
CANADA / JUDGMENT

Sojka v. Sojka

2018 BCSC 562

COURT

Supreme Court of British Columbia

DECIDED

8 February 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 562 Sojka v. Sojka

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sojka v. Sojka,

2018 BCSC 562

Date: 20180208

Docket: S123549

Registry: Vancouver

Between:

Andrew Stephen Sojka and Christine Carnegie

Plaintiffs

And

George Richard Sojka, Executor of the Estate of Genoweva Sojka,

Deceased, and George Richard Sojka, Richard John Sojka,

Henry Lawrence Sojka, Shayne Reaume and Sarah Francis

Defendants

Before: The Honourable Mr. Justice Mayer

Oral Ruling Re Enforcement of Settlement Agreement

In Chambers

Counsel for the Plaintiffs:

J.P. McStravick

Counsel for the Defendant George Sojka:

L. Spencer

Counsel for the Defendant Richard Sojka:

B. Home

Counsel for the Defendant Henry Sojka:

P. Schmidt

Place and Date of Hearing:

Vancouver, B.C.

February 1, 2018

Place and Date of Judgment:

Vancouver, B.C.

February 8, 2018

- [1] THE COURT: These are my reasons for judgment in the application brought by the plaintiffs, Andrew Sojka and Christine Carnegie, against the defendants George Richard Sojka, executor of the estate of Genoweva Sojka, deceased; and George Sojka; Richard Sojka; Henry Sojka; Shayne Reaume; and Sarah Francis.

Introduction

- [2] This is a wills and estates matter. On May 2, 2017, the parties to this action took part in a full-day mediation with a former Supreme Court Justice acting as mediator. The mediation was conducted in an attempt to settle the action commenced by the plaintiffs, Andrew Sojka and Christine Carnegie on May 18, 2012, against the defendants. The plaintiffs claim that the defendant George Sojka had unduly influenced his mother, Genoweva Sojka, in the making of a will (the "Will") executed on April 8, 2008, which was less than one month before her death, and that she lacked the testamentary capacity to make the will. Pursuant to the Will, George Sojka was made the sole beneficiary.
- [3] Further, the plaintiffs claim that in 1998, George Sojka and his brother, the defendant Richard Sojka, had unduly influenced their mother to transfer to them one-half of her interest in her home on Bond Street in Burnaby (the "Bond Street property").
- [4] At the time of Genoweva Sojka's death in 2008, the only significant asset in her estate was the Bond Street property, which had at the time of the mediation an appraised value of between \$1.8 million and \$2 million.

- [5] Pursuant to the Will, Genoweve Sojka had effectively disinherited her remaining children, which in addition to the plaintiffs included Richard and Henry Sojka and her grandchildren Shayne Reaume and Sarah Francis, whose mother Helen Francis (her daughter) had predeceased her. There was a previous will dated July 7, 1984, under which small amounts of money were left to Christine and Helen, with the balance of the estate divided with 35% going to George and the remaining 65% divided equally between Richard, Henry and Andrew.
- [6] The mediation took place a month prior to trial and after completion of examinations for discovery. At the mediation which was attended by all of the parties, the plaintiffs and George Sojka were represented by legal counsel. Prior to the mediation, briefs were exchanged and provided to the mediator by George, Henry and the plaintiffs. The mediation resulted in the parties settling the plaintiffs' underlying dispute, and Minutes of Settlement were drafted and signed by all parties.
- [7] The Minutes of Settlement (the "Agreement") included the following terms:
- 1) Counsel for the plaintiffs would remove the caveat filed in the Probate Registry (in October of 2011) to permit George Sojka, his mother's executor, to obtain a grant of probate.
 - 2) Richard and George would pay within 90 days the sum of \$575,000 to the plaintiffs and Henry Sojka.
 - 3) Counsel for the plaintiffs would prepare and circulate a consent dismissal order to the other parties for execution, which would be held for entry by counsel for George Sojka until the requisite \$575,000 amount had been paid.
 - 4) The parties would sign mutual releases in a form acceptable to their counsel.
 - 5) The trial of this matter, which had been set for June 6, 2017, for ten days would be adjourned generally by consent.
 - 6) Counsel for the plaintiffs would apply for an order approving the terms of settlement.
- [8] In accordance with the terms of the agreement set out in the Minutes of Settlement, the caveat filed with the Probate Registry was removed on July 11, 2017. The parties advised that probate has now been granted.
- [9] In July of 2017, a mutual release ("Release") was prepared by then counsel for George Sojka and circulated. The release was signed by all parties except George and Henry Sojka between July and October of 2017. The Release provides as follows:

In consideration of the terms of the Minutes of Settlement dated May 3, 2017, which the children of Genoweve Sojka ("the Deceased") acknowledge and agree constitute adequate, just and equitable provision for each of them from the estate of the Deceased ("the Estate"), each of the signatories hereto remise, release, acquit and forever discharge each of the other signatories hereto of and from all manner of actions, causes of actions, suits, debts, accounts, contracts,

damages, judgments, executions, claims and demands whatsoever respecting only the following claims (hereinafter collectively referred to as "such claims"):

1. Proof and variation of the last Will of the Deceased;
2. Adequate, just and equitable provision from the Estate; an accounting of the Estate and any other claims by, on behalf of, against or respecting the Estate;
3. Claims respecting the property at 4792 Bond Street, Burnaby, British Columbia; and
4. Claims against Henry Lawrence Sojka respecting the loans to Henry Lawrence Sojka of \$45,000 from George Richard Sojka and \$55,000 from Sarah Francis

which each signatory hereto ever had or now has, including without limitation all such claims pursuant to the Wills Variation Act, the Estate Administration Act, the Trustee Act, the Wills, Estates and Succession Act and any other legislation or statute, and each signatory waives all rights and entitlement to make and will not make any such claims, provided that nothing in this Release prevents any party from making claims to enforce the terms of this Release and of the Minutes of Settlement aforesaid. This Release may be executed in counterpart and a scanned and emailed copy of a signed Release shall be deemed validly signed ...

[10] The defendants George Sojka and Richard Sojka have failed to pay the \$575,000 amount as agreed and have refused to execute the Release.

Relief Sought

[11] The plaintiffs seek the following relief.

1. That the defendants George and Richard Sojka pay the plaintiffs and the defendant Henry Sojka the sum of \$575,000;
2. Pursuant to s. 8(3) of the Law and Equity Act, R.S.B.C. 1996, c. 253 and the inherent jurisdiction of this court, that this court enforce the terms of the settlement agreement and stay all further proceedings in this action except those necessary to enforce the terms of it, and
3. An order for costs.

[12] With respect to the position of the defendants. The defendants George and Richard Sojka do not deny that an agreement settling this matter was reached at the mediation on May 3, 2017. The defendants argue that the settlement agreement is not enforceable as at the time it was made they were mistaken as to the value of the possible claim by the plaintiffs against the Bond Street property and their mother's estate, and in the case of Richard that he did not know the value of the estate and how various expenses such as taxes (including capital gains on the sale of a property), probate and executor's fees would be paid.

- [13] With respect to the value of the property, George and Richard say that they became confused during the mediation when the discussion turned to an apportionment of the entire value of the \$1.8 million to \$2 million Bond Street property - when what the parties should have discussed was an apportionment of half of that amount, given that George and Richard Sojka already legally owned half of the property.

Issue

- [14] It is not necessary for me to determine the merits of the plaintiffs' claim and the defendants George and Richard Sojka's defence. It is clear that an Agreement was reached. Accordingly, the issue before me is whether these defendants were under a mistaken belief of fact, which justifies their request that the terms of the settlement agreement reached May 8, 2017, as further detailed and the Release issued in July of 2017, be deemed unenforceable.

Analysis

- [15] I find that the facts do not establish that at the time of the mediation that the defendants George and Richard Sojka were mistaken with respect to what was "on the table". The pleadings and the mediation briefs exchanged by the plaintiffs, George Sojka, and Henry Sojka clearly establish that all parties were well aware that what was in dispute was not only an apportionment of the 50% interest in the property held by the estate of Genoweva Sojka, but an apportionment of the entire value of that property.
- [16] George Sojka's mediation brief states in the opening paragraph that the issues to be dealt at the mediation included both whether the transfer of the Bond Street property in 1998 should be set aside on the basis that it was improper and whether the Will was invalid. The plaintiffs' mediation brief included an argument that:

In all of the circumstances the Court would rule that the one-half interest in the Bond Street property that is currently registered in George and Richard's name is property held in trust for the estate.

- [17] In my view, what George and Richard are essentially arguing is that they did not properly understand the strength of their legal position with respect to the validity of their 50% interest in the Bond Street property when they were at the mediation. On the facts of this case, even if I was to find that there was such a misunderstanding, which I do not, this misunderstanding would not be a valid basis for overturning a concluded settlement agreement. Although I am not ruling on the merits of this issue, George and Richard's position on the validity of the transfer of a 50% interest in the Bond Street property to them in 1998 is only that - a position. It has not been proven whether the transfer was valid.
- [18] Nonetheless, a compromised settlement was reached. This is typically what happens at successful mediations: the parties, recognizing the legal risks and costs of going forward to trial, come to a compromise agreement. They may not always agree that their opponent's legal position is correct, but they make a decision to settle anyway. When counsel are

present during the settlement of a dispute and assist the parties in preparing a settlement agreement and there is no evidence of duress, fraud or fundamental mistake in the preparation of such an agreement, the presumption should be that the parties intended to be bound by it.

- [19] George Sojka was represented by legal counsel before, throughout and after the mediation. There is no evidence provided, nor argument made, that George or Richard Sojka were under duress or that, in the case of George Sojka, that his counsel failed to properly advise him or to follow his instructions during the preparation of the mediation brief prior to his signing of the Minutes of Settlement.
- [20] The evidence indicates that after the mediation, at least George Sojka was aware of the terms of the Agreement and had instructed his then counsel to prepare the Release, which was circulated in draft, revised by his counsel and issued for execution. It is only George Sojka and Richard Sojka who have failed to execute the Release and to live up to the terms of the Agreement. Until he filed his response in the plaintiffs' present application for an order confirming the terms of the Agreement, there was no indication that George Sojka or Richard Sojka were under a mistake of fact when they signed the Minutes of Settlement. George and Richard benefited from the agreement as they were able to obtain a grant of probate after the plaintiffs removed their caveat filed in the Probate Registry.
- [21] George and Richard Sojka rely on the decision of the British Columbia Court of Appeal in *Hawitt v. Campbell*, 1983 Carswell BC 199 (C.A.). In my view this decision does not assist them. In *Hawitt* the court found that a stay of proceedings and entry of a settlement could be refused on the basis that a solicitor had misapprehended his client's instructions or the underlying facts and accordingly on that basis upholding the terms of the settlement would amount to an injustice. Justice Macfarlane set out that a court could refuse to exercise its discretion to perfect a settlement where:
1. There was a limitation on the instructions of the solicitor known to the opposite party.
 2. There was a misapprehension by the solicitor making the settlement of the instructions of the client or the facts of a type that would result in injustice or make it unreasonable or unfair to enforce the settlement.
 3. There was fraud or collusion.
 4. There was an issue to be tried as to whether there was such a limitation, misapprehension, fraud or collusion in relation to the settlement.
- [22] The facts in *Hawitt* justifying not enforcing a settlement agreement are clearly distinguishable from those in the case at bar. The mistake in *Hawitt* was made by counsel. This case does not involve a situation where counsel entered into a settlement on a client's behalf which was later found to be inconsistent with either the client's instructions or the underlying basis of the client's claim. Further, there was no allegation of fraud or collusion.

[23] Further, as was the justification for not upholding the terms of a settlement in *First City Capital Ltd. v. B.C. Building Corp.*, (1989) 43 B.L.R. 29 (S.C.) there was no mutual (or even unilateral) mistake as to the amount agreed to be paid and the scope of settlement. The Minutes of Settlement and Release evidence a clear agreement by George and Richard Sojka to pay \$575,000 to the plaintiffs and an agreement by George to release Henry Sojka in respect of his alleged \$45,000 loan to him.

[24] As did Justice Warren in *Carlton v. Carlton*, 2017 BCSC 603 I adopt the analysis of Justice Sewell in *Roumanis v. Hill*, 2013 BCSC 1047 as to when the enforceability of a settlement agreement ought to be decided on a summary procedure. Justice Sewell said:

55 The question of the proper procedure to adjudicate the enforceability of a settlement was addressed in *McKenzie v. McKenzie*, [1975] B.C.J. No. 1114 (B.C.S.C.). In that case Macfarlane J., as he then was, reviewed the authorities and concluded that the court ought to enforce a settlement upon application in the action if justice could be done by proceeding summarily.

57 In my view, I should proceed summarily unless I am satisfied that there is a genuine issue as to whether the settlement agreement is binding pursuant to the law of contract.

[25] As was found by Sewell J. in *Roumanis* and as I have already stated, I do not find that there is a genuine issue as to whether the settlement agreement is binding on the parties to this action.

[26] Having reviewed the evidence and considered the authorities, I agree with the submissions of the plaintiffs and the defendant Henry Sojka that George and Richard Sojka's conduct constitutes "settler's remorse" and their failure to execute the Release and pay the agreed upon amount constitutes a breach of the Settlement Agreement.

[27] There is sound policy for this court to enforce the terms of a valid settlement agreement. As stated by Lambert J.A. in *Robertson v. Walwyn Stodgell Cochran Murray Ltd.*, [1988] 24 B.C.L.R. (2d) 385 (B.C.C.A.):

9 Justice affects both parties and requires a balancing of their interests. The fact that the settlement agreement may not have been a desirable one from the point of view of the Robertsons, or the fact that they may have received poor advice from their lawyer, or the fact that they later changed their minds, cannot provide grounds for setting aside the settlement agreement, or a refusal to enforce it. And it would do scant justice to the interests of the defendants in this case to recognize the validity of the settlement agreement, and that it will ultimately prevail, but to refuse to enforce it at this time and in these proceedings.

Conclusion

[28] After considering the facts in this case and the arguments of the parties I find for the plaintiffs. Accordingly I order as follows:

- 1) That the defendants George Sojka and Richard Sojka are liable to pay and shall pay the plaintiffs Andrew Sojka and Christine Carnegie and the defendant Henry is Sojka the sum of \$575,000.
 - 2) In accordance with s. 8(3) of the Law and Equity Act, I find that the terms of the settlement agreement as set out in the Minutes of Settlement and clarified in the Release are enforceable.
 - 3) Pursuant to s. 8(3) I order a stay of all further proceedings in this action except those necessary to enforce the terms of this order.
 - 4) Finally, with respect to costs, the plaintiffs shall have their costs at Scale B against the defendants George Sojka; George Sojka as executor of the estate of Genoweva Sojka, deceased; and Richard Sojka.
- [29] I will entertain any questions, first from you, Mr. McStravick.
- [30] MR. McSTRAVICK: My Lord, the only thing I would like to add is the interest on the moneys from the date the 90 days expired until today's date, under the Court Order Enforcement Act.
- [31] THE COURT: Interest will go accordingly. Yes.
- [32] MR. McSTRAVICK: Thank you.
- [33] THE COURT:
- [34] MR. SCHMIDT: My Lord, just a comment on your last point. You said the plaintiffs are entitled to costs. Would that also be the defendant Henry Sojka? Due to the fact that we too filed a response, including materials and it was our mediation -- or affidavit with the mediation briefs that were filed.
- [35] THE COURT: Well, I will give Mr. Spencer an opportunity to respond to that.
- [36] MR. SPENCER: I seek some clarification, whether it is one set of costs or now potentially two or three. On that, in my submission it would be appropriate, given the somewhat family law nature of this application, that the court exercise its discretion in terms of balancing costs out more evenly between the parties. I would seek one set of costs just by the plaintiffs against the defendants George and Richard Sojka.
- [37] THE COURT: I think in the circumstances that that would be most appropriate, that there be one set of costs payable as suggested.
- [38] UNIDENTIFIED MALE SPEAKER: My Lord, just to clarify, would that include both of the plaintiffs' and the defendant Henry's disbursements? For where to put the one set of costs?
- [39] MR. SPENCER: I would not have any objection to that. I think that would be reasonable. There are additional certain filing fees that had to be incurred by Henry and the plaintiffs. I have no objection that.

[40] THE COURT: All right. I mean, that is appreciated, Mr. Spencer. I think that is a reasonable way to proceed. So the defendant Henry Sojka and the plaintiffs will have their disbursements, and the plaintiffs will have their costs.

"Mayer, J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/05/2018BCSC0562.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sojka-v-sojka-2018>

Prepared on 27 October 2026 · Esheria