

CANADA / JUDGMENT

Helme v. Claus

2008 BCSC 1523

COURT

Supreme Court of British Columbia

DECIDED

7 November 2008

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

2008 BCSC 1523 Helme v. Claus

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Helme v. Claus,

2008 BCSC 1523

Date: 20081107

Docket: 03 1570

Registry: Victoria

Between:

Roxanne Patricia Claus also known as

Roxanne Patricia Helme

Plaintiff

And

Robert Clair Claus

Defendant

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Counsel for the Plaintiff:

B.J. Kitzke

Counsel for the Defendant:

P.C. Freeman, Q.C.

Date and Place of Trial/Hearing:

October 22, 2008

Victoria, B.C.

- [1] The plaintiff, who is divorced from the defendant, seeks an order of this Court requiring that he pay a one half share of the fees that she paid to send their son to private school for the school years 2005/2006 and 2006/2007, a total amount of \$14,260.00. She also seeks an order that the defendant pay one half of the private school fees payable for subsequent years that the child is in attendance at private school. In fact, at the hearing of this matter, counsel indicated that, since September of 2008, the child has been enrolled at a public school, and so there is one further year of fees at issue, other than the two years specifically claimed. In addition, the plaintiff asks that her costs be awarded to her.
- [2] The application is framed as a Notice of Motion in the original matrimonial action.
- [3] A preliminary objection to the manner of proceeding has been raised by the defendant. It is his contention that the relief sought does not arise from the court order which concluded the original action, and so, on a proper application of Rule 60, the plaintiff must initiate a fresh proceeding, which entails issuing a writ of summons and statement of claim.
- [4] The plaintiff disputes that view of the matter. She says that the remedy she seeks flows from a term of the earlier court order, and that her application is in furtherance of enforcement of that order.
- [5] Counsel agreed that it is procedurally sensible that this threshold matter be determined before proceeding to the substantive application.
- [6] As indicated, on December 10, 2003, this Court made an order which, in addition to divorcing the parties, incorporated a separation agreement which they had reached. As a result, the terms of that agreement take on the status of a court order, and so an application can properly be brought to enforce it.
- [7] The specific component of the agreement which is at issue is this:
the parties will pay equally for education costs including school trips, post-secondary education costs and field trips costing in excess of \$75.00
- [8] It is the submission of the plaintiff that the order she seeks is an enforcement of that clause. She says that the fees and expenses she asks the defendant to share are "education costs".

[9] The defendant takes a contrary view. He says that the term "education costs", when it is examined in accordance with the applicable rules of contractual interpretation, is of restricted scope, extending to only those expenses specifically enumerated and does not include the private school expenses which are at issue. Thus it is, he contends, that the present application is not an enforcement of the earlier court order, and so a fresh proceeding must be initiated.

[10] The defendant's position is based on a rule or principle of interpretation which is set out in the well-known and highly-regarded text, G.H.L. Fridman, Q.C., *The Law of Contract in Canada*, Fifth Edition (Vancouver: Carswell, 2006). At p. 461, in a discussion of the ejusdem generis rule, the learned author says this:

General words may be followed by more specific ones in a document, for example, "all animals, including dogs, tigers, and elephants". Conversely, specific words may be followed by more general ones, for example, "all dogs, tigers, elephants and other animals". It would appear that, in the former case, the general words cannot be construed so as to cover a situation which is not mentioned in the subsequent specific language, since the existence of the latter indicates the real, and narrower intention of the parties.

[11] If this interpretation of the rule is correct, it seems to follow that the educational expenses caught by the court's order are limited to the specific types described, and expenses associated to private school attendance are not included. If that is so, the position of the defendant appears to be sound, and the plaintiff's attempt to require him to share in those expenses cannot be pursued in its present format.

[12] Alas, and not without some measure of trepidation, I have concluded that the statement of law relied upon is not correct. There are quite sound reasons for rejecting it and finding that the term at issue must be construed in a broader way, one that enables it to encompass private school fees.

[13] My reasons for arriving at this conclusion are set out below.

[14] Firstly, and with the greatest of respect to the esteemed author of *The Law of Contracts in Canada*, I would suggest that the authority relied upon for the assertion does not in fact support the principle stated. The case cited as providing the authority is *Shukin v. Demosky*, [1927] 1 D.L.R. 649 (Sask. K.B.). In examining the report of that decision, I note that the headnote states as follows:

A general clause in a contract followed by specific clauses showing the intention of the parties will not be extended to cover matter not shown by the specific clauses to have been within the contemplation of the parties.

[15] However, on careful scrutiny of the actual facts and findings set out in the judgment, I am driven to conclude that the headnote appears to be somewhat of an over-statement and over-simplification. At any rate, I have some difficulty accepting that the decision is authority for the interpretation of the rule as set out at para 10, *infra*.

[16] This same principle of interpretation, *eiusdem generis*, is also examined in Geoff R. Hall, *Canadian Contractual Interpretation Law*, (LexisNexis Canada, 2007) . The Rule is discussed at p. 97:

The *eiusdem generis* rule is a maxim of interpretation recently described in the following terms: "[W]hen general words follow an enumeration of persons or things with a particular and specific meaning, the general words are not to be construed in their broadest sense but are to be viewed as applying only to person [sic] or things of the same general kind, class or genus as those specified in the enumeration. Thus the effect of the rule is to interpret general words narrowly in order to accord with the meaning of more specific words preceding the general words. The rationale for the rule is said to be a presumption that when parties are focused on the particular objects of their contract they may use phrases which are literally wider than they intend, and a presumption that parties may use general words to guard against an accidental omission without intending to extend the contract to different objects. Like the *expressio unius* maxim, it is often thought of more as a rule of statutory interpretation than one of contractual interpretation, but it clearly does apply to contracts as well as to statutes. The rule only applies where general words follow specific ones (not when it is the other way around), and does not apply where the contract indicates that it would be inappropriate.

[17] At p. 98, reference is found to the judicial authority for this view:

The Supreme Court of Canada last considered the *eiusdem generis* rule in a contract case in 1990, in *National Bank of Greece (Canada) v. Katsikonouris*. Again, no concern was expressed about its use as a tool of contractual interpretation. The majority decision in that case set out an important restriction on the doctrine's use: it applies only if the general words follow the specific ones, and not if the specific words follow the general ones. The rationale for the restriction was based on the presumed intentions of contracting parties:

Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it. But it would be illogical to proceed in the same manner when a general term precedes an enumeration of specific examples. In this situation, it is logical to infer that the purpose of providing specific examples from within a broad general category is to remove any ambiguity as to whether those examples are in fact included in the category. It would defeat the intention of the person drafting the document if one were to view the specific illustrations as an exhaustive definition of the larger category of which they form a part.

[18] Somewhat curiously, the author then offers the following observation at p. 99:

While the majority required that the specific words come first, it would seem that the rule can apply both if the specific words precede and if they follow the general ones.

[19] The authority relied upon for that statement is *Pilot Insurance Co. v. Tyre King Tyre Recycling Ltd.*, 8 O.R. (3d) 236 (Ont. Gen. Div.). In that case, Jarvis J. was dealing with the rights of parties under a contract of insurance. Dealing with a "war risk" exclusion clause, the learned Justice made the following statement at paras 20 and 21:

In my opinion, the interpretive rule of *ejusdem generis* applies. In his book *The Construction of Statutes* (Toronto: Butterworths, 1974), at p. 87, Elmer A. Driedger describes the rule as being set out by Lord Halsbury in *Thames & Mersey Marine Insurance Co. Ltd. v. Hamilton, Fraser & Co.* (1887), 12 App. Cas. 484, 36 W.R. 337 (H.L.), at p. 490 App. Cas. The rule is that "general words may be restricted to the same genus as the specific words that precede them". In that case it was held that the words "all other perils, losses and misfortunes" in an insurance contract were restricted to perils of the sea, because they were preceded by an enumeration of specific perils which were all perils of the sea. The specific enumeration thus operated to reduce the scope of the general words that followed.

I find that the words "any other act of deliberate destruction" must be qualified by the specific words which precede and follow them.

[20] Frankly, I do not entirely understand the reasoning that the court followed in that case. The statement of the rule that was relied upon spoke of restriction arising from specific words preceding the general. Somehow that was applied so that limitation was taken from "words which precede and follow" [my emphasis].

[21] While this may be one of those matters upon which reasonable persons might disagree, it is my conclusion that the preferable view is that which emerges from the majority decision of the Supreme Court of Canada in *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 S.C.R. 1029.

[22] The discussion of the proper interpretation is also found in Prof. Ruth Sullivan's text, *Statutory Interpretation*, second edition (Toronto: Irwin Law, 2007). Although her focus is statutory (as opposed to contractual) interpretation, the principles seem generally relevant.

[23] In her examination of *ejusdem generis*, which she calls the Limited Class rule, she discussed the format of a list of specific items being followed by a general term, and also the situation where a general term is preceded by just a single specific term. She then makes mention of the format with which the present matter is concerned:

It has also been suggested that the limited class rule does not apply if the general words precede the list of specific items. The basis for this observation is harder to discern. Arguably the crucial factor is not whether the list precedes or follows the general words, but the language used to connect the two. If I say "footwear, including skates, ski boots, and snow shoes," it would be inappropriate to limit footwear to specialized boots used in winter sports. The specific items have been mentioned not to narrow the class but to expand it, or at least to clarify that it extends to

these potentially doubtful examples of footwear. However, if I say "footwear such as skates, ski boots, and snow shoes," the analysis might be different - simply because "such as" differs from "including." On occasion, even "including" has attracted a limited class analysis.

- [24] While it can be argued that her analysis is something less than absolutely conclusive, it is my view that both her commentary and that of Hall, and the majority decision in *National Bank of Greece*, all taken together, support quite substantially the view that where a general term is followed by specific items, and those specific items are preceded by the word "including", the meaning to be attributed to that general word is not circumscribed by these specific items. They should be taken as providing examples, but not setting strict limitations.
- [25] Finally, for what value it has, it seems to me useful to consider the matter through the lens of plain ordinary common sense. It challenges one's view of what is reasonable to argue that where there is a general term, followed by more specific items, of the type described by the general term, and indicated as being "included", these specific articles are the full extent to which the general description can be taken. In the present case, the specific expenses described as being included could logically and reasonably be seen as going somewhat beyond a child's core education costs, and so would represent the outer reaches of the concept, not its totality.
- [26] In the result, it is my conclusion that the term education costs, as found in the separation agreement, and by adoption, the court order of December 10, 2003 is of sufficient breadth to include the private school fees. Thus, this application can proceed in its extant format, the Notice of Motion.
- [27] Counsel should arrange with trial division for a date to make submissions on the substance of this matter.

"The Honourable Mr. Justice Williams"

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/08/15/2008BCSC1523.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/helme-v-claus-2008>

Prepared on 29 October 2026 · Esheria