
CANADA / JUDGMENT

Brown v. Etchells

2021 BCSC 1432

COURT

Supreme Court of British Columbia

DECIDED

22 July 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 1432 Brown v. Etchells

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Brown v. Etchells,

2021 BCSC 1432

Date: 20210722

Docket: E76521

Registry: Nanaimo

Between:

Natasha Adeen Brown

Claimant

And

Lauren Ann Etchells

Respondent

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

Counsel for the Claimant

(via telephone):

A. Mattila

Counsel for the Respondent

(via telephone):

F. Arbabi

Place and Date of Trial/Hearing:

Nanaimo, B.C.

July 5 and 6, 2021

Place and Date of Judgment:

Nanaimo, B.C.

July 22, 2021

Introduction

- [1] On July 5, 2021, I heard two applications in this family law matter concerning the nature of an agreement executed by the claimant in November 2020 and the respondent February 2021, concerning settlement of certain issues in the parties' family law dispute, including division of family property and custody and contact issues related to child of the marriage (the "Settlement Agreement").
- [2] The claimant, Natasha Brown, seeks an order pursuant to s. 93 of the Family Law Act, S.B.C. 2011, c. 25, setting aside the Settlement Agreement, which the claimant filed with the Court on February 26, 2021. In the alternative Ms. Brown seeks a declaration that the Settlement Agreement is not an agreement settling a family law dispute.
- [3] The respondent, Lauren Etchells, cross applies for an order that the Settlement Agreement is a valid agreement pursuant to s. 6 of the Family Law Act and seeks related relief including setting aside previous orders of this Court which conflict with the Settlement Agreement terms.

Background

- [4] The parties met online in December 2007 and began dating in February 2008. After dating for three years the parties jointly purchased a home in Nanaimo (the "Family Home") and began living there together. The parties were married on August 21, 2012 and the child of the marriage ("K.E.") was born in September 2014, after being conceived via assisted reproduction. The parties separated in June 2015 and in December 2015, divorce proceedings were commenced.
- [5] In April 2016, the following orders were made in the divorce proceedings:
 - a. The order of Master Dick pronounced April 14, 2016, requiring Ms. Brown to purchase Ms. Etchells' interest in the Family Home for \$57,000; and

- b. A subsequent order of Master Dick pronounced April 20, 2016, allowing Ms. Brown to have Skype and in person visits with K.E. at specified times with in person visits progressing incrementally, eventually to include overnight visits.
- [6] On May 8, 2016, Ms. Etchells fled Canada with K.E.
- [7] On May 16, 2016, Master Dick pronounced a further order, finding that Ms. Etchells had wrongfully denied Ms. Brown parenting time and requiring her to deliver K.E. to Ms. Brown.
- [8] In or about July 2019 Ms. Etchells, her parents and K.E. were found on the island of Jersey in the Channel Islands. The group had apparently attempted to cross the English Channel to England in a small dinghy before landing on Jersey. Ms. Etchells was detained by Jersey authorities for one month on charges which included child endangerment and immigration offences. Ms. Etchells and K.E. remain in Jersey at this time.
- [9] Efforts by the Government of Canada to have Ms. Etchells extradited to Canada to face charges for child abduction were not successful as the Jersey Court did not consider Ms. Brown to be a parent under Jersey law.
- [10] Ms. Brown then brought proceedings in Jersey under the Hague Convention on the Civil Aspects of Child Abduction but was ultimately unsuccessful, after two appeals brought in early 2020, in having K.E. returned to Canada.
- [11] In or about November 2020 the parties sought to negotiate a settlement of their family law dispute. Ms. Etchells, who at the time was seemingly assisted by counsel in Jersey, and Ms. Brown with the assistance of counsel in British Columbia and at some point counsel in Jersey, negotiated the terms of the Settlement Agreement - which I have stated above was signed by Ms. Brown in November 2020 and Ms. Etchells in February 2021.
- [12] The Settlement Agreement is entitled "CONSENT ORDER" and includes a style of cause describing the proceeding as "In the Royal Court of Jersey". The preamble reads as follows:

We, the above-named parties, have reached an agreement with regard to arrangements regarding the distribution of capital (within the context of our divorce in Canada) and with regard to custody and contact issues regarding our daughter [K.E.] who was born in Canada, we have agreed [sic] the following terms:-

- [13] The Settlement Agreement then sets out a number of general provisions including the following: at clause 2 that "Mirror Orders shall be made in Jersey, Canada and the UK recording the terms reached"; at clause 3 that "[a] consent order shall be filed with the Central Authority [Canada] confirming that all global proceedings regarding the Hague, [K.E.] and Lauren are withdrawn, abandoned and discontinued on agreed terms;" and at clause 16 "[t]hat this Consent Order, once filed in the Supreme Court of British Columbia and ratified by the Royal Court of Jersey" shall be sent to various authorities.

[14] The Settlement Agreement sets out specific terms concerning parenting responsibilities for K.E., Ms. Etchells' ability to relocate with K.E. to another location outside of Jersey, parental contact with K.E. and payment of reasonable child support. In addition, consistent with the April 2016 order of Master Dick, the Settlement Agreement provides that Ms. Etchells' interest in the Family Home will be purchased by Ms. Brown for \$57,000, provides that all previous orders.

Position of the Parties

- [15] Ms. Brown takes the position that the Settlement Agreement is not an agreement but either an agreement to agree to prepare a consent order suitable for filing in the Jersey Court or simply a draft consent order to which the parties did not intend to be bound. Ms. Brown submits that after she executed the Settlement Agreement she received legal advice from lawyers in Jersey and the United Kingdom that portions of the Settlement Agreement would not be enforceable under Jersey law - although she has not set out precisely what aspects of the agreement would not be enforceable.
- [16] Further, Ms. Brown submits that after the Settlement Agreement was signed by her in November 2020 the parties continued to negotiate terms of a settlement but again, she has not provided evidence with respect to what aspects of the Settlement Agreement and/or the family law dispute remained at issue.
- [17] Ms. Etchells takes the position that the Settlement Agreement sets out the agreement between the parties to settle issues between them. These include the parties' agreement with respect to, inter alia, parenting responsibilities for and access to, K.E. and the purchase of the Family Home by Ms. Brown. Ms. Etchells submits that the communication prior to the Settlement Agreement was signed and the agreement itself clearly demonstrate that the parties intended to be bound by its terms. She submits that the agreement is therefore enforceable pursuant to s. 6 of the Family Law Act.

Analysis

Legal Framework

[18] Section 6 of the Family Law Act describes what constitutes an agreement which is enforceable under that section. The relevant portions of s. 6 read as follows:

6 (1) Subject to this Act, 2 or more persons may make an agreement

- (a) to resolve a family law dispute, or
- (b) respecting
 - (i) a matter that may be the subject of a family law dispute in the future,

(ii) the means of resolving a family law dispute or a matter that may be the subject of a family law dispute in the future, including the type of family dispute resolution to be used, or

(iii) the implementation of an agreement or order.

(2) A single agreement may be made respecting one or more matters.

(3) Subject to this Act, an agreement respecting a family law dispute is binding on the parties.

(4) Subsection (3) applies whether or not

(a) there is consideration,

(b) the agreement has been made with the involvement of a family dispute resolution professional, or

(c) the agreement is filed with a court.

[19] Section 93 of the Family Law Act sets out this Court's jurisdiction to set aside an agreement between spouses respecting the division of family property and debt. Relevant portions of s. 93 read as follows:

93 (1) This section applies if spouses have a written agreement respecting division of property and debt, with the signature of each spouse witnessed by at least one other person.

(2) For the purposes of subsection (1), the same person may witness each signature.

(3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

(a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;

(b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;

(c) a spouse did not understand the nature or consequences of the agreement;

(d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.

(4) The Supreme Court may decline to act under subsection (3) if, on consideration of all of the evidence, the Supreme Court would not replace the agreement with an order that is substantially different from the terms set out in the agreement.

- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
- (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;
 - (c) the degree to which the spouses relied on the terms of the agreement.
- (6) Despite subsection (1), the Supreme Court may apply this section to an unwitnessed written agreement if the court is satisfied it would be appropriate to do so in all of the circumstances.

[20] As set out by the British Columbia Court of Appeal in *Berthin v. Berthin*, 2016 BCCA 104, the test to determine whether an agreement is valid does not consider the parties subjective intention but rather, whether an objective reasonable bystander would, in consideration of the relevant facts, consider that the parties intended to contract. In addition as set out in *Berthin* a court will not seek to enforce what is effectively an agreement to agree: *Berthin*, at paras. 46, 48.

[21] As succinctly stated by Justice Ehrcke at para. 37 of *Chepil v. Chepil*, 2006 BCSC 15:

A separation agreement is a contract and is subject to the ordinary law of contract that applies to other agreements. Like any other contract, a separation agreement may be challenged on the basis of duress, undue influence, unconscionability, fraud, or non-disclosure.

[22] Duress may include physical threats or threats of imprisonment or economic duress, the latter requiring a degree of coercion which impacts voluntariness: *Chepil*, at para. 40.

Is the Settlement Agreement an Agreement?

[23] Despite the able submissions of counsel for Ms. Brown to the contrary, for the reasons set out below I have little difficulty in concluding that a reasonable bystander would find that the Settlement Agreement is an agreement within the meaning of s. 6(1) of the Family Law Act.

[24] Although the Settlement Agreement is entitled "Consent Order" its word indicate that the parties considered the document to be an agreement. I note the following:

- a. The preamble records that the parties have "reached an agreement with regard to [various items]";
- b. That the parties agreed that mirror orders were to be made in Jersey, Canada and the UK "recording the terms reached" - indicating that this document is an agreement and that orders reflecting the agreement were to be drafted later;

- c. That the parties agreed that a copy of "this agreement and its orders" were to be filed with Interpol;
 - d. Numerous references within the document to terms which the parties were required to comply with; and
 - e. That the document is signed by the parties and witnessed by, in the case of Ms. Brown, her British Columbia counsel, and in the case of Ms. Etchells, a notary - without requirement for endorsement by a judicial official.
- [25] In addition emails exchanged between the parties before the Settlement Agreement clearly indicate that the parties were negotiating the terms of an agreement. For example, I note the following:
- a. On September 15, 2020, Ms. Etchells emailed Ms. Brown advising that "Chris [her Jersey counsel] is working on the agreement ..." followed by Ms. Brown's response the next day that she would be providing the draft to her British Columbia counsel for review;
 - b. Ms. Brown's email of October 14, 2020, advising Ms. Etchells that she had emailed the agreement to her counsel and intended to review it with her the next day;
 - c. Ms. Brown's email of October 23, 2020, advising that she would be reviewing the final version one more time and if "bearing all good" would send the document to Ms. Etchells' counsel;
 - d. Ms. Brown's email of November 3, 2020, advising that she was arranging to meet with her counsel to sign the Settlement Agreement; and
 - e. Ms. Brown's email of November 5, 2020, enclosing the executed Settlement Agreement and stating "[h]ere's to a new chapter. I truly hope it will lead to a happy ending, for all of us."
- [26] There is nothing in the emails or the Settlement Agreement which suggests, as contended to by Ms. Brown, the Settlement Agreement was merely an agreement to agree. In my view, the agreement terms are clear and for the most part unambiguous - or at a minimum not materially ambiguous. In addition there is no indication that the parties intended to draft a further more definitive agreement.
- [27] Although the Settlement Agreement contemplates the parties drafting consent orders for filing in Jersey, the UK and Canada this does not in my view constitute an agreement to agree - but rather a step subsequent to the agreement between the parties as set out in the Settlement Agreement.

Is there a basis to set aside the Settlement Agreement?

- [28] Section 93 of the Family Law Act sets out basis on which an agreement between spouses dealing with division of family property may be set aside. Those reasons include failure to disclose property or debts, vulnerability on the part of one spouse which was taken advantage of by the other, a lack of understanding regarding the nature of consequences of an agreement, or other circumstances that would under the common law cause all or part of a contract to be voidable.
- [29] There is no evidence establishing the applicability of any of the first three basis to set aside a contract set out in s. 93 of the Family Law Act. I note parenthetically that s. 93 would only apply to agreements concerning the division of property.
- [30] As set out above a contract may be voidable under the common law due to basis of duress, undue influence, unconscionability, fraud, or non-disclosure: *Chepil*, at para. 37.
- [31] With respect to whether, in general, the contract is voidable for the reasons set out in *Chepil*, there is no evidence of undue influence, unconscionability, fraud or non-disclosure.
- [32] In argument, Ms. Brown's counsel submitted that Ms. Brown was subject to duress, in that she was motivated to sign the Settlement Agreement in order to deal with the possibility that her lender would seek to foreclose on the parties' joint mortgage over the Family Home if the mortgage was not replaced or renewed.
- [33] I have difficulty with this argument. The order of Master Dick required Ms. Brown to purchase Ms. Etchells' interest in the Family Home. This is an order which Ms. Brown could have sought to comply with or have enforced if Ms. Etchells did not comply. Accordingly, it is difficult to understand how duress arising from concerns of foreclosure may have played a role in Ms. Brown signing the Settlement Agreement. In addition, there is nothing in the correspondence between the parties suggesting that Ms. Brown was pressured to sign the Settlement Agreement for this reason. The record before me establishes that the parties wished to resolve their disputes concerning ownership of the Family Residence and rights with respect to K.E. and simply proceeded to negotiate an agreement settling those matters.
- [34] In conclusion I do not find that there is a basis either under s. 93 of the Family Law Act or in the common law to set aside the Settlement Agreement.

Conclusion

- [35] I note that at the beginning of the hearing before me on July 5, 2021, the parties consented to an order under which Ms. Etchells agreed to take steps necessary to extend the term of the current mortgage on the Family Home by a period of one-year or the minimum period required by the parties' lender. At that time I directed counsel for Ms. Brown to prepare the necessary consent order for endorsement by the court.
- [36] With respect to the application of Ms. Brown filed June 2, 2021, I dismiss her application for the relief sought.

- [37] With respect to the application of Ms. Etchells to declare that the Settlement Agreement, that is the agreement filed with the court registry on February 26, 2021, is a valid agreement pursuant to s. 6 of the Family Law Act. Further, to the extent that the terms of the orders of this Court made January 26, 2016, April 4, 2016, April 14, 2016 and May 18, 2016, conflict with the parties' agreement as set out in the Settlement Agreement, such orders are set aside.
- [38] If the parties wish to speak to the matter of costs they are directed to, within 30 days of the date of these reasons, contact Supreme Court Scheduling to set a further hearing before me, by telephone or Microsoft Teams, to take place at a time convenient to the court and parties.

"Mayer J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/14/2021BCSC1432.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/brown-v-etchells-2021>

Prepared on 27 October 2026 · Esheria