
CANADA / JUDGMENT

Liggett v. Toth

2020 BCSC 1528

COURT

Supreme Court of British Columbia

DECIDED

15 October 2020

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2020 BCSC 1528 Liggett v. Toth

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liggett v. Toth,

2020 BCSC 1528

Date: 20201015

Docket: E192188

Registry: Victoria

Between:

Leslie Diane Liggett

Claimant

And:

Robbie Blake Toth

Respondent

Before: The Honourable Mr. Justice Steeves

Reasons for Judgment

Counsel for the Claimant:

A. Lewis

Counsel for Respondent:

J. Johnston

Place and Date of Hearing:

Victoria, B.C.

September 29, 2020

Place and Date of Judgment:

Victoria, B.C.

October 15, 2020

A. INTRODUCTION

- [1] In an application filed September 9, 2020 the claimant seeks orders with respect to a cohabitation agreement between the parties dated January 15, 2018 (the "Agreement").
- [2] According to the claimant, under the Agreement the respondent is required to pay to her \$25,046.62 plus interest towards the cost of a motorcycle referenced in the Agreement.
- [3] According to the respondent, he has more than paid for the motorcycle and the Agreement requires the claimant to transfer title for the motorcycle to him.
- [4] The subject application is only about the motorcycle.

B. BACKGROUND

- [5] The parties began to co-habit in July 2016 and they separated in October 2018. They were not married and there are no children.
- [6] The Agreement is dated January 15, 2018. Among other things, it provided for the consolidation of the parties debts including the financing of property that the claimant brought to the relationship and financing for a motorcycle that the claimant assisted the respondent in purchasing. At the time of the Agreement the debt owing on the motorcycle was \$35,000.
- [7] By means of an undisputed oral agreement the parties put their pay cheques into a bank account in the name of the claimant (except for \$250 per month retained by the respondent). The mortgage payment and payments for the motorcycle were paid from this account as were a number of household expenses and the respondent's credit card debt.
- [8] At the date of hearing this application (in September 2020) the claimant held legal title to the motorcycle but it was in the possession of the respondent.

C. ANALYSIS

- [9] As above, the issue here is whether, under the Agreement, the respondent has paid for the motorcycle (and the claimant has to transfer title to him) or whether he still owes money to the claimant for the motorcycle (and title would not be transferred to him until he has paid it to the claimant). The claimant takes the latter position and the respondent takes the former position.
- [10] The parties have very different calculations about the money owing on the motorcycle as a result of their different interpretations of the Agreement. Both calculations are mathematically correct and the dispute here is over how the Agreement should be interpreted. For example, it is not in dispute that the amount paid from the bank account in the claimant's name toward the mortgage on the property from August 14, 2017 to October 31, 2018 was \$22,800.78 (the parties separated in October 2018). The funds in the account were the pooled and intermingled incomes of the parties. And there is no dispute that the respondent deposited \$44,359.78 to the same bank account from August 14, 2017 to October 31, 2018.
- [11] The question is, applying the Agreement, how much did the respondent contribute to paying the debt on the motorcycle? He says that he paid \$48,680.78 which covered all of the \$35,000 motorcycle debt and more. In his second affidavit he explained his position as follows:
10. There was no provision or restriction that limited the amount of my periodic payments to the claimant to put toward the motorcycle. At all times I believed that the claimant was putting the money I provided to her toward the CIBC mortgage balance so I could pay down the portion attributed to the motorcycle. It was always my goal to pay the motorcycle off as quickly as possible. I trusted that the claimant was putting my funds toward this purpose. I told the claimant that I was working extra days so that I could pay off the motorcycle as fast as possible. The claimant understood this.
 11. Had I known that the Claimant was not making additional payments toward the motorcycle portion of the mortgage, I would not have agreed to this arrangement and would have taken steps to ensure the funds went toward the 'motorcycle loan' portion.
- [12] The claimant says that, using the calculation in the Agreement, the respondent paid only \$8,892.30 towards the motorcycle debt and he did not pay off all of the \$35,000 debt described in the Agreement. She deposes in her second affidavit that she never agreed "to accept funds transferred into the Bank Account from Mr. Toth as payment towards the motorcycle." She also points to household expenses and credit card debt for the respondent that were paid from the account.
- [13] Turning to the Agreement, s. 7.1(c) describes the debt consolidation of the parties including the debt for the motorcycle and the mortgage on the property:
7. Family Residence Owned at the Date of Agreement ("DOA family residence")

- (c) Leslie and Blake agree that, as part of a debt consolidation undertaken by the parties, the CIBC Mortgage also includes \$35,000.00 attributable to Blake for debt unrelated to the DOA family residence, incurred for the purchase of a 2016 Harley-Davidson Road Glide Ultra (the "Motorcycle"). The parties therefore agree that Leslie's portion of the CIBC Mortgage as at the date of this Agreement is \$262,033.00.

[14] Section 7.3 is where the dispute between the parties arises, in particular subsections 7.3(a) and (b):

7.3 Except as specifically modified by this paragraph or as otherwise provided in this Agreement, and notwithstanding that Leslie and Blake intend to ordinarily occupy the DOA [family residence owned at date of agreement; see s. 7(c) above] family residence throughout their relationship, Leslie and Blake agree that in the event of a breakdown of the relationship, only the appreciation of the DOA family residence accrued during their relationship will be treated as family property, and divided between them, on the following basis:

- (a) Beginning August 14, 2017, the parties will contribute to CIBC Mortgage payments proportionally based on their respective incomes.
- (b) For the purposes of this Agreement, the parties agree that Blake's payments towards the CIBC Mortgage will be applied first to the \$35,000.00 of the CIBC Mortgage attributable to him.
- (c) Once Blake has paid \$35,000.00 towards the CIBC Mortgage, and regardless of any interest accrued on the CIBC Mortgage to that point, the parties agree that Blake's obligation to pay off his pre-existing debt will be met and the Motorcycle will become Blake's separate property. Leslie will then take any and all steps required to transfer the Motorcycle into Blake's name.

[Emphasis added].

[15] As can be seen, s. 7.3(a) sets out a method by which the parties were to contribute to the mortgage payments proportionate to their incomes. As described in s. 7.3(c) this included the debt for the motorcycle. Section 1.4 of the Agreement described the income of the claimant at the time of the Agreement (January 2018) as being approximately \$80,000. Section 1.5 described the income of the respondent as being approximately \$48,000 (in January 2018). Using these figures the proportionate shares of the total income of both parties were 62% and 38%, respectively.

[16] The current incomes of the parties are similar, \$48,109.78 for the respondent (including the \$250 per month that the respondent did not contribute to the claimant's bank account) and \$76,075.12 for the claimant. The proportionate share of the respondent's total income is approximately 39%.

- [17] Returning to the Agreement, based on the respective income of the parties, under s. 7.3(a) the respondent was responsible for 39% of the "CIBC Mortgage payments" and the claimant was responsible for 61% (it is not explained in the Agreement why "Mortgage" is capitalized and no one could explain it).
- [18] With respect to the motorcycle debt, s. 7.3(b) states that the respondent's "payments towards the CIBC Mortgage will be applied first to the \$35,000 of the CIBC Mortgage attributable to" him for the motorcycle (emphasis added). As I read the Agreement this refers to the payments calculated under s. 7.3(a) as a proportion of the parties' incomes. That is, the intention was that the respondent's payments towards the mortgage were to be applied "first" to the motorcycle debt of \$35,000. Significantly, the Agreement does not say that the respondent's deposits in the claimant's bank account will be applied first to the motorcycle debt. Instead, at the time of the Agreement, he was to pay 38% of the total incomes of the parties to the debt, not 100% of his deposit into the account.
- [19] The result is that I disagree with the respondent that the total of his deposits to the claimant's account is to be applied to the motorcycle debt. For the purposes of calculating the amount still owing by the respondent on that debt it is necessary to use his proportionate share of the mortgage payment, or 39%. I agree with the claimant's interpretation of the Agreement and her calculation that the amount the respondent has paid towards the motorcycle debt is \$8,892.30.
- [20] This result is confirmed by s. 11.3 of the Agreement which contemplated the breakdown of the parties relationship:
- 11.3 In the event that a breakdown of the relationship occurs before Blake has paid \$35,000.00 towards the CIBC Mortgage, Blake will pay to Leslie \$35,000.00 less the amount already paid by Blake towards the CIBC Mortgage in full satisfaction of his portion of the CIBC Mortgage debt within six months of the breakdown of the relationship.
- [Emphasis added].
- [21] As can be seen, in the event of a breakdown, the amount owed by the respondent to the claimant is \$35,000 "less the amount paid by [the respondent] towards the CIBC Mortgage." The calculation is not based on the total amount deposited by the respondent to the claimant's account as he asserts. It is based on his proportionate share of the mortgage payments. This is consistent with s. 7.3(b).
- [22] Therefore, the amount owed by the respondent based on ss. 7.3(a) and (b) and s. 11.3 of the Agreement is \$26,107.70 (\$35,000 less \$8,892.30). Upon payment of that amount to the claimant, she is required by s. 7.3(c) of the Agreement to transfer the title to the motorcycle to the respondent.

- [23] As above, the respondent deposes that he would never have signed the Agreement if he knew at the time that all of his deposits were not being paid towards the motorcycle debt. In this regard I note that no one is applying to set aside the Agreement on the basis of unfairness; both parties rely on it for their respective positions.
- [24] As well, counsel for each party executed a "Certificate of Independent Legal Advice" and they are part of the Agreement. Among other things, counsel for the respondent stated that she "fully explained the nature and effect of the Agreement" to him. Further, the respondent "acknowledged that he completely understood the nature and effect of the Agreement." Counsel for the claimant made the same declaration for her and the claimant.
- [25] In light of this declaration I am unable to agree with the respondent that he somehow misunderstood the Agreement when he signed it and the interpretation he now holds must prevail. I have concluded above that the words in the Agreement are clear including the method by which the respondent was to pay off the motorcycle debt. Finally, as partial explanation of the difference between what the respondent deposited into the account and what the Agreement says was to go to the motorcycle debt, a number of household expenses were paid from the account. The respondent's credit card debt was also paid from that account and it totalled \$27,297.26 for the material times.
- [26] For the above reasons the claimant's application filed September 9, 2020 is allowed. She is entitled to her ordinary costs against the respondent.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

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