

CANADA / JUDGMENT

Drinkall v. Drinkall

2020 BCSC 1795

COURT

Supreme Court of British Columbia

DECIDED

23 November 2020

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2020 BCSC 1795 Drinkall v. Drinkall IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Drinkall v. Drinkall, 2020 BCSC 1795 Date: 20201123 Docket: E49441 Registry: Kamloops Between: Monique Drinkall Claimant And Gary Allen Drinkall, Drinkall Ranches Ltd. and High Prairie Outfitters Ltd. Respondent Before: The Honourable Madam Justice B.J. Brown Reasons for Judgment Counsel for Claimant: M.N. Fus Counsel for Respondent, Gary Drinkall: E. Bowman Counsel for the Respondent, Drinkall Ranches Ltd. S. Parhar Written Submissions of Claimant: August 28, 2020 and September 9, 2020 Written Submissions of Respondent, Gary Allen Drinkall: August 14, 2020 and September 3, 2020 Written Submissions of Drinkall Ranches Ltd.: August 14, 2020 and September 4, 2020 Place and Date of Judgment: Kamloops, B.C. November 23, 2020

- [1] In my reasons of June 29, 2020, indexed at 2020 BCSC 964, I provided Mr. Drinkall with an opportunity to file an expert report with respect to distributive taxes which he would incur to compensate Ms. Baldwin for her interest in Drinkall Ranches Ltd ("DRL"). He has now done so and the parties have provided me with their submissions as to the appropriate discount, if any. Opinion of Mark Lencucha
- [2] Mr. Lencucha has considered various options with potential tax consequences ranging from zero to \$240,000. Position of the Parties
- [3] Mr. Gary Drinkall argues that the Court must deduct the amount of \$240,220 from the \$600,000 compensation order. He says that whether DRL loans him the funds or the funds are generated by buy back of shares, any scenario would result in the same personal tax consequences because none of the potential purchasers are arm's length. He argues that the option set out on p. 5 of the report, which permits him to access the value of the shares without hardship to the senior Drinkalls, is the only likely outcome.
- [4] Ms. Baldwin argues that there is no need for the shares to be redeemed. She argues that in any event Mr. Gary Drinkall should have to pay at least half of the taxes that may eventually be due on any share redemption. She argues that Mr. Gary Drinkall is crucial to the ranch's operation and he is in a strong position to influence DRL's corporate decisions. She identifies various deceitful actions taken by the Drinkall family and DRL. She argues that other mechanisms such as a management bonus to Mr. Gary Drinkall from cash available in DRL could be used to pay the judgment. She argues that it is not a question of whether \$600,000

worth of shares need to be sold, but how Mr. Gary Drinkall will pay the money.

- [5] Ms. Baldwin says that Mr. Gary Drinkall's shares will not ultimately be sold, that the funds will be made available by DRL, and this is simply a ploy to reduce the amount that is necessary. She argues that if Mr. Glen Drinkall and Mr. Gary Drinkall continue to refuse to pay her the amounts owed, DRL will have to be wound up. She does not want the ranch sold but there may be no other option.
- [6] In his reply submissions, Mr. Gary Drinkall points out that Ms. Baldwin's submissions exceed the directions of the Court which were limited to what distributive taxes, if any, will be payable, and she is rearguing issues that have already been argued and decided by the Court.
- [7] DRL submits that it is not prepared to sell assets or inventory to fund the purchase of its own shares unless it would be in the best interest of the company to do so. It is prepared to discuss and work cooperatively with the parties to try and reach a resolution of this matter. It says that it is not in a position to lend \$600,000 to Mr. Gary Drinkall or buyback \$600,000 worth of shares. Discussion
- [8] As I have indicated, from the affidavits of Mr. Gary Drinkall and Mr. Glen Drinkall, it appears that Mr. Gary Drinkall must sell some of his shares in DRL to pay the compensation ordered to Ms. Baldwin. If he does so, he will likely incur tax and it would be appropriate to adjust the compensation to Ms. Baldwin to reflect the taxes that Mr. Gary Drinkall must pay.
- [9] In my view the most likely scenario is that set out at Scenario 4 in Mr. Lencucha's estimate of distributive taxes. That would result in Mr. Drinkall paying tax of \$122,000 on sale of \$600,000 of shares. That scenario involves tax planning that is available to Mr. Drinkall and DRL. I expect that he would take advantage of this tax planning, were he selling the shares for his own benefit. Should he choose not to avail himself of this tax planning, he may pay more in tax, but Ms. Baldwin should not be penalized by that decision.
- [10] The tax planning would involve DRL and the senior Drinkalls. I am confident that DRL and the senior Drinkalls will act in Mr. Gary Drinkall's best interest, particularly where there is no penalty to the senior Drinkalls in doing so. Mr. Lencucha indicates that this scenario would not penalize the senior Drinkalls.
- [11] Putting this planning into effect will require professional fees. An additional adjustment of \$10,000 should be sufficient to cover these.
- [12] In conclusion, the appropriate discount to reflect taxes and fees of disposing of \$600,000 of shares is \$132,000, leaving a net to Ms. Baldwin of \$468,000.
- [13] Ms. Baldwin argues that Mr. Drinkall should pay half of the \$132,000 as a family debt. This amount is not a family debt. Family debt is defined in s. 86 of the Family Law Act: 86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
 - (b) after the date of separation, if incurred for the purpose of maintaining family property. This is not an amount incurred while the parties were together, nor is it incurred for the purpose of maintaining the property. It is an adjustment to reflect the taxes to be paid in making the compensation payment to Ms. Baldwin.
- [14] There are other scenarios described in Mr. Lencucha's opinion which could result in no taxes paid, but that would require cooperation between the Drinkalls and Ms. Baldwin. Once again, I encourage the parties to seek an amicable resolution of these matters. It would be to everyone's benefit to do so and to avoid spending further money on litigation.
- [15] The parties may schedule a post-trial conference to discuss a deadline for Mr. Drinkall disposing of the shares and which of his outstanding applications should be dealt with next. "B.J. Brown J."
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Prepared on 27 October 2026 · Esheria