

CANADA / JUDGMENT

K.P.I.N. v. K.N.N.**2005 BCSC 163**

COURT

Supreme Court of British Columbia

DECIDED

25 January 2005

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IN THE SUPREME COURT OF BRITISH COLUMBIA IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: K.P.I.N. v. K.N.N., 2005 BCSC 163 Date: 20050125 Docket: E040663 Registry: Vancouver Between: K.P.I.N. Plaintiff And: K.N.N. Defendant Before: The Honourable Mr. Justice Groberman Oral Reasons for Judgment (Anton Piller Order) In Chambers January 25, 2005 Counsel for Plaintiff T.L. Jackson For the Defendant No appearance Place of Hearing: Vancouver, B.C.

- [1] THE COURT: This application originally came before me yesterday as an application for exclusive possession of residential premises under section 67 of the Family Relations Act, R.S.B.C. 1996, c. 128. The purpose of the application, as I understand it, is to allow the plaintiff, the wife, exclusive access to premises for the purpose of determining whether there were financial documents and the like on the premises.
- [2] I am not satisfied that that is an appropriate purpose for granting exclusive occupancy of premises, nor am I satisfied that such an order would adequately protect either the privacy of the defendant or, indeed, provide the plaintiff with the authority to search or seize property on the premises that did not belong to her.
- [3] In the circumstances, in discussions with counsel, I suggested that a more appropriate application might be an application for an Anton Piller order. Counsel had considered that possibility and accepted that an Anton Piller order might be an appropriate remedy.
- [4] After hearing from counsel for the applicant late in the day yesterday and again this morning, I have determined that in the unique circumstances of this case, an Anton Piller order is appropriate.
- [5] No case law has been cited to me in which an Anton Piller order has been granted in the context of matrimonial proceedings, and I conceive that such an order must be extraordinarily rare in that context.

- [6] I am satisfied, however, in the present case that the defendant has shown a settled intention not to comply with court orders for production of information and documents, that there is a very strong prima facie case that the defendant has secreted assets and attempted to move them out of the jurisdiction, and that the defendant is attempting to deprive the plaintiff of very substantial assets to which she would be entitled in family law proceedings.
- [7] In the circumstances of this case, I am satisfied that the order sought is necessary in order to preserve evidence and, indeed, to preserve the property over which the plaintiff makes a claim.
- [8] I note that the premises to be searched, and from which documents are going to be taken, is residential premises. I do not ignore the extraordinary protection that the law normally attaches to such premises. I am satisfied, however, that the plaintiff as joint owner of the premises has an unfettered right to enter and that this court need not concern itself with issues of her right to enter or her right to invite others on to the premises.
- [9] The effect of this order, then, is not, strictly speaking, to grant entry to premises (although it does provide some protection in the event that locks need to be opened). Rather, the purpose of this order is to provide a right to search for and take documents from premises which the plaintiff already has a right to enter.
- [10] My decision should not be seen as authority for the proposition that Anton Piller orders will be granted easily or indeed at all in ordinary family law proceedings. I emphasize that the evidence that has been placed before me satisfies me that this is a very unusual case. An extraordinary and indeed draconian remedy is necessary in the unique circumstances.
- [11] It is my intention, should these reasons be transcribed, to attach as an appendix a copy of the order granted. "H. Groberman, J." The Honourable Mr. Justice H. Groberman March 1, 2005 - Revised Judgment This is a corrigendum to my oral reasons for judgment given on January 25, 2005. Paragraph 2 should read as follows:
- [2] I am not satisfied that that is an appropriate purpose for granting exclusive occupancy of premises, nor am I satisfied that such an order would adequately protect either the privacy of the defendant or, indeed, provide the plaintiff with the authority to search or seize property on the premises that did not belong to her. APPENDIX No. E040663 Vancouver Registry IN THE SUPREME COURT OF BRITISH COLUMBIA Between: K.P.I.N. Plaintiff And: K.N.N. Defendant ORDER MADE WITHOUT NOTICE BEFORE THE HONOURABLE) TUESDAY, THE 25TH DAY) Mr. JUSTICE GROBERMAN) OF JANUARY, 2005 UPON THE WITHOUT NOTICE APPLICATION of the Plaintiff coming on for hearing on this date at 800 Smithe Street, Vancouver, British Columbia, and on hearing Tracey L. Jackson, counsel for the Plaintiff; AND UPON the Plaintiff undertaking not to use any information acquired as a result of this Order for any purpose relating to any proceeding outside of the jurisdiction of this court without leave of this Court, except that the Plaintiff may use such information in a proceeding outside of this jurisdiction for the sole purpose of freezing or preserving assets that may be family assets; AND UPON READING:

- a) the affidavit of the Plaintiff sworn Monday, January 24, 2005;
 - b) the affidavit of the Plaintiff sworn Friday, January 21, 2005; and
 - c) the affidavit of K.M. sworn Thursday, January 20, 2005 IMPORTANT NOTICE TO THE DEFENDANT
1. This Order orders you to allow the persons mentioned below to enter the premises at [] Avenue, in the city of W.[], in the Province of British Columbia [the "Premises"] to search for, examine and remove or copy the articles specified in the order. This part of the order is subject to restrictions. This order also requires you to provide certain information regarding the specified articles to the Plaintiff's solicitors and to hand over the specified articles which are under your control for examination and removal or copying, and prohibits you from doing certain acts. You should read the terms of the order very carefully. You are advised to consult a lawyer as soon as possible.
 2. If you or a person appearing to be in control of the premises are present at the attendance of the Supervising Solicitor for the execution of this Order, before you or the person appearing to be in control of the Premises allows anybody onto the Premises to carry out this Order, you are entitled to have the Supervising Solicitor explain to you what it means in everyday language.
 3. While the Supervising Solicitor, as an officer of this court, will explain the effect of this order to you, he or she is not providing legal advice to you, and no solicitor-client relationship exists or is created between the supervising solicitor and you or the person appearing to be in control of the Premises.
 4. This Order may be executed between the hours of 9:00 am and 7:30 pm on any business day.
 5. You are entitled to seek legal advice regarding the nature and effect of this Order and of the rights you may have to assert solicitor-client privilege and the privilege against self-incrimination.
 6. If there is a person appearing to be in control of the Premises, that person may refuse to permit the search to begin for two hours from the time of service of the Order on the Defendant's solicitor or on the person appearing to be in control of the Premises while you consult with your solicitor.
 7. You are at liberty to apply to this court to set aside or vary this order upon giving 24 hours notice to the Plaintiffs solicitor of your intention to do so.
 8. If you disobey this order, you may be guilty of contempt of court and may be sent to prison, or fined, or your assets seized. THE ORDER THIS COURT ORDERS that: Entry and Search of Premises and Vehicles on the Premises:
 1. John Fiddes, a solicitor with Fiddes Van Der Flier Law Corporation [hereinafter "the Supervising Solicitor"] be appointed to supervise the execution of this order.

2. Upon attendance to execute this Order, the Plaintiff, by her solicitor, shall forthwith serve a filed copy of the affidavits filed herein upon the Defendant's solicitor, and upon any person appearing to be in control of the Premises.
3. If the Defendant or a person appearing to be in control of the Premises is present upon the arrival of the Plaintiff to execute this Order, the Defendant or the person appearing to be in control of the premises shall allow:
 - a) the Supervising Solicitor and his assistant;
 - b) the solicitors for the Plaintiff (Melissa Murray);
 - c) agents for the solicitors for the Plaintiff (a representative of Forstrom Jackson, Stephen Jackson);
 - d) the Plaintiff and Mr. G.H.. to enter the Premises and any vehicles on or adjacent to the Premises including but not limited to the Defendant's BMW X5, licence # [] that they can: · search for; · inspect, · photograph or photocopy, · remove and · deliver into the safekeeping of the Plaintiff's solicitors all the documents and articles which are listed in Schedule I to this Order [the "Listed Items"] or which the representatives of Dunnaway Jackson & Associates or Stephen Jackson believe in good faith to be Listed Items. The Defendant or the person appearing to be in control of the Premises must allow those persons to continue the search of the Premises until the search is complete (but in any event no later than 7:30 p.m.), and if necessary to re-enter the Premises on the same or the following day in order to complete the search.
4. The Supervising Solicitor shall permit the Plaintiff's locksmith to open any and all locks on the Premises as necessary, including any entry, exterior and interior locks in order to permit entry to the Premises including into the garage located on the Premises and to appropriately search the Premises and the garage provided that the Supervising Solicitor:
 - a) has served the person appearing to be in control of the Premises with a copy of this Order and the affidavits in support of this Order, or
 - b) the Supervising Solicitor is satisfied that the Defendant's solicitor has been served with a copy of this Order and the affidavits in support of this Order.
5. The Supervising Solicitor shall use his best efforts to ensure that the Plaintiff, G.H., the Plaintiff's solicitors or their Agents, Stephen Jackson, do not view any documents protected by solicitor-client privilege.
6. The Plaintiff shall be at liberty to open any and all safes located on the Premises and to remove any Listed Items contained in any and all safes. If the Plaintiff is unable to open any and all safes, the Plaintiff's solicitors shall be at liberty to remove any and all safes from the Premises.

7. This order must be complied with by the Defendant, or by a responsible employee or agent of the Defendant, or by the person appearing to be in control of the Premises.
8. This order requires the Defendant or an employee or agent of the Defendant, or the person appearing to be in control of the Premises, to permit entry to the Premises immediately upon the order being served upon him or her, except as stated in paragraphs 7 and 8 below.
Restrictions on the service and carrying out of paragraphs 1 to 5 of this order
9. Paragraphs 1 to 8 of this order are subject to the following restrictions:
 - (a) This order may only be executed between 9:00 am, and 7:30 p.m. and may not be executed at all on any day that is not a business day;
 - (b) This order may not be carried out at the same time as any police search warrant;
 - (c) This order must be served by the Supervising Solicitor on any person appearing to be in control of the Premises, and the actions referred to in paragraphs 1 to 8 must be carried out in his or her presence and under his or her supervision if there is a person appearing to be in control of the Premises. If the Premises are occupied by an unaccompanied woman, at least one of the persons accompanying the Supervising Solicitor must be a woman.
 - (d) No item may be removed from the Premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the person appearing to be in control of the Premises and he or she has been given a reasonable opportunity to check the list.
 - (e) The Supervising Solicitor must provide to the Defendant, or to the person appearing to be in control of the premises, a receipt for the list of the items removed in accordance with this order, and that person must confirm in writing, upon demand of the Supervising Solicitor, that the receipt accurately reflects the items removed in accordance with this order.
 - (f) If there is no person appearing to be in control of the Premises upon the arrival of the Supervising Solicitor:
 - i) the Supervising Solicitor may allow the execution of this Order provided that the Defendant's solicitor has been served with this Order and the supporting affidavits two hours prior to the Supervising Solicitor's commencement of the search of the Premises for execution of this Order; ii) the requirements under paragraphs 9c, 9d, and 9e do not apply; iii) shall leave a receipt of the items removed at the Premises; and iv) within 24 hours of the removal of the Listed Items, the Supervising Solicitor shall provide a receipt for items removed to the Solicitor for the Defendant.

- (9) If the Supervising Solicitor is satisfied that full compliance with the foregoing subparagraphs (c), (d), (e) and (f) above is impracticable, or if the Defendant or the person appearing to be in control of the Premises refuses to provide the receipt referred to in subparagraph (e), the Supervising Solicitor may permit the search to proceed and items to be removed without compliance with the impracticable requirements or notwithstanding the refusal to provide a signed copy of the receipt. Obtaining legal advice and applying to the court
10. Before permitting the search of the Premises by the Supervising Solicitor, the Plaintiff's solicitor, Stephen Jackson, the Plaintiff and Mr. G.H., the Defendant or other person appearing to be in control of the Premises may seek legal advice. Such a person is entitled to seek legal advice regarding the nature and effect of this order and of the rights the Defendant may have to assert solicitor-client privilege and of the scope of the privilege against self-incrimination. The Defendant, or other person appearing to be in control of the Premises, may refuse to permit the search to begin for two hours while he or she consults a solicitor other than the Supervising Solicitor. Delivery of Listed Items
11. The Defendant and other persons appearing to be in control of the Premises must immediately hand over to the Plaintiff's solicitors or to Mr. Stephen Jackson any of the Listed Items which are in his or her possession or under his or her control regardless of whether such items are located by the search.
12. If any of the Listed Items exists only in computer readable form, the Defendant must immediately give the Plaintiff's solicitors or Mr Stephen Jackson, effective access to the computers, with all necessary passwords, to enable them to be searched.
13. All reasonable steps must be taken by the Plaintiff to ensure that no damage is done to any computer or data.
14. The Supervising Solicitor may remove any and all computers located on the Premises for a period of up to seven days to obtain a copy of all information contained therein.
15. The Supervising Solicitor shall obtain a copy of all of the information contained on any and all computers located on the Premises and shall provide to the Plaintiff and to the Defendant a true copy of the information so copied within 7 days of the date of the removal.
16. The Plaintiff's solicitors or Stephen Jackson shall be at liberty to remove any and all items on Schedule "1" in accordance with this Order.
17. The Plaintiff's solicitors shall provide to the Defendant a List of Documents listing the Listed Items Removed within 7 days of the date of removal. Prohibited Acts
18. The Defendant, the person appearing to be in control of the Premises, or any other person may not commence legal proceedings against the Supervising Solicitor for any reason arising out of the operation of this order without first obtaining leave of this court to do so.

19. The Defendant, or his or her agents, employees, directors, or otherwise be enjoined until the trial or other disposition of this action or until further order of this court from doing the following acts, or any of them:
 - (a) parting with possession or control of any and all of the listed items or
 - (b) hiding, defacing, or destroying any of the listed items. Report of Supervising Solicitor
20. The Supervising Solicitor must prepare a report on the execution of this order, which is to be filed with the court within 72 hours following the execution of this order. Name and address of Plaintiff's solicitors:
21. The Plaintiff's solicitors are: Dunnaway Jackson & Associates 1205-808 Nelson Street Vancouver, B.C. V6Z 2H2 Tel: 604-682-0007 Fax: 604-682-8711 Attention: Tracey L. Jackson
22. Representatives of Forstrom Jackson are: Forstrom Jackson Barristers & Solicitors 1200-625 Howe Street, Vancouver, BC V6C 2T6 Tel: 604-685-8757 Fax: 604-661-0759 Attention: Stephen Jackson Name and address of Supervising Solicitor
23. The Supervising Solicitor is: John C. Fiddes Fiddes Van Der Flier Law Corporation 1620-808 Nelson Street Vancouver, B.C. V6Z 2H2 Tel: 604-682-3155 Name and address of the Defendant's solicitor
24. The Defendant's Solicitor is: Steven N. Mansfield Bayshore Law Group Barristers & Solicitors 818-1550 Alberni Street, Vancouver, BC V6G 1A5 Tel: 604-669-8900 BY THE COURT Deputy District Registrar Schedule 1 To the Order of the Honourable Mr. Justice Groberman, dated January 25, 2005 The Plaintiff's solicitor shall be permitted to remove the following documents and articles from the Premises, not limited to those documents in the name of the Defendant:
 1. any and all financial documents of any kind
 2. any and all documentation of any and all financial transactions
 3. any and all bank account statements or documents relating to any bank accounts
 4. any and all debt instruments
 5. any and all brokerage statements, or documents from or to any brokerage houses
 6. any and all financial statements
 7. any and all tax receipts, income tax documents, income tax returns, correspondence with any taxation authority
 8. shares, share certificates, warrants, options or any other documentation relating to corporate ownership
 9. stocks, bonds, or any other financial instruments

10. contracts or agreements relating to any financial matters
11. documentation of any equity holdings
12. documentation of stock transactions of any kind
13. any safes
14. cash
15. cheques
16. credit cards
17. gold
18. any and all precious metals
19. mail, whether opened or unopened
20. cheque registers
21. any and all computers
22. zip-drives and any other computer back-up and storage devices and information
23. any documents relating to any banking and financial transactions taking place off-shore
24. any insurance documents
25. any retirement savings plans documents
26. any credit card statements
27. title searches
28. state of title certificates
29. conveyancing documents
30. computer printouts of any and all financial matters
31. correspondence with any financial institutions or brokerage houses including but not limited to electronic correspondence
32. any and all email or electronic or other correspondence relating to financial matters
33. any and all files relating to financial matters
34. on-line statements and receipts, whether in print format or electronic format showing on-line financial records or transactions of any kind
35. any and all trust documentation
36. financial records, whether electronic or print

37. Quicken or any other accounting records
 38. financial records
 39. statements of family finances or net worth statements
 40. applications for credit
 41. earnings statements
 42. agreements for payment of any kind
 43. vehicle documentation or any kind
 44. partnership agreements
 45. shareholder agreements
 46. cancelled cheques
 47. duplicate cheques
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