

CANADA / JUDGMENT

Suckau v. Suckau

2000 BCSC 890

COURT

Supreme Court of British Columbia

DECIDED

7 June 2000

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2000 BCSC 890

Citation:	Suckau v. Suckau 2000 BCSC 890
Date:	20000607 Docket No.: 2099 Registry: Golden IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	UTE SUCKAU PLAINTIFF
AND:	WOLF DIETRICH SUCKAU DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE MELNICK

Counsel for the Plaintiff:

Bruce F. Fairley

Counsel for the Defendant:

Appearing in Person

Written Submissions

[1] The parties have made written submissions as to costs.

- [2] In large measure, the plaintiff, Ms. Ute Suckau, was successful in her action against her former husband, the defendant Mr. Wolf Suckau. That costs should follow the event is not really in dispute.
- [3] However, Ms. Suckau claims that generally she should be awarded costs on scale 4. In his submissions on behalf of Ms. Suckau Mr. Fairley lists:
- (a) the necessity of obtaining expert evidence of German matrimonial law and familiarity with numerous aspects of German law, including German divorce law; (b) the need to translate German court documents and financial records; (c) extensive efforts to locate copies of documents which were in the hands of Mr. Suckau or which related to transactions that had occurred many years ago; (d) the organization of extensive documentary evidence beyond the ordinary in matrimonial litigation as reasons for increasing costs to scale 4. He also lists many difficulties he faced in attempting to obtain discovery and have Mr. Suckau comply with the Rules.
- [4] Subject to what I will say hereafter, I do not find that, however frustrating it had to be, the work Mr. Fairley did on behalf of Ms. Suckau was other than of ordinary difficulty. Therefore costs, other than as otherwise dealt with, will be on scale 3.
- [5] Ms. Suckau claims for special costs for certain portions of the trial. Mr. Fairley points out that the entire first afternoon of the trial and one-half of the morning of the second day was largely consumed by Mr. Suckau's application to adjourn the trial to obtain further documents. It was the position of Ms. Suckau that this lengthy application was brought for only one purpose, to delay the trial. I agree entirely with that characterization of that adjournment application. I also agree that a half day of court time was wasted while court registry staff prepared copies of Mr. Suckau's documents, documents that he should have disclosed earlier pursuant to demands made on him.
- [6] The above conduct on the part of Mr. Suckau can only be described as reprehensible. I got the clear impression that Mr. Suckau was doing what he could to derail the proceedings. There were times when delays were occasioned because of his ignorance of the law and procedure. I do not penalize him for that. However, he should pay special costs for court time taken up by his deliberate tactics to frustrate the action of Ms. Suckau.
- [7] Having said that, I am not prepared to characterize Mr. Suckau's application brought on November 2, 1998, as reprehensible. It may have been ill cast in law, but it is not deserving of censure.
- [8] In the result, I would award Ms. Suckau special costs at 80% of her own costs for two days of trial.
- [9] I also found that Mr. Suckau's conduct was reprehensible as it related to the examination for discovery process. After a court order was obtained to compel him to answer questions he still refused to do so. The examinations had twice been adjourned because Mr. Suckau was not prepared. Clearly, he was merely postponing the day when he would have to answer

questions and then refused to do so when ordered. I agree that Ms. Suckau should have special costs at 80% of her own costs for all process relating to the examination for discovery of Mr. Suckau.

- [10] I also agree that Ms. Suckau is entitled to special costs at the above rate for inspection of documents. Mr. Suckau produced a significant number of documents on the day of trial when he had been directed to do so much earlier. Again, Mr. Suckau's conduct in refusing to disclose documents until the day of trial was designed solely to frustrate Ms. Suckau's ability to pursue the action against him. There is no question of his not knowing what he was doing. He knew very well what he was doing. He flaunted the Rules of Court in the expectation of advantage for himself. He should not now have any advantage in costs. His conduct in this respect was also reprehensible.

"T.J. Melnick, J."

The Honourable Mr. Justice T.J. Melnick

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Prepared on 28 October 2026 · Esheria