

CANADA / JUDGMENT

Blitz v. Blitz

1999 BCCA 663

COURT

British Columbia Court of Appeal

DECIDED

26 October 1999

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COURT OF APPEAL FOR BRITISH COLUMBIA

ORAL REASONS FOR JUDGMENT

BEFORE THE HONOURABLE

Madam Justice Saunders October 26, 1999

IN CHAMBERS Vancouver, B.C.

BETWEEN:

MAUD BLITZ

PETITIONER

(APPELLANT)

AND:

ANDRE BLITZ

RESPONDENT

(RESPONDENT)

T. Hopman appearing for the Appellant

K. Thompson appearing for the Respondent

(Application for Directions)

- [1] SAUNDERS, J.A.: Mrs. Blitz, the applicant, has applied pursuant to s. 6 of the Court of Appeal Rules for an order extending the time for ordering appeal books and filing proof of ordering appeal books, by 90 days.
- [2] The divorce action was commenced December 1993. The issue was division of family assets and child support. It was heard over 20 days in 1996 and 1997. On August 17, 1998 Mr. Justice Drost issued reasons. Additional matters were heard in March 1999. On July 19, 1999 Mr. Blitz died in Netherlands. On August 10, 1999 Mr. Justice Drost issued reasons on the supplemental issues. Notices of appeal have been filed on both decisions, focused on the division of assets issue. The last notice of appeal was filed on August 30, 1999. It is agreed that proof of ordering appeal books was required to be filed by September 30, 1999.
- [3] Mr. and Mrs. Blitz had substantial assets at the time of separation and at the time of trial, both in Canada and outside Canada. Mrs. Blitz has consistently maintained that Mr. Blitz held assets outside Canada that he did not disclose to the Court. Mr. Blitz, for his part, was not co-operative in providing information concerning his out-of-Canada holdings and did not testify at trial. Mr. Justice Drost said this concerning one of the alleged European assets:

He is, to put it bluntly, an unmitigated liar; one who will do or say anything to defeat the petitioner's rightful claim to an equal share of all of their assets, and I reject the contradictory, discrepant, and downright dishonest "evidence" given by him.

That being the case, the first conclusion I have reached is that the respondent could have, had he chosen to produce relevant documents and testify at trial, provided clear evidence of what actually happened to the monies which, by his own admission, stood to his credit in the ABN Zurich account in January, 1994, and which he subsequently transferred to the BGL Account.

Accordingly, I have concluded that on a division of assets the petitioner must be credited with the sum of \$365,000, being one-half of the monies held by the respondent on deposit in the ABN Zurich Account as at January, 1994.

- [4] Mr. Justice Drost held that Mrs. Blitz was entitled to 50 percent of the assets, and was 50 percent liable on a tax debt, with the result that her share of assets valued by Mr. Justice Drost has a net value of approximately \$1.5 million. She is also entitled to costs which she estimates to be approximately \$300,000.
- [5] Anita Gans, the woman with whom Mr. Blitz resided at his death, is the executor of Mr. Blitz's Will. To date she has not filed for probate. A licensed trustee, Mr. Steve Barnes, has been appointed by the Supreme Court of British Columbia as trustee of all assets of Mr. Blitz, including any assets in certain financial institutions in Europe.

- [6] Since his appointment, Mr. Barnes has enquired of the European banks to determine if they hold assets in the name of Mr. Blitz, information which Mr. Blitz apparently declined to provide in the litigation before the Supreme Court of British Columbia. His enquiries are not complete at this time.
- [7] Mrs. Blitz seeks an extension of time to permit completion of Mr. Barnes' enquiries before she orders the appeal books, which will be costly. Ms. Gans, as executor, opposes the application saying that Mrs. Blitz has not shown a good reason to extend the time.
- [8] These circumstances are unusual. The search for further information arises directly from Mr. Blitz's own behaviour in the litigation when he failed to provide full disclosure concerning out-of-Canada assets and his conduct which led Mr. Justice Drost to observe that he was "an unmitigated liar" which cast doubt on the thoroughness of the disclosure provided. It arises also from appointment of a trustee by Court order. That is a new development in this file. The trustee is clothed with the authority to make enquiries of financial institutions which may generate information which ought to have been provided at trial and which, from the reasons for judgment, one has no confidence was thoroughly canvassed by Mr. Blitz.
- [9] The tests or considerations the Courts should apply in applications for extension of time are discussed in *Lau v. Lee*, [1995] B.C.J. No. 1905, a decision of Mr. Justice Taylor sitting in Chambers in the British Columbia Court of Appeal. At paragraph 8 of that decision, he refers to the case *Davies v. Canadian Imperial Bank of Commerce* (1987), 15 B.C.L.R. (2d) 256 and said:

... Mr. Justice Seaton, with whom Mr. Justice Macdonald concurred, mentioned five questions relevant to the disposition of applications for extension of time, which seem relevant in the present case: (i) Was there a bona fide intention to appeal (in the present case, was there a continuing bona fide intention to pursue the appeal)? (ii) When were the respondents informed of that intention (in the present circumstances, were the respondents informed of the reasons for delay in producing the material)? (iii) Would the respondents be unduly prejudiced by the extension of time? (iv) Is there merit in the appeal? and (v) Is it in the interests of justice that an extension be granted?

- [10] The challenge here is to the bona fides of the appellant's intention to appeal and the interests of justice. There is really no issue made about prejudice to the estate of Mr. Blitz.
- [11] I am satisfied that the criteria are met in this case for an extension in these circumstances and that the interests of justice will be served by the extension sought. An extension for convenience to December 31, 1999 is granted. By my calculation, that is actually 92 days but it is a convenient date for the appropriate filing.

"The Honourable Madam Justice Saunders"

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