

CANADA / JUDGMENT

Slater Vecchio LLP v. Arvanitis

2021 BCSC 1710

COURT

Supreme Court of British Columbia

DECIDED

14 July 2021

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2021 BCSC 1710 Slater Vecchio LLP v. Arvanitis IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Slater Vecchio LLP v. Arvanitis, 2021 BCSC 1710 Date: 20210714 Docket: S195495 Registry: Vancouver Between: Slater Vecchio LLP Plaintiff And Vicky Arvanitis Defendant Before: The Honourable Mr. Justice Gomery Oral Reasons for Judgment In Chambers Counsel for the Plaintiff, appearing via teleconference: D.K. Georgetti The Defendant, appearing via teleconference: V. Arvanitis Place and Date of Hearing: Vancouver, B.C. July 14, 2021 Place and Date of Judgment: Vancouver, B.C. July 14, 2021

- [1] THE COURT: This action together with companion litigation represent the late stages of litigation that has been underway for many years. The litigation has been contentious. It has been difficult for both sides. The parties each nurture a profound mistrust of one another.
- [2] The plaintiff applies for an order declaring that a settlement agreement entered into between the plaintiff and the defendant is valid, binding, and subsisting as between the defendant, and for orders giving effect to the settlement agreement. The settlement agreement is a three-page document which is intended to resolve disputes concerning costs and outstanding taxation of a fee account rendered by the plaintiff to the defendant, and compliance with injunctions granted in the plaintiff's favour against the defendant.
- [3] The settlement was made at a time when the defendant, who is now self-represented, was represented by counsel. On May 27, 2021, her counsel wrote plaintiff's counsel, Mr. Georgetti. The letter states: Ms. Arvanitis is prepared to offer to settle the dispute on the following terms:
1. Ms. Arvanitis will pay to your firm in trust for Slater Vecchio a total of \$7,000 in full and final settlement of all costs awards made against Ms. Arvanitis;
 2. Each party will otherwise bear their own legal costs;
 3. Ms. Arvanitis agrees not to proceed with any taxation of her Slater Vecchio invoices and bills; and,
 4. The parties will enter into a mutual release as a final resolution of all issues amongst the parties. This offer is open for acceptance until Monday May 31 at 12:00pm.

- [4] An agreement consistent with the offer was drawn up and signed by both parties. Paragraph 7 of the agreement states: Arvanitis expressly agrees and acknowledges that she has sought and obtained independent legal advice in respect of this agreement and its effect and has freely entered into this agreement without duress.
- [5] Ms. Arvanitis submits that the settlement is not valid and binding and should not be enforced, for the following reasons:
- a) it is misdated;
 - b) it requires payment to be made by Ms. Arvanitis to Slater Vecchio on or before June 15, 2021, and payment was not in fact made by that date because Slater Vecchio refused her tender of payment;
 - c) a reference in paragraph 4 to the return of an amount of \$200 provided to Ms. Arvanitis for conduct money is mistaken, the amount was only \$100; and
 - d) the agreement requires Ms. Arvanitis to surrender her right to tax Slater Vecchio's fee account in the amount of \$10,080, and it is fundamentally unjust that Ms. Arvanitis should have to give that up.
- [6] I do not agree with Ms. Arvanitis that the agreement is invalid for the reasons she has offered.
- [7] The dating of the agreement is expressed as a dating for reference. It is the date which the offer was open for acceptance upon. There is nothing wrong with dating an agreement for reference with a date which is other than the date it was actually signed.
- [8] The requirement that the payment be made on or before June 15, 2021, was a requirement that could be waived and has been waived by Slater Vecchio. The agreement does not fall to the ground simply because the payment is not made by that date.
- [9] The reference to an amount of \$200 provided for conduct money in the agreement is mistaken, but it is a minor mistake and I am advised that the condition imposed in the clause, that the conduct money be returned, has in fact been satisfied.
- [10] That leaves the fourth point of objection, that the agreement requires or releases Slater Vecchio from its obligation to account to participate in a fee review proceeding. This was of course the offer that Ms. Arvanitis advanced through her counsel. It is, in effect, a part of a trade-off. The trade-off involved Slater Vecchio giving up approximately \$10,000 worth of costs claims under entered orders of the court in exchange for being relieved of the obligation to participate in a costs hearing at which Ms. Arvanitis might have recovered, on total success, \$10,080.

- [11] Parties offer to compromise their claims. They do so to avoid litigation. These agreements, settlement agreements, are important to the work of the court. They are important to parties. It is important to parties that they be able to compromise and settle. There is nothing inappropriate or unfair about a settlement of the nature established by this settlement agreement, and I am not at all persuaded that the agreement was entered into under duress or is otherwise invalid.
- [12] Accordingly, I am satisfied that the agreement remains in force and should be given effect.
- [13] The difficulty is how. The agreement requires Ms. Arvanitis to pay \$7,000 to Slater Vecchio. She has tried to make that payment. She wishes to pay cash. She does not wish to deal with a bank. In the ordinary course, cash is considered as legal tender for debts, public and private. Mr. Georgetti says, in effect, that this case involves an exception to the ordinary course. He says that he does not wish to receive cash from Ms. Arvanitis on his client's behalf because it will bring him perilously close to the level at which he might be offside the Law Society disciplinary rules that prevent him from receiving more than \$7,500 in cash. He says that Ms. Arvanitis cannot deliver the cash directly to Slater Vecchio because there is a court order that prevents her from having any contact with Slater Vecchio. He says the solution is that she should take cash to a bank, purchase a bank draft, and deliver the bank draft to his office, and he would accept the bank draft.
- [14] Ms. Arvanitis, for her part, has attempted to pay the money into court, but that was stopped because the court would not accept a payment in without a court order authorizing it.
- [15] In my view, the court should make its machinery available to resolve this problem in the implementation of the settlement. I order that Ms. Arvanitis pay to Slater Vecchio \$7,000 pursuant to the settlement agreement. I direct that she may satisfy her obligation to pay \$7,000 by paying the money into court to the credit of Slater Vecchio in this action.
- [16] I order that upon payment in by Ms. Arvanitis, Slater Vecchio may have the money paid out to them by requisition without further order of the court.
- [17] Mr. Georgetti, I will hear you on costs.
- [18] MR. GEORGETTI: My Lord, just to get the terms of the order so far clear, what I just need modifying, paragraph 1 to say as follows or perhaps - yes, by paying into court to the credit of Slater Vecchio in this action, and upon payment into court, Slater Vecchio may have the funds paid out by requisition without further order of the court. Is that correct, My Lord?
- [19] THE COURT: Yes, I would probably make it a separate paragraph, but that is up to you.
- [20] MR. GEORGETTI: Okay, well, that is a drafting consideration I will turn my mind to. But otherwise, the rest of the terms of the order are satisfactory, I take it?
- [21] THE COURT: Yes, they are.
- [22] MR. GEORGETTI: Thank you, My Lord. [SUBMISSIONS ON COSTS]

- [23] THE COURT: Costs are, as a rule, ordered to the party who has been successful on an application. In this case, I think that success has been divided. The fundamental dispute between the parties involved the question of how - or the initial dispute between the parties involved the question of how the settlement was to be given effect. As the plaintiff pushed the question, Ms. Arvanitis began to dispute the validity of the settlement, but I see that position as one that was very much responsive to what the plaintiff was about or what she perceived the plaintiff was about.
- [24] I have concluded that I have made an order that puts in place a mechanism which will permit the settlement to be implemented in a manner which is, I believe and hope, consistent with the parties' desires and wishes and needs. In the circumstances, I think there should be no order as to costs.
- [25] We will adjourn.
- [26] MR. GEORGETTI: Thank you, My Lord. "Gomery J."

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