottage during his allotted time and had harassed and intimidated him.

In response, James denied the existence of either a contract as well as any alleged misconduct. James brought a motion for summary judgment for an order under the *Partition Act* and a dismissal of Gregory's claims.

Gregory relied on his own affidavit evidence stating that in or around June 2013, the brothers made an oral agreement that they would continue to own, use and share the cottage until December 2033, and that they would share the cost of carrying and maintaining the property. Gregory claimed that the brothers agreed that they would discuss a potential buyout at the end of 2033 to keep the property in the family.

However, Gregory's affidavit was otherwise devoid of context or supporting details for the alleged oral agreement. It was simply a bald statement of its terms.

During Gregory's examination for discovery, he stated that the oral agreement happened over many dates in May and June 2013, while James was going through a divorce and living with him. He claimed that the oral agreement was an effort by James to insulate his interest in the cottage from his former wife. This was never put in writing, Gregory claimed, because James did not wish to spend additional money on a lawyer to formalize their agreement.

However, Gregory admitted that he did not pay James any money for the alleged promise to refrain from selling the cottage before 2033. In his words, it "was not about money or any compensation, it was strictly family". Further, there was no supporting evidence that James actually took any steps to attempt to insulate the cottage from his divorce proceedings.

The motion judge was not persuaded by Gregory's version of events, which was not supported by evidence from any other potential witnesses. The Transfer/Deed of Land for the cottage showed nothing more than their mother having transferred the property from her own name to all three of them as joint tenants for "nil" consideration in the form of "natural love and affection". The mother's will did not address ownership of the cottage at all or provide for any constraints on

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ownership or their ability to deal with the property.

The motion judge therefore determined that there was no oral agreement between the parties to refrain from selling the cottage before 2033.

Gregory further claimed that he and James had an oral contract about their time-sharing schedule for the cottage that they had made to avoid being at the cottage at the same time and thereby avoid further conflict.

The motion judge concluded, however, that the evidence did not support Gregory's allegations. At most, the brothers and their families tried to avoid being at the cottage at the same time after their falling out. However, this type of agreement would not give rise to an enforceable contract.

Contract law generally does not regulate these types of social arrangements between family members because they are not intended to create legal rights and obligations but depend on family ties and on mutual trust and affection: *e.g. Jones v. Padavatton*, [1969] 2 All E.R. 616 (C.A.). In the motion judge's words, "courts should be slow to find an enforceable contract in these circumstances".

Lastly, the motion judge dismissed Gregory's claims for misconduct based upon James's use of the jointly held property. The parties did not file any case law in which a joint tenant was found liable in nuisance to another joint tenant for their use of their land and the motion judge found no evidence of harassment as alleged by Gregory.

The motion judge then turned to James' request for a sale of the cottage under the [Partition Act](#).

A joint tenant has a presumptive right to partition or sale of a property under [section 2](#) of the [Partition Act](#) unless the party resisting the sale demonstrates a sufficient reason to refuse it. To justify a refusal, the responding party must establish malicious, vexatious, or oppressive conduct by the party seeking the partition order: *e.g. Greenbanktree Power Corp. v. Coinamatic Canada Inc.*, 2004 CanLII 48652 (ON CA). The court has very little discretion to refuse the relief.

The motion judge commented that in cases under the [Partition Act](#), it was unexceptional to see interpersonal conflict and a breakdown in the relationship between joint tenants. Indeed, this was commonly the reason that such applications are commenced. Here, there was no reason to deny James an order for the cottage's sale. His conduct was not malicious, vexatious, or oppressive.

While a valid contract between co-owners may provide a reason to refuse partition and sale, if they have agreed to refrain from doing so, there was no such agreement between the brothers which disentitled James to the relief sought under the [Partition Act](#).

Gregory sought to resist the sale due to his sentimental attachment to the property. However, the motion judge found that there was nothing legally unique about the cottage and sentimental attachment was not a sufficient legal reason to refuse the relief sought by James.

Accordingly, the court was satisfied that James had a right to sale under [section 2](#) of the [Partition Act](#) and that Gregory had not demonstrated a sufficient reason for refusal. Summary judgment was [granted](#) to James and Gregory's action was dismissed.

As a result of the decision, the cottage will presumably be sold on the open market. The case illustrates the unfortunate consequences of a breakdown in family relationships and ownership of a jointly held property. One feels for the family members of the two sparing brothers who will no longer enjoy the use of a recreational property. A PDF version is available for download [here](#).

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