

CANADA / JUDGMENT

# J.K.C. v. D.H.C.

2003 BCSC 817

## COURT

Supreme Court of British Columbia

## DECIDED

22 May 2003

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2003BCSC0817 IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.K.C. v. D.H.C., 2003 BCSC 817 Date: 20030522 Docket: E001886 Registry: Vancouver Between: J.K.C. Plaintiff And D.H.C. Defendant Before: The Honourable Mr. Justice Masuhara Reasons for Judgment Counsel for Plaintiff G. Lang Counsel for Defendant P. Daltrop Date and Place of Trial/Hearing: May 14, 2003 Vancouver, B.C.

- [1] There are two applications before me:
- i) the defendant seeks the production of financial information in order to make a determination on maintenance; and ii) the plaintiff seeks an order for the payment out of funds held in a trust account by Owen Bird in favour of the defendant. This amount is approximately \$450,000.
- [2] The plaintiff Mr. J.K.C. is 45 years old and the defendant Ms. M is 50 years old. The parties married March 26, 1990. The parties received an order for divorce from Mr. Justice Wong on September 10, 2001. The order included settlement terms by consent relating to the joint custody of the three children of the marriage aged 11, 10 and 8, and contained detailed terms for how custody was to be shared between the parents. Physical custody was to be shared in two week cycles whereby the plaintiff had the children for 6 days and the defendant had the children for 8 days.
- [3] On September 18, 2001, Mr. Justice Wong issued an order reflecting a full settlement of the division of family assets. This amounted to a \$300,000 payment to the defendant as well as the assumption by the plaintiff of family debts. Spousal maintenance of \$6,000 per month from October 1, 2001 to and including January 2002 was also ordered. It should be noted that both parties were represented by experienced and able counsel at the time.
- [4] In regard to maintenance, the order specifically states: In the event that the parties are unable, by January 1, 2002, to agree on ongoing spousal maintenance after January 2002 or on the quantum of child maintenance payable after that date, those issues may be determined by application.

- [5] At the expiry of the last ordered payment of January 1, 2002, the plaintiff voluntarily continued to pay \$6,000 to the defendant for 4 months, though no order was in place. He says that he lost his job in June 2002.
- [6] In regard to the settlement payment of \$300,000, the plaintiff did not make full payment in accordance with the settlement order; and the defendant took execution proceedings and seized the shares of the plaintiff in a company called J.[ ] Holdings. This triggered a "buy out" clause in favour of his family and led to the plaintiff receiving approximately \$966,000 for the sale of shares to them. From this amount, he paid the outstanding balance to the defendant, and kept \$250,000. The balance has remained in a trust account at Owen Bird. Having satisfied the settlement order, he now seeks release of the funds.
- [7] The defendant, however, opposes the payment out of any of the sums, pending a review of the plaintiff's financial circumstances in order to address the issue of maintenance and support. The defendant says that a determination of spousal and child support cannot be made without full disclosure. It is further argued that given the past conduct of the plaintiff in not adhering to a court order in relation to the settlement payment of \$300,000, payment out ought not be ordered.
- [8] As a final point, the defendant argues that a lump sum for the payment of maintenance or security may be sought.
- [9] Counsel for the defendant is seeking production of the following:
- i) financial statements for J.[ ] Holdings Ltd. For its last three fiscal years; ii) financial statements for the company, partnership or proprietorship in which he has had an interest for their last three fiscal years; iii) bank statements and cancelled cheques that he has or had signing authority of during the past three years; and iv) all credit card statements over which the plaintiff has had or had signing authority during the past three years.
- [10] The plaintiff says that the various documents and affidavits filed in this action are sufficient to establish that the plaintiff has no employment income and that his income is derived from reduction of his capital. Moreover, the plaintiff argues that the funds in trust reflect the equality of the parties in terms of the fair division of family assets. Both parties, the plaintiff argues, are on an equal footing as far as assets. Since he has no ongoing employment income, no spousal or child support should be ordered.
- [11] My assessment of the materials filed suggests that there has been a fair level of disclosure. In fact, the plaintiff has provided a fourth list of documents to the defendant dated May 8, 2003. The difficulty I find, however, is that the disclosure seems to indicate inconsistencies. For example, while the plaintiff has filed several Form 89s, there are some inconsistencies between them on items such as the interest the plaintiff has in J.[ ] Holdings Ltd.; whether he is a beneficiary under a Trust; and an outstanding RESP for \$3,000 which counsel could not explain. There have been, as well, some sizeable transactions by the plaintiff which were noted in some documents that have been produced. There may be a simple explanation for

this. However, the defendant should have the benefit of the requested financial information so that she may assess these matters. As well, counsel for the plaintiff directed me to a psychological report that identified the plaintiff as having psychological disorders including Attention Deficit, Hyperactivity Disorder and Learning Disabilities. Counsel pointed to this as an explanation for the inconsistencies. Counsel herself admitted that even she was having difficulty in obtaining information from her client. Her observation obviously strengthens the argument of the defendant in this matter.

- [12] The plaintiff and his accountant depose that the businesses in which he had an interest are no longer doing business and have not filed financial statements for taxation purposes for several years.
- [13] Given that there are three young children involved, which is of paramount consideration, and the afore-mentioned concerns regarding the financial information, I am granting the order as requested by Mr. Daltrop in terms of the production of information as set out above.
- [14] To the extent that an accountant is required to prepare any documentation or financial statements, I am ordering that payments for such services be paid directly to the accountant by Owen Bird out of the subject trust funds. Who should bear any of these costs for submissions should be considered at the time of determination on maintenance and support.
- [15] In terms of the plaintiff's application for a payout of the funds, I am ordering that the amount of \$71,000 he says he owes as income tax may be paid out of the funds in trust. This amount is to be paid directly from Owen Bird to the appropriate taxation authority.
- [16] The balance in the trust account is to remain pending a determination of the spousal and child maintenance issues. "D.M. Masuhara, J." The Honourable Mr. Justice D.M. Masuhara May 27, 2003 - Corrigendum to the Reasons for Judgment issued by Mr. Justice D.M. Masuhara advising that counsel for the plaintiff should read "G. Lang" and that counsel for the defendant should read "P. Daltrop".

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