

CANADA / JUDGMENT

Seymour v. Nole

2024 BCSC 438

COURT

Supreme Court of British Columbia

DECIDED

14 March 2024

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2024 BCSC 438 Seymour v. Nole IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Seymour v. Nole, 2024 BCSC 438 Date: 20240314 Docket: S17950 Registry: Smithers Between: Natasha Seymour Plaintiff And Shayl Nole and Kimberly Marion Defendants Before: Associate Judge Harper Reasons for Decision Counsel for the Plaintiff: I.B. Lawson Counsel for the Defendants: O.C. Hanson Place and Dates of Hearing: Victoria, B.C. January 23 and February 26, 2024 Place and Date of Decision: Smithers, B.C. March 14, 2024

Introduction

- [1] The defendant, Shayl Nole, is a judgment debtor of the plaintiff, Natasha Seymour. Ms. Seymour sued Mr. Nole for damages arising from sexual battery committed by Mr. Nole. In Justice Shergill's reasons for judgment dated May 25, 2022 indexed at 2022 BCSC 867, she awarded the plaintiff damages against Mr. Nole in the amount of \$272,300. Mr. Nole's appeal on liability was dismissed in reasons for judgment dated August 15, 2023 (2023 BCCA 329). (Ms. Seymour obtained judgment against Mr. Nole's mother, the defendant, Kimberly Marion, for defamation, but that decision was reversed on appeal.)
- [2] The parties agreed that execution of the judgment would be stayed pending appeal on the payment of the sum of \$50,000 into trust. At the first hearing before me, there was a dispute as to whether the \$50,000 should be paid to Ms. Seymour given Ms. Marion's successful appeal, but the matter was resolved by the second hearing such that the \$50,000 will be released to Ms. Seymour. The amount now owing by Mr. Nole is \$222,300 plus post-judgment interest, the amount of which was not before me. Costs have not yet been assessed.
- [3] Counsel for Ms. Seymour submits that I should make an order that Mr. Nole pay Ms. Seymour the amount owing in instalments of \$3,000 per month. Counsel for Mr. Nole submits the amount should be \$1,000 per month. The Subpoena to Debtor Process
- [4] Ms. Seymour, through counsel, issued a subpoena to debtor pursuant to Rule 13-3(1) of the Supreme Court Civil Rules, which provides: Examination of Debtor
- (4) The examination referred to in a subpoena issued under subrule (1) must take place before an examiner and must be on oath as to the following matters:

- (a) the income and property of the debtor;
 - (b) the debts owed to and by the debtor;
 - (c) the disposal the debtor has made of any property; (d) the means the debtor has, or has had, or in future may have, of satisfying the order.
- [5] Ms. Seymour was required to provide Mr. Nole conduct money in the amount of \$680 to compel his attendance at the hearing in person at the Smithers courthouse: Rule 13-3(3). However, Mr. Nole did not require conduct money as he appeared via MS Teams.
- [6] The examiner must be the court; a master (or, now, an associate judge); or a registrar: Rule 13-3(5). The examiner may make orders for payment pursuant to Rule 13-3(11): Order for payment
- (11) At an examination under this rule, the examiner may make one or more of the following orders:
- (a) for the payment of the debt by instalments;
 - (b) for the payment of the debt on or before a fixed date;
 - (c) varying or rescinding any previous order;
 - (d) for payment to be made to a registrar, to the creditor or to the creditor's lawyer;
 - (e) fixing the costs payable by the debtor without assessment, and if the examiner is an associate judge or registrar, the order has the effect of an order made by the court and must be entered accordingly.
- [7] Although Rule 13-3(6) provides that a creditor and the person subpoenaed may, with leave of the examiner, call witnesses who may be cross-examined, neither party sought such leave. Only Mr. Nole gave evidence.
- [8] A statement of Mr. Nole's monthly expenses as well as documents setting out certain debts and monthly expenses were in evidence. Counsel for Ms. Seymour cross-examined Mr. Nole on his income, expenses, assets, and liabilities. In re-examination, Mr. Nole agreed with his counsel that the statement of monthly expenses was "fair and accurate".
- [9] Counsel for Ms. Seymour submitted that once I make an order for payment by instalments, Ms. Seymour would not be permitted to apply for an order in the future varying the order. Counsel for Ms. Seymour provided no authority for this position. Counsel for Mr. Nole submitted that the case authorities do permit such an application, but did not provide any authorities. In the BC Annual Practice, there is a note under Rule 13-3(5) as follows: "An order made under Rule 13-3 may be varied from time to time as the debtor's circumstances change": *First Pacific Credit Union v. Dewhurst* (1987), 16 B.C.L.R. (2d) 371 (S.C.) at p. 378. Perhaps that is the case authority counsel for Mr. Nole was referring to. The examiner may adjourn an examination from time to time: Rule 13-3(7). Rule 13-3(11)(c) permits an

examiner to vary or rescind any previous order. I see no impediment to the court making an order that a judgment be paid in instalments with liberty to the creditor to seek a further subpoena to debtor. The drafters of Rule 13-1 could not have intended that once an order for payment by instalments was made, there could be no further review. Mr. Nole's financial circumstances might change for the better and, if they do, he should pay more than the amount I order today. Mr. Nole's Financial Means and Circumstances

- [10] Mr. Nole is currently 26 years old. He lives in Dease Lake, B.C. He is employed by Newcrest Red Chris Mining Limited (or its successor) as an apprentice heavy duty mechanic. Mr. Nole provided limited documentation regarding his income. He provided only a pay summary for the period January 1, 2024 to January 15, 2024. Mr. Nole makes \$39.77 per hour. Mr. Nole estimates his gross annual income to be \$115,000. Mr. Nole works two weeks in camp, and two weeks out. He admits that he makes cash income when he is not in camp. He charges \$20 to \$30 per hour depending on whether he is working as a labourer or a mechanic.
- [11] Mr. Nole rents a house owned by his mother and stepfather. Mr. Nole lives alone, but his girlfriend is expected to move in with him. She is expecting a baby in July 2024.
- [12] A lease agreement dated September 1, 2022 was in evidence before me. The lease agreement post-dates Shergill J.'s decision. The rent set out in the lease agreement is \$2,300 per month from May 1, 2022 on a year-to-year basis. The lease agreement contains the following term: "The Landlord may increase the Rent for the Property upon providing the Tenant such notice as required by the Act" (the "Act" here is referring to "applicable legislation of the Province of British Columbia").
- [13] Mr. Nole currently pays \$2,600 per month. Mr. Nole could not remember when the rent was increased. This is an increase of 13% over the previous rent of \$2,300 per month. Mr. Nole knew before he agreed to an increase in rent that he owed Ms. Seymour \$272,300. There was no evidence before me as to the statutory limit to rent increases pursuant to the Residential Tenancy Act, S.B.C. 2002, c. 78. However, I am confident that the 13% increase is significantly more than the amount permitted under the Residential Tenancy Act. Mr. Nole did not explain why he did not contest a rent increase of 13% except to say "everything goes up".
- [14] After the release of Shergill J.'s reasons for judgment, in December 2022, Mr. Nole purchased a new truck (a 2017 Ford F350 S/D) for the price of \$83,000. The vehicle was purchased through a dealership in Terrace, B.C. and financed through Scotiabank. The total amount financed for this purchase was \$93,379. In addition, Mr. Nole purchased disability and life insurance related to the new truck, making the grand total amount financed \$109,580.59. The interest rate is 8.49% per year for 72 months with payments of \$1,947.64 per month. The cost of borrowing set out in the credit agreement is \$30,326.50. Mr. Nole justified this purchase by saying that his previous vehicle broke down, he needs a vehicle to get to work, and there was not much selection.

- [15] I do not accept that this truck was the only vehicle Mr. Nole could have bought. He knew he was indebted to Ms. Seymour, and yet he made the decision to incur this debt. Mr. Nole had other options available to him. He could have bought a cheaper vehicle. He could now sell the vehicle and buy a cheaper one. Ms. Seymour should not be expected to finance Mr. Nole's spending priorities.
- [16] In December 2023, Mr. Nole purchased a new snowmobile (a 2024 Polaris) for the price of \$23,752. He put down \$2,000 on the purchase price. There was no evidence before me as to where Mr. Nole found the \$2,000 for the down payment. The total amount financed including optional insurance is \$24,751.70. The interest rate is 9.99%. The term of the loan is 96 months (eight years). Monthly payments are \$374.90. He seeks to justify this purchase by referencing his indigenous heritage and culture. He says he uses the snowmobile for hunting which reduces his grocery bill. By purchasing the snowmobile in the face of the debt owing to Ms. Seymour, Mr. Nole again prioritized his own consumer spending over his obligation to pay the judgment. Mr. Nole could have, and should have, refrained from making such a large purchase until the court had determined his monthly payments on the judgment debt. Counsel for Ms. Seymour submits that Mr. Nole can sell the snowmobile.
- [17] For the purposes of determining an appropriate amount for monthly instalments on the judgment, I have taken into account, in accordance with Rule 13-3(4)(d), the means Mr. Nole has, or has had, or in the future, may have, of satisfying the order: · Mr. Nole had the means of satisfying the judgment (at least to some degree) by using the money he spent on the purchase of the truck and snowmobile towards payment of the judgment; and · Mr. Nole may have the means in the future of satisfying the order (at least partially) if he chooses to sell the snowmobile and truck. To be clear, the court is not ordering Mr. Nole to sell these two items. He may keep them if he wishes, but Ms. Seymour should not have to subsidize Mr. Nole's ownership of two expensive, heavily financed vehicles.
- [18] Mr. Nole makes a good income. He is an apprentice heavy duty mechanic. He earns additional cash income. His means of satisfying the judgment will likely increase as his income increases.

Conclusion

- [19] After considering the factors set out in Rule 13-1(4) and the evidence, I have determined that, pursuant to Rule 13-3(11)(a), Mr. Nole should pay Ms. Seymour the sum of \$1,750 per month commencing March 15, 2024, payable in semi-monthly instalments of \$875 on the same day as he receives his pay. At Ms. Seymour's option, she may elect to receive payments by electronic transfer. If she opts to receive payments by cheque, Mr. Nole must provide 12 post-dated cheques at a time.

- [20] Pursuant to Rule 13-3(14), the court may fix the costs payable by the debtor without assessment. Unfortunately, neither party addressed costs. If the matter comes back for review, Ms. Seymour has leave to seek costs of this subpoena to debtor. I will deal with one disbursement at this time. There will be an order today that Mr. Nole repay Ms. Seymour forthwith the amount of \$680 that he received as conduct money.
- [21] The order I have made would see the judgment debt paid off in about ten-and-a-half years. That is a long time. Mr. Nole's financial circumstances may change for the better. If he chooses to keep his truck and snowmobile, the associated loans will be paid off in five and eight years respectively. Ms. Seymour should be able to seek an order accelerating the payments. Therefore, in accordance with Rule 13-3(7), I will make an order adjourning the examination. "Associate Judge Harper"

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