

CANADA / JUDGMENT

O'Neill v. MacQuarrie

2016 BCSC 981

COURT

Supreme Court of British Columbia

DECIDED

2 June 2016

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

2016 BCSC 981 O'Neill v. MacQuarrie IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: O'Neill v. MacQuarrie, 2016 BCSC 981 Date: 20160602 Docket: E48858 Registry: New Westminster Between: Katherine Elizabeth O'Neill Claimant And Stuart Lachlan MacQuarrie Respondent Corrected Judgment: The text of the judgment was corrected on the front page in Counsel for the Respondent's name where changes were made on September 14, 2016 Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Claimant: D. Greig Counsel for the Respondent: J. Stein Place and Date of Hearing: New Westminster, B.C. May 5, 2016 Place and Date of Judgment: New Westminster, B.C. June 02, 2016

Introduction

- [1] The parties cohabited from September 2008, married on April 10, 2010, and separated February 1, 2014.
- [2] The claimant is 35 years of age and is a part-time college instructor, while the respondent is 34 years of age and is self-employed in software technology.
- [3] The respondent has not filed a Form F8 Financial Statement in these proceedings.
- [4] The parties agreed that a divorce should go and I made that order on the date of hearing, May 5, 2016.
- [5] The other issue was what debt remained at the time of separation. The Arguments
- [6] There are two contrasting arguments put forward.
- [7] The claimant argued that they made an agreement before they separated whereby the claimant would transfer all her rights in the respondent's company (MacQ Inc.) and the potential sale of profits from a program the respondent had written and otherwise settle their financial issues by paying the claimant \$35,844. She drew an agreement acknowledging receipt of \$5,000, a balance of \$14,367.33 payable on execution of the agreement and the balance of \$16,476.67 to be paid in monthly instalments.

- [8] However, the respondent said he made no such agreement, that on the day of separation the family debt was \$26,474.19, that one-half was \$13,237.10 and as the respondent had paid \$5,000 to the claimant on January 15, 2014, and retained credit card debt of \$8,493.94, he had in fact over paid his half share of the family debt by \$256.85. Contract or Not
- [9] With respect to the claimant's position it was suggested the principles of offer and acceptance apply. The respondent had offered the claimant \$20,000 in exchange for the claimant terminating her interest in his company, By making her counterproposal, that offer was declined. The respondent did not agree to sign the proposed new contract but instead said he went to see a lawyer. Thus there is no agreement. Family Debt
- [10] However, when I turn to look at the argument of the respondent, it does not ring true in light of several factors.
- [11] The first is the statement in paragraph six of his affidavit where he says that they never shared all the finances. He says she never had access to his TD Venture Visa. He does say that she controlled a joint chequing account and he controlled the MacQ business account, and they shared living expenses and income. However, having said that she had no access to his TD Visa, in the very last paragraph he claims he had a credit card debt that had accumulated throughout their relationship and the amount owing on December 27, 2013, was \$8,493.94.
- [12] No prior statements have been put forward. The items listed on the credit card statement appear to be solely for Mr. MacQuarrie's benefit. It is not the amount that may or may not be owing on February 1, 2014. On its face it does not appear to be a family debt.
- [13] Secondly, the parties seem to agree that in June 2013, the debt in fact totalled some \$36,500.
- [14] From that time on, the claimant says and I accept, the finances were separated. She agrees \$2,800 was received from her mother-in-law and then \$14,000 paid against the debt from her book earnings, which I will come to in a moment.
- [15] Last, she acknowledges receipt of \$5,000 in mid-January 2014.
- [16] So then the debt the claimant had accumulated had been reduced by \$21,800 to \$14,700 at the time of separation.
- [17] The background to the \$36,500 debt is this. It appears that in 2012 the claimant obtained a book writing contract which potentially was to pay (including tax) \$56,280.
- [18] On the basis of her potential earnings they moved from Calgary to Vancouver, where Mr. MacQuarrie developed music software. It is agreed that the development costs were \$20,330.
- [19] Sales were not brisk. Various reasons are mooted in the parties' affidavits.

- [20] However it is evident they embarked on a joint venture whereby the claimant was paying their living expenses while the respondent developed his software. As well she was a director in the company. The value of the developed software and the position she held with the company led to the respondent making the offer to buy her out for \$20,000.
- [21] Since the separation the respondent has netted some \$12,500 from European sales, after commission, and therefore the respondent has retained the whole benefit of the software, all which was achieved on the basis of his wife's income.
- [22] Indeed in looking at the reduction of the debt the principal amount is the October 2013 payment of \$14,000.
- [23] It may be said that it appears that the respondent is seeking "to have his cake", and "eat it too".
- [24] As well, it is the claimant who has paid off the balance of the debt post-separation.
- [25] I accept the debt was \$36,500 at the time the parties separated their finances and that the claimant has paid \$14,000 and the respondent \$7800 prior to the formal separation on February 1, 2014.
- [26] I accept that the paydown of the debt was \$21,800, one-half was \$10,900, and the respondent's payment of \$7800 is a shortfall of \$3,100. To that I add one half of \$14,700 or \$7350, giving a total of \$10,450. I find the respondent owes the claimant \$10,450.
- [27] I realize I am not dividing the family debt in accordance with some of the provisions of the Family Law Act, S.B.C. 2011, c. 25 but the situation here is peculiar to the parties in that they patently divided and separated their finances in June 2013, and began paying down the debt.
- [28] Also, I take into account in terms of equities that Mr. MacQuarrie has retained the benefit of the joint venture and has retained the software titled "Underscore", which Mr. MacQuarrie acknowledges was premised on the income from Ms. O'Neill's book contract. Mr. MacQuarrie therefore has the value of the development costs of \$20,330 and retains the sales profits thereof which otherwise would be captured under the Act (s. 84)(1)(b)(1), (i.e., property acquired after separation by at least one spouse, derived from property owned by a spouse).
- [29] In sum, the respondent is ordered to pay the claimant \$10,450. The claimant is entitled to her costs. "Crawford 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/16/09/2016BCSC0981cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/o-neill-v-macquarrie-2016>

Prepared on 27 October 2026 · Esheria