

CANADA / JUDGMENT

Bronson v. Hewitt

2013 BCCA 488

COURT

British Columbia Court of Appeal

DECIDED

15 November 2013

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2013 BCCA 488 Bronson v. Hewitt COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Bronson v. Hewitt, 2013 BCCA 488 Date: 20131115 Dockets: CA037941; CA037947; CA038299 Docket CA037941 Between: Thomas E. Bronson, J. Tom Bronson, Lee B. Lewis, Virginia C. Shaffer, H. Davis Lewis Jr., and Harold D. Lewis, Sr. Respondents (Plaintiffs) And Howard H. Hewitt Appellant Respondent by Cross Appeal (Defendant) And A. Eugene Lewis Respondent by Cross Appeal (Defendant) And Jennifer Lewis Browning, Julie Lewis Hendrickson, William David Tompkins, Trustee of the Graham River Trust, Graham River Outfitters Ltd., Margaret H. Mason, Bull, Housser & Tupper and Bull, Housser & Tupper LLP (Defendants)

- and - Docket: CA037947 Between: Thomas E. Bronson, J. Tom Bronson, Lee B. Lewis, Virginia C. Shaffer, H. Davis Lewis Jr., and Harold D. Lewis Sr. Respondents (Appellants by Cross Appeal) And A. Eugene Lewis Appellant (Respondent by Cross Appeal) And Howard H. Hewitt, Jennifer Lewis Browning, Julie Lewis Hendrickson, William David Tompkins, in his capacity as Trustee of the Graham River Trust, Graham River Outfitters Ltd., Margaret H. Mason, Bull, Housser & Tupper, and Bull, Housser & Tupper LLP (Defendants)
- and - Docket: CA038299 Between: Thomas E. Bronson, J. Tom Bronson, Lee B. Lewis, Virginia C. Shaffer, H. Davis Lewis Jr., and Harold D. Lewis Sr. Respondents (Plaintiffs) And Howard H. Hewitt Appellant (Defendant) And A. Eugene Lewis, Jennifer Lewis Browning, Julie Lewis Hendrickson, William David Tompkins, Trustee of the Graham River Trust, Graham River Outfitters Ltd., Margaret H. Mason, Bull, Housser & Tupper, and Bull, Housser & Tupper LLP (Defendants) Before: The Honourable Madam Justice Newbury The Honourable Mr. Justice Chiasson The Honourable Madam Justice A. MacKenzie Supplementary Reasons and to Bronson v. Hewitt, 2013 BCCA 367. Counsel for the Appellant H. Hewitt: W.G. MacLeod S. Field Counsel for the Respondent by Cross Appeal, A.E. Lewis: J.G. Dives, Q.C Counsel for the Respondents: R.R.E. DeFilippi Place and Date of Hearing: Vancouver, British Columbia June 10, 11 & 12, 2013 Place and Date of Judgment: Vancouver, British Columbia August 14, 2013 Oral Submissions: October 23, 2013 Written Submissions Received: September 18, 25, 27 and October 18, 22, 23 & 31, 2013 Date of Supplementary Judgment: November 15, 2013 Supplementary Reasons of The Court Supplementary Reasons for Judgment of the Court:

- [1] Having received and considered the written and oral submissions of counsel, we are all of the view that:
1. Mr. Eugene Lewis should have his costs of trial and all other proceedings below which were not the subject of specific costs orders, and his costs of the appeal and cross appeal, all as increased costs;
 2. Mr. Hewitt should have his costs of trial and all other proceedings below which were not the subject of a specific costs order, other than costs related to the Proceeds Award, all as increased costs; and his costs of the appeal, as increased costs;
 3. the plaintiffs should have their costs of trial as against Mr. Hewitt relating to the Distribution Letter and Proceeds Award, as increased costs;
 4. the costs payable by the plaintiffs under para. 2 hereof may be offset against the costs payable by Mr. Hewitt under para. 3;
 5. the sum of \$910,213.71 (US) and interest accrued or accruing thereon, which is being held in trust by McLeod and Company in accordance with the order of Mr. Justice Low dated November 5, 2010, shall continue to be held until:
 - a) Mr. Hewitt has passed his accounts as trustee before the registrar of the Supreme Court of British Columbia;
 - b) the parties' respective costs have been assessed; and
 - c) the trustee(s) of the BNO Trust has paid or made provision for the payment of any tax under the Income Tax Act which may be due and owing as at the date of this order; and a court of competent jurisdiction has approved the release of the said funds from trust.
- [2] We expect that the registrar will make recommendations to the Supreme Court of British Columbia regarding Mr. Hewitt's submission that he is entitled to indemnify himself from the trust assets for legal expenses incurred in his capacity as trustee of the Trust, and regarding any setoffs claimed by any of the parties. "The Honourable Madam Justice Newbury" "The Honourable Mr. Justice Chiasson" "The Honourable Madam Justice A. MacKenzie"

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