

CANADA / JUDGMENT

Jacobs v. Yehia

2015 BCSC 282

COURT

Supreme Court of British Columbia

DECIDED

25 February 2015

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2015 BCSC 282 Jacobs v. Yehia IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jacobs v. Yehia, 2015 BCSC 282 Date: 20150225 Docket: S106849 Registry: Vancouver Between: Paul Jacobs, 657947 B.C. Ltd. and Columbia Cottage Ltd. Plaintiffs And Sam Yehia, The Cambie Malone's Corporation, Cambie Holdings (Vancouver) Corp., 494989 B.C. Ltd., Cambie Holdings (Nanaimo) Corp., 0828508 B.C. Ltd., Esquimalt Holdings Corp., and 0790012 B.C. Ltd. Defendants Before: The Honourable Madam Justice Dickson Reasons for Judgment Counsel for the Plaintiffs: James D. Vilvang, Q.C. Counsel for the Defendants: Tim Goepel Place and Date of Hearing: Vancouver, B.C. October 23 and 27, 2014 Written Submissions: November 17 and 26, 2014 December 2 and 4, 2014 Place and Date of Judgment: Vancouver, B.C. February 25, 2015

- [1] The parties apply to settle the terms of my May 12, 2014 order made following the liability stage of this trial. Reasons for judgment on the liability stage of the trial are indexed at 2014 BCSC 845 (the "Liability Reasons"). Reasons for judgment on the defendants' associated application for an order cancelling certificates of pending litigation are indexed at 2015 BCSC 267 (the "CPL Reasons").
- [2] There are several points of contention. The most significant relates to the extent, if any, to which the plaintiffs and defendants should be treated separately in the order. According to the plaintiffs, the trial was conducted on the basis that the personal and corporate plaintiffs were effectively one entity and the personal and corporate defendants were effectively one entity. That being so, they say no distinction should be made between them and the order should refer generally to "the plaintiffs" and "the defendants" in each of its terms. According to the defendants, however, the personal and corporate parties are all distinct legal entities and this should be reflected in the order, particularly as none of its terms apply to all plaintiffs or all defendants. That being so, they say the order should refer to each party separately and delineate the relief granted to the appropriate entity or entities alone.
- [3] I agree with the defendants that some delineation is necessary. Given my findings in the Liability Reasons, however, I do not agree that none of the order's terms apply to all of the defendants. Taking into account the parties' submissions, the proposed forms of order presented, the Liability Reasons, and the CPL Reasons I settle the order in the form attached as Appendix A.

- [4] Paragraphs 1 and 2 of the order deal with breach of the November 2002 Loan Agreement. In the Liability Reasons, I found the personal plaintiff, Paul Jacobs, through his company, Columbia Cottage Ltd., loaned \$967,000 to the personal defendant, Sam Yehia. Although his long-range goal was to invest in the Cambie Malone Group as an equity participant, the funds were initially advanced as a personal loan to Mr. Yehia. Although the promissory notes referred to Columbia Cottage alone, it was clear on the evidence that the loan was made on behalf of both Mr. Jacobs and Columbia Cottage. Thus, the parties to the loan agreement were Mr. Jacobs and Columbia Cottage, as lenders, and Sam Yehia, as borrower. Mr. Yehia breached the loan agreement by failing to pay interest to February 2005. Accordingly, Paul Jacobs and Columbia Cottage are entitled to an accounting for unpaid interest and court ordered interest in connection with the breach.
- [5] Paragraph 3 of the order deals with breach of the October 2009 Agreements. The October 2009 Agreements include two interdependent components: the Loan Agreement and the Management Services Agreement. The parties to the October 2009 Agreements, in combination, were Sam Yehia and the Cambie Malone Corporation, on the one hand, and Paul Jacobs and 657947 B.C. Ltd., on the other. Pursuant to their terms, Sam Yehia and the Cambie Malone's Corporation agreed to pay interest to Paul Jacobs on the unpaid amount of his renewed \$967,000 loan upon termination of the Management Services Agreement. They failed to do so. Accordingly, Paul Jacobs is entitled to an accounting for unpaid interest and judgment against Sam Yehia and the Cambie Malone's Corporation for the unpaid interest, plus court order interest in connection with the breach.
- [6] Paragraphs 4 and 5 of the order deal with the unjust enrichment claim. As explained in the Liability Reasons and the CPL Reasons, from February 2005 to October 2009, all of the defendants were unjustly enriched by the \$967,000 that belonged to Paul Jacobs and Columbia Cottage. Accordingly, Paul Jacobs and Columbia Cottage are entitled to equitable relief and compensation arising from the unjust enrichment. As explained in the Liability Reasons, the compensation award is to be calculated based on 11.73 per cent of the increase in net equity of the Cambie Malone Group, including the value of the lands and businesses, from February 2005 to October 2009 and taking into account any difference in the fair market value of the services of the plaintiffs, Paul Jacobs and 657947 B.C. Ltd., and the defendant, Sam Yehia, to the Cambie Malone Group. That formula is included in paragraph 5 of the order.
- [7] Paragraph 6 of the order deals with breach of the Oral Management Consultancy Agreement and October 2009 Agreements. The Oral Management Consultancy Agreement governed the parties' working relationship from November 2002 to October 2009, when it was terminated and replaced by the October 2009 Agreements. 657947 B.C. Ltd. delivered management services to the Cambie Malone's Corporation pursuant to the sequential agreements. Over time, the Cambie Malone's Corporation failed to pay \$50,004.00 in GST that was due and owing. Accordingly, 657947 B.C. Ltd. is entitled to judgment for \$50,004, plus court order interest, against the Cambie Malone's Corporation.

- [8] Paragraphs 7 and 8 deal with set-offs to be taken into account in calculating the amounts to be awarded following the second stage of the trial.
- [9] Paragraphs 9, 10 and 11 deal with unsuccessful claims advanced by the plaintiffs at the liability stage of the trial.
- [10] Paragraph 12 deals with the plaintiffs' outstanding claim for an equitable interest in the lands, including ongoing certificates of pending litigation, and accords with my decision in the CPL Reasons.
- [11] Paragraph 13 deals with costs, which will be determined after the second phase of the trial. "DICKSON J." SCHEDULE A Docket: S106849 Registry: Vancouver IN THE SUPREME COURT OF BRITISH COLUMBIA Between: Paul Jacobs, 657947 B.C. Ltd. and Columbia Cottage Ltd. Plaintiffs And Sam Yehia, The Cambie Malone's Corporation, Cambie Holdings (Vancouver) Corp., 494989 B.C. Ltd., Cambie Holdings (Nanaimo) Corp., 0828508 B.C. Ltd., Esquimalt Holdings Corp., and 0790012 B.C. Ltd. Defendants ORDER AFTER TRIAL BEFORE THE HONOURABLE) May 12, 2014 MADAM JUSTICE DICKSON) THIS ACTION coming on for trial at Vancouver, British Columbia, on April 8-9, 11,15-19, 25, 2013, May 3, 2013, June 25, 28, 2013, July 2-3, 22, 29-30, 2013, August 19, 2013, and February 20, 2014, and written submissions being made on March 3 and 5, 2014; and on hearing J.D. Vilvang, Q.C. and R.J.M. Yalowsky for the plaintiffs and R.J. King and K.A. McLean for the defendants; AND JUDGMENT being reserved to this date: THIS COURT ORDERS AND DECLARES THAT:
1. The Defendant, Sam Yehia, breached the November 2002 Loan Agreement by failing to pay interest that was due and owing for the period to February 2005;
 2. The Plaintiffs, Paul Jacobs and Columbia Cottage Ltd., are entitled to an accounting for unpaid interest for the period to February 2005, and judgment, plus court order interest, as against the Defendant, Sam Yehia, for the unpaid interest to be determined at the second stage of the trial.
 3. The Defendants, Sam Yehia and the Cambie Malone's Corporation, breached the October 2009 Agreements by failing to pay interest that was due and owing to the Plaintiff, Paul Jacobs, and the Plaintiff, Paul Jacobs, is entitled to an order for an accounting for the unpaid interest, and judgment against the Defendants, Sam Yehia and the Cambie Malone's Corporation, for the unpaid interest, plus court ordered interest, in an amount to be determined at the second stage of the trial.
 4. The Defendants have been unjustly enriched for the period February 2005 to October 2009 and the Plaintiffs, Paul Jacobs and Columbia Cottage Ltd., are entitled to equitable relief and compensation arising from that unjust enrichment in an amount to be determined at the second stage of the trial.

5. The compensation award for the unjust enrichment shall be calculated based on 11.73 per cent of the increase in net equity of the Cambie Malone Group, including the value of the lands and businesses, from February 2005 to October 2009 and taking into account any difference in the fair market value of the services of the Plaintiffs, Paul Jacobs and 657947 B.C. Ltd., and the Defendant, Sam Yehia, to the Cambie Malone Group.
6. The Defendant, the Cambie Malone's Corporation, shall pay to the Plaintiff, 657947 B.C. Ltd., \$50,004.00, plus court order interest, representing the unpaid GST.
7. The Defendants are entitled to set-off the sum of \$45,000 against the compensation awarded to the Plaintiffs, Paul Jacobs and Columbia Cottage Ltd.
8. The Defendant, the Cambie Malone's Corporation, is entitled to set-off the value of any ineligible expenses paid to the Plaintiff, 657947 B.C. Ltd., over the course of the Oral Management Consultancy Agreement or the October 2009 Agreements against the judgment for unpaid GST referenced in paragraph 6 above. The value of such ineligible expenses shall be determined at the second stage of the trial.
9. The Plaintiffs' claim for a declaration that Paul Jacobs and Sam Yehia, through their respective corporations, were engaged in a partnership, either in common law or under the Partnership Act, R.S.B.C. 1996, c. 348, and associated relief, is dismissed.
10. The Plaintiffs' claim for a declaration that the Loan Agreement is unconscionable and rescission of the Loan Agreement is dismissed.
11. The Plaintiffs' claim for a declaration that the Management Agreement was repudiated and judgment for damages is dismissed.
12. The Plaintiffs' claim for a declaration that Paul Jacobs and Columbia Cottage Ltd. hold an equitable interest in the Lands, as described in the Further Amended Notice of Civil Claim, and for a Certificate of Pending Litigation against the Lands is adjourned to the second stage of the trial.
13. Costs will be determined at the conclusion of the second phase of the trial. BY THE COURT REGISTRAR

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