

CANADA / JUDGMENT

Jones v. Davidson

2021 BCSC 1205

COURT

Supreme Court of British Columbia

DECIDED

31 March 2021

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2021 BCSC 1205 Jones v. Davidson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jones v. Davidson, 2021 BCSC 1205 Date: 20210331 Docket: S185623 Registry: Vancouver Between: Eric Jones Plaintiff And Tracey Anne Davidson and Tracey Ann Davidson in her capacity as Administratrix of the Estate of Larry Daniel Jones, deceased Defendants Before: The Honourable Mr. Justice Mayer Oral Reasons for Judgment In Chambers Counsel for Plaintiff: J.M. Richter Counsel for Defendants: L.D. Anjos Place and Date of Trial/Hearing: Vancouver, B.C. March 31, 2021 Place and Date of Judgment: Vancouver, B.C. March 31, 2021

- [1] THE COURT: I have before me today an application for double costs brought by the successful plaintiff Eric Jones in this estate litigation. Mr. Jones, seeks double costs from the defendant, Tracey Anne Davidson, arising one day after the first trial date for this action, which was adjourned.

Background

- [2] On September 15, 2020, I issued reasons, which were corrected on October 7, 2020, granting judgment in favour of Mr. Jones against Ms. Davidson and Ms. Davidson in her capacity as administratrix of the Estate of Larry Daniel Jones.
- [3] The claim involved a dispute over the Estate of Larry Jones between Mr. Jones, his son and his only linear descendent, and Tracey Davidson. Ms. Davidson claimed to be Larry Jones' common law spouse prior to his death on March 18, 2014. My reasons are indexed as 2020 BCSC 1371 and set out in greater detail the relevant background facts in this matter, which I will not repeat for the purposes of these reasons. In summary, I found that Ms. Davidson was not Larry Jones' common law spouse at the time of his death and that Mr. Jones, as his only linear descendant, was the sole beneficiary and entitled to receive the assets of Larry Jones' estate.
- [4] I ordered that the letters of administration appointing Ms. Davidson as administrator be revoked and that Mr. Jones be appointed in her place in that role. I also ordered that Ms. Davidson transfer the home on Sleeping Beauty Lane in Terrace to Mr. Jones and that she vacate the property within a reasonable period of time, after which she would be required to pay essentially occupational rent. Finally, I ordered an accounting and tracing of monies,

which form part of Larry Jones' estate, which were received by Ms. Davidson after Larry Jones' death and that she pass her accounts as administratrix before a Registrar.

- [5] With the exception of Mr. Jones' claim for occupational rent and his claim for damages arising from an alleged misrepresentation, he was successful on all other aspects of his claim, and I awarded him his costs. As I said at the beginning of my reasons, he now applies for an order for double costs.
- [6] This action was commenced by Mr. Jones on May 11, 2018. A trial before me took place over seven days between August 10 and 19, 2020.
- [7] The formal offer to settle was made by Mr. Jones in August 2019, and it was essentially that the property on Sleeping Beauty Lane in Terrance be sold with Ms. Davidson retaining \$10,000 of the sale proceeds and Mr. Jones receiving the balance of the net proceeds from the sale of that property. As well the parties would bear their own costs.
- [8] The formal offer was also premised upon the fact that Ms. Davidson had already disposed of the investments and some of the miscellaneous assets of Larry Jones' estate which, net of estate expenses, were worth approximately \$46,000. The offer considered that there would not be a requirement for Ms. Davidson to repay that \$46,000 amount. When added to the \$10,000 share of the net sale proceeds from the sale of the property she was offered Mr. Jones offered to settle for payment to Ms. Davidson of approximately \$56,000. These are rough numbers which I think are appropriate for the purposes of this costs application.
- [9] With respect to the legal basis for an award of costs or double costs, as set out in the decision of *Fotheringham v. Fotheringham*, 2002 BCCA 454, costs are awarded to a successful party. In this case, I really do not think there is any dispute, and I do find that Mr. Jones was substantially successful at trial and therefore is entitled to his costs. The question is, is he entitled to double costs?
- [10] Under Rule 9-1(5)(b) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 the court may award double costs of all or some of the steps taken in a proceeding after the date of delivery or service of an offer to settle. Under that rule, I may consider whether the settlement offer was one that ought reasonably to have been accepted. I may consider the relationship between the terms of that offer and the final judgment. I may also consider the relative financial circumstances of the parties and any other factor that the court considers is reasonable or appropriate in the circumstances.
- [11] The opportunity for a successful litigant to obtain double costs is designed to encourage the early settlement of disputes by rewarding a party who makes a settlement offer that should have been accepted and penalizing a party who declines to accept such an offer. In *Hartshorne v. Hartshorne*, 2011 BCCA 29, at para. 26, the Court of Appeal first of all set out the factors under then Rule 37B(5)(b) which the court is able to consider in deciding whether or not to award double costs. Again, at the risk of being repetitive, they include:

- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment of the court;
 - (c) the relative financial circumstances of the parties;
 - (d) any other factor the court considers appropriate.
- [12] In this case, in my view, I consider the offer that was made by Mr. Jones, was not, as was contended by Ms. Davidson, a nuisance settlement offer. It was a significant and substantial enough offer, considering Mr. Jones' position disputing the merits of Ms. Davidson's contention that she was Larry Jones' common law spouse at the relevant time. The offer to settle with \$56,000 payable to Ms. Davidson, cannot reasonably be considered to be a nuisance settlement offer.
- [13] In my view, the critical issue in evaluating the reasonableness of the decision of Ms. Davidson not to accept the offer prior to trial is whether or not she, when considering the strength of her claim objectively, acted unreasonably in not deciding to accept the offer at that time. This involves an objective evaluation of whether or not there was any basis for Ms. Davidson's claim that she was a common law spouse of Larry Jones during the relevant period of time prior to his death in 2014.
- [14] In my view, although there is some evidence which clearly indicates that Ms. Davidson was not residing in Terrace with Larry Jones during the two-year period preceding his death, there is an argument that was available to Ms. Davidson to make after trial, after calling relevant evidence, that despite the fact that they were not living in the same location during that period of time, that there are other indicia that the parties were in a common law relationship during the relevant period.
- [15] The point is, despite Ms. Davidson's incorrect recording of the status of her relationship with Larry Jones in various documents filed in respect of the management of the estate and as well in tax documents, it was not a certainty that there would be an ultimate finding that they were not common law spouses. That is a conclusion of trial after all relevant evidence was settled.
- [16] For that reason, I do not consider that it was wholly unreasonable on the part of Ms. Davidson to make the decision to proceed forward to trial rather than to accept Mr. Jones' offer prior to the commencement of trial.
- [17] In addition, I am also conscious of the impact of an award of double costs on Ms. Davidson in this particular case. The court is certainly aware of the fact that an award of double costs has a dual purpose. It is to ensure that parties make ongoing efforts to try to resolve matters expeditiously for the purposes of saving costs and court time, and where a party is acting reasonably in making an offer, the non-accepting party may be punished for their failure to

accept the offer. But the punitive object of Rule 9-1 must be considered in light of the impact of this punishment on the unsuccessful litigant.

- [18] I wish to say first of all that there is no question that Mr. Jones is entitled to his costs of the trial at scale B. The issue of double costs and whether those punitive costs should be awarded is at issue in this case.
- [19] Mr. Jones' counsel, Mr. Richter, submits that the financial circumstances of Mr. Jones are not significant, in that he is a small business owner operating a tattoo parlour in the San Francisco or Bay area of California. That is, Mr. Richter submits that Mr. Jones should not bear all of the legal costs involved in taking this matter through to its conclusion.
- [20] Ms. Anjos on behalf of Ms. Davidson did not argue extensively with respect to Ms. Davidson's financial circumstances, nor did I ask her to do so, as I told her no further submissions were necessary as the court had the opportunity to hear evidence with respect to Ms. Davidson's financial circumstances during the trial. In addition, Ms. Davidson has filed affidavit evidence in these proceedings, which indicate that her financial circumstances and her personal circumstances, including the status of her health, are such that an award of double costs would be excessively punitive. I consider that the relative financial circumstances of the parties does not favour awarding double costs to Mr. Jones in the circumstances of this case.
- [21] For all these reasons, I decline to exercise my discretion to order double costs to Mr. Jones. Mr. Jones is entitled to his costs of this particular at scale B.
- [22] Any questions, Mr. Richter?
- [23] MR. RICHTER: No, My Lord. Thank you.
- [24] THE COURT: Thank you. Ms. Anjos?
- [25] MS. ANJOS: None. Thank you, My Lord.
- [26] THE COURT: All right. Thank you. "Mayer J."

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