

CANADA / JUDGMENT

## Azanchi v. Mobrhan-Shafiee

2021 BCCA 55

COURT

British Columbia Court of Appeal

DECIDED

9 February 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCCA 55 Azanchi v. Mobrhan-Shafiee

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Azanchi v. Mobrhan-Shafiee,

2021 BCCA 55

Date: 20210209

Docket: CA46369

Between:

Javad Azanchi

Appellant

(Claimant)

And

Negar Mobrhan-Shafiee

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Groberman

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Mr. Justice Grauer

On appeal from: An order of the Supreme Court of British Columbia, dated

August 20, 2019 (Azanchi v. Mobrhan-Shafiee, 2019 BCSC 1392,

New Westminster Docket E52312

Counsel for the Appellant

(via videoconference):

A. Rebane

Counsel for the Respondent

(via videoconference):

M. Sodagar

K. Hemmati, Articled Student

N. Saberi, Articled Student

Place and Date of Hearing:

Vancouver, British Columbia

December 9, 2020

Place and Date of Judgment:

Vancouver, British Columbia

February 9, 2021

Written Reasons by:

The Honourable Mr. Justice Groberman

Concurred in by:

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Mr. Justice Grauer

Summary:

The parties entered into a separation agreement shortly after separating in 2015. In 2018, the husband sought to set aside the property division provisions of the agreement on several grounds, the most important of which were non-disclosure by the wife of a transfer of funds to her mother in 2014 and an assertion that the agreement was voided by attempts at reconciliation in 2016. The judge rejected the husband's arguments. He found that the wife had disclosed that she was transferring funds to her mother to hold in trust for the couple's child. He also found that any attempts at reconciliation did not serve to void the agreement. He was concerned that the trust arrangement might be undone, however, and made an order requiring the wife to report any amounts she received from the trust. Held: Appeal allowed, but only to the extent of

modifying the order in respect of the trust. The judge made no reversible errors in his findings. His order in respect of the trust fund, however, was inconsistent with his finding that the money was held in trust. In its place, the court substitutes a declaration as to the parties' rights to information concerning the trust.

Reasons for Judgment of the Honourable Mr. Justice Groberman:

- [1] This appeal concerns the validity and enforceability of property division provisions in a separation agreement.
- [2] Mr. Azanchi, the husband, contends that circumstances surrounding the making of the agreement justify setting it aside. In particular, he says that Ms. Mobrhan-Shafiee, the wife, failed to disclose a valuable asset -- a sum of money that she had given to her mother to hold for the benefit of the couple's child. He also says that he did not fully understand all of the implications of the agreement when he signed it, and that he signed it under duress.
- [3] Mr. Azanchi refers to events that occurred after the parties entered into the agreement, as well. He says that the parties reconciled and cohabited, which, under the terms of the agreement, rendered it void. He also argues that the failure of the parties to follow the terms of the agreement should have led the judge to set it aside.
- [4] The trial judge rejected Mr. Azanchi's arguments, finding the agreement to be valid and enforceable.
- [5] I do not intend, in this judgment, to comprehensively address all of the background of this case. That background is fully set out in the trial judge's reasons, should a reader be interested in the details.

## The Separation Agreement

- [6] In June 2015, the parties entered into a separation agreement that was to be a full and final settlement of all issues arising out of their relationship. The agreement recites that the parties were married on December 20, 2008 and separated on May 17, 2015. In addition to property division, it deals with child and spousal support, parenting responsibilities, and miscellaneous other issues.
- [7] With respect to property division, the main asset described in the agreement is the family residence, an apartment condominium in the Yaletown area of Vancouver. It is declared in the agreement to have a fair market value of \$733,777, and is said to be subject to a mortgage having a balance owing of approximately \$612,876. The agreement provides for the immediate transfer of the beneficial interest in the property to Ms. Mobrhan-Shafiee, and for the eventual transfer of legal title to her. She is to be responsible, from the date of the agreement, for all mortgage payments.

[8] The agreement briefly deals with other property belonging to the parties. The couple's automobile is to remain the property of Ms. Mobrhan-Shafiee, and she is to make the monthly loan payments on it. Each party is to continue to hold pensions, RRSPs and bank accounts in their names, free of any claim by the other party. Similarly, each party is to continue to be solely responsible for debts in their name.

[9] The agreement concludes with certain general terms, including the following:

11.2 If [Ms. Mobrhan-Shafiee] and [Mr. Azanchi] agree to try and reconcile their relationship but they cohabit for no longer than 90 days, this Agreement will not be affected. If they cohabit for more than 90 days, this Agreement will become void, except that any transfers or payments made to that time will not be affected or invalidated.

11.12 [Ms. Mobrhan-Shafiee] and [Mr. Azanchi]'s failure to insist on the strict performance of any terms in this Agreement will not be a waiver of any of them.

11.14 [Mr. Azanchi] has been told to obtain independent legal advice, has had the opportunity to obtain independent legal advice, and has declined it

11.15 If, when this Agreement is signed, a party has failed to disclose an asset or a collection having a value in excess of \$5000 (the "Undisclosed Assets"),

(a) the party must

(i) Disclose the undisclosed asset to the other (the "Innocent Party") immediately;

(ii) hold the Innocent Party's Interest in the Undisclosed Assets in trust for the Innocent Party;

(iv) indemnify the Innocent Party for reasonable costs incurred by the Innocent Party in discovery [of] the Undisclosed Assets, and

(b) the Innocent Party is entitled to:

(i) a half interest in the Undisclosed Assets as a tenant in common,

(c) [Ms. Mobrhan-Shafiee] and [Mr. Azanchi] understand their respective rights and obligations under this Agreement and its nature and consequences;

(d) acknowledge that this Agreement is fair and reasonable;

(e) acknowledge that they are not under any undue influence of duress; and

(f) acknowledge that both are signing this Agreement voluntarily.

[10] Mr. Azanchi also signed a document entitled "Waiver of Independent Legal Advice", acknowledging that he had read and understood the agreement, that he had been advised to obtain independent legal advice, and that he wished to enter into the agreement without obtaining such advice.

Statutory Provision for Setting Aside a Property Division Agreement

[11] Section 93 of the Family Law Act, S.B.C. 2011, c. 25 provides statutory authority for setting aside property division agreements:

93 (1) This section applies if spouses have a written agreement respecting division of property and debt, with the signature of each spouse witnessed by at least one other person.

(3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
  - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
  - (c) a spouse did not understand the nature or consequences of the agreement;
  - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
- (a) the length of time that has passed since the agreement was made;
  - (b) the intention of the spouses, in making the agreement, to achieve certainty;
  - (c) the degree to which the spouses relied on the terms of the agreement.

### **The Trust Fund and Failure to Disclose**

[12] Mr. Azanchi's primary argument on this appeal is that the agreement is void by reason of Ms. Mobrhan-Shafiee's non-disclosure of funds that she gave to her mother, Ms. Anhari, in 2014. The evidence at trial in respect of the funds was not entirely consistent or satisfactory.

[13] It is clear that up until 2014, Mr. Azanchi and Ms. Mobrhan-Shafiee had a joint bank account into which their employment incomes were deposited. It is also clear that in 2014, Ms. Mobrhan-Shafiee directed her employer to deposit her earnings, instead, directly into an account held by Ms. Anhari. According to both Ms. Mobrhan-Shafiee and Ms. Anhari, the account is for the benefit of Mr. Azanchi's and Ms. Mobrhan-Shafiee's child. The child was born in 2011, and so was approximately three years old when the account was set up, and is approximately 10 years old now.

[14] Mr. Azanchi testified that he was aware, in 2014, that Ms. Anhari had opened an account for the child, or was going to do so. He also said that he and Ms. Mobrhan-Shafiee discussed putting money into an account for the child, and that he thought it would be a good idea to do so. He says, however, that he only became aware that Ms. Mobrhan-Shafiee had made contributions to Ms. Anhari's account in 2018, after the family law proceedings were commenced.

[15] Ms. Mobrhan-Shafiee's evidence was that Mr. Azanchi frequently checked the joint bank account, and so would have noticed that her income was no longer being deposited to it. She also stated, without details, that Mr. Azanchi knew that she was directing her income into her mother's account for the child.

[16] Ms. Anhari's evidence with respect to the arrangements was the most complete, though it was also limited. The following exchange occurred in her examination in chief by Ms. Mobrhan-Shafiee:

Q Did I contribute to the saving account that you had for [the child]?

A Yes. But it was your decision and your husband's decision. You decided both that you can put some money to [the child]'s account --

...

Q How did Mr. Azanchi receive the idea of my contributing to [the child]'s saving account?

A Well, he was happy and he -- he thanked me for that.

[17] Her evidence on the subject in cross-examination was as follows:

Q You stated that Mr. Azanchi was happy to put money -- save money for [the child]?

A Yes. Yes. It happened in my place. They were both in my place.

Q Were specific bank accounts discussed?

A What discussed about what? What -- they were in my place. I don't know your question because I didn't hear that, but they were in my place, when I helped them to go back together, then they're -- [the child]'s account came up, and they both decided to put some money in his account. They both agree, and Mr. Azanchi was so happy and appreciated.

Q Okay. So --

A And --

Q -- was [the child]'s account.

A Yes.

Q How much money is in this account now, Ms. Anhari?

A I don't know.

Q You don't know?

A No.

Q It's your account, correct?

A Yes.

[18] Finally, the judge posed a few questions to Ms. Anhari:

Q In terms of the money that's in the account that you hold that was to be for [the child], do you know approximately how much of that was put in by your daughter?

A To be honest, Your Honour, I don't know. She put the money in the account. That's I think she had the -- I think she -- if you ask her, she may have give you something but I don't know.

Q If your daughter were to request that money that she put in back, would she be entitled to it?

A No.

Q Why not?

A Is my account, is my personal account. I don't want anybody to know except me and - that's something between me and [the child].

[19] The judge's findings on this issue were as follows:

[115] [T]he respondent [was not] guilty of material non-disclosure that could undermine the Agreement: s. 93(3)(a) of the [Family Law Act]; Rick [v. v. Brandsema, 2009 SCC 10] at paras. 45-49. The only issue raised in this respect is the funds held for [the child] by the respondent's mother. I find the claimant was aware that funds had been placed with the respondent's mother, but simply did not know the precise amount. His failure to investigate this issue further falls primarily on his shoulders. I accept the respondent's mother's evidence that she holds these funds in trust for [the child] and that the respondent maintains no beneficial interest in them. However, as a safeguard against any change or misrepresentation in this respect, I have made an order below requiring the respondent to disclose if her mother ever takes a different position and returns funds to her. This term is consistent with the undisclosed asset disclosure provisions in paragraph 11.15 of the Agreement.

[20] Mr. Azanchi argues that Ms. Mobrhan-Shafiee improperly failed to disclose the funds in her disclosure statements. Ms. Mobrhan-Shafiee agrees that she did not list the funds in the statements. She says that she did not have to do so, because she no longer had any legal or beneficial interest in them. Mr. Azanchi points out, however, that the financial disclosure form in the Supreme Court Family Rules (Form 8) includes a section entitled "Disposal of Property" that requires a party to "[l]ist all real and personal property disposed of during the 2 years preceding th[e] statement". Ms. Mobrhan-Shafiee's earliest disclosure statement was not an exhibit at trial, and it is unclear from the record when it was made. The family law

action was not commenced until late December 2016, which may well have been more than two years after the last deposit into Ms. Anhari's account. It is unclear whether Ms. Mobrhan-Shafiee completed a Form 8 prior to that.

- [21] The judge's conclusion that Ms. Mobrhan-Shafiee retained no beneficial interest in the funds at the time of the separation agreement, and his conclusion that Mr. Azanchi knew that the funds had been transferred to Ms. Anhari were both supported by some evidence. As the judge made no palpable and overriding error of fact, this court must defer to his conclusions.
- [22] On these findings, even if there had been a technical omission from a disclosure form -- something that has not been proven -- it would not be a material one. Mr. Azanchi was fully aware of the diversion of Ms. Mobrhan-Shafiee's 2014 earnings, and of their destination. He would also have known the approximate magnitude of those earnings, if, perhaps, not their exact amount.
- [23] As there was no material non-disclosure, the agreement cannot be set aside under s. 93(3)(a) of the Family Law Act, nor do the provisions of clause 11.15 of the Separation Agreement (which deals with undisclosed assets) apply.
- [24] Both the reasons for judgment and the formal order indicate that, despite his finding that the funds were held in trust, the judge had some concern that the trust was a sham. In addition to the judge's reference in his reasons to the possibility of misrepresentation, his formal order included the following provision:
65. Should the Respondent receive any amounts from her mother from the account maintained for [the child], she shall advise the Claimant, and he shall be at liberty to apply to receive a share of those funds.
- [25] Mr. Azanchi's counsel, Mr. Rebane, says that this provision is unworkable. If Ms. Mobrhan-Shafiee receives any amount from the funds, it will be either because she misrepresented their nature to the court, or because she is knowingly participating in a breach of trust. It is doubtful that she would advise Mr. Azanchi of either an act of perjury on her part, or of a breach of trust. These concerns have considerable force.
- [26] More importantly, however, paragraph 65 of the order seems to not only contemplate a breach of trust, but to give Mr. Azanchi an opportunity to participate in it. That is not a proper way to deal with a breach.
- [27] For my part, I am troubled by the evidence with respect to the funds. It is clear that Mr. Azanchi made inquiries before trial to determine where the funds were, and what their value was. Ms. Anhari declined to provide the information. At trial, she purported not to know what the balance of the bank account was, and, in fact, claimed that it was her "personal account" and that the matter was a private one between her and the child.

- [28] The position taken by Ms. Anhari is an unsatisfactory one. Mr. Azanchi and Ms. Mobrhan-Shafiee are, jointly, the parents and guardians of the child. Nothing in the evidence suggests that Ms. Anhari received the funds without restrictions, or that she did not take on an obligation, as trustee, to answer to those with legal responsibility for the child.
- [29] Given these concerns, and those raised on behalf of Mr. Azanchi, I would replace paragraph 65 of the order with the following:
65. Both the Claimant and the Respondent have the right, on behalf of [the child], to make inquiries of the Respondent's mother to determine the amount and status of the trust funds given by the Respondent to her for the benefit of [the child], and to be consulted by the trustee before any use is made of the money contributed to the accounts by the respondent.
- [30] I am conscious of the fact that Ms. Anhari is not currently a party before the Court, and I am refraining from making any order directed to her, as trustee. She should, however, take note that neither the Supreme Court of British Columbia nor this Court will hesitate to make orders against a trustee who is not responsive to proper inquiries directed to them. She must cooperate with Mr. Azanchi and Ms. Mobrhan-Shafiee in administering the money that has been entrusted to her for the child.

Did Mr. Azanchi Lack an Understanding of the Nature or Consequences of the Agreement?

- [31] The judge rejected the contention that Mr. Azanchi lacked an understanding of the nature or consequences of the agreement, such that it should be set aside under s. 93(3)(c) of the Family Law Act.
- [32] The judge noted that Mr. Azanchi is a university-educated professional, who has considerable familiarity with contracts through his work. This was not his first marital breakdown, so he had some familiarity with family law processes as well. The judge observed that the agreement, as drafted, is fairly easy to understand. Mr. Azanchi was encouraged to seek independent legal advice, but steadfastly refused to do so. While he may have made some limited attempts to consult with a lawyer just before he signed the agreement, the attempts were perfunctory. There was no urgency in signing the agreement, and had he genuinely wished to obtain legal advice, he could have done so. He clearly was of the view that he did not require further advice in order to understand the agreement.
- [33] The judge's findings of fact, again, are entitled to deference, and it is not possible, on those findings, to conclude that Mr. Azanchi failed to appreciate the nature or consequences of the agreement.

- [34] On the appeal, Mr. Azanchi claims only that he did not understand the precise meaning of clause 11.2 of the agreement. In particular, he says that he considered that "cohabit" simply meant living together in the same house, and that "trying to reconcile" would be interpreted broadly, so as to include all attempts by the parties to behave amicably toward one another. The judge interpreted the concepts of "cohabiting" and "reconciling" in clause 11.2 more restrictively than did Mr. Azanchi.
- [35] Mr. Azanchi recognized that different interpretations of clause 11.2 might be possible, and that arriving at the correct interpretation might involve an exercise of some subtlety. He did not misapprehend the meaning of the clause; rather he recognized that it manifested some degree of imprecision. In his evidence at trial, he described the clause as "vague". Mr. Azanchi must have recognized that he could not confidently approach the clause on the assumption that it would be interpreted broadly.
- [36] The clause was not "vague" in a legal sense. Only where the essential terms of an agreement are so uncertain as to be incapable of reasonable interpretation will the contract be void for vagueness: *Hoban Construction Ltd. v. Alexander*, 2012 BCCA 75. The clause in this case is not incapable of being reasonably interpreted.
- [37] Even if Mr. Azanchi had misinterpreted the clause, it would not give rise to an order setting aside the agreement. I do not accept that, as a matter of law, a miscalculation as to the exact scope of a clause in an agreement amounts to a failure to "understand the nature or consequences of the agreement". Most, if not all, contracts include words whose meanings are somewhat elastic, and clauses whose ambit can be the subject of debate. If the mere presence of such words and clauses allowed the contract to be set aside, there would be little scope for binding private agreements.
- [38] The judge did not err in finding that Mr. Azanchi had an adequate understanding of the agreement to be bound by it. Section 93(3)(c) of the Family Law Act cannot be used to set aside the agreement.

## Duress

- [39] Mr. Azanchi suggests that he signed the agreement under duress, and says, therefore, that it can be set aside under s. 93(3)(d). I have no doubt that where duress is proven, a court can set aside a family law agreement, though s. 93(3)(b) will often be a more apt statutory basis for doing so than 93(3)(d).
- [40] In this case, Mr. Azanchi alleged that Ms. Mobrhan-Shafiee threatened to jump off a balcony, with the couple's child, if Mr. Azanchi did not sign the agreement. Ms. Mobrhan-Shafiee denied making any such threat. The trial judge made no finding on the issue, but did find that there was no duress:

- [111] given their repeated dramatic arguments over the entire relationship, I do not believe the claimant would have been sufficiently distressed by the respondent's alleged threat to throw [the child] and herself off the balcony if he did not sign the Agreement. Indeed, the claimant contradicted himself by testifying both that he was in a state of emotional vulnerability due to the respondent's threats, while at the same time stating this was all 'business as usual' such that he did not take the separation effort particularly seriously.
- [41] There is no palpable and overriding error in the judge's findings. There is nothing in the evidence to establish that Mr. Azanchi was distressed or pressured at the time he entered into the agreement.

#### The Interpretation and Application of Clause 11.2 of the Agreement

- [42] The judge adopted the proper approach to interpreting the agreement, referring to established jurisprudence on the issue:
- [73] Madam Justice Iyer reviewed the guiding principles for interpreting separation agreements in *Berns v. Berns*, 2019 BCSC 25:
- [7] The principles governing the interpretation of separation agreements are the same as those governing the interpretation of contracts in general. The court must interpret the words of the contract in light of the intentions of the parties. As the Supreme Court of Canada has held, in this inquiry the court may consider the circumstances or factual matrix surrounding contract formation:
- [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, [2008 BCCA 31] at para. 14; and *Hall* [Geoff R. Hall, *Canadian Contractual Interpretation Law*, 2nd ed. Markham, Ont.: LexisNexis, 2012], at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (*Hall*, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62).
- Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53.
- [74] The overriding concern is to determine the intent of the parties and the scope of their understanding: *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 at para. 47; *Cantlon v. Folk-Klein*, 2017 BCCA 383 at para. 13.
- [43] With that interpretive framework, the judge found that, under clause 11.2, the agreement would only be voided if the parties cohabited and agreed to try to reconcile their relationship, both for a period of longer than 90 days. He then noted that the parties had

always intended to remain separated while living in the same apartment, so that "cohabiting", in the context of this agreement, must have been intended to connote something more than simply living under the same roof. He suggested that, in using the word "cohabit" the parties meant something akin to "living in a marriage-like relationship".

- [44] I do not intend to repeat the judge's comprehensive analysis of the parties' relationship in the months following separation. He found that while they lived in the same apartment for 19 months, Mr. Azanchi was away for much of the time. When he was at the apartment, the couple did not normally share a room, and they behaved more like "roommates" than like a reconciled married couple.
- [45] In my view, the judge did not err, either in his approach or in his fact finding. While the parties were occasionally cordial to one another, they were more often distant, and there do not appear to have been any serious or prolonged attempts at reconciliation.

Should the Judge Have set Aside the Agreement for Unfairness?

- [46] Finally, the judge considered whether the separation agreement should be set aside under s. 93(5) of the Family Law Act on the basis that it was "significantly unfair". The primary "unfairness" identified by Mr. Azanchi was that the family residence greatly increased in value after the agreement was entered into.
- [47] The judge found that the circumstances of the case did not meet the "significantly unfair" threshold. On appeal, Mr. Azanchi does not directly challenge that assessment, but says that the judge failed to place sufficient emphasis on s. 93(5)(c) of the Family Law Act, which requires the court to take into consideration "the degree to which the spouses relied on the terms of the agreement" in determining whether an agreement should be set aside for significant unfairness.
- [48] Mr. Azanchi asserts that the parties departed from the terms of the agreement in several respects, and did not, in the result, rely heavily on it. He says that the judge should therefore have concluded that the agreement was significantly unfair.
- [49] I begin by noting that, for the most part, the parties did observe the terms of the agreement. They did so with a degree of flexibility, so that, for example, there was some leeway in when support payments were made. Most of the departures from the strict terms of the agreement were inconsequential, and none were in respect of fundamental rights and obligations.
- [50] It is difficult to see how the fact that the parties have been accommodating in their enforcement of the agreement renders the agreement "significantly unfair" or militates in favour of setting it aside.

- [51] More to the point, in my view, Mr. Azanchi has misinterpreted the terms of s. 93(5) of the Family Law Act. Section 93(3) sets out the typical situations in which an agreement may be set aside. Outside of those situations, s. 93(5) gives the Supreme Court discretion to set aside an agreement where it is significantly unfair. Significant unfairness represents a high threshold for setting aside an agreement.
- [52] As I read s. 93(5), paragraphs (a), (b), and (c) are simply considerations that must be taken into account before setting aside an agreement for significant unfairness. While there will be situations in which the criteria set out in those paragraphs impinge on the fairness of the agreement, they will, more often, be considerations to be taken into account in deciding whether a significantly unfair agreement should be set aside or left in place. Thus, a court may determine that, despite significant unfairness, an agreement should not be set aside if, for example, the parties have relied heavily on its terms in making their lifestyle choices, or have deliberately risked having to live with an unfair agreement because they placed a high value on certainty.
- [53] In the case before us, the various efforts made by the parties to accommodate each other during the separation did not serve to exacerbate any unfairness in the agreement. In the circumstances, the judge was not in error in failing to give them significant weight in his assessment of whether the agreement was significantly unfair. Having found that it was not significantly unfair, the judge had no basis for setting it aside under s. 93(5).

## Conclusion

- [54] I am not persuaded that the trial judge erred in finding that the separation agreement remained in force, and in refusing to set aside its property division provisions. For the most part, therefore, the appeal should be dismissed.
- [55] There is one aspect of the judge's order that cannot be allowed to stand. After expressing some concern about money being held by Ms. Mobrhan-Shafiee's mother in trust, he granted a remedy that was inconsistent with the existence of a trust.
- [56] While I share the judge's concerns about potential improprieties in respect of the trust, it seems to me that they are more legitimately dealt with by ensuring that everyone understands the special role that the parties have in respect of the trust. I would therefore order that the following provision be struck from the judge's order:
65. Should the Respondent receive any amounts from her mother from the account maintained for [the child], she shall advise the Claimant, and he shall be at liberty to apply to receive a share of those funds.
- [57] It will be replaced by the following provision dealing with the trust:

65. Both the Claimant and the Respondent have the right, on behalf of [the child], to make inquiries of the Respondent's mother to determine the amount and status of the trust funds given by the Respondent to her for the benefit of [the child], and to be consulted by the trustee before any use is made of the money contributed to the accounts by the respondent.

[58] Except for this modification, I would dismiss the appeal.

"The Honourable Mr. Justice Groberman"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Mr. Justice Grauer"

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.bccourts.ca/jdb-txt/ca/21/00/2021BCCA0055.htm>

CASE PAGE              <https://chat.esheria.ai/case-law/canada/azanchi-v-mobrhan-shafiee-2021>

Prepared on 29 October 2026 · Esheria