

CANADA / JUDGMENT

Loranger v. Stini

2001 BCSC 971

COURT

Supreme Court of British Columbia

DECIDED

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Citation: Loranger v. Stini Date: 20010705

2001 BCSC 971 Docket:

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Registry: Courtenay

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JULIENNE MARY LORANGER
PLAINTIFF

AND:

MICHAEL HANS STINI
DEFENDANT

REASONS FOR JUDGMENT

OF

MASTER J.W. HORN

Counsel for Plaintiff: H. Sweeney

Counsel for Defendant: C.R. Sinclair

Date and Place of Hearing: June 12, 2001

Campbell River, BC

[1] This was an application for interim spousal maintenance made pursuant to the Family Relations Act.

[2] The parties were never married and they have no children.

- [3] The parties started to live together in a marriage-like relationship in June, 1993. At the time, Julianne Loranger was age 25 and Michael Stini was aged 33. They had been dating previously for a long time. Mr. Stini says that he was not prepared to agree to Ms. Loranger moving in with him without there being between them a cohabitation agreement preserving their separate assets. He consulted Ms. Joan Sterling, a lawyer in Port Alberni, who prepared such a cohabitation agreement and the parties signed it about May 21, 1993.
- [4] Ms. Loranger did not seek legal advice before executing the cohabitation agreement, but such advice was offered to her and she signed a declaration that she declined to take legal advice.
- [5] Michael Stini owned and lived on a farm at the time and, although Julianne Loranger had taken some office administration courses she did not at that time have steady employment. She started to work on the farm helping to raise animals and selling meat. She also had two vegetable gardens. She kept the profits. She also did some of the farm bookkeeping. These activities were undertaken at her choice. She preferred work on the farm to taking other employment.
- [6] Michael Stini conducted a taxidermist business on the property from which he earned a reasonable income. Julianne Loranger assisted him in some ways. For this work she was paid \$8 per hour, later raised to \$9 per hour. The number of hours she worked each month varied.
- [7] The couple kept separate bank accounts.
- [8] During their cohabitation Julianne Loranger performed most of the duties of a housewife, though the two of them did the grocery shopping together.
- [9] They separated on January 13, 2001.
- [10] At first Julianne Loranger received social assistance. Recently she started working part-time as a housekeeper at a hotel in Courtenay and grosses about \$500 per month. She expects that she will continue to be subsidised by social assistance until she is able to work more hours or find another job.
- [11] The only tax return she filed was in the year 2000 in which she described herself as being single and declared only an RRSP income of \$235.10, in order to recover withheld tax.
- [12] On his income tax return for the tax year 1999 Michael Stini declared a gross business income of \$98,445 and a net of \$24,950.93. Part of his business expenses was \$30,000 paid in salaries, wages and benefits. He also declared a gross farming income of \$3,697 and a net loss of \$3,859.25. On his tax return for the tax year 2000 he showed a gross business income of \$95,709 and a net business income of \$31,005.20. Included in his business expenses was \$29,689.18 paid in salaries, wages and benefits. He declared a gross farming income of \$3,699 and a net farming loss of \$3,562.64. He declared himself in both years as living common-law.

- [13] It appears from these returns that the farm was a "hobby farm" incapable of supporting a full-time farmer.
- [14] Were it not for the existence of the cohabitation agreement there would, I think, be no question that the plaintiff would be entitled to interim maintenance from the defendant. She is a spouse as defined by the Family Relations Act and she has needs and he has means.
- [15] It is said, however, that the cohabitation agreement deprives her of that entitlement.
- [16] The agreement is a comprehensive one. In paragraph A of the preamble the parties declare that they intend to live together commencing in June, 1993, and at present have no intention to marry. They provide that in the eventuality of marriage, the agreement shall be applicable to their relationship and legal status.
- [17] In paragraphs C and D of the preamble they set out the property which each owns. Michael Stini said that his assets were household contents, personal belongings, the farm, the taxidermy business, three vehicles, mutual funds, mortgage funds and bank accounts and stock. He said that he had liabilities of \$45,000 and he said that his gross annual income was \$18,000.
- [18] Julianne Loranger said that her assets were household contents, cameras, a mountain bike, a typewriter, drums and an RRSP and that her gross annual income was \$19,000.
- [19] In paragraph E of the preamble they say that the parties are financially self sufficient and that it was intended that this shall continue, with each maintaining a separate estate, regardless of any change in circumstances.

[20] Section 3.1 of the agreement provides as follows:

Neither party shall make any claim against the other for maintenance, alimony or support and each waives and releases the other from any and all claims for same now existing or which may arise in future whether pursuant to the Family Relations Act, the Divorce Act or any other statute, law or principle of equity now existing or enacted or created in future.

- [21] In ss. 5.2 to 5.4 it is provided that the intended joint residence is the sole property of Michael Stini and that Julianne Loranger expressly waives any and all rights to possession and/or proprietary interest in the joint residence and that in the event of his desiring sole occupation of the residence she will quit the residence and will be paid the equivalent of two-months rent for a comparable replacement residence not to exceed \$1,000.
- [22] In s. 6.1 it was acknowledged that it was the intention of each party to maintain a separate estate from each other and that the parties would continue to conduct themselves as strangers at law concerning management of their respective estates.
- [23] In s. 6.2 it was provided that upon cessation of cohabitation any property acquired after the commencement of cohabitation would be dealt with in accordance with the agreement, for which detailed provisions were made, none of which are relevant to this application.

[24] In s. 7.1 it was provided that each party will be responsible for his or her own present and future liabilities and that neither party will be responsible for any future debt or liability of the other.

[25] Section 10.2 provided as follows:

The parties release each other from any claims they may have against each other's property or income other than claims arising under this agreement.

[26] In s. 12.1 it is provided that the parties acknowledge that they have carefully read the agreement and know the contents and that each has signed the same voluntarily as his or her free agent and that each has been advised of their rights thereunder and each has consulted independent legal counsel or has been advised to seek independent legal advice and has waived their right to do so.

[27] Julianne Loranger signed a waiver of independent legal advice before a notary public on the same date that she executed the cohabitation agreement.

[28] Julianne Loranger now says that she did not receive independent legal advice. She says that she was, at the time, very uncomfortable with dealing with lawyers as a result of difficulties she had with her defence of two previous driving offences and that she was extremely emotionally unstable at the time. There is no objective evidence to support these allegations and the invalidity of the agreement is, I conclude, a matter that must go to trial. On this application I must treat it as valid.

[29] The real issue is whether, despite the agreement, and pursuant to s. 89 of the Family Relations Act, Mr. Stini is obliged to support Ms. Loranger.

[30] The Family Relations Act does not deal with cohabitation agreements but only with marriage agreements and separation agreements. The obligations set out in s. 89 of the Act do not deal with an agreement such as this one, because this agreement does not provide that one spouse has the responsibility to support or maintain the other. It provides otherwise.

[31] Whether such cohabitation agreements ought to be enforced has been dealt with in a number of cases. Among them are: *Charles v. Charles* (1991) 78 DLR (4th) 412, [1991] BCJ No. 386 (QL); *Desimone v. Desimone* [1993] BCJ No. 1480 (QL); *Small v. Small* [1993] BCJ No. 1499 (QL); *Poole v. Cho* [1995] BCJ No. 1132 (QL); *Lodjn v. Lodjn* [1997] BCJ No. 2834 (QL).

[32] In this case, unlike those mentioned above, the parties did not marry. In this case, unlike those mentioned above, there has been no change in circumstances whether brought about by the relationship or fortuitously.

[33] Ms. Loranger did not take herself out of the job market on the promise of any support by Mr. Stini. She was paid for what work she did and she cannot claim any induced dependency.

[34] No doubt there is a discretion to order interim maintenance in a case where, as here, the validity of the agreement is attacked. But it seems to me that I ought not to exercise my discretion here, firstly because it seems to me that the grounds of attack upon the validity of the agreement are extremely weak, and secondly because should I award interim maintenance, Ms. Loranger has no assets from which she could repay the amount awarded should it be found at trial that the agreement is to be upheld.

[35] I dismiss the application. Should Mr. Stini desire costs, the issue can be spoken to.

"Master J.W. Horn"

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