

CANADA / JUDGMENT

Jovolos v. Schmidt

2011 BCSC 504

COURT

Supreme Court of British Columbia

DECIDED

21 April 2011

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2011 BCSC 504 Jovolos v. Schmidt IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jovolos v. Schmidt, 2011 BCSC 504 Date: 20110421 Docket: E080948 Registry: Vancouver Between: Angeline Tracy Marie Jovolos Plaintiff And Markus Joseph Schmidt Defendant Before: The Honourable Madam Justice Hyslop Supplementary Reasons for Judgment Counsel for the Plaintiff: M.D. Mennie Counsel for the Defendant: R. Henderson Place and Date of Trial: Vancouver, B.C. August 20, 2009 Place and Date of Judgment: Vancouver, B.C. April 21, 2011

- [1] The defendant claims that I did not deal with certain parts of the property division when this matter came on before me on August 20, 2009, by summary trial. I gave written reasons on September 4, 2009: Jovolos v. Schmidt, 2009 BCSC 1215.
- [2] On January 31, 2011, Mr. Schmidt's counsel appeared by telephone conference, and Ms. Jovolos appeared in person. On January 31, 2011, I granted an order which varied my order of September 4, 2009, relating to the children's soccer expenses. Ms. Jovolos alleged that Mr. Schmidt's soccer expenses included other expenses, although related to soccer, were not necessary for soccer, such as restaurant meals and other expenses that she did not want to share. In addition, I was asked to deal air miles that had accumulated. I made an order relating to both of these items.
- [3] Mr. Schmidt claims that there are two other matters that were not dealt with by me at the summary trial. They are expenses from 2006 to 2008 (spreadsheet expenses) and a motor vehicle equalization payment.
- [4] Ms. Jovolos and Mr. Schmidt filed motions setting out what they were seeking. Ms. Jovolos' motion is dated March 19, 2009 and was filed August 17, 2009.
- [5] Ms. Jovolos, in her motion, relied on the pleadings, the financial statements, the affidavit of service, and the registrar's certificate of pleadings, as well as her affidavits #1, #2 and #3 as evidence for the summary trial.
- [6] Mr. Schmidt, in his response to Ms. Jovolos' motion, stated that he was relying on his affidavits #2 and #3, as well as his financial statement.

- [7] Mr. Schmidt brought a motion for summary trial dated June 30, 2009 and filed August 18, 2009, stating that he was relying on his affidavits #2 and #3, as well as his financial statement (this is the same financial statement of Mr. Schmidt that Ms. Jovolos referred to in her motion).
- [8] Ms. Jovolos filed a response to Mr. Schmidt's motion stating that she would be relying on her affidavits #1 - #5 inclusive. Spreadsheet Expenses
- [9] The spreadsheet expenses were referred to at a settlement conference presided by Madam Justice Humphries, and in an affidavit that Mr. Schmidt swore on May 14, 2008.
- [10] In Madam Justice Humphries' settlement consent order dated January 14, 2008, the following orders are made:
10. By July 21, 2008 the Plaintiff will advise, via counsel: ...
 - b. of her position with respect to the reimbursement schedule provided. ...
 12. The parties agree that the within order represents a partial settlement and does not resolve all of the issues outstanding between them.
- [11] Mr. Schmidt's affidavit, sworn May 14, 2008, is not one of the affidavits in which he sought to rely on in this summary trial.
- [12] In that affidavit, Mr. Schmidt swears:
2. I make this affidavit in support of my application for a section 67 Family Relations Act order to be made which restrains the disposition of the assets which are the subject matter of this matrimonial proceeding. I also make this affidavit in defence of the Plaintiff's motion to lift the freeze on a bank account that is in the name of our business, Integra Ventures Inc. ...
 15. From January 23, 2006 to present I have been keeping a spreadsheet of items that the Plaintiff has said she would pay back because they were not my expenses. They total \$38,716.53. Now produced and attached hereto as Exhibit "C" to this my Affidavit is a true copy of the Spreadsheet.
- [13] The spreadsheet which is exhibit C starts on January 23, 2006 and ends on April 28, 2008. The total amount is \$38,716.53. The spreadsheet that Mr. Schmidt now seeks to rely on as a claim against Ms. Jovolos is for \$6,387.42. It starts on January 23, 2006 and ends November 29, 2008.
- [14] The only reference that Ms. Jovolos makes to the spreadsheet is contained in paras. 6, 7 and 8 of her affidavit #3 which states:
6. On July 29, 2008, Ms. Mennie wrote a letter to Ms. Henderson copy of which is attached as Exhibit "B".

7. In August 2008, I contacted the Defendant to ask he send an electronic version of his spreadsheet so that I could provide my response directly on the document. He did not do so.
8. On September 18, 2008, I sent the Defendant an email, a copy of which is attached as Exhibit "C", providing my position respecting the spreadsheet. Since then, I have repeatedly suggested that we discuss further our respective positions respecting the spreadsheet. Although he had previously agreed that he would do so, he has never done so.
- [15] In a letter written by Ms. Jovolos' counsel, she says: With respect to paragraph 10 of the Consent Order made July 14, 2008, we advise as follows: ...
2. Our client is quite prepared to consider reimbursement of certain expenses and would like to speak with Mr. Schmidt directly to discuss them.
- [16] In exhibit C, Ms. Jovolos addresses the spreadsheet. This is the spreadsheet that Mr. Schmidt refers to in his affidavit of May 14, 2008. I can find nothing in exhibit C where Ms. Jovolos agrees to pay for any of the items on the spreadsheet, except upon the production of documents proving the expense and an acknowledgement by Ms. Jovolos that she will pay half the repairs for the truck and pay her share of the insurance. However, in exhibit C Ms. Jovolos makes comments as to amounts of money that Mr. Schmidt should pay her.
- [17] There is nothing in Mr. Schmidt's material which provides evidence that Ms. Jovolos should be responsible for some of these items. As a result, I am not prepared to order that Ms. Jovolos pay Mr. Schmidt the money he is claiming on the spreadsheet. Motor Vehicle Equalization Payment to Mr. Schmidt
- [18] Mr. Schmidt claims that he should receive half the value of Ms. Jovolos' automobile. This amount is \$5,200.00. The matter of Ms. Jovolos' automobile was not argued. Further, there was no evidence of the value of an automobile.
- [19] The first paragraph of Madam Justice Humphries' order identifies family assets which are to be divided equally. There is no mention of an automobile.
- [20] In Ms. Jovolos' financial statement, she makes reference to a 2001 BMW. She swears that she acquired it in 2005, and at the time of swearing her financial statement, which was May 2, 2008, she said it was worth \$20,000.00.
- [21] Mr. Schmidt does not identify the automobile and makes no reference to it in his evidence that he presented to the Court at the summary trial. Summary
- [22] In summary, these matters were not argued and there was no evidence before me upon which a decision could be made at the summary trial. This is not a matter of non-disclosure. Costs
- [23] Each party shall bear their own costs. "H.C. Hyslop J." HYSLOP J.

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