

CANADA / JUDGMENT

Negus v. Yehia

2020 BCSC 2034

COURT

Supreme Court of British Columbia

DECIDED

21 December 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 2034 Negus v. Yehia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Negus v. Yehia,

2020 BCSC 2034

Date: 20201221

Docket: E143095

Registry: Vancouver

Between:

Sally Anne Negus

Claimant

And

Sam Yehia, The Jalboh Family Trust, Cambie Malone's Corporation, Cambie Malone's Developments Corp., Cambie Holdings (Vancouver) Corp., Cambie Holdings (Nanaimo) Corp., Esquimalt Holdings Corp., 494989 BC Ltd., 0527425 BC ltd., 0709961 BC Ltd., 0828508 BC Ltd. and 0829386 BC Ltd.

Respondents

Before: The Honourable Madam Justice Gropper

Reasons for Judgment

Counsel for the Claimant

(appearing by telephone):

K. Basran

J. Desilet

Counsel for the Respondents

(appearing by telephone):

R. Storey

Place and Dates of Hearing:

Vancouver, B.C.

October 28, 2020 and

November 6, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 21, 2020

Introduction

- [1] Sally Negus and Sam Yehia are former spouses. In April 2018, after lengthy and arduous family law proceedings that spanned from 2014 to 2019, Mr. Justice Smith valued their family property and divided it between them in his reasons for judgment in *Negus v. Yehia*, 2018 BCSC 604 (Negus #1). Ultimately, on December 28, 2018, Ms. Negus's offer to purchase Mr. Yehia's share was approved by Smith J., in *Negus v. Yehia*, 2018 BCSC 2319 (Negus #2). The final order was entered on March 22, 2019.
- [2] In order to effect the purchase, the documents were signed by the Registrar of this Court, in accordance with the direction of Smith J. on April 9, 2019.
- [3] Mr. Yehia appealed the decisions of Smith J. On August 22, 2019, the Court of Appeal dismissed Mr. Yehia's appeal: *Negus v. Yehia*, 2019 BCCA 307 ("Negus Appeal").
- [4] On December 24, 2019, Mr. Yehia commenced three actions in the Vancouver registry against Ms. Negus and the companies that formed an integral part of the division of family property in the family law proceedings: S1914180 (the "Jacobs action"); S1914293 (the "wrongful dismissal action"); and S1914294 (the "expense action").
- [5] On February 10, 2020, Ms. Negus filed this application to declare Mr. Yehia a vexatious litigant under s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. She seeks orders that Mr. Yehia seek the leave of the court before commencing any litigation against her or her companies, and before taking any further steps in the three actions commenced in December 2019.

Legal Framework

[6] Section 18 of the Supreme Court Act provides:

If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[7] The principles to be applied are set out in *Lang Michener Lash Johnston v. Fabian* (1987), 59 O.R. (2d) 353 at para. 20:

- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[8] Those principles were applied by this Court in the context of family law proceedings in *Bergeron v. Gillstrom*, 2009 BCSC 1616.

[9] In *Dawson v. Dawson*, 2014 BCSC 44 at para. 28, the Court looked at the entire history of the proceedings to determine if the family law proceedings have "conclusively established the finality of the issues raised in this family litigation".

- [10] In *D.K.H. v. M.M.H.*, 2005 BCSC 1003, the Court considered that the family litigation was out of control as a result of the many repeated matters the mother brought before the Court after a final decision in the family law proceedings had been made. At para. 48, Fisher J. stated: "In my view, there is no other way to bring reason into these proceedings. In Madam Justice Southin's words, not to exercise the jurisdiction of this Court under s. 18 will deprive [the father] of justice according to the law."

Background

- [11] Subparagraph (e) of the Fabian principles prescribe that "in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action". In order to determine if Mr. Yehia ought to be declared to be a vexatious litigant, the background is necessarily lengthy. It is set out in detail in Ms. Negus's application. Mr. Yehia has some issues with the chronology, but his focus is generally on Ms. Negus's conduct throughout the proceeding and that the three actions that he commenced in December 2019 are based upon reasonable claims.

Family Law Proceedings

- [12] The parties began living together in or about October 1993. The parties were married on August 27, 1994 and separated on October 19, 2014. There are two adult children of the parties' marriage.
- [13] Ms. Negus commenced the within action by filing a notice of family claim on November 14, 2014.
- [14] The family law case dealt with child support, spousal support and the identification, valuation and division of corporate assets, including the following companies:
- a) The Cambie Malone's Corporation;
 - b) Cambie Malone's Development Corp.;
 - c) Cambie Holdings (Nanaimo) Corp.;
 - d) Esquimalt Holdings Corp.;
 - e) Malone's Social Lounge and Taphouse Inc.;
 - f) 494989 B.C. Ltd.;
 - g) 0527425 B.C. Ltd.;
 - h) 0790012 B.C. Ltd.;
 - i) 0828508 B.C. Ltd.;
 - j) 0829386 B.C. Ltd.;

- k) 0709961 B.C. Ltd.; and
- l) Cambie Holdings (Vancouver) Corp.

(Collectively, the "Cambie Group Companies")

[15] When Ms. Negus commenced the family law case, Mr. Yehia and several of the Cambie Group Companies were respondents in separate ongoing litigation between Paul Jacobs and several companies operated by him which concerned funds advanced by Mr. Jacobs to Mr. Yehia: BCSC Action S106849 Vancouver Registry ("Jacobs v. Yehia").

[16] The trial of the family law case was heard on October 16-20, 23-24, 26-27, 30-31, November 1-3, 6-9, 14, and 27, 2017.

[17] In Negus #1 Smith J. directed that if the parties could not agree on how to divide family property they could apply for directions on the appropriate transactions to give effect to the division of family property. He granted leave to Ms. Negus to make further submissions on costs, including special costs.

[18] Ms. Negus brought on an application seeking implementation of Negus #1 and special costs.

[19] In her application, Ms. Negus proposed to purchase Mr. Yehia's interest in the family property, including the business assets, for \$12 million, under a step-plan proposal (the "Negus proposal") which included, among other things, the following terms:

- a) Ms. Negus acquires ownership of the shares in the capital of the Cambie Group Companies;
- b) If Mr. Yehia is owed any receivables by the Cambie Group Companies, he will assign those receivables to Ms. Negus;
- c) Mr. Yehia releases the Cambie Group Companies of any and all possible claims against the Cambie Group Companies; and
- d) Mr. Yehia resigns as director, officer and employee of each of the Cambie Group Companies.

[20] The application was scheduled to be heard by Smith J. on October 15 and 16, 2018. Mr. Yehia did not file any application materials for the two-day hearing within the required timelines in the Supreme Court Civil Rules, B.C. Reg. 168/2009.

[21] Mr. Yehia filed three applications on October 10, 2018, which were set to be heard on October 15 and 16, 2018. He sought orders to reconsider the division of the family property as set out in Negus #1, a stay of proceedings and special costs. The applications were filed and served late, without proper notice to Ms. Negus, apparently in response to Ms. Negus's application to implement Negus #1 in respect of the division of family property.

[22] Ms. Negus's application was heard on the scheduled dates of October 15 and 16, 2018. Mr. Yehia's applications were argued November 19 and 20, 2018.

- [23] In Negus #2, Smith J. dismissed Mr. Yehia's applications and allowed Ms. Negus's applications to provide her with the ability to purchase Mr. Yehia's interest in family property in accordance with the Negus proposal, and special costs against Mr. Yehia for the duration of the proceeding.
- [24] In Negus #2, in respect of Mr. Yehia's application for a stay and his position that without a stay, he would suffer irreparable harm resulting in an overpayment to Ms. Negus, Smith J. stated:
- [57] The respondent's comments about the claimant's income and assets are true now, but will not be true after the judgment is implemented. In these reasons, I have said the claimant may purchase the respondent's interest in the family property for \$12 million, subject to a holdback for costs of this proceeding. If the Court of Appeal finds that I have put too high a value on that property, the respondent will be the one left in possession of a windfall.
- [25] Smith J. also found that Ms. Negus was the first to make a straightforward buyout proposal that fully accorded with Negus #1; Ms. Negus should be given the first opportunity to perfect the buyout proposal; and the \$12 million buyout would result in an overpayment based on the Court's assessment of Mr. Yehia's interest in the family property as \$9,805,000.
- [26] As noted, the final order was entered on March 22, 2019 and included the following terms:
- a) The total value of all family property, less family debt, was \$19,610,000;
 - b) The shares in the Cambie Group Companies were family property;
 - c) Ms. Negus would have the first opportunity to purchase Mr. Yehia's interest in all family property and excluded property for \$12 million within 90 days of December 28, 2018 pursuant to the terms of the Negus Proposal;
 - d) The Registrar was empowered to sign any and all documents required to give effect to the transaction on behalf of Mr. Yehia, whether in his personal capacity, as a shareholder or director of the Cambie Group Companies or as trustee of any trust;
 - e) Mr. Yehia's Guideline income is \$600,000 per year for calculating child and spousal support maintenance;
 - f) Mr. Yehia's application for a reconsideration of [Negus #1] was dismissed; and
 - g) Ms. Negus was entitled to special costs.
- [27] In spite of the refusal of his application for a stay, Mr. Yehia repeatedly refused to provide Ms. Negus's counsel, Mark Ritchie, with access to the corporate minute books or authorization to speak to his bank, HSBC.

- [28] On February 22, 2019, the claimants in *Jacobs v. Yehia* brought an application seeking injunctive relief, to have monies from Ms. Negus's purchase of the companies paid into court as security for a judgment, and to be paid out to the Jacobs claimants in the event of a judgment. Mr. Justice Kelleher ordered a holdback from the purchase price of \$12 million, that Ms. Negus pay \$1,300,000 into court, subject to further orders.
- [29] On the morning of March 15, 2019, Ms. Negus's counsel appeared before the Registrar on an application to have the closing documents signed to complete the buyout. Mr. Yehia's then counsel, Mr. Kahn, appeared and sought to adjourn the application. Mr. Kahn assured the Court that Mr. Yehia would grant extensions to Ms. Negus in order to complete the buyout. The Registrar did not grant the adjournment, but Ms. Negus's counsel agreed to hold the signed documents and not use them until Mr. Yehia could make further arguments in front of Smith J.
- [30] On the afternoon of March 15, 2019, Mr. Yehia brought a further application for a stay of the final order. On March 22, 2019, that application was dismissed by Smith J.
- [31] Once Mr. Yehia's stay was dismissed, the documents signed by the Registrar to complete the buyout were provided to Mr. Yehia's counsel.
- [32] Because of Mr. Yehia's continuing refusal to provide the necessary authorizations to Ms. Negus's counsel, she had to bring on applications on short notice on March 27, 2019, to ensure that the original minute books, inclusive of share certificates, were provided, and to ensure that Ms. Negus and her counsel could discuss matters with HSBC, which holds a number of mortgages on the corporately owned properties.
- [33] On March 27, 2019, Mr. Justice McEwan ordered that Ms. Negus could have an open-ended extension of the time required to complete her buyout. At the time, Ms. Negus believed she only required a further week to complete the buyout. However, there was institutional delay in respect of HSBC advising what they required to surrender original share certificates hypothecated to them by Mr. Yehia, unbeknownst to Ms. Negus, and to allow Ms. Negus to retire some of the corporate debt.
- [34] On April 8, 2019, Mr. Yehia sought short leave returnable April 12, 2019, to extinguish Ms. Yehia's extension of time to purchase his interest, and various other relief, including relief against Ms. Negus personally in respect of *Jacobs v. Yehia*, in which Ms. Negus was not a party. Mr. Yehia's short leave application was dismissed by Master Bouck, with special costs payable to Ms. Negus.
- [35] As Mr. Yehia continued to refuse to sign an authorization allowing HSBC to surrender the original share certificates and allowing Ms. Negus to retire certain corporate debt, Ms. Negus was required to set down another registrar's hearing on April 9, 2019.

- [36] Mr. Yehia refused to sign the authorization until the parties appeared before Master Taylor on April 9, 2019, sitting as registrar. Master Taylor ordered that if Mr. Yehia did not provide the original signed authorization by 12:00 p.m., with no conditions attached, that Master Taylor would sign the authorization on Mr. Yehia's behalf, in accordance with the final order allowing the Registrar to sign all of the documents on Mr. Yehia's behalf to effect the buyout.
- [37] Included in the final documents signed by the Registrar were a waiver of all claims against the Cambie Group Companies and a resignation on behalf of Mr. Yehia from all positions in the Cambie Group Companies. These were part of the buyout.
- [38] Ms. Negus had to attend further registrar's hearings to have all of the documents required for the buyout signed by the Registrar, as Mr. Yehia refused to sign any of them. He signed the authorization on April 9, 2019, only when the parties were already in court for the registrar's hearing.
- [39] On April 18, 2019, Mr. Yehia received \$12,000,000 for the purchase. \$1,200,000 was placed in Ms. Negus's counsel's trust account in accordance with the final order, to be held pending the outcome of the special costs assessment.
- [40] Mr. Yehia's appeal was heard on June 10, 2019. In his appeal, Mr. Yehia sought to unravel Ms. Negus's purchase of his interest in family property and sought a compensation order for 50% of the difference between the price received by Ms. Negus for that property and the valuation of that property.
- [41] On June 24, 2019, Mr. Yehia brought on an application to have Ms. Negus pay him an additional \$1.3 million reflecting the holdback that was paid into court in respect of the *Jacobs v. Yehia* proceedings. In his oral reasons for judgment delivered on June 24, 2019 (Negus #3) Smith J. said (at para. 4):

I agree with [Ms. Negus's counsel] that the effect of the order Mr. Yehia is now seeking would be to increase the amount of my judgment, which ordered that Ms. Negus could pay \$12 million, to a total payment of \$1.3 million. That is a variation of the order that I do not have jurisdiction to make now that the order has been entered.

- [42] Mr. Yehia's appeal was dismissed on August 22, 2019. The Court of Appeal concluded, at para. 54:

I am also of the view that there is no merit to Mr. Yehia's argument that, if the transactions were not set aside, then he should receive an additional compensation payment in respect of properties that have been sold since the December 2018 order. No authority was provided in support of the proposition that a spouse is entitled to receive additional compensation in these circumstances. In my view, such an order would be contrary to both s. 87(b)(ii) of the Family Law Act and the principle that orders relating to property division are intended to achieve certainty and finality.

- [43] On December 4, 2019, Kelleher J. pronounced reasons for judgment concluding the amounts owing to Mr. Jacobs by Mr. Yehia and the companies named in BCSC Action S106849. The final amount payable to Mr. Jacobs was approximately \$730,000 with interest. The amounts payable to Mr. Jacobs were paid from the holdback of \$1.3 million and Mr. Yehia received the remaining funds. Kelleher J. did not apportion the liability between Mr. Yehia and the Cambie Group Companies named in the action, leaving the determination of that discrete issue to a separate action between Mr. Yehia and the named Cambie Group Companies.
- [44] On December 24, 2019, Mr. Yehia's current counsel emailed Ms. Negus's counsel attaching a letter from him and three newly commenced actions by Mr. Yehia against Ms. Negus and a number of companies in which she has or had an interest.
- [45] Between January and March 2020, Ms. Negus's counsel attempted to bring this application to declare Mr. Yehia a vexatious litigant before Smith J. On February 7, 2020, the registry advised that Smith J. was unavailable to hear the vexatious litigant application and that it could be heard before another judge.
- [46] This application was filed on February 10, 2020.

Other Related Actions

- [47] In January 2015, Mr. Yehia commenced a civil proceeding in the name of his mother, Louna Yehia, while he had power of attorney over her to have the former matrimonial home declared to be Louna Yehia's property. In other words, he sought default judgment against himself. Ms. Negus had to bring on applications to be added as a party. He also sought to register a CPL on title to the home, and that application was struck. Ms. Negus was awarded special costs.
- [48] Mr. Yehia has pursued multiple appeals in this action, including:
- a) CA42822, in which he sought to appeal the order of Mr. Justice Steeves regarding an interim advance for Ms. Negus. The appeal was ultimately placed on the inactive list by way of letter from the Court of Appeal registrar, dated May 31, 2016;
 - b) CA42836, in which he sought leave to appeal the order of Mr. Justice Macintosh, regarding an interim advance for Ms. Negus. She was put to the expense of drafting a reply to Mr. Yehia's motion, inclusive of written argument. The matter was ultimately put on the inactive list by way of letter from the Court of Appeal registrar, dated June 3, 2016;
 - c) CA44829, in which Mr. Yehia sought to appeal the order of Mr. Justice Tammen resulting from his non-attendance at the trial management conference. Mr. Yehia has not pursued this appeal;
 - d) CA45594, where Mr. Yehia sought leave to appeal the order of Mr. Justice Smith, August 23, 2018. Mr. Yehia's application for leave was denied by the Honourable Mr. Justice Savage;

- e) CA45285, Mr. Yehia's unsuccessful appeal of the final order; and
 - f) Mr. Yehia appealed the order of Master Muir dismissing his application for an adjournment of the trial, which appeal was dismissed by Mr. Justice McEwan, and then subsequently sought a further adjournment of the trial on day 1 of the trial (which was denied by the trial judge).
- [49] Mr. Yehia commenced proceedings in the names of the corporate respondents against his former lawyers in this proceeding: Mr. Mansfield and Mr. Tedham, and against the joint expert in this proceeding, Mr. Blanchette, without Ms. Negus's knowledge or consent.
- [50] Mr. Yehia has commenced proceedings against two of his other former counsel in this proceeding: Mr. Lorne McLean and Mr. Russell Tretiak.
- [51] Mr. Yehia refused on many occasions to endorse orders, requiring Ms. Negus to settle the orders in court. He refused to endorse the final order in the family law proceedings, as referred to above.

Special Costs

- [52] In Negus #2, in granting special costs to Ms. Negus, Smith J. referred to the background that I have covered and to many other positions taken by Mr. Yehia in the family law proceeding (at paras. 69-96). At para. 97, he stated:

In total, the Court made more than 25 orders prior to trial, including orders related to the separate action nominally commenced by the respondent's mother. Although the respondent ultimately consented to many of those orders, that consent usually came only after he had filed responses indicating opposition, forcing the claimant to prepare for contested applications. Many of the orders related to matters that should never have required an application in the first place, such as production of clearly relevant documents. The respondent generally had to be ordered to provide any form of support for his children or the claimant and to provide advances on family property to permit the claimant to pay legal fees and "level the litigation playing field": *F.(I.) v. R. (R.J.)*, 2015 BCSC 793 (B.C. S.C.). In some cases, he only paid the amounts ordered after the claimant brought a further application.

- [53] At para. 100-101, Smith J. concluded that special costs were warranted:

- [100] On review of the pre-trial orders and the applications that led to them, I find that the respondent's conduct throughout was a continuation of the "litigation war" that Master Taylor recognized early in the proceedings. He appears to have consistently refused to recognize the claimant's right under the FLA to share in family property following a 21-year relationship. That position continued through trial in which he argued that the claimant had no right to share in the value of the matrimonial home and was entitled to as little as a 10% share of the business properties.

- [101] I find that the respondent's conduct certainly amounts to the use of superior resources in an attempt to wear down the other party. I have no difficulty finding the respondent's conduct throughout the pre-trial proceedings to be reprehensible.
- [54] Mr. Yehia's appeal of the order awarding special costs to Ms. Negus was dismissed. The Court of Appeal stated at paras. 64 and 66 (Negus Appeal):
- [64] I would not accede to this second ground of appeal. The record is replete with examples of Mr. Yehia's conduct which, collectively, provide the basis for the judge's award of special costs for the entire proceeding. There is also the fact that this conduct continued until the Fall 2018 Hearings and beyond.
- [66] In conclusion, there is no basis, in my view, for this court to interfere with the judge's decision to award special costs to Ms. Negus.

The Three Actions

- [55] As noted, on December 24, 2019, Mr. Yehia commenced three actions against Ms. Negus and her companies.
- [56] These actions have been referred to as "new claims" by counsel for the parties and by the Court. Mr. Yehia takes the position that the reference to new claims is dispositive: it reflects that the claims are not claims that have already been determined or rolled over. I take the reference to new claims as meaning proceedings that have been commenced after the family law proceeding ended.

The Jacobs Action

- [57] The Jacobs action is a continuation of the previous litigation between Paul Jacobs and several companies operated by him and Mr. Yehia and several of the Cambie Group Companies (BCSC Action S106849 Vancouver Registry). The litigation predates the separation of the parties and relates to funds advanced by Mr. Jacobs to Mr. Yehia.
- [58] As noted, Ms. Negus agrees that there is a discrete issue regarding the apportionment of liability between Mr. Yehia and the named Cambie Group Companies in that action.
- [59] Ms. Negus was not a party to the Jacobs action.
- [60] Mr. Yehia says that the action is new, and arises from Negus #3, particularly paras. 1-3 and 7:
- [1] First of all, the order that I made following the trial and several subsequent applications was that Ms. Negus be permitted to purchase all of the family property, including the shares of the corporations, for \$12 million. That was based on Mr. Bowie's valuation, which indeed discounted the value of the corporations for the possible liability to Mr. Jacobs.

- [2] Mr. Jacobs' judgment is potentially against both Mr. Yehia personally and the corporations, which I gather now may be a corporate successor to Cambie Malone's Corporation because of subsequent transactions.
- [3] [Counsel for Mr. Jacobs] is quite correct that Mr. Jacobs has the option to seek payment from whichever of the joint debtors he wishes. As between Mr. Yehia and the corporations, their respective contributions to paying that debt is a separate issue as between them.
- [7] This potential debt to Mr. Jacobs was taken into account in the valuation that Mr. Bowie gave at trial. It may well be a matter that the corporations will ultimately have to pay or contribute to but, if it comes to that. It will have to be the subject of further litigation as between Mr. Yehia and those companies.
- [61] Mr. Yehia also says that the Jacobs action was a contingent liability that effected the fair market value of the family assets, and that should affect the buyout, in effect, by requiring Ms. Negus to pay him an additional amount.
- [62] Ms. Negus asserts that Mr. Yehia's claims have no merit for the following reasons:
- a) The claim is not limited to determining who is liable for the \$730,000 paid to Mr. Jacobs in Jacobs v. Yehia. The claims include parties not named in the original Jacobs v. Yehia action, including the Sally Negus (who was not a party to the Jacobs v. Yehia).
 - b) The Claim is not limited to the amounts owed to Mr. Jacobs. Mr. Yehia is seeking to further adjust the final order in this proceeding by attempting (with no legal basis) to adjust for the difference between a the contingent liability on the financial statements of one of the Cambie Group Companies and the actual amount paid to Mr. Jacobs.
 - c) Mr. Yehia sought a reopening of the family law case to seek similar relief and was rejected. He sought to adjust the value of the companies on appeal and was also rejected. This claim is simply a further attempt to litigate the issue.
 - d) Mr. Yehia is precluded, by way of the waivers signed as part of the Negus Proposal, from bringing further claims against the Cambie Group Companies.
- [63] I agree with Ms. Negus that this matter, except for the apportionment issue, has been heard and determined. The fair market value of the family assets included the contingent liability of the Jacobs action.
- [64] Further, this was specifically addressed by Smith J. in Negus #3 in paras. 4-6 and 9:
- [4] I agree with [Ms. Negus's counsel] that the effect of the order Mr. Yehia now is seeking would be to increase the amount of my judgment, which ordered that Ms. Negus could pay \$12 million, to a total payment of \$1.3 million. That is a variation of the order that I do not have jurisdiction to make now that the order has been entered.

- [5] Mr. Justice Kelleher has ordered a payment into court of \$1.3 million from that amount to secure what may become owing to Mr. Jacobs subject to future proceedings before Mr. Justice Kelleher.
- [6] Even if I could make the order Mr. Yehia now seeks, the effect of that would be to require Ms. Negus to pay him an extra \$1.3 million for a debt that they may not be ever liable to pay, depending on the outcome of the proceedings before Mr. Justice Kelleher.
- [9] As for any order that Ms. Negus pay an additional amount to Mr. Yehia, that would be a variation of my previous order, which I have no jurisdiction to make.

The Expense Action

- [65] This action is a claim by Mr. Yehia against the Cambie Group Companies for amount he says he was owed by the companies leading up to the buyout. He maintains that he continued to incur expenses on behalf of the Cambie Group Companies between December 2018 (the issuance of Negus #2) and the buyout in April 2019. He says that in those months, he had a fiduciary duty to the Cambie Group Companies to maintain them as going concerns and did so. He argues that Ms. Negus and the Cambie Group Companies have been unjustly enriched by his contributions.
- [66] Ms. Negus says the Mr. Yehia's claims are without merit for the following reasons:
- (a) The Negus Proposal, approved by the Court, permitted Ms. Negus to buy Mr. Yehia's interests in the companies and other family property.
 - (b) Included in the Negus Proposal were the following terms:
 - (i) Ms. Negus acquires ownership of the shares in the capital of the Cambie Group Companies;
 - (ii) If Mr. Yehia is owed any receivables by the Cambie Group Companies, he will assign those receivables to Ms. Negus;
 - (iii) Mr. Yehia releases the Cambie Group Companies of any and all possible claims against the Cambie Group Companies;
 - (iv) Mr. Yehia resigns as director, officer and employee of each of the Cambie Group Companies.
 - (c) The Registrar, on Mr. Yehia's behalf, signed a waiver of all claims against the Cambie Group Companies as part of the buyout. The Registrar's authority to do so is found in the final order. Mr. Yehia's appeal of the final order was dismissed.
 - (d) The Action is a further attempt by the Respondent to vary or indirectly appeal the terms of the Final Order.
- [67] Again, I must agree with Ms. Negus that this action is simply a reiteration of Mr. Yehia's positions at trial and on appeal that were unsuccessful.

- [68] The Negus proposal was accepted by the Court and the buyout was completed, with some difficulty, including that the Registrar was required to sign the documents on Mr. Yehia's behalf. The waivers and releases are valid and prevent Mr. Yehia from pursuing this claim.
- [69] As Smith J. stated in Negus #3 "any order that Ms. Negus pay an additional amount to Mr. Yehia would be a variation of [the entered final order]". This Court has no jurisdiction to make such an order.

The Wrongful Dismissal Action

- [70] This claim is based on Mr. Yehia's assertion that he was an employee of the Cambie Group Companies and that he continued to provide his services to the companies in the period December 2018 to April 2019. He argues that the premise for his paying spousal support to Ms. Negus in that period was based on his continuing to be paid as an employee for that period.
- [71] Ms. Negus asserts that this claim has no merit because he was not employed by the Cambie Group Companies and for the same reasons that his claim for expenses has no merit:
- (a) The Negus Proposal, approved by the Court, permitted Ms. Negus to buy Mr. Yehia's interests in the companies and other family property.
 - (b) Included in the Negus Proposal were the following terms:
 - (i) Ms. Negus acquires ownership of the shares in the capital of the Cambie Group Companies;
 - (ii) If Mr. Yehia is owed any receivables by the Cambie Group Companies, he will assign those receivables to Ms. Negus;
 - (iii) Mr. Yehia releases the Cambie Group Companies of any and all possible claims against the Cambie Group Companies;
 - (iv) Mr. Yehia resigns as director, officer and employee of each of the Cambie Group Companies.
 - (c) The Registrar, on behalf of Mr. Yehia, signed resignations for all positions in the Cambie Group Companies as part of the buyout. The Registrar's authority to do so is found in the final order. Mr. Yehia's appeal of the final order and his appeal was dismissed.
 - (d) The Registrar, on behalf of Mr. Yehia, signed a waiver of all claims against the Cambie Group Companies as part of the buyout. The Registrar's authority to do so is found in the final order. His appeal was dismissed.
- [72] It is unnecessary for me to determine if Mr. Yehia was an employee of the Cambie Group Companies or not. The resignations, waivers and releases are valid and prevent Mr. Yehia from pursuing this claim.

[73] Again, as Smith J. stated in Negus #3 "any order that Ms. Negus pay an additional amount to Mr. Yehia would be a variation of [the entered final order]". This Court has no jurisdiction to make such an order.

Vexatious Litigant

[74] I will refer to each of the relevant Fabian principles in turn:

(a) the bringing of one or more actions to determine an issue which has already been determined by a Court of competent jurisdiction constitutes a vexatious proceeding;

[75] Mr. Yehia has commenced multiple actions seeking the same relief; he continues to seek to vary the division of family property in the final order. The three newly-commenced civil proceedings against Ms. Negus and the Cambie Group Companies seek to vary findings of fact and judicial determinations regarding the value of the businesses and his compensation payment.

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;

[76] It is plain that the three present civil claims will not succeed and none can lead to any good. By bringing these actions, Mr. Yehia is merely demonstrating that he disagrees with the findings and orders of this Court, as well as the Court of Appeal. If Mr. Yehia was being reasonable, he would understand and appreciate that he will not obtain the relief that he seeks. The whole purpose of bringing these actions is to be vexatious.

(c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

[77] I have no doubt that Mr. Yehia's bringing the three newly-commenced civil actions is for an improper purpose and is meant to harass and oppress Ms. Negus for purposes other than the assertion of legitimate rights.

[78] In making a special costs award against Mr. Yehia, Smith J. concluded that his conduct throughout the family law proceedings was reprehensible and deserving of rebuke. For some reason, Mr. Yehia has failed to get that message. He continues to fight a litigation war that is over, in order to continue to punish Ms. Negus. The court cannot be used as a vehicle for Mr. Yehia to do that.

(d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

- [79] Mr. Yehia's newly-commenced actions are reiterations of the previous issues that have been determined by this Court and the Court of Appeal. They are merely rolling those issues over.
- [80] As noted, Mr. Yehia has commenced actions against many of his former lawyers. He has sued third party experts who appeared at the trial.
- (h) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings. factors again.
- [81] Mr. Yehia has engaged in a series of unsuccessful appeals in this case. His pattern of appealing orders but not following through on the appeals continued throughout the family law case.
- [82] The relevant Fabian principles are met in this case.
- [83] I am convinced that Mr. Yehia must be declared a vexatious litigant. The Court cannot condone his continuing to use his resources to harass and oppress his ex-spouse. The goal in family law proceedings is to extract the parties from their interrelationships, emotional, financial and otherwise, and to do so with finality. This was a long marriage. It is over. The parties are free to pursue their lives independently. Mr. Yehia does not seem to accept this fact.
- [84] Neither does he accept the outcome of the litigation. He seems to think there are still matters to fight about. There are not.
- [85] I therefore make the following declarations:
- a) A declaration under s. 18 of the Supreme Court Act that the respondent, Sam Yehia, is a vexatious litigant, and requires leave of the court before commencing any litigation against Sally Negus, her heirs, and/or any companies in which she has a current interest, companies in which she had a prior interest, and companies which formed an integral part of the division of family property in the herein family law proceedings or their successor companies, including but not limited to The Cambie Malone's Corporation, Cambie Malone's Developments Corp., Cambie Holdings (Vancouver) Corp., 160 Cordova Holdings Ltd., 300 Cambie Holdings Ltd., Cambie Holdings (Nanaimo) Corp., 63 Victoria Crescent Holdings Ltd., Esquimalt Holdings Corp., 856 Esquimalt Road Ltd., 494989 B.C. Ltd., 608 West Pender Street Ltd., 0527425 B.C. Ltd., 0709661 B.C. Ltd., 0790012 B.C. Ltd., 0828508 B.C. Ltd. and 0829386 B.C. Ltd.
- b) A declaration under s. 18 of the Supreme Court Act that the respondent, Sam Yehia, is a vexatious litigant, and requires leave of the court before taking any further steps in Supreme Court Actions: S1914293, S1914180, and S1914294, or any other litigation he has already commenced against Sally Negus, her heirs, and/or any companies in which she has a current interest, companies in which she had a prior interest, and companies which formed an integral part of the division of family property in the herein family law proceedings or their successor companies, including but not limited to The Cambie Malone's Corporation,

Cambie Malone's Developments Corp., Cambie Holdings (Vancouver) Corp., 160 Cordova Holdings Ltd., 300 Cambie Holdings Ltd., Cambie Holdings (Nanaimo) Corp., 63 Victoria Crescent Holdings Ltd., Esquimalt Holdings Corp., 856 Esquimalt Road Ltd., 494989 B.C. Ltd., 608 West Pender Street Ltd., 0527425 B.C. Ltd., 0709661 B.C. Ltd., 0790012 B.C. Ltd., 0828508 B.C. Ltd. and 0829386 B.C. Ltd.

Special Costs

- [86] Ms. Negus seeks special costs of this application.
- [87] Ms. Negus was awarded special costs of the family law proceeding.
- [88] In *567 Hornby Apartments Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69, the Court confirmed that where a trial judge awards special costs of a proceeding, that can include matters after the trial judgment as the term "proceeding" refers to the whole event from commencement of the action to the continuation of the trial and beyond.
- [89] In any event, the facts of this application justify special costs. Special costs are discretionary, punitive in nature, and are usually awarded to express the Court's disapproval of a party's misconduct: *Hu v. Dickson*, 2015 BCSC 218, *Garcia v. Crestbrook Forest Industries Ltd.* (No. 2) (1994), 9 B.C.L.R. (3d) 242 (C.A.). As I have said, Mr. Yehia apparently did not heed the message that his conduct in the family law proceeding was reprehensible.
- [90] I find that his conduct in pursuing the three newly-commenced claims is equally reprehensible and deserving of the Court's rebuke.
- [91] Ms. Negus is entitled to special costs of this application.

"Gropper J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/20/2020BCSC2034.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/negus-v-yehia-2020>

Prepared on 26 October 2026 · Esheria