

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: Doig and Arma Holdings v.
 Laurand Holdings and Doig,
 2003 BCCA 265

Date: 20030507

Docket: CA25515

Between:

Arthur Doig and Arma Holdings Ltd.Respondents
(Plaintiffs)

And

Laurand Holdings Ltd. and Harrison DoigAppellants
(Defendants)

Before: The Honourable Madam Justice Ryan
 The Honourable Mr. Justice Mackenzie
 The Honourable Mr. Justice Thackray

R.R. Sugden, Q.C.
 C.P. Dennis

Counsel for the Appellants

T.J. Delaney
 C. Martin

Counsel for the Respondents

Place and Date of Hearing:

Vancouver, British Columbia
 April 7, 2003

Place and Date of Judgment:

Vancouver, British Columbia
 May 7, 2003**Written Reasons by:**

The Honourable Mr. Justice Thackray

Concurred in by:

The Honourable Madam Justice Ryan
 The Honourable Mr. Justice Mackenzie

Reasons for Judgment of the Honourable Mr. Justice Thackray:

[1] This appeal was dismissed from the bench with reasons to follow. These are the reasons.

[2] Harrison and Arthur Doig are brothers. In 1968 they became jointly involved in real estate development through their holding companies. Arma is the personal company of Arthur. Laurand is the personal company of Harrison.

[3] One such joint venture was called A & L Holdings. It developed a housing subdivision in Haney, British Columbia which was completed in 1991. Arthur Doig and Arma claimed money owing by Harrison Doig and Laurand that arose out of the joint venture. By way of counterclaim Harrison Doig and Laurand made

similar claims.

[4] In 1983 Laurand borrowed \$100,000 from the Toronto Dominion Bank which was secured by a mortgage on the joint venture property. The joint venture paid off that mortgage with funds obtained from the Bank of British Columbia. In reasons dated 29 December 1998, Madam Justice Sinclair Prowse held that an agreement had been reached between the parties whereby Laurand would be solely responsible for repayment and interest at prime plus 2%. Judgment was therefore granted in favour of Arma in the amount of \$25,936.

[5] The trial judge further held that there was no agreement to pay interest on the disparity of the capital accounts of Arma and Laurand.

[6] Arthur Doig also claimed for interest on a debt owing by Big West Construction Ltd., a company controlled by Harrison Doig, to the joint venture. The trial judge held that Harrison Doig was liable to the joint venture for interest on that debt from 30 April 1989.

[7] The trial judge found that there were accounting issues to be resolved between the parties. The accounting could not be settled by the parties, so the trial continued on 20 September 2000 and on 1 May 2001. Further evidence was presented, including accounting reports from Mr. V. Cinnamon, Mr. T. Jackson and Mr. J. Peters. In reasons dated 8 June 2001, the trial judge noted that it had been discovered that Arma had been struck from the register at the time of the trial and that Laurand therefore sought an order vacating the judgment of 29 December 1998. Arma was restored to the register on 27 July 2000. The trial judge held that this was "just" and refused the application to vacate her 29 December 1998 order.

[8] The trial judge said that the amount she had earlier calculated as owing by Laurand to Arma for the mortgage loan, being \$25,936, was in error. Further, all parties agreed that the amount of \$84,034, being the balance on the mortgage and Big West loans which on 8 June 2000 she had ordered the defendants to pay to Arma, was in error.

[9] The trial judge then proceeded to revisit her analysis of the amount owing between the parties. In doing so, she accepted the calculations made by Mr. Peters. She said that Mr. Cinnamon had presumed the mortgage was repaid in 1988 but she held that there was no evidence in support of this conclusion.

The trial judge accepted Mr. Peters' figure of \$98,361 as the amount owing on the mortgage as of 30 April 1998. She then divided that amount equally between the parties, resulting in a finding that "Laurand owes Arma \$56,919.50 for its interest in the outstanding balance of the Mortgage Loan."

[10] The trial judge accepted Mr. Cinnamon's calculations concerning the interest on the Big West loan over those of Mr. Peters. He calculated the interest owing to be \$18,502 as of 31 December 1998. She further held that the outstanding principal was \$41,511, for a total debt to the joint venture of \$60,013. She said that Harrison Doig had repaid \$45,500, leaving \$14,513 payable of which Harrison Doig owed to Arma \$7,256.50.

[11] The trial judge then said that of the \$45,500 paid by Harrison Doig, Arma was entitled to only one-half because it had a 50% interest in the joint venture. She therefore held that Arma owed Laurand \$22,750.

[12] In summary, the trial judge concluded that Laurand owed Arma the net amount of \$34,169.50, and that Harrison Doig owed Arma \$7,256.

[13] The appellants' factum alleged the following errors by the trial judge:

1. In holding that Mr. Peters' report of 20 June 2000 represented the accounting that best accorded with her reasons of 29 December 1998.
2. In not admitting into evidence the expert reports of Mr. Gardiner and Mr. Schultz.

3. In holding that Harrison Doig was liable to the joint venture for the Big West loan.
4. In not vacating her judgment of 28 December 1998 in light of the fact that Arma had been struck from the register at the time of the trial and judgment.

[14] On the oral hearing of the appeal, counsel for the appellants, who had not drafted the factum, abandoned all but the first ground of appeal. Mr. Sugden recast even this to simply allege that Mr. Peters' report contained a fundamental error and that Mr. Cinnamon's report was the one that should have been accepted.

[15] The appellants submit that the fundamental error is that the mortgage had been repaid in 1997, and consequently there was no loan upon which to charge interest. The appellants say that the result was that Mr. Peters was charging interest on the disparity of the capital accounts, something that the trial judge had found against.

[16] Mr. Peters' report of 20 June 2000 explains that his understanding was that interest on the mortgage would be charged to Laurand "as long as it existed." The report says that this "was the methodology used" in the report of 18 February 2000 and was calculated "in accordance with the decision of Madam Justice Sinclair Prowse dated December 29, 1998. This methodology represented the difference between Mr. Peters' report and that of Mr. Cinnamon.

[17] The trial judge held that Mr. Peters had correctly applied her reasons. While the mortgage was repaid to the Toronto Dominion Bank, the indebtedness of Laurand to Arma remained outstanding. It was on this indebtedness, calculated from the mortgage figures, that the trial judge made her award.

[18] If Mr. Peters had said that interest was to be paid as long as indebtedness by Laurand to Arma existed, rather than saying "as long as it existed" he would have better articulated the trial judge's reasons.

[19] Mr. Peters further confused the matter by saying in his discovery evidence that he was calculating the interest on the capital account discrepancy. That testimony grounded the appellants' submissions on this appeal.

[20] Unfortunately, both the trial judge and Mr. Peters failed to clearly articulate that the mortgage was to be distinguished and treated separately from the discrepancy in the capital accounts. The fact that the mortgage was a part of the capital account caused confusion. In my opinion, the problem that has occurred is one of semantics rather than one of substance.

[21] The trial judge concluded correctly, in my opinion, that Mr. Peters was following the directions in her order. He calculated the mortgage interest as though there was still an outstanding mortgage.

[22] The trial judge was in the best position to interpret her reasons, and I can see no error in her determination that would permit this Court to interfere.

[23] I would dismiss the appeal.

"The Honourable Mr. Justice Thackray"

I AGREE:

"The Honourable Madam Justice Ryan"

I AGREE:

"The Honourable Mr. Justice Mackenzie"