

CANADA / JUDGMENT

Warde v. Slatter

2015 BCSC 826

COURT

Supreme Court of British Columbia

DECIDED

15 May 2015

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2015 BCSC 826 Warde v. Slatter IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Warde v. Slatter, 2015 BCSC 826 Date: 20150515 Docket: 21755 Registry: Fort St. John Between: Naomi Elaine Warde also known as Naomi Elaine Slatter also known as Elaine Slatter Claimant And Brian Grant Slatter and Fern Slatter and Slatter Holdings Ltd. Respondents Before: The Honourable Madam Justice Dickson Reasons for Judgment Counsel for the Claimant: Pamela S. Boles Marti Katerberg Counsel for the Respondent, Brian Slatter: Brett H. Kirkpatrick For the Respondent, Fern Slatter: Brett H. Kirkpatrick (as agent) Counsel for Slatter Holdings Ltd.: Heidi Taylor Place and Date of Hearing: Fort St. John, B.C. April 17, 2015 Place and Date of Judgment: Fort St. John, B.C. May 15, 2015

- [1] The parties apply to settle the terms of my February 3, 2015 order in these contentious family law proceedings. Oral reasons for judgment on the application are indexed at 2015 BCSC 219.
- [2] The underlying action concerns the marriage breakdown of the claimant, Elaine Warde, and the respondent Brian Slatter. Amongst other things, Ms. Warde claims an interest in the shares and property of the respondent Slatter Holdings Ltd. The respondent Fern Slatter is Brian Slatter's mother and the sole shareholder of Slatter Holdings.
- [3] The application concerned alleged breaches of the June 17, 2013 order of Mr. Justice Williams (the "Williams Order") and sought relief associated with those alleged breaches. In summary, the Williams Order enjoined the respondents from disposing of any property at issue in the proceedings. The claimant asserted that the respondents breached the Williams Order by removing funds from Slatter Holdings' bank account and, amongst other things, sought return of the funds to her counsel's trust account. She also asserted that Brian Slatter breached the Williams Order by cashing certain RRSPs. I concluded that some, but not all, of the alleged breaches were established and ordered various forms of relief, including payment into court of the remaining funds, an accounting, document production, and special costs.

- [4] After my reasons for judgment were delivered the parties could not agree on the appropriate form of order. The claimant and Slatter Holdings have each submitted a draft order for consideration and made submissions regarding their content. The competing drafts include several stylistic and other minor differences. They also include two key points of substantive difference and contention.
- [5] The first contentious point relates to whether the order should express my conclusions regarding the alleged breaches as "declarations" or "findings". The claimant submits they are properly characterized as findings and the order should describe them as such. In contrast, Slatter Holdings submits the order should describe these conclusions as declarations because that was the relief sought by the claimant in her notice of application, which referenced R. 20-4 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCF Rules]. In addition, counsel for Slatter Holdings notes I used the word "declare" in my oral reasons for judgment when expressing my conclusion that some of the respondents breached the Williams Order.
- [6] As R. 20-4 of the SCF Rules provides, declaratory relief concerns binding declarations of right. However, as Mr. Justice Frankel remarked after raising the issue when counsel appeared on a leave to appeal and stay application, counsel and trial judges often speak in terms of declarations when, in substance, they are referring to findings upon which consequent orders are made. Subject to seeing an entered order to the contrary, he characterized my conclusions on the alleged breaches as findings, not as declarations. He also adjourned the hearing of the leave to appeal and stay application pending receipt of the entered order.
- [7] When the claimant's application was argued before me no one raised the issue of whether a conclusion of breach should lead to a declaration or a finding and I did not address my mind to the issue. The exclusive focus of argument was on whether the alleged breaches occurred and, if so, what remedy should be granted, not on how a conclusion of breach should be characterised or expressed. Counsel for Slatter Holdings submits she argued the application on the basis that the claimant was seeking a declaration, not a finding, but did not identify any difference in approach that would or might have been adopted as between the two possibilities. In my view, there is none, nor is there any real prejudice to Slatter Holdings if my conclusions regarding the breaches are properly characterised in the settled form of order.
- [8] My conclusions regarding the alleged breaches are properly characterised as findings, not as declarations. The parties agree that I am not functus in connection with this matter and, all things considered, I conclude they should be characterised as such in the settled form of order.

- [9] The other key point of contention concerns the legal basis upon which I ordered document production. The claimant submits the document production order was made pursuant to both R. 9-1 of the SCF Rules and s. 212 of the Family Law Act, S.B.C. 2011, c. 25 [Act] because the SCF Rules are the "slave" of the Act. Slatter Holdings submits it was made pursuant to R. 9-1 alone, given that the SCF Rules apply to "family law cases", not just those brought under the Act, and these proceedings include a wide range of claims.
- [10] I agree with Slatter Holdings. The second amended notice of family claim includes various property claims beyond those brought under the Act, including, for example, unjust enrichment. The document production order applies to many of those claims.
- [11] Taking into account all of the foregoing, the parties' submissions and the draft forms of order presented I settle the order in the form attached as Appendix A. "DICKSON J."
- APPENDIX A

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