
CANADA / JUDGMENT

Zonruiter v. Matthews

2020 BCSC 568

COURT

Supreme Court of British Columbia

DECIDED

14 April 2020

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2020 BCSC 568 Zonruiter v. Matthews

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zonruiter v. Matthews,

2020 BCSC 568

Date: 20200414

Docket: 55020

Registry: Kamloops

Between:

Rebecca May Zonruiter

Claimant

And

Russell Vern Matthews

Respondent

Before: The Honourable Mr. Justice Marchand

Reasons for Judgment

Counsel for the Claimant:

R. Lammers

Appearing on his own behalf:

R.V. Matthews

Place and Date of Trial:

Kamloops, B.C.

March 9-12, 2020

Place and Date of Judgment:

Kamloops, B.C.

April 14, 2020

Introduction

- [1] Rebecca May Zonruiter and Russell Vern Matthews began living together in January 2013, were married on September 21, 2013 and separated in December 2015. They have one child together, Aiden, who is almost five years old.
- [2] When the parties were together, they lived in Lloydminster, Alberta. Following their separation, Ms. Zonruiter moved with Aiden to British Columbia. Since then, the parties have been involved in a mediation/arbitration process in Alberta as well as litigation in Alberta and British Columbia. Mr. Matthews moved to British Columbia in 2017.
- [3] On March 19, 2020, I issued written reasons for judgment dealing with parenting, conduct and child support issues that I considered to be pressing. I needed more time to deal with an issue that was not as pressing, namely the enforceability in British Columbia of costs awards made in favour of Ms. Zonruiter by the arbitrator in Alberta. These are my reasons with respect to the enforceability issue.

Background

- [4] The general background is summarized in my earlier reasons for judgment, which are now published at 2020 BCSC 417. I will not repeat that background in these reasons. I will, however, provide some additional details regarding the arbitration agreement entered by the parties and the costs awards made by the arbitrator.

The Arbitration Agreement

- [5] The parties entered an arbitration agreement on July 4, 2016. Both were represented at the time and received independent legal advice before signing it. The arbitration agreement was expressly entered into pursuant to s. 5 of the Arbitration Act, R.S.A. 2000, c. A-43 [Alberta Arbitration Act].
- [6] Under s. 2.1 of the arbitration agreement, the parties waived any right to further litigate custody, parenting, child support and property issues under various pieces of Alberta and federal legislation, including the Alberta Family Law Act, S.A. 2003, c. F-4.5 [Alberta FLA] and the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp).

- [7] Under s. 2.2 of the arbitration agreement, with specified exceptions, the parties agreed that the arbitration agreement "shall prevail and override" the Alberta Arbitration Act.
- [8] Under s. 2.3 of the arbitration agreement, nothing in the arbitration agreement impairs "any enforcement rights that a party may have through the courts or otherwise."
- [9] Section 6.1 of the arbitration agreement gave the parties a choice of having the arbitration conducted in accordance with the law of Alberta (and the law of Canada as it applies in Alberta), or the law of another Canadian jurisdiction (and the law of Canada as it applies in that other jurisdiction). The parties did not indicate their selection of jurisdiction, but the course of proceedings and the arbitrator's decisions make clear that the arbitration was conducted in accordance with the law of Alberta.
- [10] Subject to certain exceptions, under s. 16.1 of the arbitration agreement, all awards made by the arbitrator are binding on the parties and "may be incorporated into a consent order of the Court of Queen's Bench of Alberta". Further, "either party may apply for the enforcement of any award."
- [11] Section 17.1 of the arbitration agreement indicates that the parties "agree to enter into a Consent Order incorporating the terms of the award (made by the arbitrator) so that an application under the (Alberta Arbitration) Act to enforce the award will not be necessary."
- [12] The arbitration agreement contains a great number of other terms dealing principally with procedural matters. It is generally silent with respect to costs. Sections 18.1 and 18.2 are the only provisions dealing with costs. Collectively, they provide that a party having to take unnecessary steps to enter a consent or enforcement order may be entitled to their costs of doing so on a solicitor-client basis.

The Costs Awards

- [13] In a costs award issued on March 2, 2017, the arbitrator found that Ms. Zonruiter had been the substantially successful party with respect to the substantive awards made by the arbitrator on July 28 and December 30, 2016. As a result, the arbitrator awarded Ms. Zonruiter costs "on Column 2 of Schedule C of the Alberta Rules of Court" in the total amount of \$6,875 plus reasonable disbursements. The arbitrator also awarded Ms. Zonruiter some recovery of the arbitrator's fees for the related hearings and awards by requiring Mr. Matthews to be responsible for two thirds of the arbitrator's fees in respect of those hearings and awards.
- [14] Following the March 2, 2017 costs award, the parties were unable to agree on the total costs awarded to Ms. Zonruiter. In a supplemental costs award issued on May 8, 2017, the arbitrator found that the costs payable by Mr. Matthews to Ms. Zonruiter totalled \$12,191.12, inclusive of fees, disbursements, other charges and taxes.

- [15] Within these proceedings, on September 26, 2017, Ms. Zonruiter filed the arbitration awards made in Alberta, including the costs awards, by requisition.

Ms. Zonruiter's Position

- [16] Ms. Zonruiter highlights that the Arbitration Act, R.S.B.C. 1996, c. 55 [BC Arbitration Act] defines "dispute" to include "family law dispute" and provides that "family law dispute" has the same meaning as in the Family Law Act, S.B.C. 2011, c. 25 [BC FLA]. Ms. Zonruiter then submits that "family law dispute" is defined so broadly in the BC FLA that such disputes are not limited to those that occur in British Columbia. Ms. Zonruiter notes that under s. 29 of the BC Arbitration Act, leave of the court is not required to enforce an arbitration award made in respect of a family law dispute.
- [17] Ms. Zonruiter also relies on the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFRs]. The SCFRs define "arbitration award" to mean an award within the meaning of the BC Arbitration Act made in respect of a family law dispute. The SCFRs also define "family law case" to include a proceeding started by the filing of a requisition and arbitration award under Rule 2-1.2. Further, Rule 10-5 empowers the court to enforce arbitration awards filed under Rule 2-1.2.
- [18] Tying all of this together, Ms. Zonruiter submits that the Alberta arbitration costs awards are awards made in respect of a "family law dispute" under the BC FLA and are, therefore, enforceable under s. 29 of the BC Arbitration Act, without leave of the court. Ms. Zonruiter submits that the costs awards have been filed by requisition and are, therefore, enforceable under the SCFRs.

Analysis

- [19] At a high level, the parties entered a contract in Alberta that empowered the arbitrator to resolve their dispute and award costs in appropriate circumstances.[1] Mr. Matthews should be held responsible for the costs awards made and the court in British Columbia should assist. The only issue is how.
- [20] After working through the legislation and SCFRs, I have concluded that the process for enforcing the Alberta arbitration costs awards is not the one advanced by Ms. Zonruiter. In my respectful view, the flaw in the process advanced by Ms. Zonruiter is the breadth of the definition she advances for the term "family law dispute" under the BC FLA.
- [21] As noted by Ms. Zonruiter, "family law dispute" is defined very broadly in the BC FLA. To be specific, it is defined to mean "a dispute respecting a matter to which this Act relates". On Ms. Zonruiter's interpretation, the BC FLA would apply to family disputes arising anywhere in the world relating to parenting issues, property division, child support, spousal support, children's property and protection from family violence, including those arising in non-reciprocating jurisdictions.

- [22] In my respectful view, such a broad interpretation presents a host of concerns, including that the courts in British Columbia could be used to enforce awards made in foreign jurisdictions which have regressive laws and/or do not abide by the rule of law.
- [23] I do not consider it necessary or appropriate to try to define the full scope of the term "family law dispute" in the BC FLA in the context of the parties' dispute regarding the costs of their Alberta arbitration process. It is sufficient for me to simply find that the parties' dispute over those costs is a dispute respecting a matter related to the laws of Alberta, not British Columbia. As a result, Ms. Zonruiter may not rely on s. 29 of the BC Arbitration Act or Rule 10-5 to enforce the Alberta arbitration costs awards.
- [24] My interpretation is buttressed by differences in the language used in arbitration legislation across the country. In particular, I note that the arbitration legislation in provinces such as Alberta and Ontario includes terms that expressly permit the enforcement of arbitration awards made "elsewhere in Canada".[2] Though not applicable to family law disputes, a similar provision will be included in new arbitration legislation in British Columbia that has received Royal Assent but has not been brought into force.[3] If the legislative assembly wished to provide a similar avenue for the enforcement in British Columbia of family law arbitration awards made "elsewhere in Canada", the legislation would surely expressly reflect that.
- [25] Fortunately, the broad interpretation advanced by Ms. Zonruiter is unnecessary - because there is already a fairly straightforward process in place for Ms. Zonruiter to enforce her costs awards.
- [26] The arbitration agreement contemplates the parties filing consent orders with respect to any awards made by the arbitrator, including, in my view, the arbitrator's costs awards. If Mr. Matthews does not cooperate with respect to the filing of a consent order regarding the costs awards, the arbitration agreement and s. 49 of the Alberta Arbitration Act enable Ms. Zonruiter to apply to enforce the costs awards.
- [27] Once the parties have filed a consent order or Ms. Zonruiter has obtained judgment on the costs awards in Alberta, Ms. Zonruiter can follow the usual procedure for registering and enforcing a judgment from Alberta under Part 2 of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 [COEA].[4]

Conclusion

- [28] I must dismiss Ms. Zonruiter's application to enforce the Alberta arbitrator's costs awards directly within this proceeding. Ms. Zonruiter must follow the usual procedure of obtaining a judgment in Alberta and then enforcing it under the COEA.

[29] I encourage Mr. Matthews to cooperate by signing a consent order respecting the costs awards as contemplated by the arbitration agreement. If he fails to do so, there could be further cost consequences associated with any steps Ms. Zonruiter will otherwise be forced to take to obtain a judgment in Alberta.

"L.S. Marchand J."

MARCHAND J.

[1] Section 53 of the Alberta Arbitration Act empowers arbitrators to award costs to a party.

[2] See Alberta Arbitration Act, s. 49(1) and Arbitration Act, S.O. 1991, c. 17, s. 50(1).

[3] See Arbitration Act, S.B.C. 2020, c. 2, s. 61.

[4] Alberta is a "reciprocating state" under s. 37 of the COEA.

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