

CANADA / JUDGMENT

Wigen v. Wigen

2019 BCSC 840

COURT

Supreme Court of British Columbia

DECIDED

5 March 2019

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2019 BCSC 840 Wigen v. Wigen IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wigen v. Wigen, 2019 BCSC 840 Date: 20190305 Docket: S27448 Registry: Cranbrook Between: David Allan Wigen and Karen Lee Combs Petitioners And Donna Lynn Wigen Respondent Before: Master Vos Oral Reasons for Judgment In Chambers Counsel for the Petitioners: A. Bird Counsel for the Respondent appearing via teleconference: H. Hicks Place and Date of Hearing: Cranbrook, B.C. March 5, 2019 Place and Date of Judgment: Cranbrook, B.C. March 5, 2019

- [1] THE COURT: The petitioners seek assessment of costs they claim with respect to the sale of two lots. The lots were sold pursuant to an order made by Master Keighley on October 23, 2017, which granted the petitioners exclusive conduct of sale of 17 lots. That order provided that the petitioners could recover their costs of the petition from the respondent.
- [2] Two lots were previously sold. Today's application is with respect to Lots 17 and 19. When the sale of those two lots was expected, counsel for the petitioners sent a draft consent order to counsel for the respondent. The draft consent order included, at paragraph 8, a clause stating "The petitioners shall have their costs of this application and the sale of the lands from the respondent."
- [3] Counsel for the respondent signed the draft consent order but crossed out paragraph 8 and initialled by the parts of paragraph 8 he had crossed out. He returned the draft order with the crossed out paragraph 8 to counsel for the petitioners with an email stating: "The only costs would be conveyancing costs and those would not be our client's sole responsibility, so I have signed the orders but crossed out the costs provision as we approved the contracts to avoid the costs of the application."
- [4] That letter is not as clear as it could have been. It should have stated that the consent order was provided on the condition that respondent would not pay any party/party costs relating to the sales. But it does convey the message that the respondent consented to sales of the two lots, but not to pay costs.

- [5] When that order was returned to the petitioners' counsel, he also initialled the part that was crossed out and then submitted the consent order to the court registry. He wanted to obtain an entered order so the sales could proceed. He now seeks party/party costs with respect to the order and conduct of the sales.
- [6] It is a long standing legal principle that costs can be awarded only if an order granting costs clearly is in place. The case of *Maurice v. Maurice*, oral reasons for judgment rendered by Mr. Justice Braidwood on January 6, 1994, is cited for that proposition. That case was relied on in *Roberson & Others v. Roberson and Miller*, 2002 BCSC 1343 at paragraph 16(2).
- [7] Counsel for the petitioners submits that he has an overall entitlement to costs arising from the initial costs order; i.e. Master Keighley's October 23, 2017 order. He argues that the costs claimed today are essentially costs that relate to the initial order, as they are costs for execution proceedings pursuant to the order. But this argument ignores a plain reading of the orders that were entered, wherein both counsel initialled the negation of the only potential claims for costs.
- [8] Counsel are responsible for the conduct of litigation. Subject to supervision by the court, counsel are able to set the terms of orders to suit the needs of their clients. For example, it is quite common for counsel to agree to waive potential claims for costs with respect to a consent order, as doing so can help achieve a beneficial result in a timely and economic manner.
- [9] In this instance, counsel for the petitioners initialled the cancellation of the only authorization for costs in both consent orders, thereby eliminating the basis for a claim for party/party costs with respect to each.
- [10] In result, as the orders under which the properties were sold are silent as to costs, there is no basis on which the petitioners can claim party/party costs with respect to these two sales. The petitioners' claims for costs arising from those two sales must be, and are, dismissed.
- "Master Vos"

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