

CANADA / JUDGMENT

Bronson v. Bronson

2000 BCSC 1585

COURT

Supreme Court of British Columbia

DECIDED

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2000 BCSC 1585

Citation:	Bronson v. Bronson
Date:	20001101 2000 BCSC 1585
Docket:	D11497
Reigstry:	Chilliwack IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	FREDERIC ERSKINE BRONSON PETITIONER
AND:	COLLEEN JEWEL LOVE BRONSON RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE COLLVER

Counsel for the Petitioner:

James A. W. Schuman

Counsel for the Respondent:

Hugh G. Stark

Date and Place of Hearing:

August 10, 2000

Vancouver, BC

- [1] When Colleen Bronson and Fredric Bronson separated, she owed \$1.5 million to Mr. Bronson's law corporation and \$1 million to Revenue Canada. In a summary trial, she seeks an alternative to her impending bankruptcy.

MARRIAGE

- [2] The Bronsons were married on November 9th, 1985. Both had been married before, and Colleen Bronson brought her daughter, Brianna Niles, into the marriage. Brianna will be 18 next years of age next month. The Bronsons' younger children, Hudson and Harrison, are 12 and 7 years old.
- [3] Colleen Bronson was a legal secretary when she met Fredric Bronson, who is a personal injury lawyer. She kept Mr. Bronson's books until Hudson was born.
- [4] Although the law practice flourished, the Bronsons made a ruinous decision in 1991. They began construction of an immense home on 16.5 acres in Abbotsford. Although they do not agree about either the size of the finished areas (she says 13,500 sq. feet; he says 8,500) or the cost (she says \$4 million; he says \$2.4 to 2.7 million), photos exhibited to the summary trial affidavits reveal it to be a manorial showplace which obviously dominates its surroundings. In a vain effort to reduce both their construction debt and a mounting income tax balance, the Bronsons listed it for \$4.3 million in 1995 and sold it for \$2.2 million in 1998.

SEPARATION

- [5] The Bronsons separated on January 23rd, 1997. Although there are significant differences in their affidavits concerning the acquisition of expensive vehicles and other items, nothing turns on that, since either version points to spending that was simply out of control.
- [6] The depth of their morass was described by Fredric Bronson's accountant in late 1997. In reviewing "the economic and taxation effects" of the Fredric Bronson Law Corporation's status on the parties' net worth, he pointed to the personal law corporation's housing loan of \$1,458,400 (to Mrs. Bronson, since the property was registered in her name) and the Royal Bank mortgage of \$1,568,818, concluding his review as follows:

"The foregoing facts highlight the fact that the Bronsons are in dire financial straits with current and future liabilities to Revenue Canada well in excess of their ability to pay. These liabilities can be summarized as:

Rick 1996 Personal

\$270,000

1998 RE: Debit Balance

228,000

Law Corp. 1996

270,000

1997

552,000

1997 Installments

(46,000)

Colleen 1998 Debit Balance

243,000

1998 Housing Loan

446,741

Current & future tax liability

\$1,963,741

This state of affairs is not so surprising when one realizes that an excess of \$4,300,000 has been spent on the house and only \$2,200,000 may be realized. This debt to Revenue Canada means the family has an effective negative net worth of approximately \$933,000."

- [7] The accountant's recommendations involved use of the sale proceeds of the Bronsons' vacation home on Harrison Lake to pay taxes. There were other corporate and personal tax manoeuvres suggested, the most extreme being the expectation that Colleen Bronson would have to take "necessary action under the Bankruptcy Act" (the accountant was careful to add that Ms. Bronson would need to obtain professional guidance "to smooth this procedure"). The accountant's review concluded as follows:

"The reality of the situation is that the Bronsons have vastly overspent on the house and it has become an albatross around their necks. Rick's exceptional income earning ability is the only asset that remains and it can only survive if Rick sees a benefit of continuing to produce at that level. He is unlikely to do this if he sees the only benefactor being Revenue Canada. Rick's earning ability will also be badly impacted by the bankruptcy of himself or the Law Corp. and thus this would be counter productive to both parties. It would be anticipated that any matrimonial settlement would reflect the reality of the situation and that Colleen and the children would be provided with the means to live in an appropriate manner."

- [8] A separation agreement was signed on August 4th, 1998. After confirming total debts of \$4,920,250, it provided for division of assets and assumption of liabilities resulting in a notional estate of \$270,000 for Fredric Bronson and a deficit of \$623,000 for Colleen Bronson.

- [9] Child support was agreed to at \$8,000 per month, based upon Fredric Bronson's anticipated 1998 earnings of \$750,000. Spousal support was to be paid at the rate of \$3,500 per month, to be reviewed after 24 months.
- [10] Proceeds from the sale of the Bronsons' home were to be credited to the law corporation's loan, and from that sum Frederick Bronson was to pay the following:
- (a) an amount which Colleen Bronson would need to effect a settlement with Revenue Canada, up to a maximum of \$100,000; (b) up to \$50,000 to Colleen Bronson for moving and renovation expenses for her anticipated new home; (c) corporate income tax of approximately \$400,000; (d) balance to be applied to purchase of a new home for Colleen Bronson (up to \$375,000).
- [11] With respect to the debt to Revenue Canada, the following provision in the agreement has become the bone of contention in this litigation:
13. (F) The parties acknowledge that it is a condition precedent to this Agreement that the "proposal" presented to Revenue Canada as agreed between the parties be accepted by Revenue Canada. Failure of Revenue Canada to accept the "proposal" shall result in the issues herein being resolved through further negotiation and failing such agreement, then litigation. DIVORCE
- [12] When the Bronsons were divorced on November 23rd, 1998, the order mirrored some of the provisions in their separation agreement. However, neither assets nor debts were mentioned, and claims for corollary relief were simply "adjourned generally".
- [13] Frederic Bronson has remarried. He deposes that he used an inheritance to buy a home in Chilliwack. He also bought a vacation home on Schuswap Lake. He continues to practice law.
- [14] Colleen Bronson and the three children live in a rented home in Abbotsford. On March 14, 2000, Revenue Canada's regional manager of trust collections informed Colleen Bronson's tax lawyer as follows:

"The liability for tax payable is stated in the Income Tax Act and there are no provisions in the Income Tax Act for compromise on the tax owing. Any proposal which did not include payment in full would have to be made under the provisions of other legislation, such as the Bankruptcy and Insolvency Act."

Obviously, the above implies that it would be pointless to attempt negotiations with Revenue Canada, and Colleen Bronson therefore takes the position that she and Fredric Bronson have no agreement. Moreover, having experienced bankruptcy in her first marriage, she balks at travelling that course again.

SUMMARY TRIAL APPLICATION

[15] In her notice of motion, Colleen Bronson advances claims pursuant to the Family Relations Act, R.S.B.C. 1996, c. 128, and the Divorce Act, R.S.C. 1995, c. 3 (2nd Supp.), including the following:

- (1) a declaration as to what are family assets pursuant to s.56 of the Family Relations Act, *supra*;
- (2) an order for more than one-half of family assets, pursuant to s.65 of the Family Relations Act, *supra*;
- (3) an order for ownership, possession and division of assets whether they be family assets or assets in the sole name of Frederic Bronson, pursuant to s.66 of the Family Relations Act, *supra*; and
- (4) lump sum maintenance pursuant to s.15.2 of the Divorce Act, *supra*.

In addition, she seeks the following: an order requiring Fredric Bronson to share the Revenue Canada debt by using the remaining monies in trust (just over \$200,000), and a compensation order for the balance; forgiveness of the law corporation debt; and, provision of \$350,000 with which to purchase a house.

[16] In advancing those claims, counsel for Colleen Bronson submits that because the Bronsons did not agree upon a proposal to be made to Revenue Canada, par. 13 (F) of the separation agreement amounts to nothing more than an unenforceable "agreement to agree" and Colleen Bronson can, therefore, pursue her statutory claims. He further submits that since Fredric Bronson has admitted that his former wife should not have to bear the tax burden alone, facts to be considered in the summary trial application are not in dispute, and the cost of proceeding to trial can and should be avoided.

[17] However, Fredric Bronson's primary position is that he agreed to pay substantial monthly support on the basis of an understanding that Colleen Bronson would make a settlement proposal to Revenue Canada, and Ms. Bronson's obligation in that regard remains unfulfilled.

[18] With respect to the appropriateness of the summary trial process, counsel for Fredric Bronson submits the following: that the application is premature; that it is inconsistent with the pleadings (which, he contends, require amendment to properly identify the issues); that the relief sought is inconsistent with orders already made; that support and property claims must be considered in light of the arrangements in the separation agreement (which, he contends, have already been performed in part).

DECISION

- [19] Although I reject the argument that the pleadings are deficient (there can be no confusion about the bases upon which Colleen Bronson seeks relief) I am of the opinion that it would be unjust to attempt to decide the issues raised in this application.
- [20] Other than his law practice, which both parties seem to acknowledge must be isolated to protect the necessary income stream, Fredric Bronson's only assets are his Chilliwack home and his Schuswap property, both acquired after the parties' divorce. There is equity only in the Chilliwack home.
- [21] Essentially, what Colleen Bronson wants is redistribution of the staggering debt which I alluded to when I began these brief reasons. However, I do not have jurisdiction to order that the personal law corporation obligation be forgiven, or that Fredric Bronson pay Revenue Canada.
- [22] I also reject Fredric Bronson's contention that the relief his former wife seeks cannot be considered until she formally makes the "proposal" which her tax lawyer has been informed Revenue Canada will not consider. In effect, she has performed (although not strictly) what par.13.(F) of their separation agreement contemplates, and the parties must now negotiate again. If that fails (and I concede that the distasteful issue of Colleen Bronson's bankruptcy is probably the key to the negotiations), further litigation will be necessary.
- [23] While I cannot grant the principal relief which Colleen Bronson seeks, spousal support will continue at the rate of \$3,500 per month until further order. There will also be an order that Fredric Bronson not dispose of either his Chilliwack or Schuswap properties pending the parties' further negotiations.
- [24] The parties will bear their own costs.

"R. Collver, J."

The Honourable Mr. Justice R. Collver

November 3, 2000 -- Memorandum to the Legal Publishers issued advising the date of the release of the Reasons for Judgment should read: "20001101".

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