

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DANIEL ROSS EPP

Applicant

- and -

BERNADETTE BEAULIEU

Respondent

Application to enforce the terms of the separation agreement.

Heard at Yellowknife, NT: October 5, 2004

Reasons filed: January 07, 2005

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Appellant: Elaine Keenan Bengts
Respondent was Self-represented.

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REASONS FOR JUDGMENT

[1] The parties to these proceedings are husband and wife, having been married in 1990. They separated in July 2002. At that time they signed a separation agreement. In these proceedings the husband seeks to enforce the terms of the separation agreement. The wife resists this application submitting that the agreement is unconscionable and was signed by her under duress.

[2] The wife is self-represented in these proceedings. She sought and obtained a number of adjournments of the husband's application to allow her an opportunity to retain legal counsel. She has been unable to retain counsel, legal aid or otherwise.

[3] In these proceedings the wife's focus seems to be on the larger issue of the marriage, i.e. her allegations of the husband's abusive behaviour, cocaine use, infidelity, etc. At one point she filed an interlocutory motion seeking a compensation award "for pain and suffering caused by physical, psychological and financial abuse". The Court directed a trial of the issue, of the enforceability or binding nature of the separation agreement and of the wife's allegations of unconscionability and duress.

The trial has been held and these reasons and the Court's decision deal solely with the separation agreement. There is no other matter properly before the Court at this time.

[4] The separation agreement is dated July 22, 2002, and was drafted by the wife's lawyer Craig Haynes. In its preamble it states that the husband and the wife "wish to resolve and settle all issues relating to spousal support and division of matrimonial property", and also that each of them "acknowledge that neither is under any duress or undue influence of the other and that they are voluntarily entering into this agreement".

[5] There is a section of the agreement dealing with matrimonial property. At the time of separation the parties held the matrimonial home in their joint names. The agreement provides that the wife relinquishes her interest in the matrimonial home, and agrees to execute a formal transfer document in favour of the husband. The husband agrees to forthwith pay a lump sum of \$15,000 to the wife in settlement of matrimonial property. The husband agrees to take steps to have the wife's name removed from the mortgage documents and to save the wife harmless from the mortgage loan. If the husband is unable to get the wife's name off the mortgage documents within two years, the home is to be sold, with the mortgage loan being paid and the net proceeds going to the husband.

[6] The section of the agreement dealing with matrimonial property also provided that the wife would assume ownership of the family's 1996 Dodge Ram vehicle, and that the wife would take possession of an extensive list of personal property items which was set forth in an appendix to the agreement. The husband was also to forthwith pay additional funds to the wife towards her cellular phone expenses.

[7] The agreement contains the usual provisions regarding its finality, and it being a complete defence to any subsequent action brought with respect to property. Each of the husband and wife releases the other from any claim arising out of their relationship as husband and wife.

[8] In the context of the wife's present allegations of unconscionability and duress, it is noteworthy that appended to the separation agreement is a Certificate of Independent Legal Advice signed by the wife's solicitor Craig Haynes and dated July 22, 2002, worded as follows:

I Craig S. Haynes, of the City of Yellowknife in the Northwest Territories, Barrister and Solicitor, do hereby certify:

That I was this day consulted in my professional capacity by Bernadette Beaulieu named in the within instrument, being a Separation Agreement and executed by her on the 22nd day of July 2002, as to her legal rights and liabilities under the terms and conditions of the same, and I acted solely for Bernadette Beaulieu and explained to her the nature and effect of the Separation Agreement, and she did execute the same of her own volition and without any fear, threat, compulsion or influence from any other person.

[1] The husband paid the \$15,000 to the wife on July 22, 2002, via her solicitor. Within a week or two, the wife left Yellowknife and moved to Saskatchewan and has been living there since that time. Apparently at that time she did not execute a formal transfer document regarding her interest in the matrimonial home.

[2] In due course the husband listed the matrimonial home for sale. In June 2003, he accepted an offer to purchase. Formal transfer documents were sent to the wife to execute but she refused to sign unless she received a share of the proceeds. Eventually there was agreement to allow the transaction to proceed on the basis that the sale proceeds would be held in trust by real estate solicitors pending resolution. The transaction closed in November 2003. The real estate solicitors are holding the net proceeds (after payment of the mortgage and other costs) of \$61,663 in trust pending direction from the Court.

[3] A few years prior to separation the husband and the wife had listed the matrimonial property for sale. The listing price was \$149,900. The mortgage balance was approximately \$120,000; there was thus a potential equity of \$30,000. However, there were no acceptable offers received.

[4] The husband testified that during the discussions at the time of separation he initially offered to sell his one-half interest in the matrimonial home to the wife but she said no. He then suggested they sell the home and divide the proceeds equally but she said no. He says she wanted him to purchase her one-half interest. He says they used the estimated equity value of \$30,000 in arriving at the \$15,000 lump sum figure

stated in the separation agreement. He also says he borrowed the \$15,000 in order to make the lump sum payment in July 2002.

[5] On the face of the July 22, 2002 separation agreement, it cannot be said to be unconscionable or unfair. If the parties were of the opinion that there was \$30,000 equity in the matrimonial home, the terms of the agreement appear fair and reasonable.

[6] It is the husband's evidence that he only met Mr. Haynes, his wife's lawyer, the day he went to Mr. Haynes' office to sign the agreement. He states that at one point, his wife and Mr. Haynes left the room and conferred privately, and when they came back the agreement was signed.

[7] The husband says he listed the home for sale with a real estate agent in February 2003. There is evidence that renovations were done to the home between July 2002 and February 2003. The real estate agent set the listing price at \$214,000. This listing price was lowered three or four times over the ensuing months, and the eventual sale price was \$186,000.

[8] The Respondent, Bernadette Beaulieu testified at the trial and much of her testimony concerned her unhappiness with the deterioration of her marriage in the last few years prior to separation, and other matters regarding the marriage which are not relevant to the subject matter of these proceedings, i.e., the separation agreement. Ms. Beaulieu had a responsible position with the Territorial Government for 13 years and then she left that employment to start her own business. Her business included fashion designing and sewing contracts and by her own evidence was a successful business.

[9] Ms. Beaulieu presents as a fairly bright and articulate witness. She gives some internally inconsistent evidence with respect to the preparation and execution of the separation agreement. However, taking her evidence as a whole, I am satisfied that at the time of signing the agreement she understood the agreement and signed it voluntarily. On a friend's recommendation, she contacted lawyer Bruce Thompson and consulted with him regarding a separation agreement. Mr. Thompson eventually turned her over to another lawyer, Craig Haynes, and then she consulted Mr. Haynes about a separation agreement. She gave Mr. Haynes notes of her discussions with her husband regarding the proposed separation agreement. She says in their discussions

they agreed that everything should be split fifty-fifty. The certificate of Mr. Haynes and the whole of the evidence belies her submission that she was unduly influenced or coerced into signing the agreement. Mr. Haynes was not called as a witness at trial.

[10] I am satisfied on the evidence that in July 2002, Ms. Beaulieu negotiated a separation agreement with her husband and achieved the agreement she wanted. She benefited from the fruits of that agreement — the immediate \$15,000 lump sum payment, the furniture and other personal property items, etc. — and cannot now attempt to negotiate a different agreement or seek a Court - directed division of matrimonial property.

[11] I find that in the spring and summer of 2002, Ms. Beaulieu was unhappy and depressed at the collapse of her marriage to Mr. Epp, and that she was on medication for her depression. However, I am satisfied on the evidence that her condition did not affect her understanding of the negotiated separation agreement, or her voluntary signing of that agreement on July 22, 2002.

[12] Ms. Beaulieu made the agreement willingly. In these proceedings her husband merely asks that she be bound by the agreement. In my view, in considering the evidence in this case, there is no reason why the parties should not be bound by their agreement. A Court should respect private arrangements that are made by spouses for the division of their property upon marriage dissolution especially where those arrangements are documented with the assistance of independent legal counsel. See the recent decision of the Supreme Court of Canada in *Hartshorne v. Hartshorne* 2004 SCC 22.

[13] By paragraph 3.10 of the separation agreement the parties expressly acknowledge that it is a domestic contract within the ambit of the *Family Law Act*, S.N.W.T. 1997, ch.18. That statute states when a Court can set aside such a contract:

s.8(4) A court may, on application, set aside a domestic contract or a provision in it

- (a) where a party failed to disclose to the other party significant assets, or significant debts or other liabilities, existing when the domestic contract or provision was made;

- (b) where a party did not understand the nature or consequences of the domestic contract or provision; or
- (c) otherwise in accordance with the law of contract.

[14] Neither circumstance (a) nor circumstance (b) are present in this case. Also, there exists no reason to set aside the separation agreement pursuant to the general law of contract.

[15] Ms. Beaulieu voluntarily entered into a reasonable agreement regarding matrimonial property. She now seeks to thwart Mr. Epp's access to the sale proceeds of the matrimonial home until she marshals together a compensation claim against him for pain and suffering endured by her during the marriage. To this end, she alleges duress and unconscionability. The whole of the evidence does not substantiate any allegation of unconscionability or duress in the preparation or execution of the separation agreement.

[16] For the forgoing reasons, I find there is merit in the husband's application. An order will issue directing that the proceeds of the sale of the matrimonial home shall be paid to the husband.

[17] In these proceedings the husband seeks solicitor-client costs. I will receive written submissions from the parties on the issue of solicitor-client costs. Ms. Keenan Bengts will file her written submissions and send a copy to Ms. Beaulieu, on or before January 31, 2005. Ms. Beaulieu will file her written submissions in response on or before February 15, 2005.

J.E. Richard,
J.S.C.

Dated at Yellowknife, NT
this 7 day of January 2005

Counsel for the Applicant: Elaine Keenan Bengts
The Respondent was self-represented

S-0001-CV2004000029

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