

CANADA / JUDGMENT

Mann v. Stevenson

2014 BCSC 1307

COURT

Supreme Court of British Columbia

DECIDED

15 July 2014

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2014 BCSC 1307 Mann v. Stevenson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Mann v. Stevenson, 2014 BCSC 1307 Date: 20140715 Docket: S117202 Registry: Vancouver Between: Naresh Mann Plaintiff And: Darren Stevenson and Francesca Boulet Defendants Before: The Honourable Mr. Justice D.M. Masuhara Reasons for Judgment In Chambers Counsel for Plaintiff: K.A. McLean Counsel for Defendant: D.J. Barker Place and Date of Hearing: Vancouver, B.C. May 28, 2014 Place and Date of Judgment: Vancouver, B.C. July 15, 2014

Introduction

- [1] This further determination arises from my Reasons for Judgment from trial indexed at 2013 BCSC 2341. In those Reasons I stated at para. 68: There remains however an issue which was not addressed adequately at trial. The plaintiff in closing argument stated that he seeks an order that he is the legal and beneficial owner of 50% of any and all shares that Mr. Stevenson has been issued by Voyager; and that Mr. Stevenson convey 50% of any and all shares that he has been issued in Voyageur "to date". The two are not the same. The words in the October 2007 Document do not lead necessarily to the conclusion that Mr. Mann is entitled to all shares "to date". It would seem that the words could mean shares held as at the date of the instrument. The evidence is thin and the submissions did not address this point. I require counsel to provide submissions based on the existing record on this point.
- [2] The October 2007 Document, which is written in Mr. Mann's handwriting, states: OCTOBER 25th, 2007 TO NARESH SINGH MANN IN CONSIDERATION OF NARESH MANN'S SUPPORT AND ADVICE OVER THE PAST TEN YEARS. I DARREN STEVENSON AGREE TO TRANSFER AND CONVEY TO NARESH MANN 50% (FIFTY PERCENT) OF ANY AND ALL SHARES ISSUED TO ME IN VOYAGEUR OIL AND GAS CORPORATION AT NO COST. I AGREE TO HOLD NARESH SINGH MANN'S SHARES IN TRUST AND AGREE TO TRANSFER THESE SHARES TO HIM UPON HIS WRITTEN REQUEST. DARREN STEVENSON NARESH MANN RUGBEER BAHi ZISHAN RAHMAN
- [3] An earlier document, which was also introduced at trial and referred to in my reasons as the September 2006 Document, states: SEPT 06 - 2006 TO NARESH SINGH MANN WITH MY FULL UNDERSTANDING & COMMITTMENT DARREN RICHARD STEVENSON AGREE TO

TRANSFER & CONVEY TO NARESH SINGH MANN 50% (FIFTY PERCENT) OF MY 4,000,000 COMMON SHARES (FOUR MILLION COMMON SHARES) WITH A DEEMED VALUE OF .001 [cents] A SHARE (ZERO ZERO ONE CENTS A SHARE) IN VOYAGEUR OIL & GAS AN ONTARIO CORPORATION IN CONSIDERATION OF NARESH SINGH MANN RAISING THE ORIGINAL SEED CAPITAL FOR VOYAGEUR OIL & GAS IN THE AMOUNT OF 70,000 DOLLARS (SEVENTY THOUSAND DOLLARS) FROM HIS BROTHER MR. SUKHU MANN & MR. SHAWN SANDHU OF RICHMOND BC. I AGREE TO HOLD MR. NARESH SINGH MANN'S 2,000,000 (TWO MILLION) COMMON SHARES IN VOYAGEUR OIL & GAS IN TRUST AND AGREE TO TRANSFER THESE SHARES TO MR. NARESH SINGH MANN UPON HIS WRITTEN REQUEST. MR. DARREN STEVENSON MR. NARESH MANN WITNESS: MR. LANCE FORTT

- [4] Counsel have now appeared and provided the requested submissions on the proper interpretation of the October 2007 Document. The issue is whether the October 2007 Document conveyed only 50% of Mr. Stevenson's shares held at the date the document was signed, or whether it additionally provided an ongoing entitlement to 50% of any after-acquired shares. The September 2006 Document was not the subject of the plaintiff's claim.
- [5] The plaintiff argues that the October 2007 Document, taken in context, should be construed fairly and broadly. The plaintiff argues that the plain and ordinary meaning of the phrase "any and all shares issued to me" encompasses not only shares that had been issued to Mr. Stevenson as of the date of the agreement but also any shares issued to him prospectively from that date. He argues there is no ambiguity in the terms of the October 2007 Document.
- [6] He also argues that since there is no ambiguity in the terms that the contra proferentum rule is not applicable; and even if there was, the principle does not apply as both parties co-drafted the document.
- [7] In reply, the defendant submits that the October 2007 Document can refer to nothing other than the shares held by Mr. Stevenson as of October 2007. It is noted that there is an absence of any reference to a prospective entitlement. Reference is also made to the fact that Mr. Stevenson, prior to the execution of the October 2007 Document, transferred certain of his shares in Voyageur to his wife. Counsel for Mr. Stevenson submits that the balance then remaining with Mr. Stevenson was what was intended by the October 2007 Document.
- [8] In my view, the subject words are ambiguous. In this case, the ambiguity arises from the word "issued". Without any further clarification, it is equally likely to refer to shares that have been issued as it is to shares to be issued. Both, in my view, are equally plausible interpretations of the plain language used. One need look no further than the fact that both parties pleaded that the meaning of the document was obvious on its face then argued for two fundamentally opposite interpretations of the same word.

- [9] The law is clear that the factual matrix surrounding the making of the agreement should be considered in determining what the parties' true intentions were. That is, in an effort to determine what the parties meant to refer to by using the phrase "all shares issued," it is necessary to examine the circumstances surrounding the agreement.
- [10] In terms of context surrounding the making of the document, Mr. Mann asserts that the expansive meaning he claims should be given to the October 2007 Document is premised on the significant efforts he expended to promote Voyageur. He submits that this was the context in which the October 2007 Document was signed. However, I did not find Mr. Mann's testimony of his efforts credible. He provided little, if any, evidence to substantiate his asserted efforts. He failed to produce any documentation, as requested of him at his examination for discovery, to support his stated efforts to raise financing for Voyageur beyond the \$70,000 from his brother and his brother's partner. His reasons for why he did not produce the documents were unsatisfactory. Mr. Mann's declaration that he was a co-founder of Voyageur with Mr. Stevenson was also undermined by his own affidavit of January 12, 2012 where, at para. 10, he deposed that he "became aware of Voyageur Oil and Gas Corp. through my brother, Sukhbir Mann, who invested in the company."
- [11] To add further context, these men were promoters and during this time were living a life of heavy drinking, attending cigar bars, telling tall stories, and driving expensive vehicles.
- [12] Mr. Mann stated that he had not received the shares he was promised under the September 2006 Document. The late disclosure of the September 2006 Document in this litigation, i.e. shortly before Mr. Mann's examination for discovery, and the lack of reference to this document in materials, including an affidavit in which Mr. Mann provided details of his interactions, was troubling and weakened his version of the factual context. It is also of significance that Mr. Mann did not pursue Mr. Stevenson in respect to the September 2006 Document.
- [13] Mr. Mann spoke of high the trust between Mr. Stevenson and himself, yet he curiously also spoke of his lack of trust with Mr. Stevenson and thus the need for documentation in 2007. His evidence was confused and conflicting on this point and eroded his credibility.
- [14] The plaintiff has not persuaded me that his version of the factual matrix surrounding the signing of the document was, in fact, the state of affairs at the time, nor that the words objectively carry the meaning he asserts. I find, based on my assessment of Mr. Mann's testimony and related evidence, the factual matrix surrounding the making of the October 2007 Document was that Mr. Mann was seeking a reiteration of Mr. Stevenson's promise, in the September 2006 Document, to provide his 50% of shares in Voyageur to Mr. Mann. Mr. Mann, for some reason, misplaced it, or generally did not believe in the effect of the September 2006 Document.

- [15] If I am wrong, and the factual matrix surrounding the agreement does not resolve the ambiguity in the language used, then the law is clear that recourse may be had to extrinsic evidence to aid in the interpretation of the agreement: *Water Street* at para. 23. This may include evidence of the parties' conduct subsequent to signing the agreement, though its value may be limited: *Water Street* at para. 28.
- [16] Mr. Mann agreed that, subsequent to executing the October 2007 Document, he was provided compensation agreements from Voyageur. This does not accord with his argument that the October 2007 Document was signed in order to provide him compensation for his efforts. He signed a finder's fee agreement with Voyageur dated June 20, 2008. The agreement held he would be compensated for introducing Voyageur to persons who provide financing to Voyageur. Mr. Stevenson executed this agreement on behalf of Voyageur. A graduated compensation scale was agreed to as follows:
- (a) in cash, in an amount equal to the Scale Percentage (as defined in paragraph 1.1(c) below) of the amount of the investment by an Investment Participant which has been introduced to the Company by the Finder and/or;
 - (b) in securities of the Company, having the same terms as the securities issued to the Investment Participant, representing the Scale Percentage of the number of securities acquired by an Investment Participant which has been introduced to the Company by the Finder (the ratio of cash and securities will be at the discretion of the Finder);
 - (c) the Scale Percentage shall be:
 - (i) 10% for a Transaction having a value of \$5 million U.S. or less; (ii) 8% for a Transaction having a value of less than \$10 million U.S. but more than \$5 million U.S.; (iii) 5% for a Transaction having a value of \$10 million to \$20 million U.S. or more; and (iv) 3% for a Transaction having a value of more than \$20 million.
- [17] Mr. Mann was also provided a contract dated February 3, 2009, in which Voyageur agreed to pay him \$5,000/month as a Director of International Relations for Voyageur. Mr. Stevenson also signed this agreement on behalf of Voyageur. He agreed that he was never paid this amount nor has he made demand to Voyageur. Bearing in mind that the parties' conduct subsequent to signing the October 2007 Document is of little interpretive weight, I nevertheless consider these agreements to be fundamentally inconsistent with the meaning Mr. Mann argues I should give the October 2007 Document.
- [18] I conclude that the words in issue, when viewed in the factual matrix and objectively considered with some weight given to the subsequent agreement provided to Mr. Mann by Mr. Stevenson via Voyageur in raising funds, refer to shares issued by Voyageur to Mr. Stevenson as at the date of the document, October 25, 2007. The agreement does not provide an ongoing entitlement to 50% of any shares issued to Mr. Stevenson.

[19] As a last resort, the matter can be resolved by the application of the contra proferentum rule. While the two men discussed the agreement, it was Mr. Mann who drafted the document. I do not accept the evidence that Mr. Mann wrote down what Mr. Stevenson dictated. Mr. Mann, in my view, chose and wrote the words found in the 2007 September Document. His unqualified statement in his affidavit of January 12, 2012 supports this. At para. 14 he deposed that:

14. October 25, 2007, I asked Darren Stevenson to sign a trust agreement that I drafted by hand.

[20] Having done so, the words should be construed against Mr. Mann.

Conclusion

[21] The October 2007 Document entitles Mr. Mann to 50% of the shares in Voyageur issued to Mr. Stevenson as at October 25, 2007. "The Honourable Mr. Justice Masuhara"

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