

CANADA / JUDGMENT

Lebedovich v. Howell

2002 BCSC 1302

COURT

Supreme Court of British Columbia

DECIDED

6 September 2002

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2002BCSC1302

Citation:	Lebedovich v. Howell
Date:	20020906 2002 BCSC 1302
Docket:	S35131 Registry: Nanaimo IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	PATRICIA E. LEBEDOVICH SOLICITOR
AND:	WILMOT HOWELL CLIENT

REASONS FOR DECISION

OF

MASTER J.W. HORN

(AS REGISTRAR)

Patricia Lebedovich Appeared In Person

Counsel for the Client:

M.M.J. MacLeod

Date and Place of Hearing:

August 16, 2002

Nanaimo, BC

- [1] This was a review of a series of solicitor's bills rendered to the client between February 15, 2001, and April 26, 2002. The bills, totalling 25 in number, were in a total amount for fees, disbursements and taxes of \$24,973.32 of which all has been paid from monies paid into trust by the client except for the sum of \$1,904.21. The bills were all rendered in respect of one retainer and it is not disputed that, though nearly all have been paid, all of the bills are reviewable by me.
- [2] The solicitor-client relationship commenced on March 16, 2001, when the client signed a solicitor's engagement letter. The agreement was that the solicitor would be paid \$150 per hour and her legal assistant's rate would be \$50 per hour and the engagement was for the prosecution or defence of a family law dispute between the client and his wife.
- [3] The client does not dispute that the work was done for the quoted rate and that up to a certain point, the work was done effectively and that he received value for the work. It is in consequence of the circumstances and timing of the termination of their relationship that the client says he is entitled to a reduction in the total fees charges even though they were charged at the agreed rate.
- [4] The client, Wilmot Howell, lived in White Rock, but the litigation was being conducted in Nanaimo. Mr. Wilmot suffers from leukemia and throughout the conduct of this engagement he was required to attend doctors' appointments and receive treatments on an ongoing basis as much as three times per week. As a result of his health situation, he decided that he needed to employ counsel on the mainland who might assist Ms. Lebedovich in dealing with any documents or conferences when required for the conduct of the case. He engaged Ms. Morag MacLeod for this work. Ms. MacLeod's efforts were peripheral to the conduct of the proceedings until the court rendered its first decision in this matter on October 18, 2001.
- [5] Mr. Howell was not satisfied with the outcome of the case and he consulted with Ms. MacLeod as to his options and from then onward received advice from her although he was still dealing with Ms. Lebedovich as his solicitor.
- [6] The action went to trial before Mr. Justice Shabbits on October 3, and 4, 2001, and he gave judgment on October 18, 2001. The issues addressed were the validity of the marriage agreement between the parties and whether there should be judicial reapportionment of the family assets. In the result, the learned trial judge concluded that there ought to be a judicial reapportionment of assets. In effect, he ordered that the plaintiff wife be left with the residence in Parksville free of any claim of the defendant and that the defendant transfer to her by way of spousal rollover, one-half of the RRSP investments disclosed in his financial statement.

- [7] He concluded that the defendant should be left with a condominium in Vancouver and with all of his other assets free of any claim of the plaintiff. Unfortunately, the conclusion that the defendant still owned a condominium in Vancouver was incorrect and, in fact, he had disposed of it before any triggering event.
- [8] In consequence of this error, Ms. Lebedovich and Mr. Soloway, who acted for the plaintiff wife, appeared again before of Mr. Justice Shabbits on November 30, 2001, and he issued supplementary reasons in which he changed his original order and acceded to a submission, apparently advanced on behalf of Mr. Howell, that the plaintiff wife be left with a half interest in the house and a life interest in Mr. Howell's undivided one-half interest in the house.
- [9] After the first judgment was handed down, in consultation with Ms. MacLeod and Ms. Lebedovich, Mr. Howell decided that an appeal would be filed to preserve the time limitations, that Ms. Lebedovich would apply for a stay of execution of the first order and would apply to Mr. Justice Shabbits to address the issue of his misapprehension of the evidence.
- [10] As a result of the second order of Mr. Justice Shabbits, Ms. Lebedovich entered into correspondence and conversations with Mr. Soloway in regard to the draft order. She noticed some inaccuracies in Mr. Soloway's draft. Mr. Soloway, on his part, was pressing for an accurate statement of the named investments, half of which were to be transferred to Mrs. Howell. But Mr. Justice Shabbits' order was entered with her agreement.
- [11] There had, however, been a mortgage placed by Mrs. Howell against the Parksville house and that matter was not dealt with in Mr. Justice Shabbits' reasons because he was not told about it. Furthermore, such details as who would be responsible for the costs of upkeep and taxes and whether there would be some remedy against waste were not dealt with by him, nor in the entered order.
- [12] Agreement as to these issues was attempted between Ms. Lebedovich and Mr. Soloway and in the formulation of proposals Ms. MacLeod took an active part. So much so that a draft letter of hers was sent by Ms. Lebedovich to Mr. Soloway, almost without amendment, on January 10, 2002, proposing a resolution of all issues.
- [13] Mr. Soloway did not accept these proposals, despite the fact that the existence of a registered mortgage impaired the half interest Mr. Justice Shabbits intended should be secured to Mr. Howell.
- [14] In the meantime, Mr. Soloway was pressing for payment of those RRSPs which were to be transferred to Mrs. Howell pursuant to the order.

- [15] By March 18, 2002, Mr. Soloway, on instructions from his client, alleged that Mr. Howell was in contempt of court because it appeared from certain financial statements that he had been disposing of some of the RRSPs which were the subject of Mr. Justice Shabbits' order and of an earlier restraining order and he later commenced proceedings for contempt.
- [16] This application, however, was never was pursued. There was a deadlock because on behalf of Mr. Howell. Ms. Lebedovich was unwilling to provide a transfer of half the RRSPs unless either the mortgage was removed from Mr. Howell's interest in the property or his interest was secured in some other form. Mr. Soloway was under the impression that the existence of a certificate of pending litigation on behalf of Mr. Howell was sufficient because there was plenty of equity in the property.
- [17] Unfortunately for everybody, the order of Mr. Justice Shabbits had already been entered and so Mr. Soloway has some reason to complain that Mr. Howell was not in compliance with the order and might be in contempt. Furthermore, once the order was entered, it became difficult to approach Mr. Justice Shabbits again to inform him of the fact that there was a mortgage in existence which had been unknown to him.
- [18] No very satisfactory conclusions were ever reached by Ms. Lebedovich and Mr. Soloway and finally on April 10, 2002, Ms. Lebedovich wrote to Ms. MacLeod and said that she specifically sought instructions to set the matter down before Mr. Justice Shabbits once she had applied to the mortgage company to release the mortgage over the whole of the property and register it only over Mrs. Howell's one-half interest. She did not, however, expect the Coastal Credit Union to consent to this and she was not surprised when she eventually received a refusal from the solicitor for the Credit Union.
- [19] Ms. Lebedovich said in evidence that an agreement resolving all issues had been reached between her and Mr. Soloway in December, 2001, and that "neither the client nor the solicitor MacLeod ever provided instructions despite repeated requests by telephone, fax and letter." If there ever was such an agreement, it does not appear in writing and I had considerable difficulty during the hearing in trying to determine exactly what the agreement was. But that is not exactly the point.
- [20] The second judgment of Mr. Justice Shabbits had left unconsidered a number of matters which ought to have been settled before his order was entered. Having entered the order, Mr. Soloway was in a position to initiate proceedings to enforce his complaint that his client was not receiving the monies payable pursuant to the order. He was under no pressure to reach agreement.
- [21] It took several months before this issue was finally solved and by then Ms. Lebedovich had been discharged. It was on April 26, 2002, that she wrote to Ms. MacLeod and said in relation to the pending contempt proceedings, "We require instructions with respect to the same forthwith." In an attached letter she said,

If I do not receive instructions immediately, I will have to appear on Monday and advise the court that I have no instructions. The court may then construe that as meaning Mr. Howell does not care and has no respect for the court process which, of course, is far from the truth. If I have to appear without instructions, I will ask the court to remove me from the record.

- [22] Nothing is more clear than that Ms. Lebedovich was refusing to continue to act for Mr. Howell in resisting the application for an order of contempt.
- [23] One of the items which was causing her concern was a request by Ms. Lebedovich for authorisation to obtain information on Mr. Howell's RRSPs. She says that the client and Ms. MacLeod failed or refused to provide her with the authorisations. Mr. Howell said she already had authorisations, which he had given a long time previously.
- [24] For some reason, communications directly between Ms. Lebedovich and Mr. Howell ceased from at least January onward and she was communicating solely with Ms. MacLeod.
- [25] The request for authorisations was made when Ms. MacLeod was away for a month. By April 10, 2002, Ms. Lebedovich, in a letter to Ms. MacLeod said that she would be happy to receive further instructions from Ms. MacLeod once her account had been paid in full and once she had received a further retainer of \$1,000.
- [26] The only fee account which were unpaid at that time, was the outstanding account of February 26, 2002, for \$716.40. Ms. Lebedovich had received a payment on January 28, 2002, for her bill of January 15, 2002. Mr. Howell had not refused to pay her account of February 26, 2002, nor did he refuse to pay a further account of April 18, 2002, which was for \$909.
- [27] Considering that Mr. Howell had been left in a position where an entered order had exposed him to contempt proceedings without giving him the security in the plaintiff's house to which he was entitled, I do not think that he could be said to be in breach of his obligations to Ms. Lebedovich to keep her accounts up to date. He was, no doubt, frustrated with the lack of progress in finalizing the matter between November and April. He was, I think, entitled to hold back payment until some resolution in the four month dispute was reached.
- [28] Ms. Lebedovich says that she failed to get instructions so refused to act further. It may have been convenient for her to be dealing with Ms. MacLeod, but the fact was that for some portion of these events, Ms. MacLeod was away.
- [29] It seems to me that Ms. Lebedovich would have been better advised to deal directly with Mr. Howell to give him a firm opinion as to what course he ought to pursue and get instructions to pursue it. Her letter of March 8, 2002, was far from firm. The obvious course was to go back before Mr. Justice Shabbits as early as possible for a further clarification or working out of his order. At some point Ms. Lebedovich actually drew a draft affidavit with this end in view. Since it was apparent that negotiations with Mr. Soloway and his client were getting nowhere, it behoved her to move the matter forward by making such an application.

- [30] In the event, I conclude that Ms. Lebedovich had no cause to terminate her relationship and refuse to act further for Mr. Howell without payment or instructions. She did not need instructions to do the obvious. Nor should she, in my view, have refused to enter the order of Mr. Justice Shabbits until she had the opportunity of going back before him again to work out the mechanics of his order.
- [31] I conclude that for the first four months of 2002 Mr. Howell received little benefit from the work which was being done by Ms. Lebedovich. In the end, he engaged Mr. Vining for a cost of \$3,000, who settled the matter very promptly to the satisfaction of Mr. Howell and on the lines suggested by Ms. Lebedovich.
- [32] Up until the end of December, 2001, however, Ms. Lebedovich had done the work required of her and she had done it efficiently.
- [33] I disallow all the unpaid bills, namely, the bills of February 6, April 18, and April 28, 2002. I allow the other bills at their full amount.
- [34] Since more than one-sixth has been taxed off the bills presented by Ms. Lebedovich there will be costs to the client. These can be fixed by conference call without taking out an appointment if Ms. MacLeod and Ms. Lebedovich agree to do so.

"Master J.W. Horn"

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