

CANADA / JUDGMENT

Skage v. Farr

2020 BCSC 1997

COURT

Supreme Court of British Columbia

DECIDED

16 December 2020

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2020 BCSC 1997 Skage v. Farr

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Skage v. Farr,

2020 BCSC 1997

Date: 20201216

Docket: S24330

Registry: Fort St. John

Between:

Joyce Lynne Skage also known as

Joyce Lynne Farr-Skage and

Scott Wesley Skage

Plaintiffs

And

Robbie Jeffory Farr and

Aitken Back Ranch Ltd.

Defendants

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

In Chambers

Counsel for plaintiffs:

R. Hill

Appearing by telephone

Counsel for Defendant Robbie Jeffory Farr:

T. Holte

Appearing by telephone

Place and Date of Hearing:

Prince George, B.C.

October 2, 2020

Place and Date of Judgment:

Fort St. John, B.C.

December 16, 2020

- [1] The plaintiffs pursuant to a Notice of Application filed August 7, 2020 seek a declaration that the directors and shareholders of Aitken Back Ranch Ltd. (the "Company") are deadlocked over the management of the Company. The plaintiffs seek relief pursuant to s. 324 or in the alternative s. 227 of the Business Corporations Act, S.B.C. 2002, c. 57 (the "BCA").
- [2] The defendant Robbie Jeffory Farr ("Farr") agrees that the directors and shareholders of the Company are deadlocked. Farr says that this matter should go to trial. In the alternative there should be an independent valuation of the Company and the plaintiffs should buyout Farr's shares in the Company.

Background

- [3] The Company is incorporated under the laws of British Columbia with a registered and records office at Box 2970, 22754 Beaton Airport Road, Buick in the Province of British Columbia.
- [4] The plaintiff Joyce Farr-Skage ("Joyce"), owns 30 Class C Common shares and is a director of the Company.
- [5] The plaintiff Scott Skage is Joyce's husband and he owns 30 Class B Common shares in the Company.
- [6] Farr is Joyce's brother and he owns 60 Class A Common shares and is a director and officer of the Company.

- [7] In or about March 2014 the Company purchased a 8750 acre ranch (the "Land") in Northern British Columbia.
- [8] The purchase of the Land was financed through Farm Credit Canada ("FCC") by way of a \$1,800,000 loan. The plaintiffs and Farr put up security for the FCC loan.
- [9] The Land consists of 17 individual lots and there are oil and gas leases registered on lots on the Land. The oil and gas leases are used by the parties to pay down the FCC loan.
- [10] The plaintiffs moved into a house they constructed on Lot 2775 on the Land in the fall of 2015. Farr and his family moved into a house they constructed on Lot 2663 of the Land.
- [11] The plaintiffs and Farr operated separate cattle ranches on the Land.
- [12] In October 2016 the parties were unable to come to an agreement to register the 17 lots on the Land as joint owners.
- [13] This court proceeding was originally commenced by the plaintiffs on November 17, 2017 by way of petition in the Smithers Court file 17912. The plaintiffs in that petition were seeking the dissolution of the Company.
- [14] On November 28, 2018 Mr. Justice Sewell ordered that the Company be added as a respondent, the file be transferred to the Fort St. John registry and the petition be converted into an action.
- [15] On December 21, 2018 the plaintiffs filed a Notice of Civil Claim in the Fort St. John Court File No. 24330. Included in the plaintiffs' Notice of Civil Claim are the following claims:
- a) Derivative action on behalf of the Company against Mr. Farr for disproportionate grazing of cattle;
 - b) Derivative action on behalf of the Company against Mr. Farr for taking bales of hay produced on the Land.
- [16] On January 28, 2019 Farr filed a Response to Civil Claim.
- [17] On January 29, 2019 Farr filed a Counterclaim. Included in Farr's Counterclaim are the following claims:
- a) Derivative action on behalf of the Company against the plaintiffs for the debt on the Company's line of credit for personal use.
- [18] In February 2019 Farr moved his family and cattle herd from the Land.
- [19] On May 21, 2019 the plaintiffs filed a Response to Counterclaim.

Position of the Parties

Plaintiffs

- [20] The plaintiffs argue that there has been a breakdown in their partnership with Farr since October 2016. There are serious disputes over the financial affairs of the Company.
- [21] The plaintiffs argue that since Farr left the Land in 2019 he has made no effort to manage the Land. The plaintiff say that Farr left garbage, weeds and other issues related to Lot 2663 on the Land.
- [22] The plaintiffs argue that there are no agreements between the parties with regard to remortgaging the Land and no shareholders' agreements in place.
- [23] The balance of the FCC loan as of June 17, 2020 is \$1,037,458.80.
- [24] The plaintiffs obtained an appraisal of the Land on March 23, 2017. At that time the Land was appraised at \$2,246,000.
- [25] The plaintiffs are seeking a "shotgun order" pursuant to s. 227 (3) (h) and 324 of the BCA as follows:
- a) The plaintiffs will within 30 days of any order, offer in writing to purchase Farr's shares in the Company for a share price to be determined by the plaintiffs;
 - b) Farr will have 30 days from the date of the offer to accept the offer. The purchase price will be payable within 30 days of acceptance of the offer by Farr.
 - c) If Farr does not accept the offer, he will be entitled, within 30 days of the offer, to purchase the plaintiffs' shares in the Company for the price per share at which they offer to purchase Farr's shares. Farr's confirmation that he is purchasing the plaintiff's shares will be made in writing, and Farr will pay the plaintiffs within 30 days of making an offer to purchase their shares;
 - d) In the event Farr does not accept the plaintiffs' offer or purchase the plaintiffs' shares within the time period set out, the plaintiffs will be at liberty to purchase Farr's shares for the same price per share they originally offered. In that event, the plaintiffs will pay Farr within 30 days of the expiry date of the offer.
- [26] The plaintiffs say that a "shotgun order" would allow the Land to be more profitable. They are however prepared to vacate the Land.
- [27] The plaintiffs argue that this order should be made because the parties have lost trust and confidence in each other and there has been a breakdown in their personal relationship.
- [28] The plaintiffs say that they are prepared to make the first offer and have better knowledge of the facts relating to the Company to do this. The plaintiffs as part of the offer to purchase shares of the Company would make their best efforts to have Farr released from the loans with FCC. The plaintiffs would take over any of the liabilities of the Company including the liabilities associated to FCC if they are allowed to purchase the Land.

- [29] The plaintiffs also say that this proposed resolution would be on a without prejudice basis to any other claim that the parties may have against each other.
- [30] The plaintiffs are also prepared to leave if they are bought out and they are given a reasonable opportunity to vacate.
- [31] The plaintiffs already paid for an appraisal in 2017 and they are hesitant to incur the cost of an updated appraisal unless Farr pays for it.
- [32] The plaintiffs argue that if there is a trial it will be lengthy.

Farr

- [33] Farr opposes the "shotgun order". He has no interest in buying out the plaintiffs shares in the Company. He argues that this matter needs to go to trial. He is concerned that a "shotgun order" may prejudice the derivative action he has brought in his counterclaim, despite the plaintiffs' submission that whatever sale is done would be on a without prejudice basis to any other claims. Farr notes that in order to have standing to bring a derivative action on behalf of the Company, Farr needs to be a shareholder.
- [34] Farr also says that he was forced off the Land in 2019 and because of that he may have a claim for occupational rent. He notes that when the parties first purchased the Land they also owned land in Alberta. In 2019 the land in Alberta was sold and most of the net proceeds went to pay down the FCC loan.
- [35] In the alternative Farr argues there should be an updated appraisal of the Company and the plaintiffs should buy him out.
- [36] Finally, Farr argues that if there is a shotgun order made, or an order for an updated appraisal and the plaintiffs buy him out, there should be an order made that any other claims of the parties be preserved.
- [37] The plaintiffs and Farr agree that the parties are in deadlock and as such s. 324 of the BCA is applicable. The plaintiffs do not seek an order that the Company be liquidated and dissolved rather they seek an order pursuant to s. 227(3) of the BCA that one of the parties buys out the shares of the other.
- [38] Farr argues that because of the nature of the relief claimed by both the plaintiffs and Farr in their respective pleadings any sale of shares in the Company should be postponed until the trial of this matter is heard.

Decision

- [39] The initial question is whether this application is suitable for disposition by summary trial.
- [40] The plaintiffs say it would be appropriate to determine the issues on this application summarily under Rule 9-7 of the Supreme Court Rules. I disagree.

- [41] Rule 9-7(15)(a) imposes two conditions under which an application for judgment on a summary trial must be refused:
- a) The court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - b) The court is of the opinion that it would be unjust to decide the issues on the application.
- [42] The crucial question is whether the court is able to achieve a just and fair result by proceeding summarily: *MacMillan v. Kaiser Equipment Ltd.* 2004 BCCA 270 at para. 22.
- [43] In this case a summary determination of the issues raised in the plaintiff's Notice of Application will leave other issues to be determined at trial, a process sometimes termed "litigating in slices" (*Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83 at para. 37; *Interfor v. MacKenzie Sawmill Ltd.*, 2020 BCSC 416 at para. 24).
- [44] The court in *Interfor* described circumstances that tend to weigh strongly against summary determination of an issue, such as when (at paras. 27 and 31):
- a) the issue in question is interwoven with issues that will remain to be tried, so that the same evidence will have to be examined again and factual findings may be subject to re-evaluation on a more comprehensive record (*Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485 at paras. 97-102; *Ferrer* at para. 36);
 - b) there are material issues of credibility that cannot be justly determined without cross-examination before the court (*Mayer v. Mayer*, 2012 BCCA 77 at paras. 78-83);
 - c) it is not a judgment early in the proceedings and is not likely to assist the parties in the overall resolution of the action (*Ferrer* at paras. 16 and 35).
- [45] I agree with the parties that they are in deadlock because they have not been able to agree on the management of the Company since 2016 or come to an agreement with regard to transferring the Land into their personal names. Farr and his family moved from the Land in 2019 and he has effectively abandoned his residence on Lot 2663.
- [46] The fact that the parties are in deadlock is a common ground that the court can rely upon to grant relief pursuant to s. 324 of the BCA: *Vivian v. Firth*, 2012 BCSC 417 at para. 68.
- [47] However, this application is not suitable for disposition by summary trial and would result in litigating in slices. It would be unjust to decide the issues in this application as they are interwoven with the outstanding matters in the action.
- [48] First, both the plaintiffs and Farr have brought derivative actions on behalf of the Company against one another. If either of these derivative actions are successful this will effect the value of the Company.

- [49] I have not been asked to make a ruling with regard to those derivative actions on this application nor does the evidence on this application allow me to make such a ruling. Based on the nature of the claimed derivative actions judgment will likely require credibility assessments and cross examination.
- [50] Second, if either the plaintiffs or Farr sells their shares in the Company they will no longer be shareholders and arguably will not be able to maintain their derivative actions: s. 232 of the BCA.
- [51] Third, the parties owe a considerable amount to FCC and in my view it is not appropriate for whoever purchases the others shares in the Company to only be required to make "best efforts" to remove the other party from that liability.
- [52] For an order that one shareholder purchase the other shareholders' shares to be just and equitable there has to be a mechanism by which a fair value for the shares can be determined, and the parties' other legitimate claims cannot be extinguished as a result of that order.
- [53] In my view the value of the shares in the Company will not be able to be determined until the respective claims of the parties are resolved.
- [54] A without prejudice order relating to the parties' other claims would not preserve the right of the parties to bring their derivative claims.
- [55] It has been over three years since court proceedings originally commenced. It is unlikely that a finding in the plaintiffs' favour in this application would assist the parties with the overall resolution of the matter.
- [56] For all of the above noted reasons it would be unjust to grant the relief sought by the plaintiffs on this application.

Conclusion

- [57] I order that the plaintiffs' application requires a trial which shall be heard along with the other claims brought by the plaintiffs in their Notice of Civil Claim and Farr in his Counterclaim.
- [58] The issue of costs of this application will be determined at the trial.

"The Honourable Mr. Justice Tindale"

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