

CANADA / JUDGMENT

Agath v. Magon

2025 BCSC 1939

COURT

Supreme Court of British Columbia

DECIDED

6 October 2025

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2025 BCSC 1939 Agath v. Magon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Agath v. Magon,

2025 BCSC 1939

Date: 20251006

Docket: E248579

Registry: Victoria

Between:

Manfred Agath

Claimant

And

Maria Magdalena Magon

Respondent

Before: Associate Judge Harper

Reasons for Judgment

Counsel for the Claimant:

C. A. Swick

Counsel for the Respondent:

M. Plett

Place and Date of Hearing:

Victoria, B.C.

September 11, 2025

Place and Date of Judgment:

Victoria, B.C.

October 6, 2025

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Overview

- [1] In this family law proceeding, the respondent wife seeks an order pursuant to Rule 8-2(7) that the claimant husband's son, Manfred Agath Jr. and two corporations (M.A.T. Estates Ltd. and Ostro Organics Inc.) be added as respondents by counterclaim. The application to add Josef Pojatzi Nachfolger as a respondent by counterclaim is adjourned generally.
- [2] Ms. Magon also seeks an order pursuant to Rule 8-2(8) that the counterclaim be amended in the form attached to the notice of application.
- [3] The claimant, Mr. Agath Sr., and the proposed parties oppose the application. They say the application should be dismissed with leave to reapply after the usual discovery steps have been taken.
- [4] The fact that Mr. Agath Sr. and Mr. Agath Jr. share the same first name has caused confusion in the evidentiary record that I cannot resolve.
- [5] The parties began to live together in a marriage-like relationship in the spring of 2013 and separated in October 2024. The only issue in the proceeding is division of family property and family debt. Mr. Agath Sr. relies on a written agreement drafted by a lawyer made between the parties dated February 20, 2013 entitled "Declaration to Separate Property" in which they agree to keep their property separate. Ms. Magon pleads that the agreement is ineffective.

- [6] Ms. Magon is 81 years old (almost 82) and Mr. Agath Sr. is 82 years old. When they first started living together, they were both about 70 years old. They had each acquired property before their relationship. Ms. Magon was diagnosed with Parkinson's disease in 2019. Her health has declined. Mr. Agath Sr. questions whether Ms. Magon has capacity to conduct this litigation. In his amended notice of family claim, Mr. Agath Sr. seeks an order that Ms. Magon submit to an independent medical examination as her physical and mental condition are at issue in the proceeding. Mr. Agath Sr. also seeks an order for production of Ms. Magon's medical records, but that application has not yet been brought. Counsel for Ms. Magon concedes that Ms. Magon's son is "assisting" her with the litigation, but counsel for Ms. Magon represented to the court in oral submissions that he himself has determined that Ms. Magon has legal capacity.
- [7] Ms. Magon did not produce an affidavit in this application. Given the evidence regarding Ms. Magon's recent medical history, I think there is an open question as to whether the court, on application, would find Ms. Magon to be a person under legal disability such that a litigation guardian must represent her in this proceeding pursuant to Rule 20-3.

Applicable Rules

- [8] The application to add parties to the counterclaim is made pursuant to Rule 8-2(7)(b)(i) and (ii), and (c)(i) and (ii):
- (7) At any stage of a family law case, the court, on application by any person, may, subject to subrule (9),
- ...
- (b) order that a person be named as an additional party or be named as a party in substitution for another named party if
- (i) that person ought to have been named as a party, or
- (ii) that person's participation in the family law case is necessary to ensure that all matters in the family law case may be adjudicated on, and
- (c) order that a person be named as an additional party if there may exist, between the person and any other person who is named as a party to the family law case, a question or issue relating to or connected with
- (i) any relief claimed in the family law case, or
- (ii) the subject matter of the family law case
- [9] Rule 8-2(7)(b) must be applied narrowly, and the claimant (in the present case, the respondent advancing a counterclaim) must establish that the proposed respondent (in the present case, respondent by counterclaim) ought to have been named as a party, or that their participation is necessary: *Madadi v. Nichols*, 2021 BCCA 10, para. 21.

[10] Rule 8-2(7)(c) is broader. The question or issue must be real and not frivolous. Affidavit evidence should be examined by the court to determine if there is an issue between the parties: Madadi, paras. 22-23. If there is such an issue, the court must then determine whether it would be just and convenient to add the party.

Discussion

[11] I will address the application as it pertains to each of the proposed parties.

Mr. Agath Jr.

[12] Ms. Magon gifted a quantity of gems, minerals and jewellery (the "Gems") to Mr. Agath Jr. as evidenced by a written document. In the proposed counterclaim, Ms. Magon denies that the Gems were gifted, saying that, at best, the document is evidence of a testamentary intention. She seeks an order that Mr. Agath Jr. holds the Gems in trust for her and on her behalf. The rationale provided in the application for adding Mr. Agath Jr. as a respondent by counterclaim is to determine ownership of the Gems.

[13] There are no facts set out in the proposed amended counterclaim that support any kind of trust claim.

[14] It is not necessary to add Mr. Agath Jr. as a party to determine the issue of whether Ms. Magon gifted the Gems to Mr. Agath Jr. or not. Counsel for Ms. Magon may seek to interview Mr. Agath Jr. on the issue and apply for production of any documents he may have in his possession. If the matter proceeds to trial, presumably Mr. Agath Jr. will be called as a witness.

[15] The issue regarding the validity of the gift letter seems to involve an unstated allegation that the letter was obtained by fraud. The proposed pleading does not allege fraud. If Ms. Magon intends to plead fraud as against Mr. Agath Sr., Mr. Agath Jr., or both of them, she will need to keep in mind the cautionary words of the Court of Appeal in *Kirk v. Kirk*, 2007 BCCA 63 at para. 12, regarding the severe cost penalties of advancing a claim in fraudulent conspiracy and not succeeding.

[16] I agree with the position of Mr. Agath Sr. The discovery process will play out and if further evidence emerges that supports adding Mr. Agath Jr. as a party, the application may be renewed.

M.A.T. Estates Ltd.

[17] The parties lived in property located at 4896 Lochside Drive, Victoria ("Lochside Drive") described by Ms. Magon as the former family home.

[18] I note that despite the notice of family claim being filed October 23, 2024, neither party has filed a Form F8 financial statement. Neither party has produced a list of documents. Neither party has sought a restraining order pursuant to s. 91 of the Family Law Act, S.B.C. 2011, c. 25. The nature and extent of the family property are undetermined at this time.

- [19] Mr. Agath Sr. acquired Lochside Drive through a numbered company in 1991. The numbered company changed its name to M.A.T. Estates Inc. in January, 1992.
- [20] Mr. Agath Sr. purchased a property on Mount Newton Crossroad, Saanichton (the "Mount Newton Property") in or around 1983 and transferred it to a numbered company in 1991 which then became M.A.T. Estates Ltd. in 1992.
- [21] The current registered owner of Lochside Drive and the Mount Newton Property is M.A.T. Estates Ltd.
- [22] Mr. Agath Sr. says that M.A.T. Estates Ltd. is now owned by Mr. Agath Jr.
- [23] Ms. Magon, through a legal assistant's affidavit, has produced documents from the Land Owner Transparency Registry ordered on May 8, 2025 regarding Lochside Drive and the Mount Newton Property.
- [24] The document regarding Lochside Drive sets out the following information: M.A.T. Estates Inc. is a "reporting body", and Agath, Manfred A. is stated to be a "settlor of a relevant trust" and an "interest holder". The property is described as the principal residence of Agath, Manfred A.
- [25] Ms. Magon acknowledges that Lochside Drive may be Mr. Agath Sr.'s excluded property, but she wishes to make a claim for the increase in value of the property. She wishes to file a certificate of pending litigation against title to Lochside Drive and cannot do so unless M.A.T. Estates Inc. is a party against whom she is seeking relief.
- [26] According to the BC Company Summary for M.A.T. Estates Inc., the director information lists "Agath, Manfred" twice as directors and officers with the same mailing address being Lochside Drive, but with two different delivery addresses. Whether there are two different directors and officers both named "Agath, Manfred" or one director and officer mistakenly named twice was not explained. Mr. Agath Sr. says that M.A.T. Estates Inc. is owned by Mr. Agath Jr.
- [27] The Land Owner Transparency form for the Mount Newton Property contains the same information as the form for Lochside Drive and also states that the property is the principal residence of Manfred Agath. No explanation was provided as to how two properties could be the principal residence of Manfred Agath.
- [28] No legal argument about the Land Owner Transparency Registry was provided on behalf Ms. Magon on this application.
- [29] Ms. Magon does not have a claim to the assets of a corporation in which Mr. Agath Sr. holds shares; her claim is to the shares themselves. A corporation owned in whole or in part by a spouse is not a necessary party to a family proceeding: *Jalalian-Ghayoumpour v. Mobargha*, 2018 BCSC 684 at para. 64. In the present case, it is not even clear whether Mr. Agath Sr. holds any shares in M.A.T. Estates Inc.

- [30] The parties should go through the usual discovery process because whether a party should be added generally turns on the issue of disclosure: *Kirk v. Kirk*, 2006 BCSC 277, para. 21.
- [31] The evidence as it currently exists does not support an order adding M.A.T. Estates Inc. as a respondent to counterclaim. The application is dismissed with leave to reapply.

Ostro Organics Inc.

- [32] Ostro Organics Inc. is owned by Mr. Agath Jr. The evidence in support of the application to add Ostro Organics Inc. as a respondent to counterclaim is limited to a few bank statements from an account stated to be in the joint names "Manfred Agath" and "Maria Magon" attached to a legal assistant's affidavit without explanation. The transactions in the bank account indicate transfers out of the account to Ostro Organics Inc. Ms. Magon argues that Ostro Organics Inc. should be a respondent in order to determine whether Ostro Organics Inc. is family property. The proposed pleading shows no direct claim against Ostro Organics Inc. If Ms. Magon is alleging some type of fraudulent use of the bank account, she does not plead as much. As previously noted, a claim in fraud that is not made out will attract significant costs penalties.
- [33] Mr. Agath Jr. says that he was also a joint owner of the account, but there is no evidence that indicates whether this is correct given that the name on the account is Manfred Agath.
- [34] Mr. Agath Jr. says that he and Mr. Agath Sr. agreed that he could make deposits into the account and out of it to avoid bank fees.
- [35] With further discovery, the facts may become clearer. The application to add Ostro Organics Inc. as a respondent to counterclaim is dismissed with leave to reapply.

Conclusion

- [36] It is not necessary, just or convenient to permit adding the proposed respondents to counterclaim with vague and poorly articulated claims unsupported by the limited evidence available.
- [37] The application is dismissed with leave to reapply after the parties file and deliver their Form F8 financial statements, exchange their lists of documents, further disclosure is made from Mr. Agath Jr., and examinations for discovery have occurred.
- [38] The deadline for the filing and delivery of their respective Form F8 financial statements and lists of documents will be 45 days from the release of these reasons.
- [39] I will be seized of all further applications in this proceeding until further notice, unless an application is urgent and I am not available.
- [40] Either party may seek to schedule a case planning conference before me.
- [41] Costs will be in the cause.

"Associate Judge Harper"

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