

CANADA / JUDGMENT

Jones v. Jones

2025 BCSC 1636

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1636 Jones v. Jones

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jones v. Jones,

2025 BCSC 1636

Date: 20250812

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 Mr. Justice A. Saunders

Oral Reasons for Judgment

The Claimant, appearing on her own behalf:

A. L. Jones

Counsel for the Respondents:

M. McCubbin

Place and Date of Hearing:

Courtenay, B.C.

August 11, 2025

Place and Date of Judgment:

Courtenay, B.C.

August 12, 2025

- [1] The respondents apply to set aside portions of the order of Madam Justice Young pronounced July 28, 2025 (the "Young Order"), specifically:
- a) Para. 2, which required the respondent Mr. Jones to file a sworn affidavit of financial disclosure within 7 days, disclosing certain specified particulars of his finances;
 - b) Para. 4, which pronounced an interim injunction restraining the disbursement or transfer of funds, then being held in trust, derived from sale of the family residence, or any funds that had been released or disbursed under a June 24, 2025 order of Mr. Justice Fowler;
 - c) Paras. 6, which restrained the respondent from any further enforcement "pending further disclosure, the determination of the July 22, 2024 application and the final disposition of the appeal";
 - d) Para. 7, which provided the order remain in effect "until further order of the Court";
 - e) An order for costs against the respondent.
- [2] The background to this application is set out fully in the reasons for judgment of Madam Justice E. McDonald pronounced June 22, 2023 following a summary trial, as indexed at 2023 BCSC 1070; her supplemental reasons pronounced January 18, 2024, indexed at 2024 BCSC 88; and her oral reasons for judgment on an application by the claimant for a stay of proceedings, pronounced February 20, 2025 and indexed at 2025 BCSC 290. In the latter, McDonald J. set out the following:
- [5] Following the summary trial of this family law proceeding, I made orders on June 22, 2023 and January 18, 2024, requiring the claimant to pay the respondent retroactive child support and trial costs, among other things (the "Judgment").
- [6] The parties disagree about the amount the claimant owes to the respondent based on the Judgment. However, the key point for the purpose of this application is that regardless of the exact amount owing, the Judgment remains largely unpaid and interest continues to accrue, including on family debt owing to a bank.

- [7] The claimant has appealed and the respondent has cross-appealed from the Judgment. On October 27, 2023, following an application by the respondent, the claimant was ordered to post security for costs in the appeal. On March 11, 2024, the claimant posted the security for costs. The hearing of the appeal is set for March 20, 2025.
- [8] Following the respondent's application in the Court of Appeal, the respondent took steps to enforce the Judgment. By way of garnishing orders made January 31, February 2 and March 4, 2024, funds belonging to the claimant were attached and paid into court. The garnishing orders were subsequently released on terms that included the claimant paying the respondents \$300 by July 15, 2025, followed by \$100 on the 15th and 30th of each month.
- [9] On June 13, 2024 the claimant filed an application seeking a stay of proceedings. On September 24, 2024, I granted the claimant leave to file a new stay application. On November 1, 2024, the claimant filed the new stay application and that application came on for hearing before me on February 14, 2024.
- [10] In the meantime, the respondent applied in this proceeding to have certain funds held in trust for the claimant released to him. On February 3, 2025, Justice W.A. Baker heard the respondent's application to release funds. On February 5, 2025, Baker J. issued oral reasons stating, among other things, that:
- a) The order releasing the garnishing orders is terminated as of November 21, 2024 (para. 30);
 - b) The estate of the claimant's father is "presently in a position to disburse \$77,575.69 to the claimant" and that "such funds are properly attached to the benefit of the respondent in partial payment of the outstanding judgment" (para. 31);
 - c) Granting paragraph 1 of the respondent's application to pay the funds to the respondent's counsel, in trust, in partial satisfaction of the Judgment and granting paragraph 2 of the respondent's application to release the funds to the respondent but staying this aspect of the order until the hearing of the claimant's stay application.
- [11] On February 14, 2025, I extended the stay of the order provided by Baker J. until delivery of my oral reasons for judgment on the claimant's stay application.
- [3] In those oral reasons, McDonald J. dismissed the claimant's application for a stay.
- [4] By way of a notice of application filed May 23, 2024, the respondent Mr. Jones had sought an order allowing for the release and disbursement of the subject funds, on specified terms. That application was originally set to be heard in June 2024, and was adjourned twice. It was finally heard by Mr. Justice Fowler on June 24, 2025.
- [5] On that same day, June 24, 2025, the claimant, without notice to the respondents, filed a cross-application, together with a requisition seeking short leave. The cross-application sought, inter alia, an order setting aside or varying McDonald J.'s February 2025 denial of the claimant's application for a stay of proceedings; an order setting aside Justice Baker's decision of February 5, 2025; an interim injunction restraining the respondents from

disbursing funds or taking any further enforcement steps; and an order requiring Mr. Jones to disclose certain specified particulars of his finances. The basis for the application, in general, was said to be Mr. Jones' allegedly wrongful failure to disclose in the various proceedings before McDonald and Baker JJ. that he had made a consumer proposal under the Bankruptcy and Insolvency Act, RSC 1985 c. B-3, in March 2024.

- [6] Justice Fowler heard the respondent's application and the claimant's cross-application. By way of an order pronounced orally on June 24, 2025 (the "Fowler Order"), he granted short leave to the claimant, dismissed the claimant's application "in its entirety", and granted the respondents their order for release and payment of the trust funds, and costs. The Court's database indicates that the transcription of Fowler J.'s June 24 oral reasons for judgment (the "Fowler Reasons") was distributed to the parties on July 22, 2025. The Fowler Reasons are as yet unreported.
- [7] On July 24, 2025, the claimant served the respondent's counsel with an unfiled notice of her application and two supporting affidavits, indicating she intended to have the application heard on a short notice basis on July 28, 2025. The notice of application sought, inter alia: sworn disclosure by Mr. Jones of the full terms of his consumer proposal, a list of all assets sold or disposed of since July 1, 2023, disclosure of the insolvency of the corporate respondents, and any enforcement actions taken against the respondents since July 1, 2023 (all of which had been sought on the application before Fowler J.); an interim injunction restraining further enforcement (also sought before Fowler J.); and an interim injunction freezing the funds in trust from the sale of the family residence, and any associate disbursements made under the Fowler Order, substantively all on the basis of Mr. Jones' non-disclosure of his consumer proposal.
- [8] The respondent's counsel was on vacation the week of July 21. His automated out-of-office reply indicated that he was away until June 29, and stated that urgent matters could be dealt with by phoning his assistant. Counsel was unaware of the claimant's intention to have the matter heard during his absence. The claimant does not deny receiving the out-of-office message.
- [9] Accordingly, the respondent's counsel was not present in court on July 28, 2025 when Justice Young, presiding in Chambers in Nanaimo, allowed the filing of the claimant's application, and granted the application, making the orders the respondents now ask to have set aside.
- [10] The claimant's notice of application referred to monies having been released and distributed pursuant to the Fowler Order, but did not address the substance of the Fowler Reasons. The claimant, in her affidavit No. 32 filed July 15, 2025, stated that the Court, on June 24, 2025, had dismissed her cross-application without hearing it on its merits; and that the court clerk's notes from the June 24 hearing "confirm that my application was permitted to proceed on short notice, but the actual issues were not heard". The claimant partially contradicts this in her affidavit No. 35, filed in opposition to the present application, stating,

Justice Fowler did not grant me leave for my short notice application to be heard. I was not granted leave to file it and it was not heard on its merits.

Her affidavit No. 34 filed July 24, 2025, further stated that her June 24, 2025 notice of application had been dismissed without being heard on its merits. The claimant confirmed, on the hearing of this application, that she told Young J. during the July 28 hearing that her application had not been dealt with on the merits. Justice Young was, apparently, not provided with a copy of the Fowler Reasons.

- [11] The claimant's description to Young J. of what had transpired before Fowler J. was simply untrue. The transcript of the hearing before Fowler J. shows that both parties made submissions on the precise point of what knowledge McDonald J. would have had of Mr. Jones' financial position, given the non-disclosure of the consumer proposal, and what relevance the consumer proposal had to the claimant's indebtedness. Paragraphs 9-11 of the Fowler Reasons deal directly with the question of whether non-disclosure of the consumer proposal would have materially affected Justice McDonald's decision not to grant a stay of proceedings. He said:
- [9] The fundamental question is whether there is any reasonable likelihood that Justice McDonald's decision would have been any different had she been aware of Mr. Jones' consumer proposal. I have reviewed the reasons for denying the stay. Justice McDonald acknowledged that the claimant had not shown a substantial risk of irreparable harm if the stay was denied because there was no evidence to establish that she would be unable to collect an award from Mr. Jones. It is, therefore, at least possible that the consumer proposal might have impacted that part of her decision. However, I am not satisfied that the consumer proposal evidence would have tipped the balance such that a stay would have been ordered. Justice McDonald was aware of some of Mr. Jones' debts, that he worked consistently, and had for many years paid child and spousal support. It is, therefore, unlikely that the Court would have concluded that there was a substantial risk of irreparable harm.
- [10] Furthermore, the third part of the test, the balance of convenience, still clearly favours not granting a stay. The authorities are clear that Mr. Jones is presumptively entitled to the fruits of his judgment. Arguably, his debts are what they are in part because he has had these monies owed to him and has had to expend large sums to realize, for example, the amounts he now wishes to have distributed, including overpayments of child and spousal support. That balance of convenience clearly favours Mr. Jones.
- [11] I do not find that the consumer proposal would have made a material difference to Justice McDonald's decision. The application today, again, for a stay is dismissed with costs payable to Mr. Jones. I should add that the different relief sought in the short leave application is also dismissed because all of the relief sought is essentially the same: an application to stay enforcement of the judgments against Ms. Jones.
- [12] In short, Justice Fowler did very much deal with the merits of the claimant's application.

- [13] The respondents say that they meet the well-known Miracle Feeds test for setting aside an order obtained in the absence of a party. I agree. The respondents' failure to appear was not wrongful or deliberate. The application to set aside is being made promptly, on the first assize date available. As to the third factor, whether there were meritorious grounds to oppose the application - often termed, in the context of applications to set aside proceedings in default, whether there is a "defence worthy of investigation" - I agree with the respondents that there are several in this case, among them:
- a) For the claimant to have brought before Young J. essentially the same application that had been heard before Fowler J., without disclosing that Fowler J. had heard submissions and dealt with the issue of the allegedly wrongful non-disclosure, was clearly an abuse of process;
 - b) The respondent's financial position was not relied on by him in opposing a stay; for that reason, and for the reasons stated by Fowler J., the consumer proposal, and even more broadly, the respondent's financial position as a whole, were arguably immaterial, and there was no legal basis for imposing a disclosure obligation on him;
 - c) The terms of the Young Order - the form of which was drafted by the claimant, and signed on the bench - are, with respect, in some measures overbroad and vague. Paragraph 2(b) requires disclosure of all assets sold, transferred, seized or disposed of, regardless of monetary value and regardless of whether disposition would have occurred in the ordinary course of business. Paragraph 2(c) requires "disclosure of the insolvency" of the corporate parties; it is unclear whether this is requiring the providing of particulars of the corporations' financial status, or whether disclosure of particular financial documents or other documents is being ordered. With respect to para 2(d), requiring disclosure of "any other enforcement efforts" against Mr. Jones, again the scope of his disclosure obligation is unclear; would this require him, for example, to disclose reminder notices he has received, or calls from collection agencies? All of these points could have been addressed, had the respondent been represented at the hearing.
- [14] As to the fourth factor, I am satisfied that all the requirements are established through affidavit evidence.
- [15] I would add, to this analysis of the Miracle Feeds test, that here there is little if any room for doubt that Young J. would have refused the stay, and the related orders, had the claimant not so completely misrepresented Fowler J.'s decision. The nature of that misrepresentation was so egregious that this factor alone would justify setting the order aside.
- [16] The order is therefore granted in the form sought.
- [17] The order may be drawn up by counsel for the respondent and submitted without the claimant's endorsement.

[18] I have characterized the claimant's conduct as an abuse of process, and as such, she is liable for costs on a special costs basis. The respondent asks that the court exercise its discretion to fix special costs in the amount of \$5,000. However, the Court of Appeal has held that it is an error in principle to assess special costs on a rough-and-ready basis and in the absence of evidence of the actual legal costs incurred, such as a draft Bill of Costs: see *Herbison v. Canada (Attorney General)*, 2014 BCCA 461, at paras. 35-38. As an alternative, the respondent seeks ordinary costs fixed at \$1,000 per half day of hearing, plus applicable taxes. I award the respondents their costs in that amount, fixed at \$1,000 plus taxes and disbursements, payable forthwith, in any event of the cause.

"A. Saunders J."

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