

CANADA / JUDGMENT

Liversidge v. Svisdahl

2013 BCSC 1181

COURT

Supreme Court of British Columbia

DECIDED

2 July 2013

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2013 BCSC 1181 Liversidge v. Svisdahl IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Liversidge v. Svisdahl, 2013 BCSC 1181 Date: 20130702 Docket: 0627856 Registry: Prince George Between: Patricia Liversidge Plaintiff And Paul Svisdahl Defendant Before: The Honourable Mr. Justice Parrett Reasons for Judgment In Chambers Counsel for the plaintiff: P. Liversidge, In Person Appearing for the defendant: T. P. Matte Place and Date of Hearing: Prince George, B.C. June 18, 2012 Place and Date of Judgment: Prince George, B.C. July 2, 2013

INTRODUCTION

[1] In the present application the defendant seeks orders that:

- (a) The plaintiff, Patricia Liversidge, pay to the defendant the sum of \$46,891.14 together with prejudgment interest from and including December 18, 2006 until the date of judgment.
- (b) An order that the sum of \$13,011.57 paid into the Prince George Registry, by Central Interior Bailiffs Incorporated on February 24, 2011 to the credit of this action, plus any interest that has accrued on that amount, be paid out to the defendant, Paul Svisdahl.
- (c) An order that the plaintiff pay to the defendant his costs of this action on Scale B of Appendix B of the Supreme Court Rules.

BACKGROUND

[2] In February 2006 the parties entered into an oral partnership agreement in which they agreed to purchase the assets of KLR Towing. In order to acquire those assets the partners agreed to jointly borrow \$73,000 from the Royal Bank of Canada and the defendant agreed to loan \$42,000 to the partnership. In addition, the defendant agreed to loan an additional \$15,500 to the partnership through another partnership in which he was involved, Dahl-Son Manufacture.

- [3] It was the intention of the partners to carry on business as "Centre City Towing and Recovery" (Centre City) using two trucks owned by Dahl-Son. It was agreed that the new partnership would pay Dahl-Son its truck and cargo insurance expenses and 20% of the gross revenue from those trucks together with the applicable Goods and Services Tax.
- [4] It was further agreed that the plaintiff would provide her labour and expertise to manage the new partnership's office and to properly maintain its financial records and books while the defendant would provide his labour and expertise to manage its operations. Each was to receive a salary of \$1,000 per month for these services.
- [5] On February 14, 2006, under the terms of the agreement - · The plaintiff and defendant purchased the assets of KLR Towing; · The defendant loaned \$42,000 to Centre City; · Dahl-Son loaned \$15,500 to Centre City; · The partnership began using Dahl-Son's two trucks; and · The partnership started to carry on business as Centre City with the plaintiff and defendant each providing their labour as agreed.
- [6] In August of 2006 the plaintiff and defendant had a series of disputes about the management and operation of Centre City. On August 12, 2006 the defendant gave written notice to the plaintiff ending the partnership.
- [7] Between the middle of February 2006 and the middle of August 2006, Centre City used the two Dahl-Son trucks and generated gross revenue of \$56,347.07 but paid no money to Dahl-Son for the use of their trucks.
- [8] In the middle of August 2006, Dahl-Son recovered its trucks and Centre City ceased to use them.
- [9] On August 18, 2006, D.M. Smith, J., ordered that the plaintiff have management and control of Centre City. From that date until November 20, 2006, the plaintiff had exclusive operation and control of Centre City.
- [10] During this time the plaintiff: · Failed to deposit \$8,053.39 in cash received to Centre City's bank account; · Paid to herself or cash \$11,000; and · Failed to pay any amount to the defendant for his labour and expertise during August 2006.
- [11] On November 20, 2006, the defendant took control of Centre City as part of a proposal which would see him purchase the plaintiff's interest in the business if certain financial conditions were met. When these conditions were not met the defendant declined to pay anything to the plaintiff.
- [12] On December 18, 2006, the partnership was ordered dissolved and its assets liquidated. Over the course of 2007, 2008 and 2009, Central Interior Bailiffs proceeded with the litigation.
- [13] On February 1, 2011, Master Baker approved Central Interior Bailiffs' fees and ordered them to pay the net proceeds of the liquidation, \$13,011.57, into court to the credit of this action. On February 24, 2011 the payment was made to the credit of this action.

- [14] On September 5, 2011 Dahl-Son assigned all of its rights and claims for payment from Centre City to the defendant. On September 8, 2011 the defendant gave written notice of the assignment to the plaintiff.
- [15] On June 7, 2012 the defendant filed his affidavit #6 in this matter. Exhibit G to this affidavit was a complete accounting of the amounts claimed against the plaintiff. This schedule had been revised after the plaintiff filed her detailed response to the defendant's affidavit #5.
- [16] This earlier affidavit, filed September 13, 2011, included a detailed explanation of the accounting, 175 pages of documents referred to in the affidavit and, as Exhibit P, the earlier accounting of what was claimed.
- [17] After delivering the revised claim to the plaintiff, Mr. Svisdahl, in para. 4 of his affidavit #6, swore that:
4. In order to allow the Plaintiff an opportunity to fully respond to my Summary Trial Application, I allowed her to take possession of the 4 boxes of Centre City Towing records (being all of the business records of which I am aware) which she has since returned to my lawyer's office.
- [18] I set out below the accounting provided to both the plaintiff and the court. REVISED PAYMENT REQUIRED OF PATRICIA LIVERSIDGE TO EQUALIZE Partnership INVESTMENT
1. Funds improperly taken by Patricia Liversidge
- a. cash not deposited \$ 8,053.59
- b. cheques to Patricia Liversidge and cash 11,000.00
2. Funds owing to Paul Svisdahl
- a. loan to Centre City Towing 42,000.00
- b. Dahl-Son loan to Centre City Towing (\$15,500.00 loan less \$5,000.00 payment) 10,500.00
- c. Centre City towing debt for use of Dahl-Son trucks
- i. 20% of \$56,347.07 revenue 11,269.41 ii. truck insurance 3,022.07 iii. cargo insurance 1,180.20
- d. loan of Mastercards to Centre City Towing
- i. Canadian Tire Bank - Options Mastercard August 24, 2006 November 24, 2006 December 24, 2006 6,847.76 240.05 1,966.98 ii. Capital One Mastercard September 9, 2006 January 9, 2007 6,445.06 257.16 iii. Less Payments made (3 x \$3,000.00) (9,000.00) iv. Less additional payments made (\$4,000.00 and \$1,000.00) (5,000.00)
- e. "Missing" Cash (155.96)
- f. Net FasGas rebate (\$432.40 - 195.00 - 196.00) (41.40)
3. Funds owing to the Plaintiff:
- a. Fuel purchased on the Plaintiff's American Express Credit Card (4,640.25)

- b. Less payments by Centre City Towing towards the Plaintiff's American Express Credit Card
1,500.00

Total \$85,444.67 DISCUSSION

- [19] There is very little in dispute about the facts of this matter. The contents of the plaintiff's affidavit #5 does little to contest the defendant's claim, indeed the majority of it confirms the facts asserted by the defendant.
- [20] The law with respect to partnerships is clear. Section 31 of the Partnership Act provides that:
31. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his or her legal representatives.
- [21] The defendant has done so; the plaintiff most assuredly has not.
- [22] I have taken the time to examine in detail all of the affidavits and each of the documents exhibited to them. I accept the accounting presented by the defendant.

CONCLUSION

- [23] The defendant, Paul Svisdahl, is entitled to recover judgment on his counterclaim against the plaintiff, Patricia Liversidge, for one-half of \$85,444.67 or \$42,722.34. He will also recover prejudgment interest on that amount from December 18, 2006.
- [24] There will also be an order that the sum of \$13,011.57 paid into the Prince George Registry by Central Interior Bailiffs Incorporated on February 24, 2011 to the credit of this action, plus any interest that has accrued on that amount, be paid out to the defendant.
- [25] The defendant is entitled to recover his costs on Scale B of Appendix B. "W. G. Parrett, J."

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Prepared on 29 October 2026 · Esheria