

CANADA / JUDGMENT

Brewer v. Hanoski

2015 BCSC 2186

COURT

Supreme Court of British Columbia

DECIDED

27 November 2015

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2015 BCSC 2186 Brewer v. Hanoski IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Brewer v. Hanoski, 2015 BCSC 2186 Date: 20151127 Docket: 15397 Registry: Nelson Between: Catherine Ann Brewer Plaintiff And Randolph Paul Hanoski also known as Randolph Paul Hanoski Defendant Before: The Honourable Madam Justice B. Brown Reasons for Judgment Counsel for Plaintiff: R. Ruston, Q.C. Counsel for Defendant: No Appearance Place and Date of Trial: Nelson, B.C. October 8, 2015 Place and Date of Judgment: Nelson, B.C. November 27, 2015

- [1] Ms. Brewer and Mr. Hanoski met in August 2002. They started living together in marriage-like relationship in October 2005.
- [2] In July 2008 they moved to Ainsworth, British Columbia where they had purchased a hotel. They separated in October 2008.
- [3] Ms. Brewer is of the view that they reconciled for a period of time in 2009 before their final separation.
- [4] I understand that Mr. Hanoski at his discovery took the position that they had not reconciled.
- [5] Mr. Hanoski did not attend at trial and did not give evidence.
- [6] Ms. Brewer started this action in May 2010. On June 3, 2010, the day after Mr. Hanoski had been ordered to vacate the property, the hotel burned to the ground. Ms. Brewer is of the view that he burned it intentionally when he realized that he would not be able to continue to occupy the hotel. He was charged with arson, but was acquitted.
- [7] Before me Ms. Brewer seeks orders for partition and sale of the Ainsworth Hotel, specifically an order that the net proceeds of sale from the sale of the property be allocated to her to permit her to pay off the debt she incurred to acquire the hotel.
- [8] The hotel property was sold in May 2014. The proceeds of sale \$160,000 have been held in trust since that date. Partition and Sale / Net Proceeds of Sale
- [9] Mr. Hanoski did not attend the trial and did not give evidence.

- [10] Ms. Brewer gave evidence. She was an entirely credible witness, was well organized and provided documents to support her evidence. I accept her evidence without qualification.
- [11] Throughout the relationship, Ms. Brewer provided most of the finances. Significantly, for the purpose of this action, at the time that the hotel burned Ms. Brewer owed \$211,798 on a mortgage which she had taken on property owned jointly by her and her mother to permit the parties to acquire the Ainsworth property. The property could not be insured and no institution would grant a mortgage charging the Ainsworth property, so the only option was to take a mortgage on other property.
- [12] I accept Ms. Brewer's evidence that Mr. Hanoski did some labouring on the hotel as well as on other properties that the parties had lived in or acquired before the Ainsworth Hotel. However, Ms. Brewer's financial contributions far exceed the value of Mr. Hanoski's direct contributions or his financial contributions to any of their properties.
- [13] They owned the hotel property in joint names. They acquired the property for \$295,000. There is presumption that when property is held in joint tenancy, the proceeds from that property should be divided equally. However, that presumption is subject to the principles of unjust enrichment: *Aleksich v. Konradson*, [1995] 6 W.W.R. 268 (BCCA).
- [14] In this case Ms. Brewer's contribution, whether of labour or of money (and exclusive of the mortgage debt) far exceeds the value of Mr. Hanoski's contribution. Ms. Brewer remains liable on the mortgage that she placed on other property held by herself and her mother so that the parties could purchase the property. It would be unjust and Mr. Hanoski would be unjustly enriched if he were to receive part of the sale proceeds before the debt incurred by Ms. Brewer to acquire the property was paid in full.
- [15] Because there are no sale proceeds beyond that necessary to satisfy the debt, I need not do a detailed accounting of the contributions of each to the property.
- [16] Suffice it to say that I am satisfied that little or nothing would be due to Mr. Hanoski, even if the mortgage debt were paid in full, as his contributions are so much less than those of Ms. Brewer. Finding Regarding Arson
- [17] Ms. Brewer asks that I make a finding that Mr. Hanoski is responsible for the fire at the hotel. Given the timing, one day following the order made by Mr. Justice McEwan which gave Ms. Brewer exclusive occupancy and conduct of sale of the hotel property, the circumstances are sufficient to raise a strong suspicion that Mr. Hanoski burned the hotel. However, the evidence before me does not permit me to decide the issue. The statements which were put to Mr. Hanoski at his discovery were not admitted by him and have not been proven.
- [18] Accordingly, the evidence does not permit me to conclude that Mr. Hanoski burned the hotel.
- [19] Ms. Brewer is entitled to her costs at Scale B. "B. Brown, J."

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