

CANADA / JUDGMENT

Jones v. Jones

2024 BCSC 88

COURT

Supreme Court of British Columbia

DECIDED

18 January 2024

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2024 BCSC 88 Jones v. Jones IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jones v. Jones, 2024 BCSC 88 Date: 20240118 Docket: E14575 Registry: Campbell River Between: Angela Lynn Jones Claimant And Kevin Cameron Jones, All-Pro Diesel Ltd., All-Pro Power and Marine Ltd. and 1143789 BC Ltd. Respondents Before: The Honourable Justice E. McDonald Supplementary Reasons for Judgment on Costs and Family Debt Calculations The Claimant, appearing in person: A. Jones Counsel for the Respondents: M. McCubbin Place and Date of Trial/Hearing: Campbell River, B.C. December 21, 2023 Place and Date of Judgment: Vancouver, B.C. January 18, 2024

Introduction

- [1] In reasons for judgment following the summary trial of this family law proceeding, I granted the parties leave to make further submissions on costs and financial calculations, for example, to address the post-judgment interest owing on family debt. Those reasons are indexed as Jones v. Jones, 2023 BCSC 1070 (the "Reasons")
- [2] On December 21, 2023, the parties appeared before me to make additional submissions regarding the current calculation of family debt and costs. These supplementary reasons address the parties' additional submissions on those matters. Calculation of Family Debt
- [3] The respondent, Mr. Jones, submits that further calculations are required with respect to family debt, namely, related to the amount of the CIBC Debt.
- [4] Following the trial, I found the loan from CIBC to be a family debt that the parties are equally responsible for: Reasons, at para. 144. I initially valued the CIBC loan at \$54,830.13, as of the December 16, 2013 triggering event: Reasons, at para. 140. I also found that Mr. Jones continued to repay the CIBC loan after the date of the triggering event, that the CIBC loan was in default by September 10, 2014, and, that CIBC registered a judgment for \$45,573.69, including costs: Reasons, at para. 141.
- [5] Mr. Jones submits that he made repayments of \$9,256.44 towards the CIBC loan following the triggering event. That amount is the difference between the \$54,830.14 total owing on the CIBC loan as of the date of the triggering event, minus the registered judgment amount.

- [6] Mr. Jones submits that the amount of the CIBC Debt, namely, \$45,573.69, should be adjusted to include the additional legal fees and disbursements and post-judgment interest that he is obligated to pay CIBC pursuant to the judgment. Mr. Jones submits that as of December 21, 2023, the CIBC Debt, including legal fees and disbursements and post-judgment interest, totals \$64,340.12, with interest of \$8.02 accruing each day after December 21, 2023.
- [7] The amount required to satisfy the CIBC judgment, including the post-judgment bill of costs, is set out in the letter from CIBC's counsel attached as Exhibits J and K to the affidavit #13 of Ms. Brazier made November 3, 2023. The judgment granted to CIBC is attached as Exhibit C to Ms. Jones' affidavit made December 12, 2023.
- [8] Ms. Jones submits that she ought to have the opportunity to appear before the Registrar to challenge the post-judgment interest and/or bill of costs claimed by CIBC. Ms. Jones points out that the CIBC judgment that was registered already includes costs and she opposes the additional legal costs and disbursements claimed by CIBC.
- [9] Ms. Jones attaches copies of interest calculation tables and a printout of the court order interest rates from the Supreme Court of British Columbia website to support her position that the interest claimed by CIBC is potentially inaccurate. Mr. Jones' counsel submits that I am entitled to take judicial notice of the fact the court order interest rate from July 1, 2023 to December 31, 2023 is 6.95%, and not 6.00%, as Ms. Jones asserts.
- [10] The court order interest rates are established by the Court Order Interest Act, R.S.B.C. 1996, c. 79. In my view, a court is entitled to take judicial notice of the court order interest rates established from time to time. I note that from July 1, 2023 to December 31, 2023, the rate is set at 6.95%, not 6.00%.
- [11] Ms. Jones submits that a Registrar's hearing is necessary to allow her an opportunity to, among other things, challenge the amounts that are claimed by CIBC. I do not agree with that submission. In my view, a Registrar's hearing is not required to determine the amounts owing pursuant to the August 28, 2014 judgment obtained by CIBC.
- [12] The post-judgment interest is a matter of straight-forward calculation. In Exhibit B to Ms. Jones' affidavit made December 12, 2023, she attaches the interest calculation provided by counsel for CIBC. I find the calculation accurately sets out the post-judgment interest owing on the CIBC Debt.
- [13] CIBC as a judgment creditor is also seeking its post-judgment legal fees and disbursements from the judgment debtor. In that bill of costs, CIBC sets out the fees and disbursements for standard post-judgment steps, such as registering the certificate of judgment in the Land Title Office. There is no dispute that CIBC registered its judgment on title. I find the items and amounts claimed by CIBC are appropriate and reasonable. I have no difficulty finding there is liability for the post-judgment costs and disbursements claimed by CIBC.

- [14] As I have already found that the CIBC Debt is a family debt, it follows that the additional amounts claimed for post-judgment interest, legal fees and disbursements are also included as part of the family debt and they shall be shared on an equal basis by the parties.
- [15] As the issues are straight-forward and, in view of the overall circumstances involved in this litigation, I find that the time and expense to schedule and conduct a Registrar's hearing to determine the updated amount owing on the CIBC Debt is disproportionate to the amount involved and inconsistent with the object of the Supreme Court Family Rules, B.C. Reg 169/2009 [SCFR].
- [16] Based on the further submissions that I invited and heard from the parties, specifically regarding the post-judgment interest, legal fees and disbursements owing on the CIBC Debt, and the payments made by Mr. Jones, the following chart provides the outcome of the division of family property and debt: Payment Mr. Jones Ms. Jones Parties' share of proceeds of family home property \$87,133 \$87,133 Less CIBC Debt (\$64,340) Less CRA Judgment (to extent of Mr. Jones' interest in sale proceeds) (\$41,560) Less Advance for Legal Fees (\$50,000) Balance of respective shares of proceeds \$0 \$37,133 Adjustments: Ms. Jones to Mr. Jones - 50% of Wells Fargo Debt \$11,875 (\$11,875) Ms. Jones to Mr. Jones - 50% of CIBC Debt \$32,170 (\$32,170) Ms. Jones to Mr. Jones - 50% of \$9, 256.44 repayment towards CIBC Debt \$4,628 (\$4,628) Subtotal: Payment by Ms. Jones to Mr. Jones for Debt \$48,673 (\$48,673) Payment by Mr. Jones to Ms. Jones - 50% of All-Pro Businesses (\$33,500) \$33,500 Total: \$15,173 (\$15,173) Net property division for parties: \$15,173 \$21,960
- [17] As a result of the further submissions and updated calculations set out above, Ms. Jones shall be required to pay Mr. Jones an equalization payment of \$15,173 in respect of net family property. Costs
- [18] Costs are normally awarded to the successful party unless the court orders otherwise: S.A.M. v. J.A.M., 2017 BCSC 2348 at para. 7. As costs usually follow the event, "success in the event has been interpreted as substantial success": Marquez v. Zapiola, 2014 BCCA 35 at paras. 15-16; Reid v. Reid, 2017 BCCA 191 at para. 9.
- [19] Mr. Jones submits that he was substantially successful because when considering and weighing the various matters in dispute, the outcome of the trial was much closer to his position. Mr. Jones submits he succeeded, for example, on establishing that he had overpaid spousal support and that he was entitled to retroactive child support.
- [20] Ms. Jones submits that the parties achieved divided success in the trial so the parties should bear their own costs. Ms. Jones also submits that awarding Mr. Jones costs would undermine the decision to equally divide the assets and debts and unfairly penalize her for pursuing legitimate claims against Mr. Jones.

- [21] When I consider the various matters in dispute and weigh their relative importance in light of the outcome at trial, I have no difficulty concluding that Mr. Jones was substantially successful in the trial. Child and spousal support were two of the key issues in dispute and Mr. Jones achieved substantial success in respect of those issues. Offer to Settle
- [22] On September 24, 2021, Mr. Jones delivered an offer to settle the claim to Ms. Jones. Ms. Jones did not accept that offer. Mr. Jones reserved the right to bring the offer to the court's attention and he now seeks double costs after that date on the basis of Rule 11-1(5)(b) and because the trial outcome did not exceed his offer to Ms. Jones.
- [23] There is no suggestion that Ms. Jones countered the offer. However, Ms. Jones submits that double costs should be denied because Mr. Jones refused to participate in a scheduled mediation where she intended to discuss and explore his offer. Ms. Jones' position is that Mr. Jones' refusal to mediate after the offer and that left her with no choice but to proceed to trial.
- [24] I find that Mr. Jones' offer provided Ms. Jones with a better financial outcome than the one achieved in the trial judgment. While I understand that Ms. Jones wanted to negotiate further at a mediation, I have no difficulty finding that the offer was one which, in all of the circumstances, ought reasonably to have been accepted.
- [25] I reach that conclusion including because the offer waived Mr. Jones' claim to retroactive child support when there was evidence the children were clearly residing with him and there was no reasonable factual or legal basis for disputing his claim to retroactive child support. Therefore, I find that double costs shall apply for all steps taken by Mr. Jones from September 24, 2021 onwards. Fixed Costs
- [26] Relying on the decision in *Javaheri v. Heidari*, 2020 BCSC 1366, Mr. Jones submits that this is a case where the court should summarily fix a lump sum award of costs pursuant to Rule 16-1(1)(c) of the SCFR. Mr. Jones has provided a draft bill of costs which totals more than \$92,000. However, Mr. Jones seeks an award for costs of \$60,000, plus \$15,000 for double costs after September 24, 2021, totalling \$75,000. Mr. Jones submits this represents a significant reduction on the costs that he would otherwise be entitled to seek.
- [27] Ms. Jones submits that costs should be assessed before the Registrar in the normal course. Ms. Jones' material responding to the issue of costs demonstrates the detailed nature of her disagreement with the costs claimed by Mr. Jones. For example, she requests that Mr. Jones prove the outcome of each court application, of which there are many over the decade of litigation in this proceeding. Ms. Jones challenges even the most basic aspect of the disbursements claimed, such as the number of photocopies Mr. Jones made for this decade-long legal proceeding.

- [28] In my view, given the lengthy and unusual history of this family law proceeding, the cost and time required to conduct a Registrar's hearing to assess costs would represent an unwarranted and excessive use of judicial resources. I find the object of the SCFR, which includes the promotion of a just, speedy and inexpensive determination of the issues on the merits, is best served in the present circumstances by having the trial judge fix a lump sum of costs.
- [29] After reviewing the bill of costs and the evidence provided by the parties, I am of the view that the draft bill of costs prepared by counsel for Mr. Jones is a reasonable and fair assessment of his costs. I conclude it is very unlikely Mr. Jones would be awarded an amount of costs less than \$75,000 in light of the evidence and based on my familiarity with the issues and the course of this proceeding to date. I note that Mr. Jones is proposing this lump sum of costs of \$75,000, even though that amount is less than the costs he could otherwise seek from Ms. Jones.
- [30] Having considered the overall circumstances of this family law proceeding and its outcome, I find that Mr. Jones is entitled to his ordinary costs from February 8, 2013 to September 23, 2021, and I fix those costs at \$60,000, and double costs from September 24, 2021 to present, which I fix at \$15,000. Therefore, I fix the total costs payable to Mr. Jones at \$75,000.
- [31] I deny Mr. Jones' request that costs be assessed at more than ordinary difficulty. While the claim was hard fought and the proceeding carried on for a lengthy period of time, I do not find that it was of more than ordinary difficulty. "E. McDonald J."

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