

CANADA / JUDGMENT

Bergevin v. Bergevin

2021 BCSC 2039

COURT

Supreme Court of British Columbia

DECIDED

19 October 2021

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2021 BCSC 2039 Bergevin v. Bergevin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bergevin v. Bergevin,

2021 BCSC 2039

Date: 20211019

Docket: E16303

Registry: Nelson

Between:

Marion Elizabeth Bergevin

Claimant

And

George Elie Bergevin, Bergevin Electrical Contracting Ltd.,

Bergevin Electrical Contracting Nelson Ltd., Bergevin Developments Inc.,

Rosegarden Holdings Ltd. and Roseberry Highlands Water Company Ltd.

Respondents

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

The Claimant, appearing in person:

M.E. Bergevin

Counsel for the Respondent, G.E. Bergevin:

Z.A. Lee

No other appearances

Place and Date of Trial/Hearing:

Nelson, B.C.

August 17 and 19 and

October 12, 2021

Place and Date of Judgment:

Nelson, B.C.

October 19, 2021

- [1] Marion and George Bergevin are former spouses. They were married for 33 years. A divorce order was granted on November 12, 2019.
- [2] The parties engaged in lengthy family litigation presided over by Mr. Justice Groves, including a trial in 2012 and 2013, and resulting in a number of orders (the "Orders"). Subsequently, on April 17, 2014, they entered into a settlement agreement (the "Settlement Agreement"). The recitals to the Settlement Agreement begin as follows:

WHEREAS George and Marion each wish to settle outstanding matters between them on a mutually agreed basis different from those stipulated in the Reasons for Decision of Mr. Justice Groves

- [3] The Settlement Agreement generally addresses the division of the parties' property. It was filed in court on August 3, 2021.
- [4] Mr. Bergevin says that Ms. Bergevin has refused to comply with several terms of the Orders and Settlement Agreement, which has kept them financially connected. He applies for a number of orders, the majority of them intended to give effect to and enforce the terms of the Settlement Agreement.
- [5] Ms. Bergevin did not file an application response or affidavit evidence. She did appear at the hearing to make submissions on her own behalf. The central thrust of Ms. Bergevin's submissions was that the Settlement Agreement was inconsistent with the Orders, that she was coerced into signing the Settlement Agreement, that she was depressed at the time she signed the Settlement Agreement, that she did not understand the legal effect of the Settlement Agreement, and that she was poorly advised by the counsel who represented her at the time it was entered into. Ms. Bergevin also says that Mr. Bergevin has failed to comply with the Settlement Agreement and has cheated her out of funds she was entitled to. In effect, she sought to have the Settlement Agreement set aside.

- [6] The fundamental problem with Ms. Bergevin's position is that she has not filed an application pursuant to s. 93 of the Family Law Act, S.B.C. 2011, c. 25 to have the Settlement Agreement set aside. Nor, despite having the opportunity to do so, has she filed any affidavit evidence to substantiate her allegations about the circumstances under which the Settlement Agreement was entered into. The court can only act on the basis of admissible evidence, and there is no evidence before me on which I could give effect to any of Ms. Bergevin's concerns about the Settlement Agreement.
- [7] Ms. Bergevin also submitted that it was not open to the parties to enter into a settlement agreement which was inconsistent with Justice Groves' Orders. She submitted that the parties had to comply with the Orders unless they were overturned on appeal. The law does not support that position.
- [8] Section 6 of the Family Law Act provides as follows:
- 6 (1) Subject to this Act, 2 or more persons may make an agreement
- (a) to resolve a family law dispute, or
 - (b) respecting
 - (i) a matter that may be the subject of a family law dispute in the future,
 - (ii) the means of resolving a family law dispute or a matter that may be the subject of a family law dispute in the future, including the type of family dispute resolution to be used, or
 - (iii) the implementation of an agreement or order.
- (2) A single agreement may be made respecting one or more matters.
- (3) Subject to this Act, an agreement respecting a family law dispute is binding on the parties.
- (4) Subsection (3) applies whether or not
- (a) there is consideration,
 - (b) the agreement has been made with the involvement of a family dispute resolution professional, or
 - (c) the agreement is filed with a court.
- [9] Under s. 6(1), parties may enter into an agreement to resolve a family dispute or respecting the implementation of an agreement or an order. Such an agreement is binding on the parties. They may enter an agreement following the court making orders, and may do so in a manner inconsistent with such orders.
- [10] That point is illustrated by the decision of Mr. Justice Mayer in *Brown v. Etchells*, 2021 BCSC 1432. In that case, the parties had obtained a number of court orders. Subsequently, they entered into a settlement agreement. One spouse applied to have the settlement agreement set aside, and the other spouse applied to have it declared a valid settlement agreement, and

to have certain previous orders which conflicted with it set aside. The court, at para. 37, declared that the agreement was valid, and to the extent they were in conflict, set aside the previous court orders.

- [11] It was open to the Bergevins to enter into the Settlement Agreement, notwithstanding that some of its terms departed from Justice Groves' previous Orders. The Settlement Agreement is binding on the parties. It is seven years since it was entered into, and it is past time for it to be fulfilled.
- [12] I enter into a consideration of the specific orders applied for by Mr. Bergevin. In seeking these orders, Mr. Bergevin relies generally upon Supreme Court Family Rule 2-1(3), which gives the court the power to enforce an agreement filed under Rule 2-1 on application. He also relies upon Rule 15 8(1)-(3), which gives the court the power to order the sale of property and to appoint a person to have conduct of the sale. In addition, he relies upon s. 97(1)(b) of the Family Law Act, which authorizes the court to make orders that are necessary, reasonable or ancillary to give effect to the division of family property or debt.
- [13] The first order sought has to do with what the parties refer to as the "Remainder property". Mr. Bergevin, as bare trustee for Bergevin Development Inc., owns the Remainder property, which is described as follows:
- D.L. 4874 except Parcel A and Plans R131, NEP20686, NEP21124, NEP23566, NEP75432, and NEP87468, consisting of approximately 75 acres
- [14] Under the Settlement Agreement, Ms. Bergevin is entitled to ownership of the Remainder property. At the time the Settlement Agreement was entered into, it appears there was an issue as to whether the Remainder property was to be conveyed to Ms. Bergevin in her personal capacity or through a company held by her. Mr. Bergevin seeks to have Ms. Bergevin elect how she wishes to have the Remainder property conveyed to her within 30 days and accept title, and if she fails to do so, that he have the option of purchasing it or selling it, with the proceeds to go to Ms. Bergevin. He seeks to have sole conduct of the sale.
- [15] Ms. Bergevin says that she wants to take the title to the Remainder property in her personal name.
- [16] I am persuaded the order sought regarding the Remainder property is appropriate, and order it in the terms set out in paragraph 1 of the orders sought in the notice of application. In addition, I order that if Mr. Bergevin ultimately sells the Remainder property, the sale will be subject to court approval.
- [17] The second order sought has to do with what the parties refer to as "Parcel A". Mr. Bergevin, as bare trustee for Bergevin Developments Inc., owns Parcel A, legally described as:

Lot 1, Plan EPP101454, D.L. 4874, Kootenay Land District. PID 031-128-467, consisting of approximately 35 acres

- [18] Under the Settlement Agreement, the parties are equally entitled to Parcel A, and were to make arrangements to market it for sale. Mr. Bergevin seeks to have Parcel A appraised, with him having the right to purchase Ms. Bergevin's interest at one-half the appraised value. If he does not choose to purchase Ms. Bergevin's interest, she would have the right to purchase his. If neither party is willing or able to purchase the other party's interest, Parcel A will be listed and sold, and the net sale proceeds split equally. Mr. Bergevin seeks to have sole conduct of the sale.
- [19] Ms. Bergevin wants to have title to Parcel A. Mr. Bergevin says he doubts that she has the financial resources to buy him out. While he may be correct about that, in my view, Ms. Bergevin should have the first right to purchase Mr. Bergevin's interest in Parcel A, at one-half the value to be determined by an appraisal. Mr. Bergevin will have the right to purchase Ms. Bergevin's interest, should she not be willing and able to purchase his. If neither party purchases the other's interest, then Parcel A will be listed and sold, with Mr. Bergevin having sole conduct of the sale. In that event, the sale will be subject to court approval. With those variations, I make the order requested at paragraph 2 of the notice of application.
- [20] The third and fourth orders sought relate to Ms. Bergevin's shares in Bergevin Developments Inc. Under the Settlement Agreement, Mr. Bergevin is entitled to ownership of this and three other companies. Ms. Bergevin executed the necessary documents to transfer her shares in the other companies, but has not transferred her shares in Bergevin Developments Inc.
- [21] Mr. Bergevin seeks an order that within 15 days Ms. Bergevin execute the documents necessary to transfer her shares in Bergevin Developments Inc. and to resign as a director. Failing that, Mr. Bergevin seeks an order pursuant to s. 38 of the Law and Equity Act, R.S.B.C. 1996, c. 253 that he can execute the necessary documents.
- [22] Ms. Bergevin says that to date she has refused to transfer the shares and resign as a director because they are her "collateral for cooperation".
- [23] Mr. Bergevin is entitled to ownership of Bergevin Developments Inc. and I am satisfied that it is appropriate to order Ms. Bergevin to execute the documents to transfer her shares, and to resign as a director. Should she fail to do so within 15 days, then an order under s. 38 of the Law and Equity Act is appropriate.
- [24] Section 38 provides:
- 38 (1) If any person neglects or refuses to comply with a judgment or order directing the person to execute any conveyance, contract or document or to endorse any negotiable instrument, the court may, on terms and conditions as may be just, order that the deed, conveyance, contract, assignment or other document must be executed or that the negotiable instrument must be endorsed by a person the court may nominate for that purpose.

- (2) If an order is made under subsection (1), the conveyance, contract, document or instrument executed or endorsed operates and is for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.
- [25] Section 38 was considered by Mr. Justice Ross in *Liu v. Meng*, 2020 BCSC 910 at paras. 12-18. He reviewed the law and noted that the common practice is to nominate the district registrar and did so in that case. I consider it appropriate to nominate the district registrar to execute any and all documents necessary to transfer Ms. Bergevin's shares in and resign as director of Bergevin Developments Inc.
- [26] The fifth and sixth orders sought relates to a water licence application. Under the Settlement Agreement, Mr. Bergevin is entitled to sole ownership of Bergevin Electrical Contracting Ltd. In his affidavit, Mr. Bergevin says that in or around 1991 he applied for a water licence to construct a power production facility on Gardner Creek. He filed it in both his and Ms. Bergevin's names on behalf of Bergevin Electrical Contracting Ltd., he believes because they were both directors of that company at that time. According to Mr. Bergevin, in order to proceed with the water licence application on his own, Ms. Bergevin needs to notify the Ministry of Forest, Lands and Natural Resource Operations and Rural Development (the "Ministry") that she withdraws from the water licence application and authorizes him to continue on his own. He says that he has asked Ms. Bergevin to do so, and she has ignored his request.
- [27] I am satisfied that an order requiring Ms. Bergevin to send a letter within 15 days to the Ministry withdrawing from the water licence application and authorizing Mr. Bergevin to proceed on his own is necessary to give effect to the terms of the Settlement Agreement. Should she fail to do so, I nominate the district registrar, pursuant to s. 38 of the Law and Equity Act, to do so.
- [28] Those are all of the orders sought by Mr. Bergevin that relate to the Settlement Agreement. In addition, he sought an order prohibiting Ms. Bergevin from publishing comments on social media about him or the parties' separation.
- [29] In applying for this order, Mr. Bergevin referred to some Facebook posts made by Ms. Bergevin in or around February 2020 in which she made some unflattering remarks about him.
- [30] In support of this order, Mr. Bergevin relied on ss. 222, 225 and 227 of the Family Law Act. Section 222(b) gives the court the authority to make an order "to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order". Section 225 gives the court the authority to make an order "setting restrictions or conditions respecting communications between parties, including respecting when or how communications may be made." Section 227(c) gives the court the authority to make an order requiring a party to "do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222".

- [31] Counsel for Mr. Bergevin acknowledged in his submissions that he was seeking a broad interpretation of these provisions in seeking an order prohibiting Ms. Bergevin from publishing any comments about Mr. Bergevin or the parties' separation on social media. No authorities were provided in support of making such an order.
- [32] In my view, Mr. Bergevin is seeking an overly broad interpretation of these provisions. Section 225 does not apply, as it refers to communications "between" parties, not "about" parties. Without deciding if it could be appropriate to make an order prohibiting communications on social media under ss. 222 and 227, I am not satisfied that such an order would be appropriate in this case. While Mr. Bergevin says that Ms. Bergevin has repeatedly disparaged him online since May 2010, the only examples provided were a handful from February 2020. I am not persuaded that it is necessary at this time to prohibit Ms. Bergevin from making any social media posts about Mr. Bergevin or the parties' separation in order to manage behaviours that might frustrate the resolution of this family law dispute. I therefore decline to make the order sought. Should Ms. Bergevin engage in behaviours in the future which have the effect of frustrating the resolution of this family law dispute, Mr. Bergevin is at liberty to apply.

"Lyster J."

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