

CANADA / JUDGMENT

A.S.M v. J.W.M.

2025 BCSC 2059

COURT

Supreme Court of British Columbia

DECIDED

21 October 2025

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2025 BCSC 2059 A.S.M v. J.W.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.S.M v. J.W.M.,

2025 BCSC 2059

Date: 20251021

Docket: E193400

Registry: Vancouver

Between:

A.S.M. aka A.S.S.

Claimant

And

J.W.M. and I.E.M.

Respondents

Corrected Judgment: The text of the judgment was corrected at the front page and throughout of the Judgment for publishing purposes on November 6, 2025.

Before: The Honourable Justice J. Walker

Reasons for Judgment

The Claimant, appearing in person:

A.S.M.

Counsel for the Respondent J.W.M. :

J. Broadhurst

No other appearances

Place and Date of Hearing:

Port Coquitlam, B.C.

June 11, 2025

Vancouver, B.C.

July 11, 14 and October 16, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 21, 2025

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I. Introduction

- [1] The respondent, applies for a declaration, by way of summary trial, that an agreement reached with the claimant, on August 29, 2024, to settle their family law dispute is valid, binding, and enforceable.
- [2] The claimant opposes proceeding by way of summary trial and opposes the application primarily on the basis that the agreement was based on incomplete or misleading disclosure relating to the respondent's alleged misappropriation of family property. The claimant also implicitly calls into question the adequacy of her legal representation, she alleges that she entered into the agreement under duress, and the agreement is unconscionable.
- [3] In addition to her application response, the claimant filed an application seeking to have the agreement reached varied. Her application is based on the same grounds for which she opposes the respondent's application. She has prepared an alternative draft order reflecting what she submits is a fair resolution.

II. Background

- [4] The claimant and respondent began living together in November 1993, were married on July 17, 1999, and separated on June 16, 2019.
- [5] The parties have three children together: H.M. is 25 years old; A.M is 23 years old; and B.M. is 21 years of age. H.M. is a child with special needs and resides with the claimant . A.M. and B.M. are university students. B.M. resides with the claimant and attends school locally. A.M. resides with the claimant when she is not away for school.

- [6] On December 17, 2019, the claimant filed her notice of family claim. Subsequently, the matter was set for trial on three separate occasions: November 1, 2021, November 28, 2022, and April 29, 2024. Those trials were all adjourned at the request of the claimant because she believed there was missing disclosure. The respondent consented to the adjournment requests.
- [7] The matter was then re-set for 15 days and scheduled to commence on September 3, 2024. The claimant intended to represent herself at trial but had retained a senior experienced family law lawyer to assist her with trial preparation and with any potential settlement negotiations.

A. The settlement

- [8] On August 26, 2024, respondent's counsel sent a detailed settlement offer letter to claimant's counsel. The letter was eleven pages long, with 45 separate paragraphs proposing comprehensive terms for settlement. The offer included a term that the parties would sell the family residence and equally divide the net sale proceeds with adjustments for retroactive support and s. 7 expenses, an equalization payment, reimbursement for the claimant's personal use of a line of credit, and reimbursement for the claimant's share of property taxes. The letter enclosed an excel spreadsheet setting out the expenses the respondent paid for the family residence between July 1, 2019, and June 30, 2023, an excel spreadsheet setting out calculations for an equalization payment, and DivorceMate calculations for spousal and child support.
- [9] On August 28, 2024, claimant's counsel sent a counteroffer to respondent's counsel. The counteroffer letter explained by way of introductory comments that:
- a) The parties have different views of the financial circumstances that have taken place since separation, including the proper use of significant sums [the respondent] received over and above his income while employed at TD Waterhouse and CIBC Wood Gundy and the amount of retroactive section 7 expenses that are owing by [the respondent].
 - b) [The claimant] says that [the respondent] must pay her a compensation payment on account of the over \$1.0 million that he received during the marriage which is in addition to the income he earned at TD Waterhouse and CIBC Wood Gundy.
- [10] The counteroffer letter responded to each of the 45 paragraphs set out in the respondent's settlement offer and explained the underlying reasoning for the claimant's counteroffer. The counteroffer proposed that the claimant would solely retain the family residence and provided an example of the distribution of equity in the family residence based on the settlement offer letter. Counsel assumed the figures used in the letter were correct based on a telephone conversation between counsel the day before.

- [11] The counteroffer required that the respondent forego monies due to him for the family residence and any cash adjustments, and that the claimant would forego the RRSP adjustment due to her, which was a compromise close to the mid point of the differences between the parties offers. The letter had the claimant's signature and date in a box that stated, "I confirm this letter is my counteroffer".
- [12] On August 29, 2024, respondent's counsel sent a counteroffer letter to claimant's counsel, accepting the modifications made by the claimant in her August 28, 2024 counteroffer provided that the claimant would agree to the following:
- a) The Respondent's income for future spousal support reviews would be determined using the past three years of income and capped at \$259,000 per year.
 - b) The Claimant would owe the Respondent \$50,000 which would be secured by an interest free mortgage secured against the family home.
 - c) The Claimant would remove the Respondent from any encumbrances on the former matrimonial home by March 1, 2025.
 - d) The Respondent would not make any contributions to car expenses for the children.
- [13] On August 29, 2024 at 11:45 AM, claimant's counsel sent a further counteroffer. The counteroffer letter again had the claimant's signature and date in a box that stated, "I confirm this letter is my counteroffer". The letter noted the claimant was willing to forego significant future spousal support to reach a settlement. The counteroffer proposed the following:
- a) The Respondent's income for future spousal support reviews would be determined using the past three years of income and would be capped at \$285,000.
 - b) The Claimant would not owe the Respondent the \$50,000 set out in his counteroffer dated August 29, 2024.
 - c) The Claimant would remove the Respondent from any encumbrances on the family home by March 1, 2025, and if she was unable to do so, would list the family home for sale by April 1, 2025.
 - d) The Respondent would not make any contributions to car expenses for the children.
- [14] On August 29, 2024 at 1:02 PM, respondent's counsel sent a further counteroffer to claimant's counsel. The counteroffer proposed the following:
- a) The parties would split the difference between the Claimant's and the Respondent's respective positions on the income cap for spousal support.
 - b) If the family home was sold in the next two years, the Respondent would receive half the gross sale proceeds that exceed \$1,450,000.

- c) The Respondent would not make any contributions to the car expenses for the children.
 - d) The Claimant would remove the Respondent from any encumbrances on the family home by March 1, 2025, and if she was unable to do so, would list the family home for sale by April 1, 2025.
- [15] On August 29, 2024 at 1:47 PM, claimant's counsel sent a letter to respondent's counsel accepting the counteroffer that had been sent at 1:02 PM. The letter had the claimant's signature and stated, "I confirm this letter is my acceptance of the counteroffer referred to in this letter".
- [16] Claimant's counsel was going on vacation after August 29, 2024, but respondent's counsel was hopeful he might be able to review the consent order before he left. When respondent's counsel advised supreme court scheduling that the matter had settled, he asked for 10 minutes of court time on September 3, 2024 to speak to the consent order and to deal with the divorce. When the claimant contacted supreme court scheduling and learned there was still an appearance scheduled for September 3, 2024, she was confused since she understood that her counsel would not be able to review the draft order until after his return from vacation on September 26, 2024.
- [17] The claimant then sent two emails to supreme court scheduling in which she confirmed the trial would not be proceeding as a settlement had been reached. The claimant wondered why respondent's counsel was rushing this, and brought her back to her long-held suspicions that the respondent had not provided a proper financial accounting.
- [18] The draft order was sent to claimant's counsel on September 26, 2024. Respondent's counsel has never received a response from the claimant's former lawyer.
- [19] On November 28, 2024, the claimant sent respondent's counsel a letter stating that she had reviewed the settlement offer letter first set out in the respondent's letter dated August 26, 2024, and the exchange of letters that culminated in a settlement agreement. She stated that there appeared to be several mistakes within the information provided, material facts were not accurate, full disclosure was not made, misleading information was relied upon, and this resulted in an obviously unfair agreement. She claimed that in excess of \$800,000 post-separation family property and debt was not disclosed in the offer.
- [20] The claimant stated she was not aware of the spreadsheets attached to the August 26, 2024 offer until after the settlement was negotiated. The claimant attached a revised draft order to her letter with substantial changes reflecting what she was prepared to agree to.

B. The Claimant's evidence

- [21] In her affidavit sworn on June 6, 2025, the claimant alleges that the respondent has failed to account for approximately \$1.6 million in family property.

- [22] The claimant acknowledges she received disclosure from banks in response to her requests, acting on the authorizations the respondent provided her; however, the results were limited to the past seven years.
- [23] In relation to the settlement, the claimant acknowledges she had retained counsel to assist her with settlement and for guidance for trial preparation. The trial was scheduled to start on September 3, 2024 and she was going to represent herself. Her counsel was leaving for vacation on August 29, 2024.
- [24] The month of August 2024 was difficult for the claimant because H.M. had not been well and was being followed closely by a neurologist and psychiatrist from a new mental health team. H.M. had begun taking a new medication and was sick much of August requiring night care, leaving the claimant with very little time to rest. Additionally, the claimant's mother had Parkinson's and was in and out of the hospital. A.M. and B.M. were getting ready for university and the claimant had helped A.M. get ready to leave for school in the second week of August.
- [25] Discovery of the respondent took place on August 13, 2024 and discovery of the respondent's mother took place on August 16, 2024.
- [26] During the week leading up to the settlement, the claimant was focussed on trial preparation and was very behind. She was working on completing her list of documents, witness list, a doctor's report for H.M., book of documents, opening statement, statement of facts, closing argument and the new disclosure from the respondent received after the examination for discovery.
- [27] As a result, she relied on her counsel who handled all aspects of the settlement while she focussed on trial preparation. The claimant deposed that the respondent knew she was stretched beyond capacity during settlement negotiations and he took advantage of her vulnerability, ignorance, and distress.
- [28] The settlement reached is not based on an accurate picture of the parties' financial circumstances. The respondent's settlement offer in his August 26, 2024 letter was used as the foundation to negotiate the settlement was based on misrepresented information and facts not known to the claimant at the time. Had the respondent provided full financial disclosure in his settlement offer letter the settlement would have looked significantly different.
- [29] The claimant alleges that the respondent failed to disclose material facts including family property held, or disposed of, family debt, and other relevant facts such as H.M.'s care. These were vital and known to the respondent and his counsel and significantly altered the outcome of the settlement.

- [30] The claimant swears that, at the time of the settlement discussions, she did not receive the excel spreadsheets attached to the respondent's letter. This was vital information she did not have at the time. The claimant accepts the spreadsheets were provided with the letters but states she did not see them at the time.
- [31] The claimant did not participate in any of the phone calls between counsel, nor was she privy to any conversations between respondent's counsel and her lawyer. Her lawyer did not make any requests for supporting documents during the settlement negotiations. She did not understand the calculations used. Nevertheless, her lawyer assured her that the calculations were accurate.
- [32] She was unaware of the purpose of her signature on her counteroffer letters. The signing procedure was explained to her by her lawyer's assistant. The letters were not reviewed with her to ensure accuracy or understanding. She didn't understand the implications of the terms of the settlement offers as they changed.
- [33] The claimant understood that when her lawyer returned from vacation in October a more comprehensive draft of the settlement agreement would be reviewed by him and he would include more details and terms requiring further discussions between the parties and counsel.
- [34] The claimant alleges the following inaccuracies in the agreement:
- a) She did not agree to terminate spousal support upon the respondent's retirement;
 - b) Income numbers for both parties were inaccurate, specifically her income was \$0 but \$35,000 instead of \$30,000 was imputed and the respondent's income was noted as \$243,394 but should have been \$253,606;
 - c) Current child and spousal support amounts using a three-year average were incorrect as a result of the inaccuracy of the respondent's income amount;
 - d) Retroactive support calculations for child and spousal support were inaccurate as she didn't appreciate the use of after-tax calculations, and the amount was based on inaccurate information about the respondent's income;
 - e) She understood the \$30,000 attributed to s. 7 expenses was for A.M.'s schooling only and not for all children, \$45,000 would be the minimum estimated amount;
 - f) The respondent wrongly applied H.M.'s disability tax credit to s. 7 expenses in the offer;
 - g) The respondent did not disclose his s. 7 arrears in the amount of \$93,000;
 - h) Not included in the assets and debts table the respondent provided was his disposal of his RRSP's in the amount of \$296,765 from 2017 to 2022 which was subtracted from his income for support calculations;

- i) The respondent's loan he received when he commenced employment at CIBC was not included and the respondent has not shown what happened to the money;
 - j) The amount of money the respondent said he contributed to household expenses is inaccurate, it was not \$208,827.60 instead it was only \$119,498.14;
 - k) The settlement did not account for amounts she paid towards the mortgages or line of credit;
 - l) The settlement did not account for amounts she contributed to utilities and property taxes; and
 - m) The amount of the mortgages and the line of credit was inaccurate because the balance was shown as of December 2023, which was \$509,273 instead of August 2024 when it was \$625,279.37.
- [35] The \$1.6 million dollars in family property that was in the possession of or disposed of by the respondent, and or his mother, and not included in the spread sheets used for the settlement agreement are as follows:
- a) \$320,000 from CIBC received in six increments beginning in September 2011;
 - b) \$30,000 from CIBC received in September 2011;
 - c) \$325,000 received in two payments from CIBC;
 - d) \$296,765 RRSP holdings disposed of;
 - e) \$200,394 GIC disposed of by the respondent and his mother;
 - f) \$57,600 RBC account disposed of by the respondent and his mother;
 - g) \$160,838 RBC account disposed of by the respondent and his mother;
 - h) \$343,396 dissipated from a CIBC account;
 - i) \$400,000 borrowed from RBC as a second mortgage in June 2009, drawing all usable equity; and
 - j) \$288,571.64 from the claimant's CIBC investment account disposed by the respondent.
- [36] Attached to the claimant's affidavit were approximately 60 exhibits consisting of the correspondence relating to the settlement, banking and other related documentation, and charts she prepared relating mainly to her contention that the underlying numbers used for the purpose of settlement were inaccurate or incomplete.
- [37] The claimant swore another affidavit on July 9, 2025, attaching another 14 exhibits consisting mainly of more banking related documentation again said to support her claim that the underlying numbers used for the purpose of settlement were inaccurate or incomplete.

- [38] In the course of her submissions, I permitted the claimant to refer to the examination for discovery she conducted of the respondent even though it was not part of the application record. The claimant sought to refer to it to demonstrate that the respondent gave family money to his mother.
- [39] As explained below, after the hearing concluded, the claimant applied to re-open the hearing and tendered affidavits sworn on September 12, 2025 and October 10, 2025. On October 16, 2025, I allowed the claimant's application in part and permitted her to refer to portions of those affidavits and some of the appended exhibits. Both affidavits attached further materials said to support the claimant's contention that the agreement was based on non-disclosure, inaccurate and misleading information.

C. Procedural history

- [40] As noted, the parties settled this matter on the eve of what was the fourth trial date set. Several months later, the claimant advised that she was resiling from the agreement.
- [41] On May 16, 2025, the respondent filed this application seeking to enforce the agreement. The claimant filed her response on May 29, 2025, and filed her notice of application on June 6, 2025.
- [42] The respondent set the application down for one day, although at the outset the claimant estimated the hearing would take two days. The hearing commenced on June 11, 2025, on the understanding that a second day would be required in the future. The respondent's submissions concluded before the lunch break, and the claimant commenced her submissions in the afternoon.
- [43] The continuation was set for July 11, 2025. As noted, the claimant filed another affidavit on July 9, 2025, and referred to it during the course of the continuation of her submissions without objection from the respondent. Over the respondent's objection, I permitted the claimant to refer to portions of the respondent's examination for discovery transcript, which was not part of the already voluminous application record.
- [44] On July 11, 2025, the claimant's submissions continued for the entire day. Respondent's counsel replied on July 14, 2025, and I permitted the claimant to make a brief sur-reply. I reserved my decision. On July 17, 2025, the claimant indicated her intention to apply to reopen her case.
- [45] After a judicial management conference ("JMC") held on August 26, 2025, the claimant's application was scheduled for October 16, 2025. At the JMC, the claimant explained that she wished to advance further submissions relating to the dissipation of family assets by the respondent. It was not clear whether the claimant intended to also adduce further evidence.

- [46] On September 12, 2025, the claimant filed her application materials and a new affidavit attaching further materials. The claimant sought to have those materials considered and to make submissions based on those materials.
- [47] On October 12, 2025, the claimant filed another affidavit attaching substantially more materials which she sought to tender. The claimant's application was heard on October 16, 2025, and during the course of her submissions it became apparent that while some documents were already part of the application record, the claimant had included them for the ease of making further submissions. Other documents that were not part of the application record, provided further support for the submissions that had already been made.
- [48] In oral reasons delivered On October 16, 2025, I permitted the claimant to rely on and make submissions related to some, but not all of the materials appended to her affidavits. The claimant reiterated her position that the respondent and Mrs. I.E.M had failed to properly account for the disposal of family property thus rendering the settlement agreement unfair. The claimant also provided banking records showing the movement of money that she claims is mainly unaccounted for.

III. Issues

- [49] The preliminary issue to be decided is whether the respondent's application for a determination that there was a binding settlement agreement can be resolved by way of a summary trial.
- [50] If I decide that this matter can be decided by way of a summary trial, I must then determine whether there was a binding agreement. If I conclude there was a binding agreement, I will then have to determine whether the claimant's arguments to set aside the agreement can be determined by way of summary trial. If I accept that they can be, then I will need to decide whether the settlement agreement should be set aside.

A. Is this a suitable case for a summary trial

- [51] The respondent submits that when all of the appropriate factors are taken into account, the court can and should determine the issues by way of summary trial. The respondent submits that despite the claimant's assertions in her affidavits, there is no actual conflict in the evidence. The issues raised by the claimant are only assertions they are not evidence.
- [52] The claimant submits that a summary trial is not appropriate as the issues are complex, disclosure is not complete, there are significant amounts of money unaccounted for, and no supporting documents showing where the money was spent by the respondent. The claimant asserts that the respondent's credibility is in issue, and she would be prejudiced if the settlement agreement is ordered.

1. The law

- [53] On the hearing of a summary trial application, R. 11-3(15)(a) of the Supreme Court Family Rules permits a court to grant judgment unless: (i) it is unable to find the facts necessary to decide the issues; or (ii) it would be unjust to decide the issues on the application.
- [54] The relevant factors to consider whether a matter is suitable for a summary trial include, but are not limited to: the amount involved, the complexity of the matters, urgency, prejudice by reason of delay, the cost of a conventional trial in relation to the amount involved, the course of the proceedings, whether credibility is a critical factor and whether the summary trial will create unnecessary complexity or result in litigation in slices: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 1989 CanLII 229 (BC CA), 36 B.C.L.R. (2d) 202 (C.A.); *Gichuru v. Pallai*, 2013 BCCA 60 at para. 31.
- [55] Summary judgment rules are to be interpreted broadly, favouring proportionality and fair access to affordable, timely and just adjudication of claims: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 5.
- [56] The court ought not to refuse to grant judgment at a summary trial on the basis that a full trial could conceivably "turn something up" or produce a different result. If the court can find the necessary facts, it must grant judgment, unless it would be unjust to do so: *Harrison v. British Columbia (Children and Family Development)*, 2010 BCCA 220 at paras. 40-41; *Hudema v. Moore*, 2021 BCSC 587, para. 57.

2. Discussion

- [57] In my view, the determination of whether the parties entered into a binding settlement, and if so whether it should be set aside, is suitable for determination by way of a summary trial. The application of the relevant factors weighs heavily in favour of determining the issues summarily.
- [58] This matter appears complex given the substantial volume of materials filed on this application and the lengthy dispute between the parties that has generated further volumes of materials filed in other applications brought in this Court. However, much of the materials are duplicative and address the same underlying issue: the claimant's belief that the respondent has failed to properly account for family property he controlled. The claimant argues she is unable to prove by way of a summary trial that there are hundreds of thousands of dollars unaccounted for, but she can prove it at trial.
- [59] In my view, this matter is not complex, and the voluminous materials do not mean the issues are complex.
- [60] While the claimant now suggests that \$1.6 million dollars is unaccounted for, and this substantial amount of money weighs against determination by way of summary trial, for the reasons set out below I do not accept her position. There are only two assets in issue, the family home and the respondent's book of business. The primary issues of dispute between the parties involve the amount of support and special expenses payable. It is apparent that regardless of whether the settlement is enforced or whether the matter proceeds to a

conventional trial, the parties will continue to have to address the amount of support payable, what constitutes special expenses, and the proportionate sharing of the special expenses.

- [61] There is no doubt that if this matter were to proceed to a conventional trial, the trial would take a significant amount of time based on what I understand to be the claimant's intended approach. The claimant has indicated that she intends to conduct a detailed analysis of the respondent's past spending to support her contention that he dissipated family property. The parties would incur further expenses and legal costs.
- [62] There are compelling reasons to resolve the issues between the parties in an expeditious manner. The parties have been separated for six years, The claimant filed her claim in December 2019, and there have been four trial dates set and adjourned. There has been a substantial amount of litigation and disclosure provided leading up to the settlement agreement. More than a year has now passed since the settlement agreement was reached. Furthermore, there is a certificate of pending litigation registered against the respondent's mother's property. As set out below, I do not accept that the respondent's mother (Mrs. I.E.M.) held or holds family property in her name. Mrs. I. E. M. will continue to suffer prejudice should this matter not be disposed of summarily.
- [63] I also accept that the respondent will suffer prejudice should this matter proceed to a full trial. The financial disclosure issues have been going on for nearly six years and the parties reached an agreement to finally resolve these matters. As is evident from the agreement reached, both parties made significant compromises in order to resolve the outstanding matters without the necessity of a trial.
- [64] It is also relevant that if I determine the agreement should be enforced and there is no basis to set it aside, this brings this matter to a conclusion. There is no risk that my ruling will create unnecessary complexity in the resolution of the dispute, and this is not a case where determining the issue summarily will result in "litigating in slices".
- [65] The only factor potentially weighing against a summary trial is whether the resolution of the dispute turns on credibility assessments which would impair my ability to find the facts necessary to determine the issues. The claimant does not accept the respondent's assertions that he has provided complete disclosure and submits a trial is required to determine whether his assertions are true. The claimant does not accept the respondent's evidence that he did not dissipate family property and that the alleged unaccounted for money was used for family expenses.
- [66] I accept that where there is a head-on conflict on a credibility issue that goes to the heart of the dispute, and no principled or objective basis on which to resolve it can be identified, the case will likely require a full trial, with viva voce evidence and cross-examination. However, a summary trial almost invariably involves a resolution of credibility issues, and in appropriate circumstances a summary judge can make credibility findings on affidavit evidence alone. In most cases, a court is able to render judgment despite the conflict in the

affidavits because there is other objective evidence, which allows the conflict to be resolved: *Kushty Consulting Ltd. v. Wissman*, 2025 BCSC 336 at paras. 5-7.

- [67] In my view, credibility is not a significant issue in this application. There is a substantial amount of materials setting out the financial basis for the settlement. By the time the agreement was reached, the claimant had significant disclosure to assess whether to negotiate an agreement and to assess what a fair resolution was. The truth or accuracy of the averments of the parties is not critical to my determination in this case.
- [68] Lastly, the fact that the claimant has not pointed to, or does not assert that there are any other new materials or information that has come to light after the settlement agreement was reached, weighs in favour of a summary determination.

B. Was there a binding settlement agreement

- [69] The respondent's position is that there is really no question that a binding agreement was reached between the parties and that the claimant is attempting to renegotiate the agreement.
- [70] The claimant does not seriously dispute that the parties reached an agreement, rather her position is that she did not appreciate the terms of the agreement and in hindsight she believes the agreement was not fair because it was based on inaccurate information and a lack of disclosure.
- [71] In her notice of application to have the agreement varied, she argues the agreement was reached on the basis of duress and is unconscionable. In oral submissions, she also argued that her ability to understand the settlement agreement was in part due to the way her counsel approached the settlement negotiations. In this case, it is my view that these arguments are more appropriately considered when determining whether the agreement should be set aside, rather than in the context of an assessment as to whether there was an agreement.
1. The law
- [72] The onus is on the respondent to prove the existence of the settlement agreement on a balance of probabilities. The court is required to determine whether the parties reached agreement on all essential terms, such that a contract has been formed: *Sehic v. Sehic*, 2024 BCSC 1559 at para. 35.
- [73] The applicable legal principles to determine whether an enforceable contract has been formed were set out in *Oswald v. Start Up SRL*, 2021 BCCA 352 at para. 34:
- (a) there must be an intention to contract;
 - (b) the essential terms must be agreed to by the parties;
 - (c) the essential terms must be sufficiently certain;

- (d) whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intentions of the parties; and
 - (e) the determination is contextual and must take into account all material facts, including the communications between the parties and the conduct of the parties both before and after the agreement is made.
- [74] There is a strong public interest in favour of resolving disputes through agreement, and it is the policy of the courts to promote and enforce settlement agreements: *Kuo v. Kuo*, 2017 BCCA 245 at para. 37. However, fairness has a role to play in family law agreements, thus they are not analyzed with the same rigour as in other contractual settings: *Spiegel v. Meilman*, 2017 BCSC 766 at para. 29; *Sehic* at para. 39.
- [75] The claimant emphasises the general duty of honesty in contractual performance recognized by the Supreme Court in *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 73-74. Parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract.
- [76] The claimant submits, and I agree, that the general duty of honesty in contractual performance takes on heightened importance in family cases. During negotiations aimed at resolution, each spouse is under a duty to deal with the other in utmost good faith and this involves an obligation to make full disclosure of the existence and value of all assets held by him or her: *Swanson v. Swanson* (1983), 1983 CanLII 203 (BC SC), 34 R.F.L. (2d) 155 (B.C.S.C.), at para. 19.
2. Discussion
- [77] The evidence overwhelming supports the respondent's position that an agreement was reached. The respondent has established that the parties reached an agreement on all essential terms, and a contract was formed.
- [78] As noted, the claimant does not seriously contest that an agreement was reached and that the letters exchanged between counsel constitute an agreement. Her arguments mainly relate to whether the agreement should be enforced, because she did not understand what she had agreed to and that the agreement was not fair.
- [79] The agreement was reached long after the parties separated and after significant disclosure had been provided. The parties were well-placed to understand their respective positions.
- [80] The claimant, through counsel, was able to negotiate a significantly better result for herself than what the initial offer to settle proposed. The claimant's position was explained, and the respondent was persuaded to agree to it. The claimant endorsed the counteroffer letters and indicated that the counteroffers made by counsel were hers. Once a settlement was reached, the claimant endorsed the confirmatory letter and indicated her agreement that the matter was settled. The claimant confirmed with the court that her case had settled and a trial

would not be necessary.

- [81] In my view, when the claimant agreed to the respondent's final proposal, there was an intention between the parties to contract, essential terms had been agreed to that were clear and unambiguous. Having regard to the entire context, I find the requirements of a binding contract were met. An objective reasonable bystander would conclude a binding and enforceable agreement was reached.
- [82] As noted, the claimant does not contest that she intended to enter into an agreement to resolve her claims, instead she contends that, unbeknownst to her at the time, the agreement was a product of inaccurate and incomplete information. As a result, she argues that the agreement is fundamentally unfair and should not be enforced.
- [83] The arguments the claimant makes in opposition to the declaration sought by the respondent overlap with her application seeking variation of the settlement agreement, which I interpret to be an application to set aside the agreement. Whether the agreement is flawed due to inadequate financial disclosure and should not be enforced or whether the agreement should be set aside as a result engage the same legal principles in this case.

C. Should the settlement agreement be set aside

- [84] Having concluded the parties entered into a binding agreement, I now turn to whether the agreement should be set aside on the basis of the claimant's allegations of inadequate legal representation, non-disclosure, duress, and unconscionability.
1. The claimant's legal representation and understanding
- [85] The claimant has not directly raised ineffective assistance of counsel as a reason to set aside the agreement; however, through her assertions that she did not understand what she agreed to she has called into question the adequacy of the legal advice she received. The claimant asserts the calculations in the spread sheets that were attached to the respondent's first settlement offer was not shown to her, her lawyer did not obtain relevant information from her, and she didn't understand the purpose of endorsing the settlement letters.
- [86] The claimant has not adduced any evidence from her counsel to support her claims. In any event, the relevance of allegations of ineffective assistance of counsel as to whether the settlement agreement should be set aside is limited at best. In *Ke v. Zhang*, 2025 BCCA 245 at paras. 24-29, the Court held that in civil appeals, arguments related to ineffective assistance of counsel will succeed only in extraordinary circumstances for several reasons:
- a) First, any grievance about the performance of the appellant's own trial counsel will generally be a matter between the appellant and the lawyer. The proper avenue of redress for such a grievance is generally a civil claim against the lawyer.

- b) Second, complaints about the performance of trial counsel will almost invariably have nothing to do with the respondent. It is generally unfair to visit the consequences of the appellant's alleged improper representation at trial upon a respondent.
 - c) Third, civil cases generally do not involve intrusions upon liberty, state-imposed sanctions, or the determination of Charter-protected interests giving rise to an overarching concern about the conduct of counsel and its impact on the integrity of the justice system.
 - d) Fourth, the proper litigation of allegations of ineffective assistance of counsel often requires additional procedural steps, including evidence from counsel, and waiver over solicitor-client privilege. Where these steps are not taken, the reviewing court will only have a "partial picture" of what transpired between counsel and the appellant.
- [87] While the Court was considering the conduct of counsel for the first time on appeal, in my view, similar considerations apply when counsel's conduct is raised where counsel's role in reaching a settlement is questioned.
- [88] I do not accept the claimant's assertion that she did not understand what she agreed to as a result of her lawyer's inadequate legal representation. Claimant's counsel was duty bound to act on her instructions and there is nothing to suggest he did not do so. In fact, the detailed correspondence he wrote in furtherance of the settlement negotiations demonstrate that he understood the claimant's position and advanced it. His letters reflect knowledge of the issues, and considering the substantive responses he provided, it would have been impossible for him to write those letters without the claimant's instructions. Much of what the claimant says today about her view of the respondent's financial disclosure was conveyed in the letters.
- [89] Furthermore, even if I were to accept that claimant's counsel did not adequately perform his function, I do not accept that the claimant did not understand what she agreed to. The detailed settlement correspondence, her own knowledge of the issues at stake, and the history of the matter stands in stark contrast to her assertions.
- [90] Her view that the respondent had not adequately accounted for disposal of family property was the very first point raised by her counsel in response to the settlement offer. The letter set out that the claimant's view was that in addition to his employment income, the respondent had failed to account for one million dollars. Despite this, the claimant proposed a counteroffer informed by this long held view. In other words, what she proposed factored in the respondent's alleged failure to account for this property.
- [91] On this application, the claimant relies on the issue of undisclosed or unaccounted for family property, but this is not something the claimant discovered after the settlement was reached. She has deposed to this in several affidavits preceding the settlement discussions. Indeed, the respondent's inadequate disclosure formed the basis of applications she made in this Court, long before the settlement discussions.

- [92] Some of the accounting the claimant provided to me is similar to what she provided before the settlement, demonstrating that she had substantial knowledge of what she viewed as unaccounted for family property when she agreed to settle her claim. For example, in her affidavit sworn on January 5, 2023, the claimant explained in detail the circumstances relating to the obtaining of a second mortgage and her belief that those funds were ultimately unaccounted for. She raises this exact issue on this application, in support of her contention that the agreement reached should be set aside because the agreement failed to account for the reason why this second mortgage was required: the respondent was dissipating family property.
- [93] While I accept the claimant's evidence that during the relationship the respondent controlled the family finances and that she paid little attention to them, at the time of the settlement discussions the parties had been separated for over five years. The claimant had by that time become aware of the family's financial situation and, as I have already indicated, the claimant explained her view of it in previously sworn affidavits.
- [94] Furthermore, the claimant is not unsophisticated. She had worked in sales and as a real estate agent. Although the claimant was self-represented on this application, she had been represented by counsel before and when she made other related applications. Before me, the claimant demonstrated her grasp of the issues. Her materials were comprehensive and responsive to the application being made. Her oral submissions were, for the most part, focussed on the issues.
- [95] For all those reasons, on the evidence before me, I do not accept that the claimant did not understand what she had agreed to and that her counsel's role in the settlement discussions led her to accept a settlement she did not understand or agree to.

2. Non-disclosure

- [96] As I have just outlined, in my view, the claimant had an in depth understanding of the alleged financial deficiencies at the time the settlement was reached. The claimant's resistance to the respondent's application to have the settlement enforced and her application to have the settlement set aside is premised on the same knowledge she had at the time.
- [97] I accept that, since she agreed to settle her claim, the claimant has examined past spending and financial documents in more detail than she had before; however, the results of her analysis lead her to the same conclusion she had reached prior to the settlement.
- [98] While the amount of undisclosed spending has changed over time, the claimant has consistently maintained that the respondent dissipated hundreds of thousands of dollars of family property both before and after separation. Her assertions and opinions have not changed. For example, in her March 24, 2024 letter to respondent's counsel (appended to her April 18, 2024 affidavit), The claimant asserted that the respondent had failed to account for the sum of approximately \$1.261 million.

[99] Importantly, the claimant has not pointed to any new materials to support her view. Everything she relies on had already been disclosed. Instead, the claimant has conducted a near forensic review of the materials that existed, and that she had in her possession before the settlement. There is nothing that has been put before me that did not exist prior to the settlement agreement.

a) The law

[100] I accept the claimant's general proposition, relying on the decision in *Cunha v. Cunha*, 1994 CanLII 3195 (BC SC), that non-disclosure in the context of family litigation discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation and may lead a party to give up and walk away with only a share of the assets they know about. Non-disclosure also has a tendency to deprive children of proper support.

[101] The Supreme Court of Canada has confirmed that separated parties have a duty to make full and honest disclosure of all relevant financial information to protect the integrity of the results of negotiations undertaken in what are unique and vulnerable circumstances: *Rick v. Brandsema*, 2009 SCC 10 at paras. 47-48 [*Brandsema*].

[102] An agreement negotiated without proper financial disclosure may render the agreement vulnerable to judicial intervention where the result is a negotiated settlement that is substantially at variance from the objectives of the Family Law Act, S.B.C. 2011, c. 25: *Brandsema* at para. 47.

[103] The claimant relies on *Viric v. Blair*, 2014 ONCA 392 at para. 58 where the court held that once a court is satisfied that there has been deliberate material misrepresentation by one spouse, it is an error to place the onus on the recipient spouse to investigate or test the veracity of the information.

[104] Whether a court will intervene in cases where there has not been proper disclosure, will depend on the circumstances of each case, including the extent of the defective disclosure and the degree to which it is found to have been deliberately generated. It will also depend on the extent to which the resulting negotiated terms are at variance from the goals of the governing legislation. The more an agreement complies with the statutory objectives, the less the risk that it will be interfered with: *Brandsema* at para. 49.

[105] At the same time, courts should respect the rights of the parties to determine for themselves what a reasonable resolution is in their own personal circumstances. Parties should be free to decide for themselves what bargain they are prepared to make: *Brandsema* at para. 45.

[106] Justice Wolfe's recent decision in *Sehic v. Sehic*, 2024 BCSC 1559 addressed circumstances similar to those raised in this case. Through correspondence exchanged by counsel, the parties negotiated a resolution of their family law claim. Claimant's counsel drafted a separation agreement reflecting the agreed upon resolution, which the respondent signed.

The claimant then advised that the separation agreement had been sent on a without prejudice basis and that she was reconsidering the fairness of the settlement. The respondent brought an application, by way of summary trial, to enforce the agreement. Assuming the proceedings had not been settled, the claimant brought an application to compel the respondent to produce financial disclosure.

- [107] The claimant's primary basis for disputing that an agreement had been reached was based on her assertion that the respondent had not provided adequate financial disclosure. In particular, the respondent had failed to comply with an order made at a judicial case conference requiring him to produce financial disclosure.
- [108] After concluding that the parties had reached an agreement, the trial judge went on to consider whether the agreement was flawed due to inadequate disclosure. Recognizing that it was the claimant who proposed settlement based on the financial information that she did have, Justice Wolfe concluded that the alleged lack of financial disclosure did not jeopardize the negotiation process or result in a fundamental flaw in the settlement agreement.
- [109] In *Farrer v. Farrer*, 2013 BCSC 1088, Justice Saunders considered whether to rescind a signed separation agreement on grounds of unconscionability because the plaintiff alleged that the parties' negotiations were procedurally flawed as a result of non-disclosure of financial information, including the failure to provide a sworn financial statement. Recognizing the importance of the negotiating parties having adequate information to properly inform their consent to an agreement, as discussed in *Brandsema*, the Court concluded that on the facts, the validity of the negotiating process had not been jeopardized by inadequate financial disclosure.
- [110] It was significant that the parties proceeded with their negotiations on the basis of values they knew were only estimates. The parties made an informed choice to proceed on that basis, and while the information may not have been perfect, it did not compromise a party's ability to negotiate.
- [111] In *Donnelly v. Weekley*, 2017 BCSC 529 at para. 108, Justice Johnston concluded that in order for a court to set aside an agreement on the basis of a failure to disclose, a party to an agreement must demonstrate that a significant asset, debt, or other information related to the negotiation of the agreement was not disclosed.
- b) Discussion
- [112] On the facts before me, and applying the guidance from the above noted cases, in my view, the alleged financial non-disclosure and alleged accounting errors are not a reason to invalidate or set aside the agreement reached.
- [113] In the first place, if the claimant did not have satisfactory disclosure from the respondent, she knew that at the time she decided to enter into negotiations. She indicated that at the outset of the negotiations in response to the respondent's settlement offer. In my view, even

if the claimant only had a general awareness of the financial issues she raises now, that would be sufficient to dispose of this issue, subject to consideration as to whether the agreement should be set aside on the basis of duress or unconscionability. However, the claimant had much more than a general understanding of the respondent's alleged lack of accounting, she had a detailed understanding of it at the time the agreement was reached. Despite knowing this, the claimant decided to settle her claim.

- [114] Secondly, in my view, the claimant's allegations of misappropriation of family assets are not borne out and not supported by the evidence. Respectfully, the claimant has drawn conclusions where such conclusions are not available on the materials and has focussed on the parts of the evidence that assist her claims while ignoring the parts that do not.
- [115] In assessing the disclosure issues raised by the claimant it is important to consider the context of the issue. The claimant's position that the respondent has failed to properly account for family property has resulted in at least one prior court application. On January 16, 2023, Associate Judge Hughes ordered the respondent to provide additional disclosure to the claimant and ordered that the respondent provide executed consent authorizations to allow the claimant to obtain the respondent's banking information directly from financial institutions. The claimant has indicated that she did receive additional documents, but since records were only kept for 7 years what she received was limited.
- [116] The total disclosure made between the parties is extensive. In the course of her submissions, the claimant indicated that she has some 20 boxes of materials related to her family law claim. Although, I acknowledge the claimant's submission that she can't know what is missing, because it is missing. Furthermore, while the respondent places significant reliance on the authorizations he provided her to allow her to obtain financial information, the authorizations are only helpful if known where they should be directed to.
- [117] Broadly speaking, the claimant's position that respondent dissipated family property is based on the fact that in 2009 the mortgage on the family residence was only \$97,321, but at the time of separation, and since separation, the mortgage has increased. Furthermore, the parties have made significant withdrawals from their RRSP's. At the heart of the claimant's view is that since the respondent controlled the family's finances he must have taken it for his own personal gain. It became clear during the claimant's October 16, 2025 submissions that part of her frustration is that the respondent moved money from accounts in her name without her approval.
- [118] The claimant accepts that the family's spending significantly outpaced the family income both before and after the separation. For example, in 2023 (after separation) the respondent's gross income was \$214,517 and the claimant's was \$17,084. In her financial statement sworn on August 1, 2024, the claimant set out that her household and family expenses amounted to \$227,628 per year. Despite this acknowledgement, the claimant does not accept the proceeds from the increased mortgage debt and the proceeds from the RRSP's account were used for family expenses.

- [119] In the years preceding the parties' separation, on the materials before me, it is apparent that the family spending outpaced the family income. The claimant acknowledged that in 2014, for example, monthly credit card bills were approximately \$7,800.
- [120] Furthermore, although on this application the claimant maintains that vast amounts of family money are unaccounted for and were not used for family related expenses, she has in the past acknowledged that deposits were made to the parties' joint bank account that she could not explain. In her affidavit sworn on January 25, 2023, she deposed that she is unable to account for deposits totalling \$563,801.23. It is a reasonable inference that these amounts account for what the claimant now says is unaccounted for: the increase of the mortgage on the residence and the RRSP withdrawals.
- [121] I have listened very carefully to the claimant's submissions and reviewed her materials along with the documents she referred me to, and many more. In my view, the claimant's submission that through errors, misstatements and unaccounted for family property, the settlement agreement is flawed is not supported. Many of the claimant's assertions are not supported by the evidence, some of the facts the claimant relies on are inaccurate, and she makes some of the same complaints in different ways, resulting in the double counting of certain amounts.
- [122] While I will not address every issue raised by the claimant what follows is my analysis with respect to the more significant issues raised by the claimant .
- i. The Respondent's CIBC income
- [123] The respondent began working at CIBC in 2011. As part of his compensation package, he received a loan of \$320,000. The claimant claims this loan was additional compensation and was not factored into the settlement. However, in advancing this submission, the claimant to accept and consider that the loan was forgiven at a rate of \$3187.01 per month and was included in the respondent's income.
- [124] The claimant also claims that the respondent's performance bonuses he received amounting to \$325,000 in the first two years of his employment were not factored into the settlement. However, the respondent's performance bonuses were included in his income in the years he received payment.
- [125] The claimant further alleges the respondent received an additional \$30,000 bonus when he commenced work at CIBC; however, she has offered no support for this assertion. It is apparent that had he received additional compensation from his employer, it would have been included in his income.
- ii. Mortgages and line of credit

- [126] The claimant claims that the entire amount of the \$400,000 second mortgage taken out in June 2009 was not considered in the settlement agreement and that the respondent has not accounted for the use of these funds. The claimant acknowledges that the proceeds from the mortgage were deposited into her RRSP.
- [127] One of the reasons for the increase in the amount of the mortgage on the family residence was that the parties used the line of credit secured against the residence for day-to-day expenses. The claimant deposed to that in her January 5, 2023 affidavit. Furthermore, the banking information appended to her October 12, 2025 affidavit unequivocally demonstrates this pattern. The claimant also acknowledged that the line of credit was used to purchase her vehicle and the respondent's vehicle. She was also aware that when mortgages were renewed, the outstanding amount owed on the line of credit was added to the new mortgage.
- [128] The settlement offer letter and responses took this debt into account, the total amount of the mortgages was set out in these documents.

iii. RRSP withdrawals

- [129] Although the claimant acknowledges that the proceeds from the \$400,000 second mortgage were deposited into her RRSP account, she adds that to the amount she says the respondent withdrew from her RRSP in arriving at her \$1.6 million figure. The mortgage and the RRSP are counted twice.
- [130] The claimant deposed that her RRSP and non-registered account were valued at \$289,693.64 as of December 31, 2015; however, the statements she has attached to her affidavit do not support this amount. Her December 31, 2015 statement shows a total value of \$72,786.15. While I accept that withdrawals were made from the claimant's RRSP no evidence has been provided to support the amount she has claimed. The earliest statement the claimant provided, and refers to, in her affidavit is dated December 31, 2014, showing a total balance of \$139,428.05 for both her registered and nonregistered accounts.
- [131] As for her contention that the RRSP withdrawals, all of which occurred before the separation, are unaccounted for: the withdrawals were deposited into the parties' joint bank account, and the funds appear to have been used for family expenses. As noted, the family spending significantly outpaced the family income. Indeed, the claimant acknowledged during her October 16, 2025 submissions that the funds from her RRSP were used for family expenses.
- [132] There is no basis to conclude the funds were used for anything other than family related spending and the claimant's position on the use of her RRSP funds was well known to her long before she agreed to settle her claim.

iv. The Claimant's GIC and bank accounts

- [133] The claimant claims that the respondent's mother's bank accounts and a GIC that Mrs. I.E.M. held is family property. As far as I can discern, the claimant's claims are based on her supposition that the unexplained dissipation of family assets must mean that the respondent gave that money to his mother.
- [134] In support of her theory, the claimant relies on the respondent's examination for discovery that she conducted on August 14, 2024, where the respondent acknowledged he had provided his mother with a modest amount of money to allow her to take advantage of some investment opportunities. The respondent said his mother had given the family more than the amount he gave her over time. His mother made money on the investment and a large percentage of it was given to the family. In her submissions, the claimant relied on the respondent's acknowledgment that he provided his mother money to support her contention that family money was given to Mrs. I. E. M. but submitted the court should not accept his evidence that it more than repaid amounts she had given to the family.
- [135] The additional banking information the claimant filed traced some of Mrs. I.E.M. money. The claimant demonstrated that funds were transferred from an investment account and into Mrs. I.E.M.'s bank account. In some instances, Mrs. I.E.M. then transferred money from her account to the respondent . However, there were no instances where significant sums were transferred from the respondent to his mother.
- [136] The claimant claims that a one-year GIC valued at approximately \$200,000 purchased by Mrs. I.E.M. in June of 2018 was purchased with family money and was not accounted for in the settlement agreement. The claimant again points to the respondent's examination for discovery evidence where the respondent said he was unaware of Mrs. I.E.M.'s \$200,000 GIC purchased in 2018 and said that his mother does not have \$200,000. He said there was virtually no chance his mother had a \$200,000 GIC. The claimant was able to show that Mrs. I.E.M. received the proceeds from the GIC, and it was cashed out, but there is nothing in the records provided to show the origins of the \$200,000 and that the respondent was the source of or the recipient of those funds.
- [137] The claimant claims that a bank account held by Mrs. I.E.M shows that \$57,600 of family property was disposed of. There is no evidence in support of this claim other than the claimant's reliance on the examination for discovery evidence, that I have already referred to. Furthermore, the claimant appears to have arrived at this amount by relying on a balance of \$27,500 on March 31, 2017, and adding certain deposits and transfers (some of which occurred after separation) together to arrive at the \$57,600 total. It is not clear why the claimant has focussed on only certain larger amounts to the exclusion of others to make her point.

- [138] The claimant also claims that \$160,808 received or disposed of through a second bank account held by Mrs. I.E.M was family property that was not considered in relation to the settlement agreement. Mrs. I.E.M.'s bank account had a balance of \$2,107.96 on March 31, 2017, and a balance of \$1,935 at the time the parties separated. The bank account appears to be used by Mrs. I.E.M. for her day-to day banking as it includes purchases at grocery stores, pharmacies, restaurants and other similar businesses.
- [139] In arriving at \$160,808, it would appear that the claimant has again selectively added up deposits and transfers to the account, including those that occurred long after the separation. There is no evidence to suggest that any of the deposits were made by or on behalf of the respondent, let alone any evidence to suggest that they were family property.
- [140] Long before the settlement discussions, the claimant was aware that the respondent had said he deposited a small amount of money in his mother's account that was subsequently returned and spent on family expenses. That was set out in a letter from his counsel to claimant's counsel on November 5, 2021, and attached to her affidavit sworn on January 25, 2023.
- [141] Mrs. I.E.M.'s funds were not considered as part of the settlement agreement, because the respondent took the position that those funds were not family property. The claimant knew that was the respondent's position long before the settlement discussions took place. On the basis of the evidence before me, and despite having the opportunity to produce additional bank statements, the respondent's position was justified and there is no basis to conclude that this alleged non-disclosure rendered the agreement reached unfair.

v. Support and Section 7 Expense arrears

- [142] The claimant claims that support and s. 7 expense arrears were not factored into the settlement agreement; however, the amount of the arrears was acknowledged, set out, and factored into the August 26, 2024 settlement offer. The amount of the equalization payment the respondent proposed to pay to the claimant explicitly contemplated the amount of the arrears.

vi. Disability tax credit

- [143] The claimant claims that the respondent improperly claimed the disability tax credit for H.M. on his tax return and that this was not factored into the settlement. It is difficult to see how this impacted the settlement but, in any event, this was not previously unknown to the claimant, she deposed to this in her affidavit sworn on May 30, 2023.

c) Conclusion

- [144] I have considered, but not addressed, all of the claimant's submissions relating to non-disclosure and alleged errors that she submits should result in the agreement being set aside. In my view, the claimant's contention that there are vast amounts of unaccounted for family property is not borne out. Furthermore, the claimant was well aware of the

perceived disclosure issues, long before she engaged in settlement discussion. Nevertheless, despite those issues which she acknowledged at the outset of the settlement discussions, she agreed to settle her claim. The claimant's application to set aside the agreement on the basis of non-disclosure is dismissed.

3. Duress

[145] The claimant also argues that the agreement should be set aside on the basis that she was under duress when the negotiations were taking place. She has deposed that August of 2024 was a difficult time for her. She was under pressure to prepare for the impending trial, noting that the discoveries of the respondent and Mrs. I.E.M. had only recently taken place. H.M. had challenges that month which required her attention, and both A.M. and B.M. were getting ready for university. A.M. had left for school in mid-August and the claimant had helped her get ready. Lastly, the claimant's mother had been in and out of the hospital. She alleges that the respondent was aware of all of this and took advantage of her situation.

[146] In considering the question of duress in the family law context, the court has defined it as "a form of oppressive contractual conduct directed by one party towards another to compel them to act to their disadvantage" and the underlying question to be considered is "whether the oppressor's action vitiated the consent of the oppressed party": *G.C.G. v. M.J.T.*, 2016 BCSC 1277 at para. 104; *Young v. Sherk*, 2019 BCSC 312 at para. 83. Mere emotional difficulty or strain is generally insufficient to establish duress: *Young* at para. 85.

[147] In my view, there is no evidence to support the claimant's duress claim. While I accept that she was feeling pressure in relation to the upcoming trial coupled with her family responsibilities, there is nothing to suggest that any pressure she felt was directed by the respondent compel her to act to her disadvantage. There is no evidence the respondent took advantage of the claimant's circumstances.

4. Unconscionability

[148] As I have already noted, a negotiated agreement may be set aside where there has been deliberate non-disclosure, depending on the extent of the non-disclosure and its impact on the agreement. Furthermore, in recognition that negotiations in the family law context occur in a unique and often emotional environment, a court may choose to not enforce an agreement where there were circumstances of oppression, pressure, or other vulnerabilities, and if one party's exploitation of such vulnerabilities during the negotiation process resulted in a separation agreement that deviated substantially from the Family Law Act: *Brandsema*, at paras. 40, 44.

[149] Courts must not presume vulnerability, instead there must be persuasive evidence brought before the court that shows one party took advantage of the vulnerability of the other party demonstrating that the agreement is unconscionable: *Brandsema*, at paras. 42, 43.

- [150] The claimant alleges the respondent took advantage of her vulnerable state during the negotiations. She makes the same submissions she advanced in relation to her duress argument. She also argues that since the respondent controlled the family finances during the marriage, is an investment banker and financial adviser, he has been able to control the disclosure he has provided. She is left to attempt to demonstrate what is missing, which is a difficult task.
- [151] In my view, the claimant has not shown that she was vulnerable and that the respondent took advantage of her vulnerability. For the reasons already outlined, at the time of the settlement discussions, the claimant was intimately aware of the issues she was going to have to prove at trial and the state of the respondent's financial disclosure.
- [152] The most important factor in my assessment is that the agreement reached is fair. The agreement does not vary from the objectives of the Family Law Act. The agreement reached is significantly better for the claimant than was first proposed by the respondent, there was give and take on both sides. It is noteworthy that, the claimant had the assistance of counsel to guide her in the settlement discussions.
- [153] The parties have two main assets: the family home and the respondent's book of business. The settlement agreement provides the claimant with the family home, unencumbered by any interest the respondent had in it. It has always been important to the claimant to be able to retain the family residence. In exchange, the respondent retains his book of business. I appreciate the value of the respondent's book of business was never determined with precision, but the claimant knew that when she reached the settlement agreement.
- [154] The agreement provides for pension division, child support, spousal support and payment of s. 7 expenses. The cap on the respondent's income for the purpose of spousal support only is reasonable and in line with his income.
- [155] During the claimant's submissions in support of her argument that the agreement reached is unfair, she noted that the amounts she is entitled to receive for special expenses was insufficient. However, the claimant fails to appreciate that the agreement requires the respondent to pre-pay the claimant a set amount in advance, which is then required to be adjusted every six months. The respondent is required to pay the claimant any outstanding amounts not covered by the advance payment within 14 days of the reconciliation. The agreement also provides for a review of A.M.'s expenses after May 31, 2025; a review of B.M.'s expenses after April 30, 2026, and commencing June 1, 2026, upon request, a review of the proportionate sharing of H.M.'s expenses.
- [156] The claimant submitted that the agreement does not adequately address H.M.'s future care, and in particular adequately address spousal support since she is H.M.'s primary caregiver. The respondent previously acknowledged that the claimant was best placed to provide care for H.M. The parties are undoubtedly going to have to continue to address the cost of H.M.'s care and the agreement does provide for a review of those expenses. The eventual termination of spousal support was an important part of the agreement, and was known to

the claimant at the time she agreed to settle her claim.

[157] The claimant also emphasized that the agreement reached did not account for her excluded family property claim. Whether the claimant could establish an excluded property claim is far from certain and was disputed by the respondent; however, the settlement did account for the claimant's claim. As part of the equalization payment to be made the respondent was prepared to include \$30,000 specifically to address the claimant's claim. This was clearly set out in the August 26, 2024 settlement proposal.

[158] It is noteworthy that the agreement requires the respondent to pay more in support payments than he was previously required to. The respondent asserts that he has been making those increased payments even though the claimant had resiled from the agreement.

IV. Costs

[159] The respondent seeks special costs arguing that the claimant has engaged in reprehensible conduct. The respondent says that the claimant agreed to a settlement and then resiled from it and has attempted to negotiate every part of the agreement but has relied on the terms of the agreement that benefit her.

[160] The respondent relies on *Spiegel v. Meilman*, 2017 BCSC 766 at para. 47 and *Shewchuk v. IBM Canada Limited*, 2017 BCSC 2211 at paras. 59-63 to support his position that special costs can be awarded where a party resiles from a negotiated agreement.

[161] I accept that special costs may be warranted in cases where a party has been found to resile from a negotiated agreement; however, it will not always be reprehensible conduct for a party to refuse to carry out a binding settlement agreement: *Orr v. Pioneer Distributors Ltd.*, 2013 BCSC 1002 at para. 57; *Gesner v. Canadian Imperial Bank of Commerce*, 2025 BCSC 1274 at para. 78. A decision to award special costs remains a discretionary exercise dependent upon the circumstances present in the case.

[162] Special costs are awarded against an unsuccessful party as punishment for reprehensible litigation conduct, or for other types of forms of misconduct deserving of rebuke: *Gesner* at para. 74 and 75. Nevertheless, an award of special costs is exceptional, and courts are directed to exercise restraint in awarding special costs, particularly where a party is self-represented and may not fully appreciate the implications of their conduct: *Miolla v. Miolla*, 2018 BCSC 2295 at para. 47

[163] In my view, while I have found that the claimant was not justified in arguing that there was no agreement or in resiling from it, her conduct in the litigation does not amount to reprehensible conduct. In advancing her arguments, the claimant did not engage in behaviour that was otherwise abusive of the court. I accept that the claimant has not intentionally misled the court and her views about the financial disclosure are honestly held.

[164] The respondent is entitled to his ordinary costs of this application.

V. Conclusion

[165] The respondent's summary trial application for a declaration that the parties entered into a binding settlement as outlined in the correspondence between counsel and accepted by the claimant on August 29, 2024, is granted in the form attached as Schedule 'A' to the respondent's notice of application.

[166] It follows then that the claimant's application to have the settlement set aside or varied is dismissed.

"J. Walker, J."

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