
CANADA / JUDGMENT

Bartch v. Bartch

2015 BCSC 1686

COURT

Supreme Court of British Columbia

DECIDED

18 August 2015

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2015 BCSC 1686 Bartch v. Bartch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bartch v. Bartch,

2015 BCSC 1686

Date: 20150818

Docket: E47527

Registry: New Westminster

Between:

Terry Lynn Marie Bartch

also known as Terry Lynn Bartch

Claimant

And

Bradley Dean Bartch

also known as Brad Bartch

Respondent

Before: The Honourable Mr. Justice A. Saunders

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

R.S. Tretiak, Q.C.

Counsel for the Respondent:

D.L. Polley

Place and Date of Trial/Hearing:

New Westminster, B.C.

August 18, 2015

Place and Date of Judgment:

New Westminster, B.C.

August 18, 2015

- [1] THE COURT: The respondent, Mr. Bartch, seeks an order transferring this family action from New Westminster to Kelowna, for all purposes.
- [2] Ms. Bartch, as the claimant, has the right under the Supreme Court Family Rules to choose the venue of the proceeding. That is a right enjoyed by all claimants and plaintiffs and it is an important right. That right, however, may be subordinate to other concerns.
- [3] The test for a change in venue of the trial of an action is as set out in the dissenting judgment of Justice Martin in *Armstrong v. Revelstoke (City)*, [1927] 2 W.W.R. 245, 38 B.C.R. 253 (BCCA). The court may exercise its discretion to change venue where it is shown that another location will be substantially more convenient. However, even where such substantial convenience is demonstrated, it may be overcome where a move would result in some unfairness such that it is in the interests of justice for the venue to remain unchanged.
- [4] I will first consider the preponderance of the convenience between the parties. The parties are in Kelowna. They resided there together for many years and they reside there still. They have always done business there. They operated together, and Ms. Bartch still operates, a multi-level marketing business. Their counsel each maintain practices there: Mr. Tretiak practices in New Westminster and Kelowna, Mr. Polley in Kelowna only. The subject matter of the action, and the parties, have nothing to do with New Westminster other than the fact that the action was started here.
- [5] Mr. Bartch, in his affidavit, provided a list of eight specific persons who may be witnesses at trial. Those are people who reside in Kelowna. He says their attendance at trial may be necessary. His counsel elaborated on that in submissions and said that as people who knew the parties and some of them, at least, knowing something about the way the parties conducted business together, their evidence may go to the question of the separation date. The question of the separation date is one of the chief issues in this case in respect of the property division claim. Undoubtedly, the potential participation of all of those witnesses weighs in favour of the proposed change in venue.

- [6] Ms. Bartch in her affidavit says that she may call unspecified, unnamed witnesses from Vancouver, from Alberta, from Ontario, and from the United States.
- [7] A witness from Vancouver, obviously, would find it cheaper and more convenient to attend here in New Westminster than in Kelowna; the balance of convenience favours New Westminster for that individual.
- [8] With respect to a witness from Alberta, in my view, location would appear likely to be a neutral factor, as there are direct flights from Alberta into both Kelowna and Vancouver.
- [9] With respect to a witness from Ontario attending at either venue, of course, would be equally inconvenient. I am not aware of any flights directly from Ontario into Kelowna. It may be that there are some, but even assuming that the witness would have to fly into Vancouver if the venue were here in New Westminster and then move by taxi or by SkyTrain out to New Westminster. There would be some considerable inconvenience to the witness having to attend here from Ontario. The additional inconvenience posed by having to fly the witness from the Vancouver airport to Kelowna would seem to me to be marginal.
- [10] There is also the suggestion in Ms. Bartch's affidavit of necessary witnesses from the United States. Mr. Tretiak alluded that there may be witnesses required from the head office of the parent company within the multi-level marketing program or business that Ms. Bartch is involved in who might have to testify as to certain terms of the contractual relationship between them and Ms. Bartch's company that governs their activity. I assume that these were the witnesses to whom his client was referring.
- [11] I am not persuaded that there is a great likelihood that viva voce testimony from witnesses would be necessary regarding the contractual relationship issue. There are contractual documents that speak to the parties' obligations. In any event, again, there is great inconvenience, obviously, in bringing a witness to New Westminster from Houston or from anywhere in the United States. There is certainly no greater convenience posed by bringing them to Kelowna; if anything there would be some degree of inconvenience, but in my judgment it would be marginal.
- [12] On balance, I find that the first branch of the test in Armstrong is satisfied; there would be at least a substantial preponderance of convenience in favour of the venue for the trial being transferred to Kelowna. Given that counsel both practice in Kelowna, it would be appropriate to transfer the action there for all purposes.
- [13] Now, as to second branch of the test, whether the convenience factors are overcome by the interests of justice, I turn to the affidavit of Ms. Bartch. First, at para. 101 of her affidavit she states:

I am well known in the Okanagan area as a result of my active promotion of NuCerity.

She says then further on at para. 103:

NuCerity is [an] image and reputation based company. Promoting a beautiful life and a positive image is a part of NuCerity. Because of the acrimonious nature of the breakdown of our relationship, I am concerned that it will adversely affect my NuCerity business.

If what Ms. Bartch is saying here is that there is potentially an inconsistency between the positive image of the company and the true nature of her relationship with her husband and its breakdown, the court has no interest in fostering an untrue public image.

[14] At para. 102, Ms. Bartch says this:

Because I am not known professionally in New Westminster I can maintain a level of privacy with respect to my NuCerity business. I am extremely concerned that trade secrets will be disclosed throughout these proceedings and I wish to prevent such disclosure in Kelowna where I am very active in my NuCerity business.

She goes on at para. 105 to say:

Over the last 6 years, I managed to successfully build my business through my personal innovative methods and techniques. I am concerned that should the matter be heard in the Okanagan, my trade secrets may be exposed and disbursed to competitors in the Okanagan area.

These are bare assertions on the part of Ms. Bartch. There is no detail provided as to the nature of these purported trade secrets, no evidence provided as to how they could be compromised, why people would be interested in them, and why they require the protection of the courts in terms of having the trial of this matter conducted in what I have found would be an inconvenient, a markedly inconvenient, venue.

[15] If there is any substance at all to these assertions of there being a commercial interest deserving of some level of court protection, that can be dealt with by the trial judge in the form of a sealing order. That is an appropriate matter for the trial judge to deal with. It is not a matter that is deserving of any consideration in respect of the venue of the trial, particularly on the evidence that I have before me.

[16] Finally, as I noted, it appears that the date of separation will be one of the chief issues in this case. There is a separation date specified in a written, unwitnessed separation agreement, but that date is contested by Mr. Bartch. Therefore, a threshold issue will be the enforceability of that agreement. Counsel for Ms. Bartch submits that this action could be effectively and conveniently bifurcated, with the validity and enforceability of the separation agreement being dealt with first, as a preliminary issue, and that this determination could be made in any venue; if the determination of that issue did not lead to the action being resolved, the trial could then proceed in Kelowna.

[17] It appears that the parties will have to deal with this issue by means of one of them seeking an order that the court apply s. 93 of the Family Law Act, S.B.C. 2011, c. 25, to that written unwitnessed agreement. Subsection 93(3) provides that a witnessed separation agreement may only be set aside or replaced with an order made under Part 5 of the Family Law Act if

one or more of certain particular circumstances enumerated therein are made out.

Subsection 93(4) provides that the court may decline to act under subsection 93(3) if it would not replace the agreement with an order whose terms were substantially different from those of the agreement. Subsection. 93(5) further provides that even if the circumstances enumerated in subsection 93(3) are not made out, the agreement may still be set aside if it is found to be significantly unfair on consideration of another list of specified factors.

[18] Those provisions, as I have indicated, apply to witnessed separation agreements. The subject agreement, however, is unwitnessed. Subsection 93(6) provides:

(6) Despite subsection (3), the Supreme Court may apply this section to an unwitnessed written agreement if the court is satisfied it would be appropriate to do so in all of the circumstances.

[19] I am not aware, and counsel are not aware, of any judicial interpretation of that subsection. If the phrase "all of the circumstances" were interpreted to mean the circumstances enumerated in subsections 93(3) and (5), then it might be the case that the validity of the separation agreement could be determined only through hearing the testimony of the parties themselves, or in some summary fashion, and such could take place in the present venue, New Westminster, without substantial inconvenience. However subsection 93(6) is not so limited, on its face; it is conceivable that the phrase "in all the circumstances" may be interpreted broadly, such that a broad inquiry into the circumstances of the parties is necessary. In the present case, that could require evidence to be given by independent witnesses familiar with the parties, in respect of how they led their lives and conducted their business affairs together. Given the parties' close connections to Kelowna, it is probable that such evidence would be given by persons who reside in Kelowna. I cannot conclude that the suggested bifurcation of the action would alter the balance in favour of a change of venue.

[20] For today's purposes, I would hesitantly express some reservations as to whether it would be practical to deal with this issue on a preliminary basis. Given the potential complexity of what is meant by "in all the circumstances," I have some concern as to whether that will indeed be a practical way of proceeding. That will be a matter for the trial judge to determine.

[21] For those reasons, the application of the respondent for a change in venue for all purposes is granted.

[DISCUSSION WITH COUNSEL]

[22] MR. POLLEY: My Lord, as I had opened with today, I only was concerned that, if it is necessary for the court registry, that the order be that that includes the trial?

[23] THE COURT: Yes, for all purposes including trial. So you should secure a new trial date with Kelowna as soon as possible and file an amended notice of trial reflecting that.

"A. Saunders J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/15/16/2015BCSC1686.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bartch-v-bartch-2015>

Prepared on 24 October 2026 · Esheria