

CANADA / JUDGMENT

# Suzuki v. DeValone

2013 BCSC 632

## COURT

Supreme Court of British Columbia

## DECIDED

11 April 2013

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2013 BCSC 632 Suzuki v. DeValone IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Suzuki v. DeValone, 2013 BCSC 632 Date: 20130411 Docket: S115591 Registry: Vancouver Between: Elsie Suzuki Plaintiff (Respondent) And Yvonne Rumi DeValone Defendant (Appellant) Before: The Honourable Mr. Justice Bowden On appeal from: Supreme Court of British Columbia, October 29, 2012, (Suzuki v. DeValone, Vancouver No. S115591) Reasons for Judgment In Chambers Counsel for the Plaintiff (Respondent): J.S. Humphry Counsel for the Defendant (Appellant): C. Cho R.T. Todd Place and Date of Hearing: Vancouver, B.C. March 21, 2013 Place and Date of Judgment: Vancouver, B.C. April 11, 2013

- [1] This is an appeal from a decision of Master Scarth, dismissing an application by the appellant who is the defendant in Suzuki v. DeValone, Vancouver No. S115591 (the "First Action"), and the plaintiff in DeValone v. Howardson, Vancouver No. S123910 (the "Second Action"), to consolidate the two actions under Rule 22-5 of the Supreme Court Civil Rules.
- [2] Some background is helpful in understanding the learned master's decision.
- [3] Ms. Suzuki is Ms. DeValone's mother. In around 1996, Ms. Suzuki and her husband (Ms. DeValone's father), transferred a one half interest in the family home to Ms. DeValone in exchange for Ms. DeValone continuing to live in the home and caring for her mother and father. She cared for her father until his death in 1999. Ms. Suzuki is now 89 years of age and continues to reside with Ms. DeValone in the family home.
- [4] After the death of Mr. Suzuki, Ms. Suzuki began taking dancing lessons from a dance instructor, John Howardson, and they developed a friendship.
- [5] Ms. Suzuki decided to transfer her remaining one half interest in the family home to Ms. DeValone, apparently to protect the home from any claim by Mr. Howardson.

- [6] In August 2011, Ms. Suzuki commenced the First Action, seeking the return of the title to the home to her on the basis of a breach of fiduciary duty, negligent misrepresentation by her daughter or unconscionability and unjust enrichment. Ms. DeValone's defence is that her mother transferred the property to her in exchange for her promise to care for her and her father, or that the property was given to her by her mother and therefore the transfer was valid.
- [7] In the Second Action, Ms. DeValone claims that Mr. Howardson unlawfully interfered with economic relations, induced the breach of contract and inflicted nervous shock on her by inducing Ms. Suzuki to commence the First Action. I. Analysis
- [8] The oral reasons for judgment by the learned master simply dismiss the application without reasons. However, both counsel submit, and I accept that the reasons for her decision are evident from the transcript of proceedings before her.
- [9] In my view, the matter before the master was purely interlocutory such that the standard of review is "clearly wrong" and this Court should not rehear the application: *Abermin Corp. v. Granges Exploration Ltd.* (1990), 45 B.C.L.R. (2d) 188 (B.C.S.C.)
- [10] I will deal in turn with each of the errors in law alleged to have been made by the learned master.
1. Holding that there are no overlapping claims between the First Action and the Second Action
- [11] The learned master stated at line 9 on page 23 of the transcript of proceedings: ... what you haven't established ... to my satisfaction, is that there are overlapping claims here ...
- [12] On page 22 at line 15 she stated: If the agreement is found to be void, in the Suzuki action, you don't really have much foundation for the claim in the Devalone and Howardson case.
- [13] The learned master elaborates at line 43 of page 22: So that's the difficulty I have. In one action, what's sought is a declaration with respect to property. In another, it's damages against another individual altogether.
- [14] In my view, the learned master was correct in her reasoning. If the contract in the First Action is upheld by the Court, then there is no basis for the Second Action to proceed. On the other hand, if the contract is held to be void because of misrepresentation or unconscionability on the part of the appellant, that will have nothing to do with Mr. Howardson and, as the learned master said at line 41 on page 22 of the transcript, it would then appear that Ms. Suzuki was quite entitled to commence the First Action, regardless of what Mr. Howardson may have done.
2. Holding that there is no potential for inconsistent results if the First Action and the Second Action are not consolidated

- [15] At line 8 of page 23, the learned master says: ... what you haven't established ... to my satisfaction ...(is) that there's a potential for ... inconsistent results.
- [16] She goes on to say at line 20: I don't accept that submission, because you're not asking for a finding in the Devalone matter as to the enforceability of the agreement.
- [17] This reasoning follows naturally and logically when she considered that the two actions were quite different as indicated at lines 43 to 46 on page 22. In my view, her conclusion is quite correct.
3. Hearing evidence in the application to consolidate the First Action and the Second Action
- [18] While the learned master allowed some evidence to be introduced, she said at line 4 of page 20: He did refer me to evidence. But his submission is essentially that the claims in these two matters don't overlap.
- [19] In my view, this was not an error by the learned master because she was able to reach the conclusions that she did without relying on the evidence and by just considering the issues raised by the pleadings.
4. Rejecting the authority of *Peel v. Western Delta*, 2003 BCSC 784 [Peel]
- [20] In *Peel*, the court states at para. 27: Consolidation may be appropriate where the parties are the same and the issues are common so that disposition of one of the actions will necessarily dispose of the issues in the other.
- [21] In my view, the learned master found correctly that the issues in the two actions are completely different. Furthermore, the parties are not the same. In my view, the learned master correctly applied the decision in *Peel*. It was not said in *Peel*, as submitted to the master by the appellant, that if one matter disposes of the other, then they should be consolidated.
5. Considering whether the Second Action disclosed a reasonable cause of action when this issue was not before the Court by application
- [22] At line 43 on page 21, the learned master expressed concerns about whether a portion of the claim in the Second Action disclosed a reasonable cause of action based on the alleged economic relationship between the mother and daughter, and the claim for damages for nervous shock. However, she went on to say at line 10 of page 22: But what I don't see is an overlap in the claims.
- [23] In my view, this was not an error by the learned master. She did not base her decision to dismiss the application upon her view of the reasonableness of the cause of action in the Second Action.
6. Considering the merits and prospects of success of the Second Action

- [24] The appellant stated that this ground is essentially the same as the fifth ground of appeal, and for the same reasons I find no error to have occurred.
7. Considering whether if the Second Action notice of civil claim asks the Court to find the agreement purported to be breached in that action is an enforceable agreement
- [25] Although the appellant's argument on this ground is not clear, it appears that she is referring to the learned master's rejection that there are overlapping claims or the potential for inconsistent results. One of the learned master's reasons is stated at line 21 of page 23: I don't accept that submission, because you're not asking for a finding in the Devalone matter as to the enforceability of the agreement.
- [26] The learned master's conclusion is correct for the same reasons given in relation to the second ground of appeal.
- [27] While that disposes of the grounds of appeal I will add that, although they were not referred to by her, in my view the decision of the learned master is in accordance with the principles enunciated by Master Kirkpatrick, as she then was, in *Merritt v. Imasco Enterprises Inc.* (1992), 2 C.P.C. (3d) 275 [Merritt].
- [28] At paras. 18 and 19 of *Merritt*, Master Kirkpatrick stated: None of the submissions of counsel address the real issue to be determined. That is, are the issues raised by the pleadings sufficiently similar to warrant the order sought and will the order make sense in the circumstances? An application to have actions tried at the same time thus requires an examination of circumstances which may be of a more general nature than is made under R. 27 or 19. I accept that the foundation of an application under R. 5(8) is indeed disclosed by the pleadings. The examination of the pleadings will answer the first question to be addressed: do common claims, disputes and relationships exist between the parties? But the next question which one must ask is: are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"? *Webster v. Webster* (1979), 12 B.C.L.R. 172 (C.A.). That second question cannot, in my respectful view, be determined solely by reference to the pleadings. Reference must also be made to matters disclosed outside the pleadings:
- (1) Will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?;
  - (2) Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?;
  - (3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?; and
  - (4) Will there be a real saving in experts' time and witness fees?

- [29] By way of obiter I will comment on the considerations referred to in Merritt that were not referred to by the learned master:
- [30] In my view, consolidation of the two actions will not create a saving in pre-trial procedures. Indeed, the appellant has indicated a desire to examine Mr. Howardson for discovery and to explore the financial relationship between him and the respondent. This in my view will likely increase the costs of pre-trial procedures.
- [31] With regard to the number of trial days, I accept the respondent's submission that the consolidation of the Second Action with the First Action will in all likelihood extend the length of the trial to enable the judge to deal with matters that may not be relevant in the First Action.
- [32] There is the potential for Mr. Howardson to be seriously inconvenienced by being required to attend the trial of the First Action in which he may only have a marginal interest. This is likely why he is opposed to the consolidation.
- [33] There is no evidence that an expert will be needed in either action. The evidence suggests that an increase in the witness fees will be greater if Mr. Howardson is required to attend because the actions are consolidated. That cost may be avoided if the Second Action does not proceed.
- [34] Lastly, in my view it does not make sense to consolidate these two very different actions. Whether or not the respondent is successful in her action will not necessarily involve Mr. Howardson in any way. While the appellant feels aggrieved by the alleged actions of Mr. Howardson, the manner in which she has proceeded against him does not justify the consolidation of the Second Action with the First Action.
- [35] In the end result, the learned master properly decided the issues before her and did not err in law or in principle.
- [36] The appeal is dismissed with costs to the respondent. "Bowden J."

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