
CANADA / JUDGMENT

Siebert v. Siebert

2010 BCSC 801

COURT

Supreme Court of British Columbia

DECIDED

8 June 2010

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2010 BCSC 801 Siebert v. Siebert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Siebert v. Siebert,

2010 BCSC 801

Date: 20100608

Docket: 19928

Registry: Cranbrook

Between:

Jennifer Dawn Siebert

Plaintiff

And

Nathaniel Justin Blandon Siebert and

Home Aid Restorations Ltd.

Defendants

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

Appearing on her own behalf:

Jennifer Dawn Siebert

Appearing on his own behalf:

No one appearing on behalf of

Home Aid Restorations Ltd.

Nathaniel Justin Blandon Siebert

Place and Date of Hearing:

Cranbrook, B.C.

May 17 & 18, 2010

Place and Date of Judgment:

Cranbrook, B.C.

June 8, 2010

[1] The plaintiff, Jennifer Dawn Siebert ("Ms. Siebert"), seeks a variety of relief in a matrimonial proceeding. The defendant, Nathaniel Justin Blandon Siebert ("Mr. Siebert"), opposes all or most of these applications.

I. Background:

[2] Both parties appeared in person. When last before me, on December 18, 21 and 22, 2009, they were both represented by counsel. At that time I made extensive orders to guide their affairs including interim custody and guardianship of their children, who had the right to occupy which residence, that certain property should be sold, that certain business assets and records should be delivered to Ms. Siebert, that Mr. Siebert should pay child support but not spousal support, that certain accountings should be made by each party, and so on. No written order reflecting the terms of the order I made was ever entered, likely because the parties soon afterwards were not able to continue to employ their counsel.

[3] In my view, a clear statement of the orders I made in December 2009 is necessary to be on the record as a base line from which to consider the new orders now being sought by Ms. Siebert. I have, therefore, reviewed the judgment I gave on December 22, 2009 and settled the form of order on my own motion. It is essentially in the form apparently prepared by Ms. Siebert's then counsel, Mr. Sheard, and approved by Ms. Bratt, then counsel for Mr. Siebert. I have deleted one paragraph as, upon reviewing my notes, I do not believe I made this order:

Mr. Seibert is to sign any and all documents necessary to enable Mrs. Siebert to operate Home Aid as a sole proprietorship in her name;

Quite frankly, it would likely have been appropriate to include such an order at the time and would have been included if both counsel had indicated their consent to it on behalf of the parties. But that is not possible on the material before me and, in any event, Ms. Siebert says that circumstances have changed and she no longer wishes to operate Home Aid Restorations Ltd. ("Home Aid").

- [4] Notwithstanding the orders I made in December, the parties appear to have largely ordered their lives as it inconvenienced them and sometimes ignored my orders if it didn't convenience them. For example, Mr. Siebert has paid no child support whatever. He initially (in December) claimed to be injured, now he says he will likely be employed soon at about \$25.00 an hour, but makes no mention of the source of his employment. Ms. Siebert, notwithstanding having been given the right to reside in the matrimonial home until it was sold, moved out within a week or two of my order into another residence at 531 King Street NW in Cranbrook that I found to be a family asset. That is the residence that used to be in only Mr. Siebert's name but which he caused to be registered in the names of him and his father. Now Ms. Siebert wants an order that that property not be sold so that she and the children can continue to live in it.
- [5] Mr. Siebert never delivered the assets of Home Aid to Ms. Siebert as ordered although he says she in fact got most of them when she moved into the King Street property. However, Ms. Siebert was not able to make effective use of those assets as Mr. Siebert appears to have taken steps to ensure that Ms. Siebert is not able to obtain any restoration contracts from the firms that formerly provided Home Aid with most of its business (fire and flood restorations for insurers).
- [6] Mr. Siebert says he had a very provident sale of the King Street property but that Ms. Siebert refused to sell. In fact, she did not refuse to sell, she just did not accept Mr. Siebert's proposal for the distribution of the sale proceeds.
- [7] Ms. Siebert says, because she did not get child support, she breached my order not to dispose of assets by selling a riding lawn mower.
- [8] In the meantime, the two Blair Avenue NW properties owned as an investment by Home Aid are apparently in foreclosure because, says Mr. Siebert, Ms. Siebert pocketed the rent rather than paying the mortgage(s). She says she needed money for her and the children to live on.
- [9] In short, the financial affairs of these two parties is in a mess and not getting better given their attitude to each other and the apparent resolve of Mr. Siebert to sabotage Ms. Siebert's attempt at economic self-sufficiency.
- [10] Ms. Siebert seeks other orders, including one reversing the prohibition I made on her consumption of alcohol and one requiring Mr. Siebert to sign documents necessary for her to get passports for the children. She wants the restraining order lifted with respect to assets so she can raise money to live on.

- [11] At the time of appearing before me, neither party was employed although, as noted above, Mr. Siebert suggested that he has some form of employment in the offing.

II. Discussion:

- [12] Court orders can only go so far to assist and guide litigants. In this proceeding, both parties have shown a disregard for the framework put in place by the Court in December 2009. Most of that disregard has been on the part of Mr. Siebert. Then, too, the reality of the financial difficulties and debt burden which casts a long shadow over their affairs is a constraint on what can pragmatically be done at this point.
- [13] I have no difficulty ordering that Ms. Siebert and the children have exclusive use and occupancy of the residence at 531 King Street NW. However, there is mortgage debt against that property. Someone has to pay the mortgage. Mr. Siebert's father has been making the payments. If he stops doing so (and I cannot order him to make those payments) the bank may well foreclose. Notwithstanding Ms. Siebert's complaint that there is no place of an adequate size available for her and the children to rent, the reality is that this property must be sold to satisfy the mortgage debt against it. The proceeds after payment of the mortgage now registered against it (original principal of \$145,000) and any outstanding taxes and utilities shall be divided equally between Mr. Siebert and Ms. Siebert. Mr. Siebert shall be personally responsible for any compensation owing to his father as a result of his manipulation of the title. However, one-half of Mr. Siebert's share of the proceeds of sale will be paid to Ms. Siebert as compensation for any unpaid child or spousal maintenance owing at the time sale proceeds are distributed. If the one-half share of Mr. Siebert's sale proceeds are more than any arrears then owing to Ms. Siebert, she may retain them and credit them against future child and spousal obligations of Mr. Siebert. The bottom line, however, is that this property must be sold. If Mr. Siebert's father refuses to co-operate in the sale, there is liberty for Ms. Siebert to apply to the court on notice to Mr. Siebert's father so that he may be represented on the application.
- [14] It is clear to me that Mr. Siebert sabotaged any possibility of Ms. Siebert operating Home Aid. In those circumstances, I vacate my December 2009 order that she be provided with the records and assets of Home Aid for the purpose of operating it. These assets should now be sold. Ms. Siebert will have conduct of sale. She is to account to Mr. Siebert for any sales. He is to be provided with one-half of the net sale proceeds of these assets upon distribution of the proceeds being made. If he is in arrears of child or spousal support at that time, Ms. Siebert can apply for leave of the court to have all or part of his share of the proceeds directed to her to satisfy that outstanding support. It may not be retained by her as security for future payment of support, however.
- [15] If Mr. Siebert wishes to purchase the assets of Home Aid he will have 60 days from the date of this judgment to do so at fair market value (which is no doubt less than the replacement value of assets suggested by him in this application).

- [16] Ms. Siebert asks for a very modest \$200 a month spousal support back-dated to September 1, 2009. I am prepared to order that amount of spousal support, but effective June 1, 2010. Mr. Siebert's half share of the lawn mower sale proceeds will count as spousal support until that date.
- [17] At this time, it would appear pointless to order that \$10,000 be advanced to accountant Gary Knight to do the Home Aid year end. There is no money to advance to him and personal and corporate debt (and in Ms. Siebert's case outstanding legal debt) as well as arrears of child support will surely consume whatever is available. But if I am not sufficiently optimistic about the parties' financial circumstances, surely they can agree on the imperative of having the books for Home Aid done. No doubt Revenue Canada and perhaps other creditors will be interested at some point.
- [18] During this application, Mr. Siebert did not voice any opposition to Ms. Siebert being relieved of the condition that she not consume alcohol. I remove that condition.
- [19] There is no good reason why the children should not have passports. Mr. Siebert shall forthwith sign any documentation presented to him by Ms. Siebert to allow her to obtain those passports. Liberty to apply if he does not do so. I make the following change to my December 22, 2009 order:
- Ms. Siebert may only take the children out of Canada to the United States and then only for a maximum period of two weeks without the written consent of Mr. Siebert. She shall give Mr. Siebert not less than two weeks' notice of any planned trip to the United States with any of the children.
- [20] I decline to make any further orders sought by Ms. Siebert and those applications are dismissed.
- [21] Ms. Siebert is entitled to her costs of this application which I assess at \$680 payable by Mr. Siebert forthwith.

"Melnick J."

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