

CANADA / JUDGMENT

Bayat v. Nguyen

2025 BCSC 2622

COURT

Supreme Court of British Columbia

DECIDED

8 April 2025

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2025 BCSC 2622 Bayat v. Nguyen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bayat v. Nguyen,

2025 BCSC 2622

Date: 20250408

Docket: E232910

Registry: Vancouver

Between:

Amir Ramin Bayat

Claimant

And

Thi Nhan Nguyen also known as Lynn Nguyen also known as Lynn Thi Nhan Nguyen also known as Thi Lynn Nhan Nguyen also known as Thi Nhan Lynn Nguyen, Thi Lan Ta, Thanh Cao Nguyen, Tom Trung Thanh Nguyen also known as Tom Trung Nguyen also known as Tom Nguyen, Jessica Sharon Jang also known as Jessica Jang, Elaine Thanh Thao Nguyen also known as Elaine Nguyen, Pauline Pui-Ling Jang also known as Pauline Jang, 1155696 B.C. Ltd., 1155695 B.C. Ltd., Lyto Development Ltd., Enerstar Windows Ltd., RFR Homes Ltd., 1118363 B.C. Ltd.,

Pacific Gate Development Group Ltd.

Respondents

Before: The Honourable Justice Thomas

Oral Reasons for Judgment

In Chambers

The Claimant, appearing in person:

A. Bayat

Counsel for the Respondent Thi Nhan Nguyen also known as Lynn Nguyen also known as Lynn Thi Nhan Nguyen also known as Thi Lynn Nhan Nguyen also known as Thi Nhan Lynn Nguyen:

T.W.T. Yu

Counsel for the Respondents Thi Lan Ta, Thanh Cao Nguyen, Tom Trung Thanh Nguyen also known as Tom Trung Nguyen also known as Tom Nguyen, Jessica Sharon Jang also known as Jessica Jang, Elaine Thanh Thao Nguyen also known as Elaine Nguyen, Pauline Pui-Ling Jang also known as Pauline Jang, and Pacific Gate Development Group Ltd.:

M. Pendreigh

For the Respondents 1155696 B.C. Ltd., 1155695 B.C. Ltd., Lyto Development Ltd., Enerstar Windows Ltd., RFR Homes Ltd., 1118363 B.C. Ltd.:

No appearances

Place and Date of Trial/Hearing:

Vancouver, B.C.

April 4 and 8, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 8, 2025

- [1] THE COURT: This action is part of a complex family law matter. Mr. Bayat and Ms. Nguyen were in a relationship and had a son born on November 11, 2015, and a daughter born on November 7, 2017. They signed a parenting agreement and Mr. Bayat moved to Ontario with the children in 2023.
- [2] On November 10, 2023, he filed the notice of family claim seeking spousal support and division of family assets. He alleges that Ms. Nguyen had a beneficial interest in a number of properties which were owned by her family members or corporations, including a family home. To this end, he named six relatives of Ms. Nguyen and seven corporations as additional respondents in the action. I will refer to these as the "other respondents", who are on title for 18 properties specified in the claim. Ms. Nguyen is not on title for any of the specified properties.

- [3] Mr. Bayat said that he worked on the family home in which he and Ms. Nguyen resided together and also worked on other properties specified in the notice of family claim. In addition, he also advances a claim for unjust enrichment outside of the family law claim against the assets of the other respondents. He has filed certificates of pending litigation against the 18 properties.
- [4] In her response, Ms. Nguyen denies that she was in a marriage-like relationship with Mr. Bayat, denies that they lived together, and denies a beneficial interest in the properties and assets.
- [5] The other respondents deny that Ms. Nguyen has any beneficial interest in their properties and assets. They also deny that Mr. Bayat provided any work on the properties that would entitle him to a claim for unjust enrichment.
- [6] In a counterclaim, Ms. Nguyen asks that the parenting agreement be set aside as it was filed under duress and, if set aside, she seeks child support and asks that the children be returned to British Columbia.
- [7] Mr. Bayat filed a jurisdictional appearance to the counterclaim as he wished to pursue his claim for child support in Ontario.
- [8] On September 25, 2024, Justice Coval ordered, by consent, that the validity of the parenting agreement be tried and determined by this court.

Nature of this Application

- [9] Ms. Nguyen brings an application to have the issue of the nature of her relationship with Mr. Bayat be determined prior to the other issues raised in the notice of family law claim.
- [10] I adopt the following facts and law set out in Ms. Nguyen's notice of application:
23. In December 2022, the claimant and his mother and brother were evicted from Rupert Street. Lynn secured her sister's permission to allow the claimant and his mother and brother to temporarily stay at Raleigh Street until they could find a new home. They stayed for a short period and then eventually moved to 6550 Tyne Street in Vancouver in or about early 2023. This was the only period of co-habitation between the claimant, Lynn and the children.
24. Rules 14-6(2) and 14-7(67) of the Supreme Court Family Rules provide that the court may order that one or more questions of fact or law be tried and determined before the others.
25. For an issue to be determined separately from other issues in the litigation, the applicant must demonstrate that the issue is capable of being decided independently of other issues and that trying one issue independently will result in efficiencies in the litigation.

Ross River Dena Council v. Canada, 2013 YKCA 6 at paras. 14-38; K.M.W. v. M.D.W., 2016 BCSC 228 at para. 37-38; Hudema v. Moore, 2020 BCSC 1502 at para. 7.

26. In *Nguyen v. Bains*, 2001 BCSC 1130, Martinson J. summarized some of the jurisprudence under former Rule 39 (29) [as quoted from *Ross River*, *supra*]:
- [11] Courts have considered the question of when some issues should be tried before others. These are some of the points that have been made:
- a. A judge's discretion to sever an issue is probably not restricted to extraordinary or exceptional cases. However, it should not be exercised in favour of severance unless there is a real likelihood of a significant saving in time and expense.
 - b. Severance may be appropriate if the issue to be tried first could be determinative in that its resolution could put an end to the action for one or more parties.
 - c. Severance is most appropriate when the trial is by judge alone.
 - d. Severance should generally not be ordered when the issue to be tried is interwoven with other issues in the trial. This concern may be addressed by having the same judge hear both parts of the trial and ordering that the evidence in the first part applies to the second part.
 - e. A party's financial circumstances are one factor to consider in the exercise of the discretion.
 - f. Any pre-trial severance ruling will be subject to the ultimate discretion of the trial judge.
47. The jurisprudence has established various indicia to be considered when determine whether the parties were in a marriage-like relationship within the meaning ;of s. 3 of the Family Law Act, which was conveniently summarized by Justice G.C. Weatherill in *Kneller v. Greenwood*, 2015 BCSC 1410 at paras. 97-100 [Kneller] as follows:
1. Shelter:
 - a. Did the parties live under the same roof?
 - b. What were the sleeping arrangements?
 - c. Did anyone else occupy or share the available accommodation?
 2. Sexual and Personal Behaviour:
 - a. Did the parties have sexual relations? If not, why not?
 - b. Did they maintain an attitude of fidelity to each other?
 - c. What were their feelings towards each other?
 - d. Did they communicate on a personal level?
 - e. Did they eat their meals together?
 - f. What, if anything, did they do to assist each other with problems or during illness?
 - g. Did they buy gifts for each other on special occasions?

3. Services:

What was the conduct and habit of the parties in relation to:

- a. preparation of meals;
- b. washing and mending clothes;
- c. shopping;
- d. household maintenance; and
- e. any other domestic services?

4. Social:

- a. Did they participate together or separately in neighbourhood and community activities?
- b. What was the relationship and conduct of each of them toward members of their respective families and how did such families behave towards the parties?

5. Societal:

What was the attitude and conduct of the community toward each of them and as a couple?

6. Support (economic):

- a. What were the financial arrangements between the parties regarding the provision of or contribution toward the necessities of life (food, clothing, shelter, recreation, etc.)?
 - b. What were the arrangements concerning the acquisition and ownership of property?
 - c. Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?
48. No single factor is dispositive of the issue, and the court must consider the relationship as a whole. These indicia may be present in a relationship in varying degrees, and all are not necessary for the relationship to be marriage-like.
49. In *Weber v. Leclerc*, 2015 BCCA 492, Justice Grobemian, writing for the court, also noted the following at paras. 12, 17, 21-25:
- a) The issue of a "marriage-like relationship" is a question of mixed fact and law that requires a broad approach.
 - b) Today, though economic dependence or interdependence exists in many marriages, the intention to live in a marriage-like relationship need not include an intention to be financially interdependent.

- c) The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
 - d) The intention that is critical is not the intention to be bound by a statutory regime of mutual support, but rather the intention to enter into a relationship similar to marriage.
 - e) The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".
 - f) The indicia of a marriage-like relationship are not meant to be a checklist but are helpful indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship.
 - g) Every relationship is unique, and the presence or absence of any particular factor is not determinative of whether a relationship is marriage-like.
- [11] Mr. Bayat opposes the application and relies primarily on *Holmes v. Fedoruk*, 2021 BCSC 442, at paras. 47-52.:
- [47] Supreme Court Family Rules 14-6(2) and 14-7(67) state that the Court may order that one or more questions of fact or law in a family action be tried and determined before the others.
- [48] In seeking such an order in this case, Mr. Fedoruk relies on the decision of this Court in *Hudema v. Moore*, 2020 BCSC 1502, in which a similar threshold issue was ordered to be severed and tried in advance of the other questions in the case. The severable issue in that case was the validity and enforceability of an agreement between the parties stating that although they were living together, they were not in a marriage-like relationship and so would not advance any claim against each other on that basis.
- [49] In allowing the respondent's application for severance in those circumstances, Baker J. conveniently summarised the test to be applied in the exercise of that discretion as follows, at para. 7:
- [7] In *K.M.W. v. M.D.W.*, 2016 BCSC 228, the B.C. Supreme Court applied the law as set out by the B.C. Court of Appeal in the case of *Ross River Dena Council v. Canada*, 2013 YKCA 6, in which the court found that, for an issue to be determined separately from other issues in the litigation, the applicant must demonstrate that the issue is capable of being decided independently of other issues and that trying one issue independently will result in efficiencies in the litigation.

- [50] That case is clearly distinguishable from this one because the agreement, if valid and enforceable, provided the respondent with a complete defence to the claim. In this case, there is no such discreet and potentially determinative defence. On the contrary, I have already found that Ms. Holmes has made out a prima facie case on the "marriage-like relationship" issue.
- [51] I appreciate that if, despite my finding, Mr. Fedoruk is ultimately able to defeat the claim on that issue, then this litigation too could be resolved far more efficiently with the proposed severance. But if he is not, then the litigation will merely have been made more complicated and expensive. In that event, the parties will still have to cover much of the same evidentiary ground in the second phase of the trial when they address the remaining issues, such as the strength of Ms. Holmes' case for entitlement to spousal support and the appropriate division of family property, including what assets, if any, should be considered excluded.
- [52] On balance, I have concluded that the proposed severance would not be appropriate in this case.

Position of Mr. Bayat

- [12] Mr. Bayat says the other respondents have 100 claims or so filed against them and are involved in a variety of shady financial deals and complex transactions in trust for Ms. Nguyen, as part of an overall scheme to avoid paying creditors and taxes. He is confident that if the other defendants were subjected to disclosure and discovery, that they would be forced to settle this action to keep their affairs private from enforcement agencies.
- [13] I find this strategy troubling. However, I need not comment on it further as in my view, the matter can be resolved through the principles relied upon by Mr. Bayat.
- [14] Mr. Bayat says he requires substantial document production and discovery of the parties to prove that Ms. Nguyen has a beneficial interest in the properties and the value and extent of the properties and assets, including many of the liabilities and issues relating to the litigation he mentioned in his submissions. He says that there is considerable evidentiary overlap between the value of the properties and Ms. Nguyen's beneficial interest in the properties, and the nature of the relationship between Ms. Nguyen and himself. He says that Ms. Nguyen's family members would have to testify in both trials if the matter were bifurcated, as would his family members. His family members, as I understand it, reside in Ontario.
- [15] However, he was unable to provide a single example of any evidentiary overlap that arise between the two issues when I questioned him on this. He did say that the issues in this action will relate to a claim for child support and who was the primary caregiver of the children prior to him relocating in 2023. However, he specifically left this aspect out of the notice of family claim he filed with assistance of counsel. No steps have been taken to incorporate this aspect into this family claim at this time.

- [16] Mr. Bayat provided detailed submissions that reviewed the documents, texts, and photographs pertaining to him and Ms. Nguyen that he says would provide the basis for establishing that they were in a marriage-like relationship. One of the main factual issues in dispute between the parties is whether Mr. Bayat and Ms. Nguyen resided in the same residence for a period of time over the course of their relationship. He characterized the issues of establishing the nature of their relationship as "easy to prove" and expressed a desire to prove that aspect of the claim at this hearing, but realized he could not.
- [17] I did not see any significant overlap between the evidence he directed me to that would be used to establish that Ms. Nguyen had a beneficial interest in the properties in question. This evidence seemed primarily focused on the nature of their relationship.
- [18] Mr. Bayat says that the trial of this matter will take at least 25 days. He felt this was necessary for all the issues tried together, or that 25 days would be required for a determination of the nature of his relationship with Ms. Nguyen and then a further 25 days for the determination of her beneficial interest in the properties and value of the properties.

Position of Ms. Nguyen and the Other Defendants

- [19] Ms. Nguyen's counsel says that the issues pertaining to the nature of the relationship and the strength, if any, of any claim to spousal support are discrete from the issues of a beneficial interest in the properties and the value of the assets. Her counsel provided a detailed breakdown of a 10-day trial estimate on this issue that appeared to conform with the evidence Mr. Bayat reviewed with me during the application and based on the witnesses that Mr. Bayat said that he would call on this issue.
- [20] Ms. Nguyen's counsel says that there is no overlap on the issues of the nature of the relationship and Ms. Nguyen's alleged beneficial interest in the properties. One of the most significant issues from their perspective is whether Mr. Bayat and Ms. Nguyen resided together for a lengthy period of time. If the parties are not in a marriage-like relationship, the only claim would be Mr. Bayat's common law claim for unjust enrichment.
- [21] The pleadings are vague on the work that he provided supporting the allegations of unjust enrichment and such issues could be resolved in less than five days, since the position of the other respondents is that Mr. Bayat did not work on the other properties.
- [22] Ms. Nguyen's counsel says that the issue of child support and parenting are not currently part of this notice of family law claim and Mr. Bayat is disputing that B.C. has jurisdiction on this issue. The resolution of the parenting agreement is proceeding as a parallel issue in these proceedings. The first step will be to determine if the parent agreement is valid.

- [23] There are numerous issues involving the children and parenting. I note the children have been living with Mr. Bayat in Ontario since 2023. It is unknown how many days would be required to resolve these issues if the parent agreement is invalid, what evidence would be required, and the appropriate jurisdiction. Presumably, significant evidence would be required about how the children have been doing since 2023 while in Ontario under Mr. Bayat's care.
- [24] Counsel for the other respondents advised that, given the allegations made by Mr. Bayat about misconduct, outstanding lawsuits, and amounts that Mr. Bayat advised me were connected to the properties, the number of properties, and people involved, the disclosure obligations would be time consuming and onerous. He estimates, given the complexity of the holdings and the nature of the allegations made against the defendants, that 25 days may be required on this issue, should the matter proceed to trial.

Disposition

- [25] I am satisfied that the issue of the nature of the relationship between Ms. Nguyen and Mr. Bayat can be tried independently from the other issues in the notice of family law claim. I say this because:
- 1) The issue of Ms. Nguyen's beneficial interest in any properties appears to be discrete for the factors that one would assess in determining the nature of her relationship with Mr. Bayat;
 - 2) Mr. Bayat was unable to provide a single example of an evidentiary overlap on this issue;
 - 3) The issue of the children and child support are not currently part of this litigation.
- [26] I note that Mr. Bayat, with the assistance of his former counsel, felt that it would be more efficient or advantageous to proceed with this aspect of his claim in Ontario when he filed his notice of family law claim and jurisdictional appearance to the counterclaim. It is far from clear at this time where and when, if at all, these issues will proceed and what they would entail.
- [27] I am satisfied that trying the issue of the nature of the relationship that exists between Mr. Bayat and Ms. Nguyen first will result in efficiencies in the litigation. I say this because this is not a situation like *Holmes v. Fedoruk* where a *prima facie* case has already been established on the "marriage-like relationship". To the contrary, the nature of the relationship between Mr. Bayat and Ms. Nguyen is in dispute and if it is determined that such a relationship does not exist, there will be a substantial savings in time, money, and court resources. If it is determined that such a relationship exists, the litigation can proceed with little evidentiary overlap.

[28] I am cognizant that there will be a repetition of a number of witnesses having to testify in what I would call the relationship trial, as well as the beneficial interest trial. I am not satisfied that there will be a repetition of evidence given the nature of these pleadings and the issues, however, if the relationship trial, for lack of a better word, is tried first.

[29] Therefore, I order as follows:

- 1) The resolution of the nature of the relationship that existed between Mr. Bayat and Ms. Nguyen will be resolved prior to the resolution of any beneficial interest that Ms. Nguyen may have in other properties or assets, as set out in the notice of family claim.
- 2) Disclosure of documents or discovery and any amendments relevant to any beneficial interest or the assets in question will be postponed until after the resolution of the nature of the relationship that existed between Mr. Bayat and Ms. Nguyen has been resolved.
- 3) A 10-day trial will be scheduled to deal with the issue of the nature of the relationship that existed between Mr. Bayat and Ms. Nguyen as soon as reasonably possible.

[30] THE COURT: I assess the costs at \$2,000 plus disbursements payable to Ms. Nguyen and order that they are payable forthwith. Also, I will waive approval of the form of the order by Mr. Bayat, but I will order that Mr. Bayat be served a copy of the order once it has been entered.

"Thomas J."

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