

CANADA / JUDGMENT

Blumenschein v. Seel

2020 BCSC 1995

COURT

Supreme Court of British Columbia

DECIDED

19 June 2020

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2020 BCSC 1995 Blumenschein v. Seel THE SUPREME COURT OF BRITISH COLUMBIA Citation: Blumenschein v. Seel, 2020 BCSC 1995 Date: 20200619 Docket: S200862 Registry: Victoria Between: Eric Blumenschein and Jacob Trust Plaintiffs And Annemarie Seel, Jacob Enterprises Ltd., Joan Crescent Manor Holdings Ltd., and Windell Homes Ltd., and Peter Blumenschein, and Kelly Blumenschein Defendants Before: The Honourable Mr. Justice Funt (appearing by teleconference) Oral Reasons for Judgment In Chambers The Plaintiff, Eric Blumenschein, appearing by teleconference: E. Blumenschein Counsel for the Defendants, appearing by teleconference: A. Rafuse Place and Date of Hearing: Victoria, B.C. June 19, 2020 Place and Date of Judgment: Victoria, B.C. June 19, 2020

- [1] THE COURT: The plaintiff applicant seeks an injunction to prohibit his mother from undertaking an estate plan.
- [2] The applicant's mother is in her eighties and is not in the best of health. In 2019, she suffered a stroke and had open-heart surgery. She also states that she has had a brain aneurysm. From Dr. Gupta's December 13, 2019 letter, I understand that the applicant's mother still enjoys good mental faculties. The applicant does not disagree.
- [3] In all of the circumstances, I must consider what is just and equitable. Three factors in particular warrant consideration:
- 1) Is there a serious issue to be tried?
 - 2) Will the applicant suffer irreparable harm absent the injunction? and,
 - 3) Does the balance of convenience favour granting the injunction? The authorities for those factors are *RJR-MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5.
- [4] Before considering the three factors, I note that the applicant, in his notice of application, refers to a February 7, 1991 trust settlement deed. In reviewing the documents, I see documents that reflect a power of attorney and, as an aside, a possible testamentary aspect in that it may have been thought that it would survive the applicant's mother's death.

- [5] With respect to the first factor, the defendant respondents concede that there is a serious issue to be tried in that the applicant's claim, which has several dimensions, is not frivolous or vexatious.
- [6] With respect to the second factor, if the applicant's mother undertakes the proposed estate plan, I do not see the applicant will suffer irreparable harm. Matters may be quantified in monetary terms. With the real estate assets in Canada, the risk of failing to collect upon a successful judgment is greatly reduced. Further, tracing remedies would likely be available against the defendants and others that would be aware of the applicant's claims.
- [7] With respect to the third factor, the balance of convenience, I have noted the adequacy of damages and the fact that there are significant assets in Canada, including assets of over \$4 million in British Columbia.
- [8] In my view, a compelling aspect is that the applicant's mother wishes to have her affairs in order. She is in her eighties, has had serious health concerns, has five other children, and is mentally competent. She has been considering organizing her affairs for some years now.
- [9] Prior to proceeding with implementation, I understand, as one would expect, that the applicant's mother will receive her own, separate, independent legal advice.
- [10] Standing back and considering matters as a whole, I find that an injunction should not be granted at this time. The application is dismissed. [SUBMISSIONS ON COSTS]
- [11] THE COURT: I will award costs for a one-day hearing. Seeking an injunction is an extraordinary remedy and can be separated from the rest of the proceedings, so I will award costs on a one-day hearing. Thank you. [DISCUSSION]
- [12] ERIC BLUMENSCHIN: My Lord, I request that you make the scale, Scale A.
- [13] THE COURT: No, Scale B. It is the normal scale, ordinary difficulty here. Okay, and the costs are always reviewable by the registrar. "Funt J."

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