

CANADA / JUDGMENT

McKnight v. Hutchison

2016 BCSC 137

COURT

Supreme Court of British Columbia

DECIDED

29 January 2016

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2016 BCSC 137 McKnight v. Hutchison IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: McKnight v. Hutchison, 2016 BCSC 137 Date: 20160129 Docket: 06 3172 Registry: Victoria

Between: Donald Dale McKnight Plaintiff And John Michael Hutchison and 574316 B.C. Ltd.

Defendants Before: The Honourable Chief Justice Hinkson Supplementary Reasons to McKnight v. Hutchison, 2015 BCSC 1886 Supplementary Reasons for Judgment Counsel for the Plaintiff:

Donald Dale McKnight Counsel for the Defendants: J. Michael Hutchison, Q.C. Place and Date of

Trial: Victoria, B.C. May 25-29, June 1-4, 8-11, 15-16, 2015 Place and Date of Judgment: Victoria,

B.C. October 16, 2015 Written Submissions Received: December 29, 2015, January 8 and 15, 2016

Place and Date of Supplementary Judgment: Victoria, B.C. January 29, 2016

- [1] The plaintiff, Donald Dale McKnight, is a lawyer licensed to practise in the Province of British Columbia. The personal defendant, John Michael Hutchison, Q.C., is similarly licensed. The plaintiff and the personal defendant were partners in a law firm in the 1990s. The corporate defendant is a company created and controlled by the personal defendant.
- [2] This case has a long history. While the majority of the issues between the parties were resolved by previous decisions, there were outstanding issues that I dealt with in reasons for judgment delivered on October 16, 2015, which are indexed at 2015 BCSC 1886.
- [3] The defendants have applied for what they term "Reconsideration and Clarification" of certain parts of my reasons for judgment. Specifically, the defendants contend that:
- a) I misunderstood the evidence concerning the personal defendant's use of firm trust funds in finding at paragraph 102 that: During the existence of the parties' partnership, the personal defendant acted for a client who required US \$50,000 in order to secure an investment opportunity. When the client's uncertified cheque could not be negotiated, the personal defendant issued a cheque from the partnership's pooled trust account for the amount, in order to save the investment opportunity. Despite the institution of legal proceedings in the United States to recover the funds, they were never recovered;
 - b) at para 108, I failed to consider amendments made by the defendants for their claim for advances that they had made for partnership expenses;

- c) I was mistaken in my characterization of certain expenses in para. 117;
 - d) paras. 135 and 167 are inconsistent, and require clarification.
- [4] No order arising from my decision of October 16, 2015 has been entered. Authorities
- [5] The ability of a trial judge to reopen a case, or to revisit issues that were addressed in reasons for judgment prior to the entry of an order arising from the reasons for judgment is well known, but is to be used sparingly: *Clayton v. British American Securities Ltd.*, [1934] 3 W.W.R. 257 (B.C.C.A.).
- [6] Here, the defendants are not seeking to reopen the trial, but, as indicated above, ask for reconsideration or clarification of certain parts of my reasons for judgment.
- [7] With respect to para. 102, I reject the defendants submission that I misunderstood the evidence. The personal defendant misused the firm's trust account, and, as I explained at para. 106 of my reasons for judgment, "I am unable to accept that the use of trust funds by the personal defendant could be seen in any way to be the ordinary and proper conduct of the business of the partnership".
- [8] With respect to para. 108 of my reasons for judgment, the parties agree that my reasons failed to take into account the adjustments net of GST. In the result, the figures found in para. 108 should be replaced with the following figures:
1. Cash loan to the partnership \$ 12,000.00
 2. Lease Payments for 823 Broughton St. - base rent - net of GST @ 7% 227,352.47
 3. Lease payments for 823 Broughton St. - storage - net of GST @ 7% 9,800.00
 4. Lease payments for 823 Broughton St. - operating costs - net of GST @ 7% 46,625.64
 5. Lease payments for 823 Broughton St. -property taxes-net of GST @ 7% 45,004.34
 6. 6. Lease payments for 823 Broughton Street - taxes -
 7. 7. Partnership file storage offsite - October Mansions - net of GST @ 7% 6,840.13
 8. BC Hydro charges for 823 Broughton Street - net of GST @ 7% 15,370.27
 9. Partnership file storage offsite - Access pre 2008 net of GST @ 7% 19,440.12 Partnership file storage offsite - Access - 2008 forward net of GST @ 5% 36,540.34 Access start up costs - net of GST @ 7% 3,997.69 Access file access - net of GST @ 5% 1,051.76
 10. Partnership account - Trenholme Jackson Eade - net of GST @ 7% 28,822.31
 11. 574316 BC Ltd. accounting charges to Trenholme Jackson Eade 12,727.05
 12. 574316 BC Ltd. corporate legal accounts annual filings/records (interest removed) - net of GST @ 5% 3,594.48

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13. 13. Telus - advertising - net of GST @ 7% 46,006.13
14. 14. Student salary 3,750.00
15. 15. Gilbert J. Smith capital reimbursement 3,000.00
16. 16. Partnership bank loans paid by JMH 149,166.70
17. 17. Partnership Action against PG Media - filing fees 416.00
18. 18. BOM mortgage interest paid by JMH paid monthly 28,118.76
19. 19. CCSU mortgage interest paid by JMH 13,568.76
20. 20. Reimbursement to partnership for funds used to purchase automobile 25,246.60
21. 21. Paid costs settlement by Kathryn Hutchison 15,552.25
22. 22. Paid federal and provincial taxes to firm by JMH 55,721.11
23. 23. Paid balance of counsel fees for action against A. Walker - net of GST @ 7% 550.79
24. 24. Paid JC WordAssist Transcript in Ridyard Assessment - net GST @ 5% 429.60
25. 25. Paid Ridyard costs to Johns Southward 3,750.00
26. 26. Paid Law Society for Trust Administration Fee - net of GST @ 5% 10.00 TOTAL PAID OUT \$814,453.30 Less Reimbursement for recovered partnership funds - net of GST @ 7% (72,015.58) NET CLAIM FOR ADVANCES \$742,437.72
- [9] At para. 117 of my reasons for judgment I considered the defendants' claim for a set off for the cost of storage of file materials to permit the personal defendant to access them during the litigation between the parties. I made no finding as to whether these expenses might be recoverable as costs in the action, but found that they could not be claimed as a set off against the personal defendant's obligations to the partnership.
- [10] The defendants contend that my characterization of the items discussed in para. 117 is mistaken. I did not consider the claims for storage to be proper advances made by the defendants on behalf of the partnership and have concluded that the defendants' submissions regarding this paragraph amount to no more than an attempt to reargue a matter that was argued at trial. Such a submission is not permitted even if a trial is reopened: *Moradkhan v. Modifi*, 2013 BCCA 132 at para. 31.
- [11] Paras. 137 and 165 read as follows:
- [137] The claim for the accounting charges of Trenholme Jackson Eade are adjourned pending the determination of the Registrar. The remainder of the requested expenses for set off are dismissed.

- [165] The accounting charges of Trenholme Jackson Eade are dismissed pending the determination of the Registrar. The remainder of the requested expenses for set off were not allowed.
- [12] As can be seen from paras. 118 and 119 of my reasons for judgment, there were two sets of accounts rendered by Trenholme Jackson Eade:
- [118] Although he used partnership monies to satisfy the accounting charges of Trenholme Jackson Eade, the personal defendant has included these payments as a set off. As I have directed a reference to the Registrar to determine what was received and spent from partnership assets, I have concluded that the personal defendant cannot claim this amount as a set off, and anticipate that it will be addressed by the Registrar when the reference I have directed takes place. This claim for set off is therefore dismissed.
- [119] The defendants have also claimed a further set off for fees paid to Trenholme Jackson Eade for accounting charges to the corporate defendant, and for the cost of corporate legal accounts and annual filings and records for the corporate defendant. I am not persuaded that the creation and maintenance of the corporate defendant was necessary for reasons other than those attributable to the personal defendant's efforts to enjoy what were found to be secret profits, and I reject the claims listed as 12, 13, and 14 for set off.
- [13] While it was my intention for para. 137 to address the claim described in para. 118, and for para. 165 to address the claim set out in para. 119, I accept that I was not as clear as I had hoped to be in my treatment of these two claims. I trust that these supplemental reasons for judgment will clarify what I had intended with respect to the accounting charges of Trenholme Jackson Eade.
- [14] In summary:
- a) I decline to reconsider paras. 102 and 117 of my original reasons for judgment in this matter, indexed at 2015 BCSC 1886;
 - b) I have provided further clarification of paras. 137 and 165 of my original reasons in paras. 11-13 of these reasons; and
 - c) the figures set out in para. 108 of my original reasons will be replaced by the figures set out in para. 8 of these reasons. "The Honourable Chief Justice Hinkson"

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Prepared on 27 October 2026 · Esheria