IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Harding v. Harding,*
2024 BCSC 1091

Date: 20240621
Docket: S18939
Registry: Smithers

Between:

Earnest Adrian Harding and Sheila Gayle Ellen Harding

Plaintiffs

And

James Ernest Harding, Mica Dione Harding and The Royal Bank of Canada

Defendants

Before: The Honourable Madam Justice Watchuk

Reasons for Judgment on Costs

Counsel for the Plaintiffs:	L.J. Perry
Counsel for the Defendant, James Ernest Harding:	R. Hill
Counsel for the Defendant, Mica Dione Harding:	I. Lawson
Written Submissions of the Defendant, James Ernest Harding:	May 24, 2024
Written Submissions of the Defendant, Mica Dione Harding:	May 28, 2024
Place and Date of Judgment:	Smithers, B.C. June 21, 2024

Introduction

[1] In this multi-party litigation, one of the actions, the within action, concerned property issues between the parents, the plaintiffs, Earnest Adrian Harding and Sheila Gayle Ellen Harding, their son, the defendant, James Ernest Harding, and his former wife, the defendant, Mica Dion Harding (the "Property Action").

[2] In these reasons, I will refer to all the parties by their first names in order to minimize confusion, as they all have the same last name. In doing so, I intend no disrespect. I will also refer to the plaintiffs, Earnest and Sheila, collectively as the "parents" or the "plaintiffs". As James is referred to as "Jim" by his family, I will use that name.

[3] There was also a family action (Smithers Registry Action No. 18791) between Jim and Mica which was joined for trial and heard at the same time.

[4] In the family action, Jim and Mica agreed that no costs were to be awarded to either of them.

[5] In the Property Action, it is agreed amongst all parties that the plaintiffs, as the successful parties, are entitled to their costs.

[6] The only costs issue is the apportionment of costs between Jim and Mica in the Property Action. Jim submits that he should pay a lesser amount of costs, specifically 30%, than Mica, who he says should pay 70%.

Discussion

[7] In my February 6, 2024 reasons for judgment (indexed at 2024 BCSC 185), I summarized the actions and parties:

> [1] These two actions, heard together, concern two generations of a family and two properties in the Smithers, BC area. Action No. 18791 is a family case between Mica and James Harding. Action No. 18939 is a civil case brought by James's parents, Earnest and Gayle Harding, against James, Mica and the Royal Bank of Canada ("RBC"). The case against RBC was dismissed by consent prior to the trial. The two properties are known as the Telkwa Property and the Babine Lake Property.

[8] Jim submits that Mica's counterclaim—seeking that the 2004 transfer of the Telkwa Property (one of the two properties in Smithers) from Jim to the plaintiffs be set aside as either a fraudulent conveyance or pursuant to s. 97 of the *Family Law Act*, S.B.C. 2011, c. 25—and her allegation that the *Limitation Act*, S.B.C. 2012, c. 13 was a complete bar to all of the plaintiffs' claims were separate and discreet issues upon which Mica was unsuccessful at trial. Jim further submits that the inclusion of these issues in the trial increased the length of the trial.

[9] In support of his position, Jim relies on *Sutherland v. The Attorney General of Canada*, 2008 BCCA 27 at paras. 26 and 31. With all due respect, I do not agree that this case supports his position. In *Sutherland*, the issue of apportionment of costs and the application of what is now Rule 14-1(15) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 arose on appeal of the trial decision to apportion costs between the ultimately successful defendants and an ultimately unsuccessful plaintiff. In granting the appeal of the costs order, the Court of Appeal set aside the apportionment, awarded costs to the successful parties, and set out the law which is not in dispute.

[10] However, there is no authority submitted in which costs were apportioned as is sought here, between two defendants, Jim and Mica, both of whom were unsuccessful in the Property Action.

[11] Further, one of the requirements for the apportionment of costs is that the use of court time and the expenditure of resources must be taken into account. As set out in *Sutherland*:

> [19] The learned trial judge found that this was an appropriate case to apportion costs under Rule 57(15), quoted above at para. 8. The judge held that there were three fundamental criteria to consider in a decision to apportion costs, namely:
>
> (1) there must be separate or distinct issues clearly delineated;
>
> (2) the use of court time and the expenditure of resources must be taken into account;
>
> (3) the purpose of Rule 57(15) is to "effect a just result" between the parties.

[12] In that regard, Mica submits:

> 9. The same number of witnesses would have been heard whether or not these issues had been raised by Mica Harding. The history of dealings with the family home was evidence that the plaintiffs were required in any event to adduce in order to prove their case in trust – nothing was prolonged by Mica Harding having contested the plaintiffs' version of this history. The limitation defence did not in fact prolong the trial at all: it was purely a legal issue raised in argument at the conclusion of the case. The facts pleaded in the counterclaim are identical to the facts pleaded in Mica Harding's response to civil claim – no additional time was required to determine these facts.

[13] With regard to the trial time expended on the issues raised by Mica, I largely agree with her submissions. The case was not significantly unnecessarily prolonged through her conduct with respect to the issues she raised in the counterclaim and the limitation date issue. Further, the evidence on other issues between the parties overlapped with the issues in the counterclaim, thus requiring only minimal additional trial time. Therefore, the Court would not be in a position to assess, as is required, the basis to identify the time attributable to the trial of these issues.

[14] Finally, Mica put forth certain defences and positions in which Jim did not join. It is not without significance that had Mica been successful, Jim would have benefitted. For example, on the limitation date issue, the result may have been that neither Jim nor Mica were liable for maintenance expenses for the Babine Lake property, the other property in issue.

[15] In addition, for completeness, although it was not raised by the parties, as the issues in Mica's counterclaim were intertwined with the issues in the parents' claim, there will be no costs for the counterclaim: *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2017 BCCA 346 at para. 96.

Conclusion

[16] Taking into account the entirety of the circumstances of this trial, a just result is that Jim and Mica share equally the costs payable to the plaintiffs.

[17] The application to apportion costs between Jim and Mica is therefore dismissed. The plaintiffs are entitled to their costs at Scale B, payable jointly and severally by Jim and Mica.

"*The Honourable Madam Justice Watchuk*"