

CANADA / JUDGMENT

Fauteux v. Eng

2012 BCSC 394

COURT

Supreme Court of British Columbia

DECIDED

20 March 2012

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2012 BCSC 394 Fauteux v.Eng IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Fauteux v. Eng, 2012 BCSC 394 Date: 20120320 Docket: E034899 Registry: New Westminster Between: Andrea Michelle Fauteux Claimant And Robert Richard Eng aka Robert Eng Respondent Before: The Honourable Mr. Justice Crawford Reasons for Judgment Claimant Andrea Michelle Fauteux: In Person Counsel for the Respondent: M. Ramage Place and Date of Hearing: New Westminster, B.C. March 5, 2012 Place and Date of Judgment: New Westminster, B.C. March 20, 2012

Introduction

- [1] In this family law matter Mr. Eng seeks summary disposition of issues set out in his application dated July 26, 2011.
- [2] The parties had signed a Separation Agreement dated December 3, 2009 and Ms. Fauteux argued the Separation Agreement was unfair to her.
- [3] Ms. Fauteux now concedes the Separation Agreement of December 3, 2009 is valid and binding. I do note her concession was given in Court July 11, 2011, was then withdrawn, and then finally conceded and ordered by the Court February 24, 2012.
- [4] The parties have agreed on several matters listed in the motion regarding their son M., namely:
 - (a) that M.'s daycare and agreed extracurricular costs be shared proportionate to the parties' income;
 - (b) proof of s. 7 expenses is to be established within 14 days of the request; and
 - (c) Mr. Eng is to pick up M. for his access visits and Ms. Fauteux is to pick up M. for return to her home.
- [5] That leaves four property issues, namely:
 - (a) the Washington trailer;

- (b) the RCI timeshare;
 - (c) the Bank of Montreal judgment on a Dodge Ram truck which has been solely in the name of Ms. Fauteux and solely for her use; and
 - (d) the Vancity line of credit. The Separation Agreement of December 3, 2009 and Subsequent Events
- [6] The Agreement provided that each party would retain their own motor vehicle and that Ms. Fauteux would be liable for the Vancity line of credit, then some \$3,500.
- [7] The Agreement did not provide for payment of the loan from the Bank of Montreal ("BMO") signed by both parties and used to purchase the Dodge Ram truck ("the Truck"). At that time the loan was approximately \$44,000 while the Truck value was \$35,000. Monthly payments were \$686.
- [8] Nor did the Agreement deal with the RCI timeshare. Mr. Eng was paying the financing payments of \$256 per month and the annual trailer dues of \$1,600 per month though the asset was in joint names.
- [9] With respect to the matrimonial home the Agreement provided Mr. Eng pay Ms. Fauteux \$110,000 for her equity in the home. In fact he paid \$100,000. Then from the \$10,000 owing on February 10, 2010, he deducted \$2,000 as he was continuing to pay the Truck payment, the RCI timeshare payment and the trailer dues.
- [10] In March 2010 Ms. Fauteux issued a Petition seeking to set aside the Separation Agreement. Mr. Eng had M. in his care for the month of July 2010 and for that month he failed to pay child maintenance to Ms. Fauteux.
- [11] On October 16, 2010 Ms. Fauteux wrote to Mr. Eng saying she had not been making the Truck payments as she could not afford the payments and asking if Mr. Eng wanted the Truck.
- [12] Mr. Eng said he had seen her driving a new truck. He was right. Ms. Fauteux had recovered \$62,000 in a lawsuit and bought a new truck for \$66,214.14. She made a down payment of \$24,500 and was obliged to make monthly payments of \$651.17 on the balance.
- [13] On February 20, 2011 Ms. Fauteux left the Truck at Mr. Eng's house with the keys in the glove box and no licence plates.
- [14] A week later the Bank of Montreal sued both parties on the Dodge Ram truck loan contract. Mr. Eng took the position it was Ms. Fauteux's responsibility. The Bank of Montreal eventually took a default judgment against both parties for \$43,293.65 and costs. The Bank of Montreal registered the judgment against Mr. Eng's home.
- [15] Mr. Eng asked Ms. Fauteux to sell the Truck.

- [16] On May 20, 2011 a Consent Order in this action provided the Dodge Ram truck be sold and the proceeds credited to the Bank of Montreal debt. It appears neither side has made any positive efforts to sell the Truck. Ms. Fauteux said the offers she had received were below market value. Vancity Line of Credit
- [17] The Agreement provided Ms. Fauteux keep this account. Ms. Fauteux continued to use the account though it stayed in joint names. She did not pay off the account. She made some deposits and in May 2010 withdrew \$5,000. Then she paid \$8,613 into the account, leaving a balance of \$1,690.47 but continued to use the line of credit. Now it totals \$10,000 and Mr. Eng has been paying the monthly interest charges to stop the account being closed.
- [18] Mr. Eng proposes a solution. He agrees he withheld \$2,000 from the house payment and owes \$2,400 child support for a total of \$4,400. Upon confirmation that Ms. Fauteux has reduced the debt to \$4,400 he will pay the \$4,400 to Vancity and his name is to be removed from the account. If Ms. Fauteux intends to continue to use the account, Mr. Eng is to be held harmless for any future debt. The Dodge Ram Truck
- [19] Mr. Eng says the Truck was bought on the basis Ms. Fauteux would be using it. Ms. Fauteux had been in several car accidents and they bought the Truck to provide for her safety. Mr. Eng said she would be responsible for the payments as she would be the sole user, and the loan would be paid from monies that would come due to her from a personal injury lawsuit. Thus Mr. Eng says he co-signed the Truck loan at the Bank of Montreal. The debt payments were paid from their joint Vancity account, where Ms. Fauteux was depositing her employment income.
- [20] In October 2010 Ms. Fauteux received a \$62,000 settlement. But rather than paying out the Bank of Montreal loan on the Truck, Ms. Fauteux bought a new truck.
- [21] In any event Ms. Fauteux does not deny the evidence of Mr. Eng that she was to pay off the Bank of Montreal loan on receipt of the personal injury settlement. She does say that the Truck was damaged (estimated at \$5,333) and was bought second-hand while the parties were still cohabiting. Ms. Fauteux says she was attempting to sell the Dodge truck but had not received "any serious offers" as of August 2, 2011. Discussion and Orders RCI Timeshare
- [22] This item was not dealt with in the Separation Agreement. It had originally cost \$15,000 payable at \$256 per month in May 2008 and Ms. Fauteux made the payments until they separated.
- [23] Mr. Eng believed that in May of 2010 Ms. Fauteux had paid the balance on the timeshare. In fact Ms. Fauteux confirms she did pay off the balance of \$10,553.51 on May 25, 2010.
- [24] This item is and remains Ms. Fauteux's. The Washington Trailer
- [25] The trailer is located at Paradise Lakes, Washington and was purchased in 2007 for \$10,000. The parties appear to agree that is still its value. The dues are \$1,600 per annum which Mr. Eng has paid although the trailer is in joint names.

- [26] I order Mr. Eng remove Ms. Fauteux's name from title and be solely responsible for any debt. The Vancity Debt
- [27] Ms. Fauteux points out that Mr. Eng had a \$5,000 debt on his motor vehicle which he rolled into the mortgage on the house prior to the Separation Agreement and that \$5,000 should be taken into account. I agree.
- [28] I order that the \$5,000 is taken into account in the Vancity debt and thus the debt be reduced from \$10,000 to \$9,400 by Ms. Fauteux paying off \$600 within 21 days of this order, and that Mr. Eng pay off the \$9,400 balance on the same terms as previously mentioned. The Dodge Ram Truck and Bank of Montreal Debt
- [29] I find the Truck and the BMO debt are solely Ms. Fauteux's. The Agreement provided the Truck was hers. She bought the Truck on the agreement that she pay off the Bank of Montreal debt from the settlement that she received and she did not.
- [30] Even more inexplicable is the evidence which indicates that some \$230,000 has passed through her hands in the last two years. She has the new truck. She has the old truck. It would have made a lot of sense had she complied with the Agreement. Or alternatively that she use the Dodge truck as a down payment on the new truck and consolidated the debt. In any event she has not.
- [31] I find Ms. Fauteux solely responsible for the whole of the Bank of Montreal debt.
- [32] Mr. Eng asks I order that Ms. Fauteux be liable for the judgment obtained by the Bank of Montreal in proceedings in Vancouver Registry No. S111195 dated March 30, 2011, and that Ms. Fauteux pay the judgment within 30 days of this order, or failing that that Ms. Fauteux make arrangements to pay the judgment on a periodic basis on terms acceptable to the Bank of Montreal or rather than should she default on any periodic payment, the entire outstanding balance be payable by her within 14 days of default.
- [33] Ms. Fauteux says she cannot retire the BMO judgment. Accordingly I follow the second course proposed by Mr. Eng, and order that Ms. Fauteux make arrangements to pay the judgment on a periodic basis on terms acceptable to the Bank of Montreal and further that should she default on a periodic payment the whole of the balance will be payable by her.
- [34] While I make the order I question whether that will be effective as against the Bank of Montreal who I do not believe were on notice or in attendance.
- [35] Mr. Eng asks that I leave costs for another date. If they need to be spoken to a time can be arranged through the Trial Coordinator. "The Honourable Mr. Justice Crawford"

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