
CANADA / JUDGMENT

B.M.S. v. J.M.S.

2015 BCSC 2084

COURT

Supreme Court of British Columbia

DECIDED

2 December 2015

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2015 BCSC 2084 B.M.S. v. J.M.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.M.S. v. J.M.S.,

2015 BCSC 2084

Date: 20151202

Docket: E028955

Registry: New Westminster

Between:

B.M.S.

Claimant

And

J.M.S.

Respondent

Before: The Honourable Mr. Justice Bernard

Reasons for Judgment on Costs

Counsel for Claimant:

J.J. Hittrich

Counsel for Respondent:

J.C. Fiddes

Date of Submissions:

New Westminster, B.C.

May 11, 2015

November 30, 2015

Place and Date of Judgment:

New Westminster, B.C.

December 2, 2015

- [1] The parties are former spouses who were divorced by court order dated May 17, 2010. This order resolved in principle, and by consent, the division of family assets and debts. To achieve an actual division, however, the order obliged the parties to account to one another in relation to various assets and debts, to attempt to increase a joint line of credit for the purpose of paying off high-interest credit card debt, to continue to list for sale real property on Saturna Island, and to obtain a valuation of Ms. S.'s business.
- [2] In the event of disagreement on accounting or adjustment issues, the parties were at liberty to apply for a court-ordered relief "as to accounting, valuations, or any reasonable matter related to the eventual mechanism of the final property division".
- [3] It was implicit in the parties' agreement to the foregoing consent order, reached on the eve of trial, that they would act in good faith, cooperate with one another, and take timely and reasonable steps to achieve a final division of assets and debts. This did not occur, and it is not contentious that Mr. S. was largely responsible for the failure. Mr. S. frankly acknowledged that he was not pleased with the settlement negotiated by his counsel and, as a result, he essentially disregarded the order and intentionally breached the term obliging him to apply to increase a line of credit.
- [4] Mr. S. was also admittedly angry at Ms. S. for various perceived or actual wrongs against him. He acknowledged reporting Ms. S. to Canada Revenue Agency in relation to her business (for which there was to be a valuation for the purpose of asset division) out of "anger and spite". An ensuing audit in the post-order period not only caused Ms. S. much grief, it also disrupted the asset division by putting into question the amount of business debt and, therefore, the value of the business for the purpose of achieving the asset/debt division contemplated by the order.
- [5] Eventually, Ms. S. sought a declaration that Mr. S. was in contempt of court, and other relief aimed at attempting to resolve the asset/debt division. At the trial, Mr. S. admitted his contempt. He was also surprisingly frank about his anger, his flagrant disregard for the court's order, and his failure to take reasonable steps to either comply with, or attempt to set aside, the order.

- [6] Ms. S. now seeks a special costs award as indemnification from Mr. S., on the basis that Mr. S.'s post-order flagrant breach of the court's order and demonstrable bad faith in following the spirit of the order, was reprehensible conduct deserving of the court's reproof or rebuke. The essence of her position is that Mr. S.'s conduct, motivated principally by anger and spite, needlessly obliged her to incur additional costs to enforce the order; one to which Mr. S. had consented. Ms. S. submitted as follows:

The implementation of the May 17, 2010 Consent Order has been frustrated at every turn by Mr. S. He has shown a stubborn and vindictive attitude and complete disregard for due process. Ms. S. has had to incur delay after delay and major costs in terms of interest costs and legal costs.

- [7] Mr. S.'s position is that the parties ought to bear their own costs. He notes that he admitted his contempt and submits that while Ms. S. generously sought no punishment, she now seeks special costs to, effectively, "have the fine paid to her rather than the crown".
- [8] As for indemnification for costs from a contemnor, in *Everywoman's Health Center Society (1998) v. Bridges*, 1991 Can LII 5715 (B.C.C.A.), 54 B.C.L.R. (2d) 294 (C.A.) Madam Justice Southin, delivering the judgment of the Court, said:
- [14] As to the costs awarded in the civil contempt proceedings, I see no foundation for interfering with that determination. It has long been the practice in the court below to award such costs to a successful applicant. The practice is sound. A person who obtains an order from the court is entitled to have it obeyed without further expense to himself.
- [15] For the proceedings in this Court, the respondents seek an order of special costs under the rule promulgated on 1st September, 1990, which replaces the earlier rule which provided for solicitor-client costs.
- [16] Counsel for the respondents says in her written submission that the new rule as to special costs is intended to enable the court to indemnify, where appropriate, fully, or at least substantially, a party for the costs to which he or she has been put. I agree with her.
- [9] Similarly, in *Sound Contracting Ltd. v. Comox-Strathcona (Regional District)*, [2005] B.C.J. No. 682, (B.C.C.A.) Mr. Justice Smith, delivering the judgment of the Court, said:
- [17] Counsel for the appellant emphasized that the contempt had been purged in this case and submitted that a finding of special costs ought not to be made in those circumstances. In my view, the fact that the contempt had been purged is irrelevant. Purging the contempt did not render the conduct any less contemptuous. Rather it simply absolved the appellant and Mr. Heringa from punishment for the contemptuous conduct. Special costs are awarded on the basis of reprehensible conduct and, as Mr. Justice Warren pointed out in the case that I earlier referred to, wilful disobedience of a court order is reprehensible conduct within the meaning of that word as it is used in the context of special costs.

- [10] Applying the foregoing to the case at bar, I am satisfied that Ms. S. is entitled to the special costs order she seeks. Ms. S. was entitled to Mr. S.'s good faith in implementing the May 17, 2010 order, and entitled to have it obeyed without further expense to her. The subsequent proceedings were necessitated principally, if not solely, by Mr. S.'s wilful and ill-motivated disregard for the court's order. Although all the relief sought by Ms. S. was not granted, I am satisfied that she enjoyed substantial success.
- [11] Finally, I note that each party, in their submissions, relied upon alleged post-judgment misconduct of the other party (i.e., failure to comply with one or more terms of my order). I am not persuaded this is conduct that is properly considered in the context of a costs claim in the instant proceedings; it may, however, have relevance to subsequent proceedings, should they be necessary.

"The Honourable Mr. Justice Bernard"

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