

CANADA / JUDGMENT

Small v. Small

2020 BCSC 2062

COURT

Supreme Court of British Columbia

DECIDED

25 November 2020

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2020 BCSC 2062 Small v. Small

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Small v. Small,

2020 BCSC 2062

Date: 20201125

Docket: E180585

Registry: Vancouver

Between:

Oxana Small aka Oxana Kirsanova

Claimant

And

Trevor Scott Small also known as Trevor Small

Respondent

Before: The Honourable Madam Justice Horsman

Oral Reasons for Judgment

In Chambers

Counsel for Claimant:

A.V. Mackenzie

M. Milau

Counsel for Respondent:

J. Stein

Place and Date of Hearing:

Vancouver, B.C.

November 25, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 25, 2020

- [1] THE COURT: The respondent has brought an application pursuant to para. 22 of my reasons for judgment of August 26, 2020, indexed at 2020 BCSC 1253 (the "Post-Trial Judgment"). Paragraph 22 of my reasons for judgment concerns a relatively narrow issue about the quantification of the shareholder loan debt the parties owe to the respondent's company Global Brand Solutions Ltd ("GBS") that existed as of April 30, 2018.
- [2] The respondent's application requires some context. In my original reasons for judgment at trial indexed at 2020 BCSC 707 (the "Trial Judgment"), I ordered that the shareholder loan debt existing as of April 30, 2018, was family debt and subject to equal division: see paras. 144 to 151.
- [3] One would have thought that the quantification of the debt for the purposes of its division would be a relatively straightforward exercise that did not require judicial intervention. This has not proven to be the case.
- [4] On July 29, 2020, the respondent filed a notice of application seeking a variety of post-judgment relief, including a reopening of the trial to re-determine his income.
- [5] The relief sought in part 1 of the respondent's notice of application included, at para. 2, that Ms. Kirsanova reimburse GBS \$106,070.37 by August 30, 2020. The figure of \$106,070.37 is the amount that GBS's accountant calculates to be one half of the shareholder loan debt owing as of April 30, 2018.
- [6] The respondent's July 29, 2020 notice of application was heard on August 12 and 14 of 2020. The claimant opposed the order sought by the respondent at para. 2 of part 1 of his notice of application. Her opposition was not based on the respondent's calculation of the GBS shareholder loan debt existing as of April 30, 2018. Rather, the claimant took the position that I ought to direct GBS to declare dividends as a means of retiring the debt. She tendered evidence from an accountant to support such an order.
- [7] At para. 18 of the Post-Trial Judgment, I summarized the claimant's position as follows:

- [18] The claimant resists reimbursing GBS this amount. The dispute is not with the respondent's quantification of the debt, per se. The claimant wishes to have some additional time to consider the respondent's calculations and there may ultimately be agreement on the number. The issue at this stage is the method of repayment. The claimant says that requiring her to repay the sum would be unfair as it would benefit the respondent personally. She says instead that I should order that her portion of the shareholder loan debt will be reduced by requiring GBS to retroactively declare dividends during the years the loans were incurred.
- [8] I dismissed the claimant's argument. I concluded that the Trial Judgment provides that the claimant is responsible for half the parties' shareholder loan debt to GBS as of April 30, 2018, and that it was up to GBS to decide on the means by which it would collect the debt. I also dismissed the claimant's argument that it was unfair to require her to pay GBS for her share of the significant post-separation expenses that were incurred for family purposes.
- [9] At paras. 21 to 22 of the Post-Trial Judgment, I concluded:
- [21] For these reasons, I decline to issue any order or direction that would excuse the claimant from directly repaying the shareholder loan debt to GBS. However, I am not prepared to issue a deadline for repayment at this time, as the respondent has requested. To date, the claimant has resisted repaying her share of the shareholder loans because she believed she was entitled to insist on an alternative repayment method. With that controversy resolved, I assume the parties will act promptly to seek agreement on a repayment amount and a deadline for repayment.
- [22] In the circumstances, I consider it appropriate to simply adjourn the relief sought by the respondent in term 2 of the notice of application. The respondent can re-apply for that relief in the event that the parties are unable to reach agreement.
- [10] This is the only point on which either party was permitted to request a further hearing before me, that is, to address any remaining dispute over the exact quantification of the GBS debt. This narrow issue was left open only to provide the claimant with an opportunity to consider if she agreed to the respondent's calculation of the GBS shareholder loan as reflected in para. 2 of part 1 of his notice of application.
- [11] Remarkably the parties have been unable to resolve even this discrete calculation question without scheduling a further half day of court time. The respondent's position has not changed. He seeks an order requiring the claimant to reimburse GBS \$106,070.37 towards the GBS shareholder loans.
- [12] The claimant's material is not directly responsive to the one issue that was left unresolved after the Post-Trial Judgment. Instead the claimant has filed a new notice of application, without leave of the court, seeking a range of expansive remedies in relation to the GBS shareholder loans, including remedies that are directly contrary to my Post-Trial Judgment and remedies that have never before been sought including at trial.

- [13] The claimant's application can best be described as an application to reopen the Trial Judgment, which is now the subject of an entered order, combined with an application to reopen the Post-Trial Judgment, which itself sought a reopening of the Trial Judgment. The claimant requests that I order the respondent to declare dividends as a means of reducing her shareholder loan debt, which is a form of relief that was not sought at trial and which I have already refused to grant in the Post-Trial Judgment.
- [14] The claimant says that reopening of the Post-Trial Judgment is warranted as a result of new information provided by the respondent in his reopening application filed July 29, 2020. This information is clearly not new but was, rather, in the claimant's possession at the time the original post-trial applications were argued.
- [15] The claimant has attempted to overcome this hurdle by filing, on November 5, 2020, an amended application response to the respondent's July 29, 2020 notice of application. The application response is not so much amended as completely revised, raising new substantive arguments that were never advanced at the hearing of the respondent's application on August 12 and 14, 2020. Further, the amended application response was filed after judgment had already been issued on the respondent's application.
- [16] The claimant approaches the present hearing as if it was open to her to raise any new argument she chooses to in relation to the GBS shareholder loan debt without regard to the fact that the trial process is complete, save for the single narrow issue of the respondent's proposed quantification of the repayment amount.
- [17] I note that the respondent's position that GBS shareholder loan debt should be equally divided as of April 30, 2018, was transparently advanced in his written argument at trial and the loans were quantified in his Scott Schedule. Yet the claimant made no submissions on the GBS shareholder loan debt at trial, save to agree that she was responsible for her portion of the shareholder loans that existed as of May 1, 2017.
- [18] Any opposition the claimant had to the relief sought by the respondent ought to have been raised at trial. The claimant has in any event had a further opportunity to revisit the issue of the GBS shareholder loans through the Post-Trial Judgment, including the opportunity to put in new evidence on the issue.
- [19] If the claimant was unhappy with the Trial Judgment or Post-Trial Judgment, she also had the opportunity to seek the remedy of appellate review. She does not, however, have a remedy available to her in the form of repetitive attempts to re-litigate issues in the trial court after the trial has concluded.
- [20] For these reasons, as I advised the parties at the outset of this hearing, I am not prepared to entertain the claimant's application to reopen the reopening application at this stage and in these circumstances. Indeed, the claimant's litigation conduct is, in my view, approaching the stage where it may properly be viewed as an abuse of court process.

- [21] I will now turn to address the only issue that is properly before me at this time, which is the quantification of the shareholder loans that the claimant must repay. In the Trial Judgment I equally divided the shareholder loans as of April 30, 2018, so that each party was responsible for \$136,070.37. The respondent accepts that this amount should be reduced by \$30,000 to reflect dividends issued to the claimant by GBS on July 31, 2018. This leaves a net amount owing of \$106,070.37.
- [22] The amount of shareholder loan debt is confirmed in a letter provided by Dianne Mee, the GBS accountant. The source documents, the shareholder account records, are also in evidence and were in evidence at trial. They support the respondent's calculations.
- [23] The claimant raised two issues in opposition to the respondent's proposed quantification. First, she says that the respondent has not produced records to confirm that the claimant was not issued dividends after July 31, 2018. I do not consider this to be a legitimate objection. As respondent's counsel points out, if dividends had issued to the claimant, then a T5 would also have been issued to her and she would have been required to report the dividends on her tax return. There is no evidence that further dividends have issued to her.
- [24] Second, the claimant says that I ought not to rely on Ms. Mee's evidence or the underlying source documents because the claimant has suspicions that there are inaccuracies in the shareholder account records. The claimant did not raise such suspicions at trial, and there is no evidence before me to substantiate them in any event.
- [25] I am satisfied based on the evidence that the respondent's calculation is correct. I therefore order that the claimant forthwith reimburse GBS the sum of \$106,070.37.
- [26] The respondent is entitled to his costs of these applications from the claimant at Scale B, also payable forthwith.

"Horsman J."

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