

CANADA / JUDGMENT

Campbell v. Campbell

2023 BCCA 384

COURT

British Columbia Court of Appeal

DECIDED

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2023 BCCA 384 Campbell v. Campbell

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Campbell v. Campbell,

2023 BCCA 384

Date: 20230928

Docket: CA48763

Between:

Bradley William Campbell

Appellant

(Claimant)

And

Heather Dorothy Campbell

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Harris

The Honourable Mr. Justice Willcock

The Honourable Madam Justice Fisher

On appeal from: An order of the Supreme Court of British Columbia, dated

November 22, 2022 (Campbell v. Campbell, 2022 BCSC 2213,
Kelowna Docket 133494).

Oral Reasons for Judgment

Counsel for the Appellant:

D.E. Labun

Counsel for the Respondent:

J.W.T. Robinson

Place and Date of Hearing:

Vancouver, British Columbia

September 25, 2023

Place and Date of Judgment:

Vancouver, British Columbia

September 28, 2023

Summary:

This is an appeal of an order declaring an agreement reached between the parties to be a binding settlement agreement finally resolving all issues between them with respect to family property and debt. The appellant, Mr. Campbell, opposed the order on the basis that negotiations intended to lead to the settlement of all outstanding disputes arising from the breakdown of the parties' marriage, including any potential claims to spousal support, had not done so and that any agreement that had been reached between the parties was incomplete and ineffective. On appeal, Mr. Campbell contends the chambers judge erred in concluding that the parties had reached a binding agreement by forgetting, ignoring or misconceiving the relevant evidence in respect of the parties' intended scope of settlement negotiations and whether they had agreed on all essential terms within that intended scope. Held: Appeal dismissed. It was open to the chambers judge to find that the objective evidence supported the conclusion that the parties reached a binding settlement agreement limited in scope to the division of family property and debt. He made no palpable error in doing so and there is no basis for this Court to interfere with his interpretation of the correspondence giving rise to the binding agreement.

[1] WILLCOCK J.A.: This is an appeal from the order pronounced by Mr. Justice Veenstra on November 22, 2022, for reasons indexed at 2022 BCSC 2213, declaring a settlement agreement between the parties to be a binding agreement finally resolving all issues with respect to the division of family property and family debt, but not with respect to potential claims for spousal support. The order was made on a summary trial application brought pursuant to R. 11-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009.

- [2] Before the chambers judge, Ms. Campbell sought an order to enforce and implement a settlement agreement she alleged had been reached with Mr. Campbell, from whom she was seeking a divorce. Ms. Campbell said the purported settlement agreement was limited in scope to the division of family property and family debt.
- [3] Mr. Campbell opposed the granting of the order sought on the basis that negotiations intended to lead to settlement of all outstanding disputes arising from the breakdown of the parties' marriage, including any potential claims to spousal support, had evidently not done so and whatever agreement had been reached was incomplete and ineffective. He said there had been no meeting of the minds on the scope of the purported agreement sufficient to give rise to a binding settlement agreement.
- [4] The facts are set out in detail in paras. 4-22 of the reasons. The language that effected the settlement is found in correspondence between the parties' solicitors beginning with a May 25, 2021, letter from counsel for Mr. Campbell to counsel for Ms. Campbell stating:

We are advised by our client that the parties have agreed to the terms of settlement and require an agreement reflecting same.

- [5] The May 25 letter also attached a schedule of assets and liabilities completed by Mr. Campbell. On June 10, 2021, counsel for Ms. Campbell responded by letter. That letter enclosed a completed schedule of assets and liabilities. It also described the terms of the potential settlement agreement referred to by Mr. Campbell's counsel in the May 25 letter:

Ms. Campbell shall pay to [Mr. Campbell] \$32,500 as full and final settlement of all issues arising from their marriage.

[Emphasis added.]

- [6] The originally contemplated settlement discussed in these two letters did not move forward.
- [7] Rather, on August 17, 2021, a counteroffer was made in correspondence from Mr. Campbell's counsel to Ms. Campbell's counsel that contained the following wording:

Mr. Campbell is prepared to accept in full and final settlement of division of family property and debt, an equalization payment of \$100,000 from Ms. Campbell.

[Emphasis added.]

- [8] That was met with a counteroffer from Ms. Campbell on September 29, 2021. Mr. Campbell's counsel responded to the September 29 counteroffer on October 5, 2021, by repeating the August 17, 2021 counteroffer in the following terms:

Given the above, and in the interests of final settlement of all matters expediently and cost-effectively and to avoid any further stress or delay, we have instructions from our client to extend his original counteroffer of August 17, 2021 until 4:00 pm, Friday, October 15, 2021. We trust that this extension will allow your client sufficient time to sort out her financial affairs and allow the parties to achieve an amicable final settlement.

[Emphasis added.]

- [9] Ms. Campbell, however, did not have sufficient cash to fund the single \$100,000 payment contemplated by the August 17 offer and endeavoured to arrange financing. In light of this fact, Mr. Campbell agreed to further extend the deadline for acceptance of his August 17 counteroffer to November 19, 2021.
- [10] On November 18, 2021, Ms. Campbell's solicitor wrote that her client "was making her best efforts to receive confirmation and approval for a \$100,000 cash loan in order to accept [Mr. Campbell's] settlement offer".
- [11] However, given Ms. Campbell's difficulty in arranging the necessary financing, negotiations continued with respect to how the contemplated payment might be made. On December 1, 2021, Mr. Campbell's solicitor proposed two alternate options that would be acceptable to him: a \$185,000 spousal rollover from Ms. Campbell's RRSP account or two \$50,000 cash payments.
- [12] On December 8, 2021, Ms. Campbell's solicitor proposed settlement on terms that incorporated the prior correspondence, writing:

We write in response to your letter of December 1, 2021.

We have instructions from our client to agree to the second option presented by your client. Our client will provide two cash payments of \$50,000 each to your client. Our client, however, does not agree to the timelines as presented by your client. Our client will agree to make the first payment forthwith following the execution by both parties of a Separation Agreement. Our client will make the second payment within one month after that.

It would be quite unusual for a party to a legal proceeding to exchange monetary compensation absent a written and executed agreement, inclusive of the necessary waivers. Our client will not be advancing money to your client in the absence of this protection in place.

It has been our understanding since the commencement of this matter that your office was to prepare the Separation Agreement. As such, please prepare and provide the property agreement forthwith and we will review and meet with our client to execute same. Your client will solely bear those costs and our client will agree to solely bear the costs of the divorce on the condition that your client cooperates with service of same.

- [13] On December 16, 2021, counsel for Mr. Campbell replied as follows:

Thank you for your letter of December 8, 2021. We confirm our client's agreement to the terms set out in same.

We will revise the separation agreement accordingly and provide you with our draft of same for review and execution by your client.

- [14] A dispute then arose with respect to documentation of the settlement. Mr. Campbell sought to have Ms. Campbell execute a "spousal support waiver". Ms. Campbell's counsel took the position that disclosure of the parties' 2018, 2019 and 2020 incomes would be "the necessary first step" toward resolving a spousal support claim. Mr. Campbell's counsel took the position that the parties had concluded a "full and final settlement of all issues/claims arising from their marriage".
- [15] Ms. Campbell commenced an action on March 3, 2022, seeking an order confirming the settlement agreement concluded between the parties on December 16, 2021, in respect of division of property and debt. She argued there was no issue as to certainty, and that all essential terms had been agreed to. The provision in the correspondence for the drafting of a written separation agreement was said to be "akin to the drafting of a release or other customary documents to effect a settlement in other types of cases", a proposition for which Ms. Campbell cited *Fieguth v. Acklands Ltd.* (1989), 37 B.C.L.R. (2d) 62, 1989 CanLII 2744 (C.A.) and *Hutton v. Hutton*, 2020 BCSC 2046.
- [16] Mr. Campbell contended that resolution of the potential spousal support claim (no such claim had yet been advanced) was essential to final settlement of all matters between the parties, such that absent an agreement on spousal support there was an essential term missing from the parties' settlement. He argued that a review of the correspondence between the solicitors should lead to the conclusion the parties were not *ad idem* or "on the same page" as to whether spousal support was included in their settlement. He said there was a defect in the formation of the contract and that there was at best an agreement to agree, referencing *Beck v. Bachman*, 2014 BCSC 1996, and *Yin v. Liu*, 2015 BCSC 277. In the alternative, he argued there was a mutual mistake as to what claims were settled, relying on the analysis in *Seppanen v. Seppanen* (1991), 59 B.C.L.R. (2d) 26, 1991 CanLII 1874 (S.C.), and *First City Capital Ltd. v. B.C. Building Corp.* (1989), 43 B.L.R. 29, 1989 CanLII 2868 (S.C.).
- [17] The parties agreed that the key principles governing the interpretation of the parties' correspondence can be found in the judgments of Chief Justice McEachern in *Fieguth* and Chief Justice Hinkson in *Hutton*. They also agreed that a summary trial was appropriate; the letters said to give rise to the agreement were all before the court and the only issue was their proper interpretation.
- [18] The chambers judge held an objective observer would consider that the scope and terms of the settlement are to be found in the August 17, 2021 letter, as varied with respect to payment terms by the subsequent correspondence. In arriving at this conclusion, the chambers judge found:

- a) the letters exchanged on December 8 and 16, 2021, constitute a clear offer and acceptance with all necessary terms determinable either from those two letters or from letters exchanged leading up to the final offer and acceptance (para. 60);
- b) the offer that was accepted on December 16 is traceable to offer of August 17, 2021, which clearly and carefully delineated the scope of settlement that Mr. Campbell was open to discussing (para. 61);
- c) the settlement contemplated in the offer of August 17, 2021, was intended to effect "full and final settlement of division of family property and debt", and that did not change at any time prior to the acceptance that occurred on December 16 (para. 61);
- d) the October 5, 2021 letter extended the August 17, 2021 offer, and reaffirmed Mr. Campbell's determination to limit the negotiations to the resolution of division of family property and debt (para. 62);
- e) the reference in the December 8 letter to "necessary waivers" refers to those waivers that are necessary to confirm title to the properties and debts that were the subject matter of the settlement (para. 66);
- f) the words "property agreement" and "separation agreement" in the December 8 letter refer to one and the same document and the separate use of these words did not change the scope of the settlement (para. 67);
- g) the December 16 letter confirms the parties believed they had a settlement and what remained to be done were routine matters in the course of documenting the agreement that had been made (para. 68); and
- h) a waiver of spousal support was not an essential term of the settlement given that spousal support was outside of the scope of the settlement that was agreed to; the case could be distinguished from Beck, a case where the parties' correspondence clearly indicated that one specific issue (in that case, security for spousal support) remained outstanding (para. 69).

[19] The chambers judge also found there was no evidence that would establish a mistake. At para. 71 he held as follows:

It is clear that at some point in about January 2022, [Mr. Campbell] decided that it would be in his interest to have a settlement of spousal support as well, but I can find no basis in the evidence to conclude that there was a mistake as of December 16, 2021, when the settlement was agreed to.

- [20] On appeal, Mr. Campbell says the chambers judge gave no effect to words used by both parties in the course of their negotiations indicating that they both sought "full and final settlement of all issues arising from their marriage", or "full and final settlement of all claims", or "final settlement of all matters". He says the presence of these phrases indicates that the scope of the parties' discussions was not limited to the division of family property and debt.
- [21] The latter phrase ("final settlement of all matters") featured in the October 5, 2021, letter sent on behalf of Mr. Campbell, which the chambers judge characterized as "a clear rejection of the claimant's counteroffer which would have expanded the scope of the settlement" to encompass "full and final settlement of all claims". The appellant contends this was a mischaracterization and a palpable and overriding error.
- [22] He says the judge gave no effect to the statements in the parties' letters indicating that at all times preparation and execution of a "Separation Agreement" was contemplated, or the statement in Ms. Campbell's accepted offer of December 8, 2021, that the parties must execute a "Separation Agreement" before payment of the agreed sums. He says the chambers judge did not consider what terms, beyond those being specifically discussed at the time and eventually agreed to respecting the division of family property and family debt, were essential to a so-called "separation agreement".
- [23] Specifically, Mr. Campbell says the chambers judge:
- a) erred in law in failing to consider evidence of facts arising subsequent to December 16, 2021, to determine whether or not the parties had reached a binding agreement on that date;
 - b) erred in law, or committed a palpable and overriding error of mixed fact and law by forgetting, ignoring or misconceiving the relevant evidence to conclude that the parties' settlement discussions on and after August 17, 2021, were limited in scope to matters of property and debt division only;
 - c) committed a palpable and overriding error of mixed fact and law by forgetting, ignoring or misconceiving the relevant evidence to conclude that on or about December 16, 2021, the parties had agreed on all essential terms required to reach an agreement on matters within the scope of their settlement discussions;
 - d) committed a palpable and overriding error of mixed fact and law in determining that there was no ambiguity in the wording of Ms. Campbell's December 8, 2021, offer concerning the scope of settlement discussions or the meaning of references to a "Separation Agreement", and declining to apply the doctrine of contra proferentem against the drafter of that document; and

- e) committed an extricable error of law by purporting to apply an objective test to a set of correspondence from which he had selected words supporting one conclusion, ignored words supporting the opposite conclusion, and failed to consider the proper context of the negotiations.
- [24] I would not accede to any of these arguments. As the respondent Ms. Campbell says, there is really only one issue on this appeal; namely, whether it was open to the chambers judge to find that the objective evidence supported the conclusion that the parties reached a settlement agreement limited in scope to the issue of the division of family property and debt.
- [25] If such a finding was available, the chambers judge cannot be said to have erred in concluding that a waiver of spousal support claims was not an essential term of the settlement agreed to. Nor can he be said to have erred in concluding that the documentation of the agreement reached by the parties (i.e., the drafting and execution of the "Separation Agreement" or "necessary waivers") was only necessary to effect the agreement, not that it was a condition precedent to the agreement's formation at law.
- [26] In my view, there is support in the evidence for the judge's conclusion that the scope of the settlement under negotiation was defined in the August 17, 2021 correspondence, and that it did not change at any time prior to the acceptance that occurred on December 16. The August 17, 2021 counteroffer does expressly limit the scope of the proposed settlement to the division of family property and debt, and all subsequent offers and counteroffers do refer back to the August 17, 2021 letter as the basis of the nature and scope of the offer under consideration.
- [27] In the absence of a palpable error, we must defer to the chambers judge's interpretation of the agreement that is concluded in the correspondence. That is, this Court should not interfere with the chambers judge's interpretation that a legally enforceable agreement as to the division of family property and debt only was reached by the parties unless a palpable error in the chambers judge's decision is demonstrated.
- [28] Mr. Campbell says such an error may be found in the judge's "forgetting, ignoring or misconceiving [of] relevant evidence". However, the judge expressly adverted to most of the evidence drawn to our attention by Mr. Campbell and expressly accounted for it in his analysis of the evidence.
- [29] The judge clearly did not ignore the evidence of post-agreement conduct. It is described at paras. 18-21 of the reasons. While he referred to that evidence in the context of the argument that any purported settlement agreement was vitiated by mistake, he held that the key documents were those that preceded the emergence of a dispute. It was open to him to weigh the evidence of post-December 2021 statements in light of the fact that they were statements of the position of one party alone and made after a dispute had arisen. He observed:

[71] The parties' correspondence, on an objective basis, reflects all of the essential terms and a consensus ad item. The only indication in the evidence as to a mistake comes in the letter sent by counsel in February 2022, after a dispute had already arisen. I would agree with the claimant that the key documents to be considered are the documents leading up to and including the formation of the contract which occurred on December 16, 2021. It is clear that at some point in about January 2022, the respondent decided that it would be in his interest to have a settlement of spousal support as well, but I can find no basis in the evidence to conclude that there was a mistake as of December 16, 2021, when the settlement was agreed to. As a result, I conclude that there is a binding agreement of settlement in this case of matters of family property and debt.

[30] There is no basis to argue that the judge ignored or failed to address the evidence of the parties' intentions to reach a full and final settlement. He expressly addressed that evidence. It is recited in para. 41:

The respondent argues that there are several points in the series of correspondence between the parties in which there was discussion of an overall settlement, that communications between the parties in early 2022 made clear that the parties are not on the same page as to whether spousal support was included in their settlement and that the proper interpretation of the correspondence is that there is at best an agreement to agree. Specifically, the respondent points to the use of the words:

- (a) "full and final settlement of all issues arises from their marriage," in the June 10 letter written by claimant's counsel;
- (b) "in full and final settlement of all claims," in the September 29 letter written by the claimant's counsel;
- (c) "in the interests of final settlement of all matters," in the October 5 letter written by the respondent's counsel; and
- (d) "it is preferred that these parties have finality," in the December 1 letter written by the respondent's counsel.

[31] The parties' stated desire to reach a comprehensive settlement was also addressed in para. 62, where the judge notes that these expressions of intent do not change the fact that the correspondence describes a specific, limited settlement. He writes:

The goal of a final settlement cannot, in my view, be reasonably interpreted as expanding the carefully crafted scope described in the August 17 counteroffer that was being re-extended. The parties clearly had a shared goal of finality with respect to matters of family property and debt.

[32] There is no basis to conclude the judge ignored or failed to address the evidence that the parties sought to have a "Separation Agreement" executed. He expressly addressed the argument that a "Separation Agreement" is necessarily more than an agreement to divide property as follows:

- [68] The separation agreement was intended to document what the parties had agreed to. Nothing in the correspondence or in the inherent nature of a separation agreement would give rise to a conclusion that the preparation of a separation agreement was a condition precedent to the parties having a binding agreement.
- [33] In response to Mr. Campbell's submission that the summary trial judge erred in failing to read the December 8, 2021 letter contra proferentem, against the maker, Ms. Campbell, citing the decision of Justice Stratas in *Apotex Inc. v. Allergan, Inc.*, 2016 FCA 155, says the chambers judge correctly addressed the evidence by giving effect to the agreement clearly described in the correspondence. In *Apotex*, Stratas J.A. issued a warning which is apt here:
- [52] a settlement agreement may be reached quickly without formality and, from a subjective standpoint, sometimes unexpectedly: settlement agreements almost always involve consideration, settlement discussions usually take place in a context where an intention to create legal relations can be presumed, informal discussions can count, a meeting of minds is assessed objectively, an agreement on all essential terms is binding even though the parties are still negotiating over other terms and, unless essential, terms such as the provision of releases can be easily implied into an agreement to complete it. The recent decision of the Supreme Court of the United Kingdom in *RTS Flexible Systems*, above, underscores these points.
- [53] This has practical ramifications. If a party does not want to be bound until it has agreed to all terms it subjectively considers essential to the deal, in every offer it communicates it must make that wish objectively clear.
- [34] I agree with Ms. Campbell that the evidence supported the judge's conclusion that, objectively, the agreement was limited, that its essential terms were clear and the agreement was not vitiated by mistake. It was by no means objectively clear that there were essential terms unresolved on December 16, 2021. Nor does the evidence disclose any ambiguity in the agreement warranting the application of the doctrine of contra proferentem.
- [35] In sum, it was open to the chambers judge to find that the objective evidence supported the conclusion that the parties reached a binding settlement agreement limited in scope to the issue of the division of family property and debt. He made no palpable error in doing so.
- [36] I would dismiss the appeal.
- [37] HARRIS J.A.: I agree.
- [38] FISHER J.A.: I agree.
- [39] HARRIS J.A.: The appeal is dismissed.

"The Honourable Mr. Justice Willcock"

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