IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***S.D.G. v. J.A.W.***,
2008 BCSC 912

Date: 20081009
Docket: E063345
Registry: Vancouver

Between:

S.D.G.

Plaintiff

And

J.A.W.

Defendant

And

B.D.G. and P.D.G.

Defendants by Counterclaim

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

Counsel for plaintiff	A.E. Thiele
Counsel for defendant/plaintiff by counterclaim	S. Foo
Counsel for defendants by counterclaim	C.M. Courtenay
Date and Place of Trial:	September 8, 9, 10, 11, 12, 23 and 24, 3008 Vancouver, B.C.

[1] The plaintiff, S.D.G. (“Ms. G.”), seeks sole custody and sole guardianship of the child of her former relationship with the defendant, J.A.W. (“Mr. W.”). The summary of relief sought makes no statement as to the relief she seeks with respect to access to the child by Mr. W. However, at the trial, much evidence was called by her to demonstrate that Mr. W. should not have access to the child. Mr. W. seeks joint custody and guardianship of the child, liberal unsupervised access or, at the least, supervised access. Mr. W. counterclaims against Ms. G. and her parents, B.D.G. (“Mrs. G.”) and P.D.G. (“Mr. G.”) for an interest in certain real property which he claims was formerly occupied as the matrimonial home. Ms. G. denies that it was occupied as a matrimonial home and all defendants by counterclaim deny that Mr. W. has any interest in the real property by virtue of any form of trust interest.

I. BACKGROUND

[2] Mr. W. became a tenant of Ms. G. at her then residence in North Vancouver in July 2000. They quickly became intimate and by August 2000, Ms. G. was pregnant. Thereafter, in approximately September or October 2000, at the invitation of Ms. G., Mr. W. moved out of the basement apartment he was occupying and into the residence of Ms. G. Their child, A.M.G. (“A.”) was born on May 31, 2001.

[3] At the time they commenced cohabitation, Ms. G. was working as a registered nurse while Mr. W. practised law as a part-time duty counsel who received some private criminal defence retainers as well. Ms. G. had recently separated from her former husband and had two children by that marriage. Mr. W.

acted as a father figure toward both of those children as well as his own after A.'s birth.

[4] The relationship between Ms. G. and Mr. W. was troubled almost from the start. Money, or rather the insufficiency of it, was a constant source of friction between them. The situation was exacerbated when, due to an injury, Ms. G. was off work for a considerable period of time. Mr. W. had health problems as well. He suffered from (and probably continues to suffer from) chronic dysthymia. During substantial periods of his relationship with Ms. G., Mr. W. suffered significant periods of depression such that he spent much time in bed.

[5] At one point while living in North Vancouver, the lives of Ms. G., Mr. W. and the children were complicated by the addition to the home of a friend and former client of Mr. W. who resided in the basement apartment. With the complicity of one or both of Ms. G. and Mr. W., the friend established a marijuana grow operation in the basement. Subsequently, premises were rented in Richmond for the expansion and continuance of this operation. Each of Ms. G. and Mr. W. point the finger at the other as being responsible for being in partnership with the friend with respect to this venture.

[6] It is the position of each of Ms. G. and Mr. W. that she or he was primarily responsible for the financial support of the family unit. Ms. G. says that, notwithstanding the period of time when she was off work (during which time, she says, she was on a form of compensation in any event) she was employed throughout most of the time that they lived in North Vancouver. She also says that

Mr. W.'s income was very sporadic although she concedes that he did contribute to the family pool of funds. On the other hand, it is Mr. W.'s position that he effectively worked two jobs to provide the financial resources required for the family and that there were extensive periods of time when Ms. G. was not working and unable to do so. He says that he did not pay his income tax for several years as a consequence of pouring everything he had into the family. This was in part because, in his view, Ms. G. was irresponsible with money and would spend more than they had such that their credit cards were "maxed out".

[7] Wherever the truth lies, the reality is that by 2002 it became abundantly evident that they could not afford to continue to make the first mortgage payments of over $1,800 a month. Consequently, they decided to seek a residence in a less expensive community. A home in Sechelt was identified which Ms. G. offered to purchase subject to the sale of her home in North Vancouver. However, neither Ms. G. nor Mr. W. was able to qualify for a mortgage. Ms. G. had a bad credit rating due, in part no doubt, to the frequency with which payments made on the first mortgage on the North Vancouver home had been in default. Mr. W. was unable to provide the financial information required by lenders because he had failed to file income tax returns for so many years.

[8] After the North Vancouver home had been sold, and within days of the date of closing due for the purchase of the home in Sechelt, Ms. G.'s parents came to the rescue. They had held a second mortgage on the North Vancouver home to secure about $30,000 they had originally advanced as half of the downpayment on that

home. Ms. G. had been unable to make even the nominal payments expected on that mortgage for principal only.

[9] Mrs. G. was understandably unwilling to put herself and her husband at financial risk by guaranteeing a mortgage to be taken out by Ms. G. The solution agreed upon between Ms. G. and her parents was that her parents would effectively take title to the home (with a 1/1000 interest being held by Ms. G. so that she could claim the homeowner's grant as a resident) and all three of them becoming mortgagors.

[10] It was expected by her parents that Ms. G. would be responsible for all of the mortgage payments and expenses connected with the home. Ms. G., Mr. W. and the three children moved into the home in Sechelt in February 2003. The pattern of financial distress continued, this time made more difficult by Ms. G.'s sometimes lack of employment. Although the mortgage payments were now a more affordable $1,008 a month, they were still unable to consistently make those payments.

[11] In the meantime, both parties had extramarital affairs that didn't add to the harmony of their relationship. Ultimately, Ms. G. asked Mr. W. to leave the matrimonial home, which he did in February 2005. At this time, Ms. G. wrote a cheque for $600 to pay for Mr. W.'s February rent as a way of getting him out of the house.

[12] Mr. W. then established a relationship with M.C. (Ms. C.") who also had two daughters by prior relationship(s). Mr. W. and Ms. C. then had a child ("P."), a girl.

[13] Initially, Ms. G. did not have much difficulty with Mr. W. having extensive access to A., even to the extent of that becoming a week on/week off parenting relationship between February and September 2006.

[14] However, in September 2006 access by Mr. W. to A. was abruptly ended as a consequence of A., who was then five years old, telling Ms. G. that he had seen an incident in which he alleged that Mr. W. had tied up the six-year-old daughter of Ms. C. and frightened her with a spider. The child apparently is terrified of spiders. Ms. G. contacted authorities and, ultimately, A. was interviewed as were the two daughters of Ms. C., both of whom related that the incident had occurred in a form similar to that described by A. Ultimately, Mr. W. was charged with assaulting and unlawfully confining the child. The trial was not held until early this year. On May 23, 2008, a provincial court judge acquitted Mr. W. of both charges following a trial in which all three children gave evidence in one form or another. Mr. W. also gave evidence in which he indicated that the child had become tangled in a rope by herself. That explanation the provincial court judge found to be “highly improbable” but on the test he was bound to apply in a criminal case found that it could reasonably be true. He also found that there was no reason to reject the evidence of A. He stated: “It is the evidence of a five-year-old boy doing the best he can to recollect something which occurred in his house.”

[15] In summary, I am left with the very firm impression upon reading the reasons of the provincial court judge that, had the trial before him been a civil one to be decided on the standard of a balance of probabilities, the result would have been very different.

[16] That said, this was not a trial to decide whether the incident described by A. involving his father occurred as he described it or not. I can say I am satisfied of one thing on all of the evidence before me: A. did not concoct the story that he told his mother.

[17] The real problem which now impacts on A.'s relationship (or lack of it) with Mr. W. is the fallout from this incident and A.'s concern with respect to his father's reaction and feelings towards him as consequence of his having reported what he honestly believes he saw and, thereafter, being required to give evidence with respect to it.

[18] In July and August 2007, A. was given a psychology assessment by the Child Protection Service Unit of the BC Children's Hospital at the request of his family physician and a Minister of Children and Family Development social worker. In a report dated September 10, 2007, psychologist, Sarina Kot ("Dr. Kot"), concluded that A. was suffering from post traumatic stress symptoms and had a strong fear about any contact with Mr. W. She noted that while supervision of any access of Mr. W. to A. would address A.'s physical safety, it would be insufficient to ensure his "emotional safety". She stated, in part:

> [A.] needs to be protected from emotional harm so that he does not suffer more serious Post Traumatic Stress symptoms. He also needs protection from potential physical harm.
>
> When decisions are to be made regarding custody and access, assessment findings contained in this report should be reviewed as they provide important information on [A.'s] perspective and his safety needs. Please note that this is not a custody and access assessment but a social-emotional assessment on a child.

> In making any decisions regarding [A.'s] future contact with his father, it is important to consider the complexity of this case. The primary focus should be protection of a young and brave witness of crime. When considered in this light, it is easy to understand that a witness of crime would not normally be ordered to spend time with the accused in a social context, especially when the witness has expressed fear of the accused's plan of retaliation.

[19] Dr. Kot's assessment took place, of course, over one year ago before the trial involving the incident that A. had reported. Further, as noted by Dr. Kot, her assessment was with respect to A.'s social-emotional health and was not with respect to custody and access.

[20] During the course of this trial, Mr. W. played excerpts of certain telephone conversations he had had with A. During the playing of those recordings in the courtroom, Mr. W. displayed much emotion leading his counsel to suggest in argument that this demonstrated Mr. W.'s strong emotional attachment to, and love for, the child. I have no difficulty in accepting those submissions.

[21] My notes of those conversations, which took place in October and December 2006, indicate that the conversations were in many respects innocuous but in some respects subtly manipulative by Mr. W. of A. In one portion (hinting that the present of a puppy was ready and waiting for him if only A. could come to see him) Mr. W. was very manipulative. He also asked questions that, in my view, were not fair to put to a child such as who did A. think loved him more, Mr. W. or the man with whom Ms. G. had by then established a new spousal relationship (that relationship continues). I was left with the impression that Mr. W. really did not appreciate the potential impact on a young child of the type of questions he was putting to him.

[22] Mr. W. has since separated from Ms. C. and there are, apparently, ongoing court proceedings with respect to the custody of and Mr. W.'s access to, their child, P.

[23] Mrs. G. introduced into evidence a one-page typed letter addressed to Mr. G. that I am satisfied was authored by Mr. W. and placed on the vehicle of Mr. and Mrs. G. while in a store parking lot. It is not exaggerating to describe this foul invective as a poison pen letter. It certainly demonstrates (as does the evidence in this trial) the hate that Mr. W. harbours for both of Ms. G.'s parents. I should add that it is evident from the evidence I heard that he also has deep animosity toward Ms. G. as well.

[24] Mr. John Spence, a friend of Mr. W.'s, gave evidence of his having observed a close and loving relationship between Mr. W. and A. when Mr. W. was still exercising access to A. Further, he spoke of the warm relationship that Mr. W. continues to enjoy with Mr. Spence's own children.

[25] B.M-J. ("Dr. M-J.") gave evidence on behalf of Ms. G. He said that they commenced a relationship in 2005 and that Ms. G. and A. moved into his home about one year later. He described a period when A. pulled out almost all of his eyelashes (although he did not offer any medical opinion as to whether this was due to anxiety). In these circumstances, I observe that it is hard to believe that it would be for any other reason. He has a good father-like relationship with A. and intends to marry Ms. G.

[26] Ms. C. gave evidence that, during her relationship with Mr. W., she found that he would manipulate the children by telling them that certain things were their fault.

For example, he would tell them that they had made him sick and thus he had to sleep when in fact he took a lot of medications and slept as a consequence.

[27] As noted above, at the present time, A. lives with Ms. G. and Dr. M-J. in a home in which he also has a relationship with his two half-sisters. On the other hand, it is evident that he has no access to or relationship with his half-sister, P.

[28] As Ms. G. and her three children are now living with Dr. M-J. in his home, it was not made clear to me in the evidence what has become of the Sechelt residence. In any event, its present status is immaterial to the issues that I have to decide on this trial, including what interest, if any, Mr. W. has in that home.

II. DISCUSSION

1. Custody and Access

[29] Section 24 of the ***Family Relations Act***, R.S.B.C. 1996, c. 128 (the "Act") provides:

> (1) When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:
>
> > (a) the health and emotional well being of the child including any special needs for care and treatment;
> >
> > (b) if appropriate, the views of the child;
> >
> > (c) the love, affection and similar ties that exist between the child and other persons;
> >
> > (d) education and training for the child;

> (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.
>
> (1.1) The references to "other persons" in subsection (1) (c) and to "each person" in subsection (1) (e) include parents, grandparents, other relatives of the child and persons who are not relatives of the child.
>
> (2) If the guardianship of the estate of a child is at issue, a court must consider as an additional factor the material well being of the child.
>
> (3) If the conduct of a person does not substantially affect a factor set out in subsection (1) or (2), the court must not consider that conduct in a proceeding respecting an order under this Part.
>
> (4) If under subsection (3) the conduct of a person may be considered by a court, the court must consider the conduct only to the extent that the conduct affects a factor set out in subsection (1) or (2).

[30] In this case, the most significant issue is the emotional wellbeing of A. It is clear from Dr. Kot's assessment of A. that the provision of even supervised access, while adequate for providing for A.'s physical safety, would not provide for the protection of his emotional wellbeing. I am concerned, of course, that Dr. Kot's report is one year old and that a significant event, the criminal trial involving Mr. W., is now over. Notwithstanding those concerns, however, I have to say that the overwhelming force of the evidence in this case is that, for the foreseeable future, Mr. W. should not have access to A. in the interest of safeguarding A.'s emotional health. I am satisfied that A. is still fearful of Mr. W. as a consequence of his fear of blame he believes is directed to him by Mr. W. for his role in telling the authorities what he saw happen between Mr. W. and Ms. C.'s six-year-old daughter. I saw nothing in the character displayed by Mr. W. in the many days he gave evidence during this trial that would lead me to a level of comfort that Mr. W. will be able to

provide an emotionally secure environment for A., free of any form of retribution or blame for what has occurred.

[31] At some point in time, it is likely that A. will be sufficiently mature and secure to face re-establishing a relationship with Mr. W. I cannot say when that will occur but undoubtedly it will not be any time soon. A. should be permitted to get on with his life, now that the trial of earlier this year is behind him, without the fear of having to face his father until he is emotionally ready to do so. I would expect that there should be a medical opinion in that regard but A. should not have to face even that sort of analysis for the foreseeable future. He clearly needs time to heal emotionally.

[32] Undoubtedly, the relationship with both his or her parents is important for any child. That is why, in proceedings of this sort, there is a strong prejudice in favour of fostering that relationship with both parents in recognition of the fact that it is normally in the interest of the child to have that relationship.

[33] In this case, it is undoubtedly in Mr. W.'s interest to have a relationship with the child he clearly loves. However, it is Mr. W. who is responsible for the events that led the child to have the emotional difficulties he does with respect to Mr. W. It is no one other than Mr. W. who must take responsibility for what started events on their unfortunate path to where they led today. Hopefully, at some time in the future, he will have an opportunity to make amends and rebuild his relationship with A. When that will be, only time will tell.

[34] Cases such as ***Chapman v. Chapman***, [1993] B.C.J. No. 316, a decision of Mr. Justice Brenner, as he then was, and my own decision in ***S.K.K. v. D.J.K.***

(1995), 15 R.F.L. (4th) 90, [1995] B.C.J. No. 1272, , support this conclusion in my view.

[35] Further, the level of animosity exhibited toward Ms. G. and her parents by Mr. W. in these proceedings is yet another reason for me to have real concern for putting A. in a situation where he may be exposed to the manipulative behaviour of Mr. W. and commentary by him with respect to Ms. G. and her parents. A. does not need that at this time or at any time. I do not have the confidence that Mr. W. really appreciates the effect of his actions on others, particularly A.

[36] For these reasons, I would award sole custody of A. to Ms. G. with no access by Mr. W. to A. until further court order or until consented to by Ms. G. with the benefit of medical opinion confirming the appropriateness of such access in light of A.'S physical and emotional wellbeing. However, Ms. G. should provide to Mr. W., in a timely way, information on A.'s schooling and any serious health issues that may arise.

2. Counterclaim Respecting Sechelt Property

[37] Mr. W. advances a claim for an interest in the Sechelt property in the following terms:

> b) A declaration that the plaintiff and defendants by counterclaim hold the property situated at […], Sechelt, B.C.
>
> [legal description]
>
> in trust for the defendant pursuant to:
>
> (i) an express trust

(ii) in the alternative, a constructive trust
(iii) in the alternative, a resulting trust

[38] As I understood his evidence, the theory of Mr. W.'s trust claim is as follows: he made substantial financial contributions, including mortgage payments, while living in a marriage-like relationship in North Vancouver with Ms. G and, as well, provided the labour to maintain and improve the property. Thus, he contributed to the equity that was ultimately realized from the sale of that property, which was used in part to provide the downpayment on the Sechelt property and in part to provide some furnishings for it. The registration of the Sechelt property largely in the names of Mr. and Mrs. G. was simply a device to provide security for Mr. and Mrs. G. and, until he left the relationship in February 2005, he continued to contribute to family expenses, including the monthly mortgage payments on the Sechelt property.

[39] For her part, Ms. G., while grudgingly admitting that Mr. W. had in fact provided funds for the operation for the household, preferred to characterize Mr. W. as barely beyond the status of a tenant throughout their relationship and that, in any event, his financial contributions were so sporadic and insignificant in comparison to her more regular and substantial contributions as to be meaningless. Further, she and her parents indicated that the Sechelt home was now essentially that of her parents and that she would not have even held the 1/1000 interest had it not been for the suggestion of an advisor to her parents that such an interest was a good device in order for her to claim the homeowner's grant as a resident of the property.

[40] Mr. W.'s pleading of express trust, constructive trust and resulting trust without any particulars appears to be an example of what I would call shotgun pleading; putting forward every possibility in the hope that something will stick.

[41] First of all, let me say that there is absolutely no evidence of an express trust.

[42] Next, I turn to the question of whether there is evidence to support Mr. W.'s claim in resulting trust. At the root of such a claim is the necessity for the claimant to demonstrate that there was a common intention that property (in this case the Sechelt property) be acquired for the benefit of, in part, the claimant. That is, in the circumstances of this case, that there was a common intention of Mr. W. and Ms. G. that the Sechelt property be theirs even though, for financing reasons (or perhaps protection from creditor reasons), the largest share of the ownership of the property was registered in the names of Ms. G.'s parents. I have to say that I am not at all satisfied that the evidence establishes such a common intention. I am satisfied that the evidence establishes that it was intended by Ms. G. and her parents that the home be acquired by her and that the home be placed in the names of the parents, essentially in trust for Ms. G. (as noted by Mr. G. in his evidence), as a way of her parents having security for the fact that the purchase could never have been completed without their becoming either principals or cosigners of the mortgage. That is, had it not been for Mr. and Mrs. G., there would have been no Sechelt property as certainly Mr. W. was unable to provide the financial information necessary to support being given, or guaranteeing, a mortgage.

[43] That takes me, then, to the claim in constructive trust. Such a claim is founded on principles set out in the decisions of the Supreme Court of Canada in ***Peter v. Beblow***, [1993] 1 S.C.R. 980, and ***Pettkus v. Becker***, [1980] 2 S.C.R. 834. That is, can Mr. W. demonstrate that Ms. G. and her parents have been unjustly enriched by benefitting from his cohabitation with Ms. G. while he suffered a corresponding deprivation without a juristic reason?

[44] First of all, I am satisfied that Mr. W. and Ms. G. did live in a marriage-like relationship from late 2000 until late 2004 or early 2005. I have no doubt that Ms. G.'s invitation to Mr. W. to move upstairs once she discovered she was pregnant by him, was an invitation extended to him to live in a marriage-like relationship.

[45] I also find that it is probable that Mr. W. did do some work to maintain the North Vancouver residence but that such contributions were minimal in part due to his ongoing health issues and in part due to the fact that any real contributions were made not by him but by the friend he invited into the home and by Mr. G. in attempting to help his daughter maintain her property.

[46] Mr. W. has not established that any non-monetary contributions he made to his relationship with Ms. G. constituted a deprivation to him. In my view, they were inadequate to reach even a minimum threshold for being so characterized. In reality, in this relationship, Mr. W. probably got a lot more than he gave. That is, I conclude that most of the household chores were performed by Ms. G. or others, not by Mr. W., including cooking, cleaning and child rearing (although I do recognize that, with respect to the latter, he did make a contribution by caring for the children

and by acting as a father figure to them). Due to his sometime depression and other illnesses, Mr. W. was often incapacitated at which time virtually the entire burden of caring for and providing for the family fell on the shoulders of Ms. G.

[47] Although the evidence is conflicting and confusing on the issue of who made what financial contributions, I am satisfied that Mr. W. did make some financial contributions to the relationship which resulted in payments being made on the mortgages of each of the North Vancouver and Sechelt properties and in improvements such as the purchase of new doors for the North Vancouver property. I conclude, however, that the financial contributions of Ms. G. far outweighed those made by Mr. W.

[48] Thus, in the circumstances in this case, I consider that, on a "value received" analysis, although there was an enrichment of Ms. G. and a corresponding deprivation to Mr. W. by his monetary contributions, there was a juristic reason for the deprivation in the sense described in ***Thomas v. Fenton***, 2006 BCCA 299, 57 B.C.L.R. (4th) 204. In that case, Madam Justice Kirkpatrick, noted, at para. 25:

> In my opinion, the trial judge erred in failing to give adequate consideration to the benefits conferred on Mr. Thomas by Ms. Fenton. It is manifestly clear that Ms. Fenton bestowed far more on Mr. Thomas than he bestowed on her. Had the trial judge undertaken the requisite global analysis of the circumstances of these parties, I think he would have concluded that there was a juristic reason for Ms. Fenton's enrichment and that the claim for unjust enrichment could not succeed.

[49] One potential wrinkle to this approach arises from the change in the value of the North Vancouver home over the period of time that the parties cohabited in it. That home, of course, originally belonged to Ms. G. and her former spouse, Mr. F.

Ms. G.'s ownership interest in that home was acquired in part by her cashing in a retirement savings plan and in part by a $30,000 loan from her parents secured by way of a second mortgage. She was able to repay that second mortgage upon the sale of the North Vancouver home and had sufficient equity remaining to pay the full downpayment of $71,300 on the Sechelt property (as well as repay her parents for the $5,000 deposit) and to have additional funds available (approximately $25,000) for furnishings and living expenses. Thus, did the contributions made by Mr. W., even though substantially less than those made by Ms. G., in circumstances that would otherwise provide a juristic reason for his deprivation, nevertheless contribute to the value that survived from the North Vancouver property to be invested in the Sechelt property? In other words, is he helped by the inflation of the North Vancouver home's property value (there is really no evidence of any increase in the value of the Sechelt property)?

[50] Ms. G. established her relationship with Mr. W. for reasons that don't appear to be based on much more than the fact than she had become pregnant by him and ultimately had his child. Their cohabitation throughout was fraught with financial difficulties brought about not exclusively by Mr. W. but principally by him because of his erratic and unreliable earning capacity compounded by his ongoing physical and emotional health problems. I conclude, however, that Ms. G. likely would not have been able to pay the mortgage and other costs associated with the North Vancouver home (nor, later the Sechelt home) without the financial assistance of Mr. W. such as it was. Thus, on a "value survived" analysis, I find that he did make a contribution for which, without some monetary compensation, he would suffer a deprivation

without juristic reason. That is, he helped Ms. G. maintain ownership of her home during a time that it increased in value due to inflation, which increase she was able to roll over into the downpayment and other improvements on the Sechelt property. And Mr. and Mrs. G. got the benefit of that help too because Ms. G. caused the effective ownership of the Sechelt property to be placed in their names without compensation other than their agreeing to become responsible for the mortgage.

[51] I consider that Ms. G. and Mr. and Mrs. G. are capable of compensating Mr. W. monetarily. Thus a declaration of trust is not appropriate in this case. The difficulty is in assessing that compensation. Given the probable equity created in the North Vancouver property during the cohabitation of Mr. W. and Ms. G., and considering his probable contributions to the Sechelt property, I conclude that monetary compensation in the amount of $10,000 is reasonable.

III. CONCLUSION

[52] Ms. G. shall have sole custody of the child A. Subject to what I have said above, Mr. W. will not have access to A. although Ms. G. must provide certain information to Mr. W. with respect to the child.

[53] Mr. W. shall have judgment against Ms. G. and Mr. and Mrs. G. for the sum of $10,000 for compensation for his contributions to the North Vancouver and Sechelt properties.

[54] As each side has been successful on one of the two principal issues before me, I make no award of costs.

"T.J. Melnick J"