

CANADA / JUDGMENT

Winfield v. Lomas

2008 BCSC 1671

COURT

Supreme Court of British Columbia

DECIDED

20 August 2008

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2008 BCSC 1671 Winfield v. Lomas IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Winfield v. Lomas, 2008 BCSC 1671 Date: 20080820 Docket: 05 1022 Registry: Victoria Between: Janice Winfield Plaintiff And Timothy Vernon Lomas Defendant Before: The Honourable Mr. Justice Kelleher Oral Reasons for Judgment In Chambers August 20, 2008 Counsel for the Plaintiff: R. Gill Counsel for the Defendant: R. Warburton Place of Hearing: Victoria, B.C.

- [1] THE COURT: This is an application under Rule 53(6) of the Rules of Court for an order setting aside a decision of the registrar.
- [2] The facts are somewhat unusual. The plaintiff brought action for damages for assault. The plaintiff and defendant were in a common-law relationship until January 2005, when one of the assaults allegedly took place.
- [3] The parties reached a settlement that was reflected in a consent order. Under the terms of the consent order, the defendant is to pay to the plaintiff \$75,000 plus costs as damages for assault. The consent order was entered into on August 21, 2006.
- [4] On September 16, 2006, the defendant made an assignment in bankruptcy. He was discharged on January 4, 2008.
- [5] On April 25, 2008, Madam Justice Dickson ruled that the consent order was not released by the discharge. She ruled this was an award of damages by a court in civil proceedings in respect of bodily harm intentionally inflicted within the meaning of s. 178(1)(a.1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.
- [6] The plaintiff then issued a subpoena to debtor. The matter was heard on May 5, 2008. The registrar ordered payments on the debt of \$100 per month, delivery of 12 post-dated cheques, and gave the plaintiff liberty to apply in six months. The plaintiff appeals from that ruling.
- [7] Counsel for the plaintiff argues that this is tantamount to a final order and this should be treated as a re-hearing.

- [8] Generally speaking, if a decision of the registrar under appeal is a final order, the appeal proceeds by way of re-hearing. If it is not a final order, the decision can be overturned only if it is found to be clearly wrong: see *Abermin Corporation v. Granges Exploration Ltd.* (1990), 45 B.C.L.R. (2d) 188 at 192-93, 20 A.C.W.S. (3d) 944 (S.C.).
- [9] I conclude that this ruling is interlocutory. It is not a final disposition. The plaintiff is entitled to make a new application in six months. The test, then, is whether it is clearly wrong.
- [10] Rulings such as the one before me are entitled to a high degree of deference. Registrars bring considerable experience and ability to their task. They see many of these cases. The breadth and depth of their experience must be recognized.
- [11] In *Frost v. Frost* (1940), 56 B.C.R. 30, [1941] 1 D.L.R. 774 (C.A.), the Court of Appeal explained the rationale for this. Mr. Justice McDonald said at 33 (B.C.R.): The rule that a judge should not override a registrar except on a matter of principle has never been due to any jurisdictional restriction; it is simply a rule of policy and good sense, adopted because registrars can go into details better than can judges.
- [12] This is as sensible an approach today as it was 68 years ago.
- [13] The exceptions to which the Court of Appeal refers are matters of principle. This is what concerns me here. The registrar's decision makes no reference to the fact that this judgment is one of those exceptional judgments which Parliament has decided is not released by an order of discharge.
- [14] In my view, in the case of such an exceptional judgment, and in the absence of extraordinary circumstances, the monthly payment ordered should at least exceed the monthly interest accruing on the judgment. \$100 per month is far below the monthly interest on the judgment. In other words, Parliament has decided that this is one of those exceptional judgments which should be paid notwithstanding a bankruptcy. The effect of the decision under appeal is that the judgment is not being retired. That requires addressing.
- [15] The defendant provided a budget to the registrar, which is before me. He has income from employment with the Government of British Columbia of \$2,563 per month. He pays rent of \$870. He has no dependents. He has no debts other than liabilities which he has incurred to legal counsel for these ongoing proceedings.
- [16] Given the nature of the judgment, I conclude that it is appropriate to require payments of \$400 per month. The financial circumstances of the defendant do not appear to permit more.
- [17] Both parties have leave to apply to the registrar in six months to have this matter reviewed regardless of a change in circumstances.
- [18] The plaintiff is entitled to the costs of this application.

- [19] MR. GILL: Just for clarification, My Lord, would that \$400, I'm not sure if you intended that to be retroactive to the date of the registrar's hearing or should that start on the 1st of September?
- [20] THE COURT: No, it should start on the 1st of September.
- [21] MR. GILL: Okay. And then the liberty to apply would be six months after the 1st of September?
- [22] THE COURT: Yes, that is right.
- [23] MR. GILL: Thank you, My Lord.
- [24] THE COURT: Yes, thank you. Is there anything further?
- [25] MR. GILL: No, thank you, My Lord.
- [26] MR. WARBURTON: No, My Lord. Thank you.
- [27] MR. WARBURTON: Oh, My Lord, my friend and I did discuss the prospect of costs of today simply being added to the amount outstanding as far as a calculation between the parties.
- [28] MR. GILL: I think that's inevitable.
- [29] THE COURT: I think it is too.
- [30] MR. WARBURTON: Not being paid forthwith.
- [31] THE COURT: Yes.
- [32] MR. WARBURTON: Thank you, My Lord. "Mr. Justice Kelleher"

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