

CANADA / JUDGMENT

van Wollen v. van Wollen

2024 BCSC 1370

COURT

Supreme Court of British Columbia

DECIDED

14 February 2024

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2024 BCSC 1370 van Wollen v. van Wollen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

van Wollen v. van Wollen,

2024 BCSC 1370

Date: 20240214

Docket: E222525

Registry: Vancouver

Between:

Elizabeth Valerie van Wollen

Claimant

And

Sebastian van Wollen, VW Consulting Ltd., Inc.No. BC0940721, Blue Planet Plastics Recycling & Manufacturing Ltd., Inc.No. BC0704324, AG Envirotech Inc., Inc.No. BC0399368

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

V. Richards

The respondent Sebastian van Wollen, appearing in person:

S. van Wollen

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 14, 2024

Place and Date of Judgment:

Vancouver, B.C.

February 14, 2024

- [1] THE COURT: Two applications are set for hearing today. One is an application by the claimant seeking orders relating to the respondent's alleged noncompliance with previous court orders, and an order for sole conduct of sale of property.
- [2] The second is the respondent's application filed February 7, 2024, seeking a variety of orders, three of which I have already found have nothing to do with the previous orders granted, or the money at issue in those orders. The respondent's position is that other orders he seeks are intertwined with the relief being sought by the claimant such that both applications should be heard together and, if necessary, be adjourned to do so.
- [3] I have heard his submissions about that and understand his position, but I do not agree with him. I do not see how any orders he seeks are intertwined with the claimant's application, which is primarily for enforcement of previous court orders based on the allegation the respondent has not complied with them.
- [4] I note the alleged contempt has to do with an order granted last fall for the distribution of funds to which the respondent consented, which makes it difficult for him to argue against it being enforced, or to bring up additional facts especially when he was represented by counsel.
- [5] There was a follow-up order by Associate Judge Nielsen also relating to securing the respondent's compliance. The respondent represented himself at that hearing, and I assume he objected to the orders sought. However, Associate Judge Nielsen did not agree with him.
- [6] One reason the respondent opposes the relief being sought against him is based on an order granted at the Judicial Case Conference dealing with the funds. He also raises an issue about the liquidity of the company concerned. However, as I told to him, I find those are not issues that I can deal with because what is before me is an application seeking compliance with other court orders issued about the same things.

- [7] In my view, the respondent's application is not intertwined with the claimant's application such that they must be heard together. Also, the respondent's application was set down for hearing with inadequate notice being given to the other side. The claimant's application was properly set and will proceed.
- [8] The application brought by Mr. Van Wollen filed February 7, 2024, is adjourned.
- [9] I turn to the claimant's application which raises generally two issues.
- [10] The claimant seeks an order pursuant to the Supreme Court Family Rules that the respondent be found in contempt for his failure to comply with paragraph 6 of the order of Master Muir made in April 18, 2023, and paragraph 9 of Associate Judge Nielsen's order made November 30, 2023. The application suggests the respondent be given the opportunity to purge that contempt by immediately signing an authorization allowing for the transfer of certain funds. The claimant nevertheless seeks a fine of \$5,000 for his contempt. If I do not find him in contempt, in the alternative, she seeks he be fined under 232(b)(ii) of the Family Law Act, S.B.C. 2011, c. 25, for his failure to comply.
- [11] The second issue is whether sole conduct of sale of certain property should be granted to the claimant.
- [12] I turn first to the issue of contempt and compliance. The test for contempt is well known, and it is set out accurately and objectively in the notice of application at paragraphs 4 to 8. Counsel has been thorough by including *Swann v. Swann*, 2009 BCCA 335. That case addresses the consideration in family law cases about holding someone in contempt for refusing to make a support payment. In those circumstances, the court in that case suggested it ought to consider the alleged contemnor's capacity to pay.
- [13] I appreciate counsel bringing that case to my attention, as it was appropriate to do so. However, as I said during submissions, that doctrine is not invoked in this particular case because this is not about support payments nor the respondent's ability to pay; rather, it is about distribution from a corporation jointly owned by the parties. Therefore, what is sometimes called the fourth element of contempt does not arise in this case.
- [14] The issue boils down to whether the order was clear and unequivocal about what should and should not be done. There is no doubt that both orders were.
- [15] Next, one asks if the respondent had actual knowledge of the orders. And, of course he did. In fact, a relevant consideration in this case is that before Associate Judge Muir, through his counsel, the respondent consented to the order. It is also relevant that he represented himself and was present in front of Associate Justice Nielsen when that order was granted.
- [16] The last issue is whether the party intentionally did the act, or failed to do something they were supposed to do by court order. That step has clearly been met here too.

- [17] Typically, a person's motivations (beyond what is referred to in the Swann case) is usually irrelevant for contempt. Notwithstanding that, Mr. van Wollen is representing himself, and in his affidavit, and before me he explains why he has not complied. I understand what he has said. Unfortunately, it does not amount to a legal excuse or reason for him not to comply with the previous court orders.
- [18] I will explain briefly. An order was made April 18, 2023, for a distribution from the corporate vehicle that is the holding company for an operating company. Each party was to get \$250,000. That was not done. Then there was communication in the late summer or early fall last year, and the claimant asked the respondent to give authorizations to allow for that distribution. Mr. van Wollen takes the position, and it is his belief, that the company situation had changed by that time. He refers in his affidavit to the company enjoying remarkable success during the years following COVID, but then not having as good returns in 2023.
- [19] The claimant points out that she was being cooperative in agreeing to allow for a \$500,000 transfer of funds to the operating company. She mentioned that to respond to the respondent's assertion that he has tried to engage in a dialogue with the other side and has not met with success.
- [20] The respondent believes that allowing this distribution of funds at this point will put the company at great risk. He believes that he has been prevented from getting updated information to put before the Court about that. In his affidavit, he addressed the reasons why he holds that view.
- [21] The reality is that information can and should have been put before Associate Judge Nielsen. Or, Mr. van Wollen could have applied to set aside or vary the order, supported by proper evidence. He has not done so.
- [22] This is a high conflict family case. There have been disputes and disagreements about parenting. One can assume the emotional toll of the litigation on both parties has been high and will continue to be difficult. They share two teenage children, and the arrangements have changed. Looking at the decision of Associate Judge Nielsen, it is obvious there have been difficult issues about parenting arrangements.
- [23] With respect to the correspondence between the parties, I note that Mr. Van Wollen invited a dialogue to address certain issues. It is not unreasonable in these circumstances for the opposing side to have not wanted to engage with him. I make no comment about either party about the fact that they were not able to come to some different agreement about what the court order says. However, at the end of the day, that is a determinative factor.
- [24] Associate Judge Muir was faced with both parties agreeing to a distribution of \$250,000. In her affidavit, the claimant says that she relied on that, and she needs those funds. Whether or not time has passed, whether or not the situation of the business has changed, in dealing with very limited facts in front of me, it is material that the parties were before Associate

Judge Nielsen. While it is true they were dealing with other issues, they were also very clearly dealing with the issue about compliance with Associate Judge Muir's order. Associate Judge Nielsen ordered compliance. He made a comment, which courts often do, that parties can certainly agree to do something else, but that does not establish a legal basis for a party to fail to comply with a court order. He clearly made an order that they should comply forthwith with Associate Judge Muir's order.

- [25] Associate Judge Nielsen's words are actually quite important because he points out that once an order is made, it is not open to negotiation. People can agree, if they like to do something else, but there is no obligation to engage in the discussions about that. While people can agree to something else, one cannot fault another party for refusing to engage in a discussion about changing a court order once that party has been successful. In this case, not only has the claimant been successful, she got an order with the consent of the respondent. She then got an order enforcing that order,, and she is still faced today with this situation of there being no compliance by the respondent.
- [26] For all those reasons, I do find the respondent in contempt of paragraph 6 of the order of Associate Judge Muir made April 18, 2023, and of paragraph 9 of the order Associate Judge Nielsen made November 30, 2023.
- [27] I am also ordering that I will allow the respondent to purge his contempt by signing the authorization allowing RBC Dominion Securities to transfer \$250,000 from van Wollen Consulting to the claimant or her corporation. I understand that counsel may have an authorization here, and if I can see him sign that, he would have purged his contempt.
- [28] Even if he purges that contempt, he has been non-compliant. The Court does not treat that situation lightly. This is an issue between the Court and Mr. van Wollen, and the punishment for contempt can amount to a fine or imprisonment.
- [29] I will give him this opportunity to purge the contempt, which means it would not then be appropriate to issue a fine or imprisonment.
- [30] I now turn to the orders being sought for sale of the home. This, too, has some difficult history between the parties and some unfortunate communication. Mr. van Wollen originally agreed to list the house for sale, but then indicated that he will not agree to any sale, and he has withdrawn his agreement and wants to withdraw the agreement for listing.
- [31] The claimant was told by the realtor that unless both parties agree, the listing will remain.
- [32] In his material the respondent offers reasons why he does not think it would be prudent to allow the claimant to have conduct of sale. In his submissions to me, he expressed, I would say, some frustration that he wanted to sell the home some time ago. To be fair, I did not hear the other side that point, but I am just setting out his perspective. There was an issue about where he would live with the children. That was resolved in a manner that he did not want.

- [33] In any event, the order was made by Associate Judge Nielsen to sell the home, meaning he already decided it was necessary and/or expedient to sell the home. They need the liquidity from the home because neither of them can afford to buy the other one out.
- [34] I appreciate counsel giving me the case law that relates to whether sole conduct should be granted, although I am somewhat familiar with it. I mention specifically *Dhillon v. Kumar*, 2014 BCSC 2366; and the *DeThomas v. DeThomas*, 2023 BCSC 901. The court has to look at a number of factors: the willingness of a party to facilitate a sale, and the inability of the parties to agree on routine aspects of the sale or to cooperate.
- [35] On the material in front of me, the respondent did show some unwillingness to facilitate the sale because he agreed and then withdrew his agreement. He has given his reasons for that, and he has explained it. I infer he continued to be frustrated by what he believed to be an unwillingness to engage in a dialogue. I make no comment on whether that is reasonable or not. The fact remains that there was difficulty in moving forward.
- [36] I thank Mr. Van Wollen for being candid with the Court and being patient. He said he would simply agree, and I hoped he was not merely capitulating. What I mean by that is during his submissions, I take him to have recognized the need to sell the home. He has been unhappy with certain things that have happened and how it has proceeded, but at the end of the day, he recognized the house has to be sold.
- [37] He expressed some concerns about the market, the price of the listing, and whether those things will ultimately turn out to impact the parties negatively financially. But, the legal test is whether there is an indication that the parties have an inability to co-operate and whether they are going to be able to do it jointly and smoothly. The indications in front of me are that they, in fact, cannot do that.
- [38] For those reasons, I am granting the order sought. Therefore I order pursuant to s. 15-8 of the Supreme Court Family Rules, that he claimant has sole conduct of sale of the property.
- [39] The clauses as sought in paragraph 6 of the notice of application are the standard clauses, and all may not be needed if the house is already listed. If there are any changes that the parties want to make to those, I will hear them on that.
- [40] The last issue was an order dispensing with the need for the respondent to sign the Form A freehold transfer. The claimant's counsel pointed out that she forwarded, appropriately, the order from Associate Judge Nielsen to the respondent to sign. The respondent made some notations on it, which would not have been accepted by the registry for filing, and so she gave the appropriate notice and 14 days has passed. In light of that, the claimant wants to be proactive to avoid similar problems in the future and asks for dispensing with the need for the respondent's signature. I do grant that mainly just to keep things simple between the parties as they obviously still have challenges communicating.

[41] Therefore, the orders sought in in paragraphs 7 and 8 of the claimant's application are granted.

[DISCUSSION RE REALTOR AND SOLE CONDUCT OF SALE]

THE COURT: With regard to paragraph 6(a) of the application, counsel will change the wording slightly so that the claimant may sign, renew, or, if needed, sign a new listing agreement with the same realtor on behalf of both parties.

[DISCUSSION RE AUTHORIZATION FOR THE BANK]

[SUBMISSIONS ON COSTS]

[42] THE COURT: The notice of application seeks special costs in regard to this application. It is well established that a party found in contempt is ordinarily required to pay special costs. That is to reflect the fact that contempt of the court is not really a matter as between the parties, but it is primarily a matter as between the Court and the contemtor.

[43] Court orders have to be followed, and they are effective when they are pronounced. The claimant seeks special costs which is meant to address conduct deserving of rebuke. Contempt of court is obviously deserving of rebuke. It is something that should not happen. We have a civil justice system in order that parties can resolve their disputes in a civil manner. That means coming to court, making your arguments, and then living with the order that is granted. If you do not like the order, you appeal it, if you can.

[44] But, when parties choose a different path and they do not comply, there are sometimes justifications and reasons for doing that.

[45] In this case, I have already given my reasons for finding the respondent in contempt, and I will not restate them.

[46] I will say that this situation was that much more concerning to the Court because the original order was by consent. When a party comes to court, consents to something, does not comply and then is brought to court again, and another presider says, you must comply, and then four months pass and there has been no compliance, as I said, I found that to be contempt. I also find that conduct to be deserving of rebuke, and special costs are payable for that reason.

"Sharma J."

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