

CANADA / JUDGMENT

Beere v. Rajaratnam

2025 BCSC 2612

COURT

Supreme Court of British Columbia

DECIDED

27 August 2025

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2025 BCSC 2612 Beere v. Rajaratnam

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Beere v. Rajaratnam,

2025 BCSC 2612

Date: 20250827

Docket: E241731

Registry: Vancouver

Between:

Sarah Christina Beere

Claimant

And

Alexander Mischa Rajaratnam

Respondent

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

E. Jalilian

Counsel for the Respondent:

N. Bernardi

Place and Date of Hearing:

Vancouver, B.C.

August 12, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 27, 2025

Introduction

- [1] THE COURT: By application filed September 11, 2024, the claimant applies for:
- a) Sale of the former family home, located at 2041 Tompkins Crescent, North Vancouver, B.C. (the "Family Home") and related orders concerning selection of a realtor, preparation of property for sale, and sale process; and
 - b) An interim distribution of \$85,000 to each of the parties from the net proceeds of sale of the Family Home to fund legal expenses relating to this action, pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 ("FLA");
- [2] The respondent opposes all of the relief sought.

Background

- [3] The claimant is employed with the North Vancouver School District. The respondent is currently employed as a driver with the Pacific Association of First Nations Women.
- [4] The parties began living together in a marriage-like relationship in November 2012 and separated in 2023. They have one child together, [G.] born [month and day redacted], 2016, currently age 9.
- [5] The respondent purchased the Family Home in 2004 while he was in a previous marriage. The claimant moved into the home in November 2012. At the time, the respondent was still engaged in matrimonial proceedings with his ex-wife. In or about 2013, he bought out his ex-wife's interest in the property. The funds he used to do so came from a line of credit and an \$80,000 loan from his uncle.
- [6] In April 2014, the respondent refinanced the Family Home. At the time there was an HSBC mortgage in the sum of \$121,233 and a secured line of credit in the sum of \$71,011 registered on title, for total secured debt of about \$192,244. These were later replaced by a Scotia mortgage of \$270,000 and a Scotia line of credit of \$80,000. The claimant agreed to become a guarantor of the new Scotia financing. The respondent says the refinancing was arranged to repay the loan owing to his uncle. Roughly a year later, his uncle decided to convert the loan

into a gift to the respondent. He says he used about \$40,000 of the \$80,000 in proceeds which had been raised from the refinancing to redo the Family Home's roof and drainage.

- [7] The claimant says in 2023 she discovered that, unbeknownst to her at the time, that as part of the 2014 refinancing, the notary handling the refinancing had paid out to the respondent net proceeds of \$82,624. The respondent never disclosed this to her at the time and he did not share the funds with her.
- [8] From April 2014, the claimant says she began making all monthly mortgage payments on the Family Home. That issue appears to not be in dispute.
- [9] The claimant says in or around 2013 or 2014, two realtors provided a market valuation of the Family Home, indicating its market value was about \$883,000. She notes the property's 2012 BC Assessment value was \$895,000.
- [10] The respondent says throughout their relationship, the parties kept their finances separated, apart from the financing to which I have referred. The claimant deposited her income into her personal bank and made mortgage payments and paid for groceries from her own account. The respondent says he paid the other household expenses, including utilities, property taxes and insurance, using the limited income he was receiving from doing freelance work as an audio engineer and by drawing on his personal savings and the line of credit.
- [11] The claimant took a four-month long maternity leaving following [G.]'s birth but then returned to work.
- [12] The respondent says that during their relationship the parties discussed renovating the Family Home and did piecemeal upgrades from time to time. He carried out most of the work himself to save money. In 2017, he completed a bathroom renovation. He started but never completed projects involving the fence and soffits. The parties discussed the idea of creating a self-contained rental suite in the basement, with the intention of it becoming an additional source of rental income.
- [13] In order to fund the basement suite renovation, in or about May 2021, the parties again refinanced the Family Home, this time through BlueShore Financial Credit Union ("Blueshore"). They increased the mortgage to \$580,000. After paying out the Scotia mortgage and line of credit, net proceeds of about \$350,000 were deposited into the respondent's Tangerine high interest savings account (the "Tangerine Account").
- [14] The respondent acknowledges that shortly before the refinancing, the claimant had made a lump sum payment of \$40,000 on the Scotia mortgage using funds gifted to her by her mother. This was done to reduce the prepayment penalty the parties would incur for early payout of the Scotia mortgage.

- [15] The respondent says in summer 2021, the claimant used \$10,000 from the Tangerine Account to purchase a new car. In May 2022, a further \$100,000 was transferred to her from that account for her personal investment purposes. He says she has not yet accounted to him for those funds.
- [16] The respondent says that proceeds from the Tangerine Account were used to purchase construction materials for the basement suite renovation. It is not clear on the material I was taken through what materials were purchased or what they cost. The claimant says the respondent never followed through with any meaningful work on the suite renovation. The materials are still being stored in the basement of the Family Home. She says the respondent has been spending what remains of the refinancing proceeds on his personal leisure activities, including concerts, travel, eating out, playing hockey and other personal expenses.
- [17] Following the May 2021 refinancing, the monthly mortgage payment was \$2,166. The interest rate on the mortgage was (and is) 2.09% per annum. The five year term of the mortgage expires in May 2026.
- [18] The claimant has an excluded property claim which she values at \$110,000, which she says can be traced to the Family Home. The respondent disputes her claim. The respondent has an excluded property claim which he values at \$797,244. The claimant acknowledges at least part of his claim, based on him having owned part of the Family Home prior to their relationship starting, but disputes the amount of that claim.
- [19] The parties have not yet retained a joint expert to prepare a present-day and historical appraisal of the Family Home. The respondent says that in April 2025, he asked the claimant to join him in getting a current-day appraisal, but she declined. He proceeded to obtain his own appraisal in support of his recent efforts to obtain temporary financing in support of a proposal to buy out the claimant's interest in the Family Home.
- [20] The claimant says from April 2014, she bore sole responsibility for making mortgage payments on the Family Home and the majority of payments on the line of credit, despite the respondent being the one using the line of credit to pay for his vehicle and credit card payments. She also paid the majority of their groceries and household expenses. After [G.] was born, she paid his expenses as well, including before and after school care and camps.
- [21] The claimant says that due to the respondent's lack of gainful employment during the relationship, their expenses always exceeded their family income, so they had to rely on lines of credit to cover the shortfall.
- [22] After separation, the parties initially continued living under the same roof for approximately one year. On July 25, 2024, the claimant moved out of the Family Home with [G.] She rented a basement suite, for which she is paying \$2,300 per month. Her net income is about \$5,200 per month. Until January 2025, she was paying both the monthly mortgage payment on the Family Home and her own rent; these total \$4,466 per month. This left her with about \$700

per month for all other living expenses, including childcare at about \$590 per month. Her expenses exceeded her income, so she was forced to draw upon her personal savings and rely on a Scotia line of credit to cover the shortfall. The shortfall included day-to-day expenses for herself and [G.], furnishings for her new home, clothing and toys for [G.], and legal expenses for this action. She says her current financial situation is not sustainable.

[23] Around the time she filed this application [September 11, 2024] she had \$18,786 owing on her line of credit and minimal savings remaining. She has now committed to paying the entire cost of a s. 211 FLA report which was recently ordered by consent, and her legal expenses for the upcoming trial, scheduled for January 26, 2026, for 10 days. She says she cannot afford to continue to retain legal counsel without receiving an advance for her anticipated legal expenses.

[24] The respondent became responsible for paying the mortgage in January 2025, further to an order of Justice MacNaughton. I will address this in more detail below.

Procedural background

[25] On July 12, 2024, the claimant filed her notice of family claim.

[26] On July 25, 2024, the claimant left the Family Home, taking [G.] with her. She says she moved out due to ongoing family violence. The respondent denies all allegations of family violence and says the claimant moved out without giving him prior notice of her intentions. He complains she initially severely limited his parenting time with [G.] to one overnight every second week.

[27] On August 2, 2024, the respondent filed his response to family claim and Counterclaim.

[28] On August 6, 2024, the respondent filed an interim application for parenting time, child support and spousal support. It was initially returnable August 16, 2024, but did not get on for hearing due to insufficient court time. A full day hearing was set for September 24, 2024.

[29] On September 11, 2024, the claimant filed the present application.

[30] On September 13, 2024, the parties exchanged their first lists of documents.

[31] On September 24, 2024, the respondent's application was heard by Justice MacNaughton. The hearing continued on December 2, 2024. On January 23, 2025, Justice MacNaughton issued reasons for judgment, indexed as *Beere v. Rajaratnam*, 2025 BCSC 103. Her orders included:

- a) The respondent was granted parenting time with [G.] with graduated increases until a 2-2-5-5 shared parenting schedule was achieved by June 15, 2025;
- b) The claimant's annual income was found to be \$102,062;
- c) The respondent was imputed as having an income of \$50,000;

- d) The claimant was ordered to pay the respondent child support for [G.] in the sum of \$494 per month, starting on July 1, 2025;
 - e) The claimant was ordered to pay the respondent a proportionate share of [G.]'s 7 expenses [claimant = 67%, respondent = 33%], commencing July 1, 2025. Such expenses would include after-school care, camp, costs, and any other expenses that the parties agree on in advance, which may include swimming lessons and any other sports-related or extracurricular activities;
 - f) The claimant was ordered to pay the respondent interim spousal support in the sum of \$548 per month, commencing January 15, 2025; and
 - g) The respondent was ordered to assume responsibility for monthly mortgage payments and other expenses associated with the Family Home.
- [32] On May 13 and 16, 2025, the parties exchanged their second lists of documents. As noted, trial is scheduled for January 26, 2026, for 10 days.

Sale of the Family Home

Applicable law

[33] Rule 15-8(1) of the Supreme Court Family Rules, B.C. Reg. 169/2009 ("SCFR") provides:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.
- [34] In *S.K.M. v. T.J.B.*, 2022 BCSC 426, the court summarized the principles to be considered:
- 38 The case law has established a number of factors for consideration. An updated listing of these was set out by Master Robertson in *R.R.S. v. B.R.M.S.*, 2021 BCSC 1330 [RRS]:
- [17] One of the originating decisions on this issue, decided under the former Family Relations Act, is *Bodo v. Bodo*, 1990 CanLII 2291 (BC SC) ("Bodo"), where the court specifically set out the factors that the court is to consider on applications for the sale of the Home, noting as follows:
 - [23] Given the wide variety of factual patterns in family law actions it would be singularly foolish of me to attempt a definitive listing of factors that might be relevant to the determination as to whether a sale is "necessary and expedient". However, those factors that have been considered in determining whether a sale should be ordered at trial will always be relevant. They include:

1. Children's need for stability and easy access to their school and friends, particularly in the period immediately following the separation of their parents;
2. The availability (including affordability) of alternative accommodation for each spouse and his or her dependents;
3. The emotional condition of the spouses, especially the parenting spouse;
4. External economic factors (e.g., a declining market);
5. Wasting of the asset; and,
6. The capacity of the parties to maintain the asset.

39 Justice McNaughton provided a summary of developments subsequent to Bodo as follows in *N.I. v. J.I.*, 2020 BCSC 1847 [NI]:

[15] In *A.B. v. C.D.*, 2015 BCSC 2134 at paras. 63-64, Justice Burke summarized the principles that have evolved from the cases in which an interim sale of a family home is sought. She said:

[63] The courts have discretion to order the interim sale of a family asset where it is necessary and expedient. The courts have considered a number of factors in doing so. These include:

* Whether the sale is necessary. This is an important factor. If the sale is not necessary, any sale should be advantageous to both parties. Another factor is whether the sale will promote early settlement and/or whether the sale will defeat a spouse's claim for reapportionment;

* In addition, a question may arise as to whether the sale of the family home is inevitable, or whether a spouse might be able to retain it on a division of assets; and

* Another important consideration may arise as to whether a sale would effectively eliminate accommodation for a spouse and children or whether alternative accommodation is available.

[64] Finally, any doubt should be resolved in favour of the status quo.

[16] To that list I would add the Court of Appeal's criticism of Bodo as set out at para. 35 of Reilly:

35 With respect, this formulation may not provide the certainty it suggests. The status quo for one spouse may be the perpetuation of an injustice for another. In light of the infinite variety of circumstances arising out of human relationships it is fruitless to attempt to catalogue in advance the factors to be taken into account on an application for an interim sale.

Position of the Parties

Claimant's position

[35] The majority of the parties' collective family property is tied up in the Family Home. The claimant has offered a rough calculation of her interest in the Family Home as follows:

- a) 2012 value \$883,000, less liabilities (\$192,244) = net value of \$690,756;

- b) 2025 BC Assessment value of \$2,050,000, less liabilities (\$522,000) = net value \$1,528,000;
- c) Increase in value subject to division = \$837,244;
- d) Deduct claimant's exclusion claim (\$110,000) = \$727,244;
- e) Each party's 50% share of that = \$363,622; and
- f) Claimant's 50% share + her exclusion claim of \$110,000 = \$473,622.

[36] The claimant says the total amount owing to her will likely end up being higher than this, as she also has a claim for division of balances held in various bank accounts in the respondent's name, she claims adjustments for post-separation mortgage payments and household expenses which she paid, she is claiming retroactive child support and s. 7 expenses for [G.] and has an occupational rent claim in relation to the Family Home.

[37] The claimant argues the respondent does not have the financial means to buy out her interest in the Family Home. During their relationship, he worked limited hours as a freelancer and did not earn substantial income. She paid the majority of the Family Home-related expenses and family living expenses. Approximately one year after they separated, around May 2024, the respondent started working part-time as a transporter, earning \$23-\$28 per hour. His line 15000 income over the past four years has been:

- a) 2021 - (\$1);
- b) 2022 - \$3;
- c) 2023 - \$5,950; and
- d) 2024 - \$43,554 (based on his T4s and T5s).

[38] The respondent's most recent pay stubs indicate he is currently earning at most about \$3,200 net income per month, based on him now working full-time hours. He is receiving from the claimant spousal support of \$548 per month and child support of \$494 per month, for a total of \$1,042 per month. She calculates that his monthly expenses just to maintain the Family Home include:

- a) Mortgage payments - \$2,166;
- b) Property taxes - \$621;
- c) Property insurance - \$247;
- d) Utilities - \$230;
- e) TV and internet - \$150;
- f) Repairs and maintenance - \$50;
- g) Alarm system - \$15; and

- h) Subtotal - \$3,479.
- [39] This would leave him less than a \$1,000 to cover all other expenses for himself and [G.], including his proportionate share of s. 7 expenses.
- [40] The claimant says a review of the respondent's recent credit card statements indicates he has been spending between \$4,000 - \$6,000 per month. He has been paying his expenses using family funds held in the Tangerine Account. Her calculation of post-separation balances in that account include:
- a) March 2023 - \$170,148.86;
 - b) April 2025 - \$56,003.96; and
 - c) Total Amount depleted - (\$114,114).
- [41] This averages \$7,607 per month in family funds that the respondent has been expending for his personal use.
- [42] He does not list any other significant assets in his F8 Financial Statement apart from his interest in the Family Home. In order for him to buy out her interest, he would need to qualify for a new mortgage of at least \$1,000,000. Based on his current and historical levels of income, he has no prospect of qualifying for a mortgage of that size. It is inevitable that the Family Home will have to be sold in order to divide the parties' respective interests in it.
- [43] The claimant also argues that the sale of the Family Home is advantageous to both parties, as it may promote an early resolution of this litigation. The parties recently consented to an order that a s. 211 FLA report be prepared. The respondent took the position that he could not afford to pay his 50% share of the cost of that report, so the claimant agreed to pay 100% upfront. She says she has to borrow funds to cover this. She has now exhausted her borrowing capacity. Selling the Family Home will free up funds which could be applied to the cost of this report.
- [44] The claimant disputes the respondent's assertion that the Family Home is in a state of construction. She says no significant construction has taken place for several years. She argues that the respondent has been exhibiting hoarding behaviours and points to photographs of the interior of the home which are included in the recent appraisal. They show excessive clutter in numerous rooms in the home. She argues that renovation projects which have not been completed in more than ten years are unlikely to be completed prior to trial. The respondent has not completed any substantial renovation projects, despite him having been unemployed in the past and [G.] having attended preschool since 2019. After receiving the BlueShore mortgage proceeds in 2021, they made inquiries with several contractors and landscapers, but the respondent abandoned all of those. She now believes he never intended to follow through. Neither of the parties has the funds necessary to pay the cost of significant renovations.

- [45] She argues the Family Home is located on a good corner in a highly sought-after neighbourhood. She believes it will fetch a competitive price despite the incomplete and outstanding renovations.
- [46] The claimant highlights the following passage from Justice MacNaughton's reasons, at para. 117:

Although I was not asked to address the sale of the Family Home, the likelihood that the parties will need advances under s. 89 of the FLA for the purposes of this litigation, and for the preparation of a s. 211 report, means that a sale of the Family Home is likely necessary. In his affidavit, the respondent [has] made some proposals about how he might be able to afford to retain the Family Home, but he appears to have taken no steps in that regard.

Respondent's Position

- [47] The respondent says he has been exploring options which would allow him to retain the Family Home and buy out the claimant's interest. In his application response, he originally indicated he was considering completing construction of a basement suite and then selling a portion of the Family Home to a third party in a form of "Collaborative Ownership" arrangement. He says this is a rising trend which allows people to purchase properties together when they do not have adequate financial resources available to do so on their own.
- [48] The respondent would use the sale proceeds from selling a collaborative interest to a third party to buy out the claimant's interest in the Family Home. In the interim, he was agreeable to setting aside \$40,000 from the remaining funds in the Tangerine Account to cover the monthly mortgage payments between the date he filed his application response and the date of trial. Alternatively, he believed he could obtain short-term financing through a private lender until his entitlement to spousal support has been confirmed by court order, after which he would obtain a more conventional form of financing. He was also considering getting a roommate to generate rental income and help fund the renovations to complete the basement suite and proceed with his Collaborative Ownership plan.
- [49] The respondent says any sale of the Family Home would render him homeless and displace [G.] from the community in which he has grown up. He has a large volume of equipment, building materials and tools stored in the Family Home. If a sale is ordered, he believes he would incur about \$1,000 per month in storage fees for those items, as they would likely not fit into any post-sale rental accommodation. He has not been able to find any two-bedroom rental accommodation close to [G.]'s school at a cost similar to the mortgage payment on the Family Home [\$2,166 per month]. He believes he would end up paying about \$3,000 per month in rent, based on his own research.

- [50] There was a lengthy delay from when the claimant's application was filed to when it was set for hearing. The claimant suggests this was due to health difficulties the respondent was dealing with. In the interim, the respondent made some additional progress concerning his plans for how he might buy out the claimant's interest in the Family Home. In April 2025, he inquired with the claimant about them jointly retaining an appraiser for the Family Home, which she declined.
- [51] In June 2025, the respondent met with a mortgage broker to discuss options for retaining the Family Home. On July 3, 2025, he received a conditional commitment letter for a loan with the following features:
- a) Lender - Vault Capital Inc. and/or its assignees;
 - b) Loan amount - \$1,100,000;
 - c) Term - 12 months;
 - d) Interest rate - 6.75% per year or RBC Prime Commercial Lending Rate plus 1.8% per year, whichever is higher;
 - e) Interest reserve - \$68,749.97 will be deducted from the proceeds of the loan and held in trust as an interest reserve to be used to pay the monthly interest payments accrued for the 12 month term of the loan;
 - f) Amortization - interest only mortgage;
 - g) Lender's Fees - \$11,000;
 - h) Commitment letter is open for acceptance until July 10, 2025; and
 - i) Conditions for Broker - includes that the Lender required an as-is minimum value appraisal report value of \$2,050,000.
- [52] The respondent obtained his own appraisal for the Family Home, prepared by Macintosh Appraisals Ltd. It concluded that as of July 8, 2025, the property had an estimated market value of \$1,900,000. The claimant notes that value fails to satisfy the condition in the conditional commitment letter that an appraisal be obtained indicating a minimum value of \$2,050,000. The respondent replies that with the appraisal coming back at \$150,000 lower, this also means that the value of the claimant's interest in the property is also lower, so he would have to borrow less money to buy out her interest. Respondent's counsel suggested that a \$150,000 reduction in property value arguably leads to about a \$100,000 reduction in the value of the claimant's interest.
- [53] During the hearing, respondent's counsel sought to tender a new conditional commitment letter which had been obtained on the day of the hearing and received while the hearing was in progress. It was described as being based on the Family Home having an appraised value of \$1,900,000. The claimant objected to it being admitted into evidence. She noted the previous commitment letter had expired on July 10, 2025. The respondent had received the

appraisal on July 30, 2025. He could have arranged it for a new commitment letter and given the claimant notice of it in advance of the hearing, but chose not to do so.

- [54] I agree the new commitment letter was delivered out of time, and the claimant was not given any notice of it prior to the hearing, and would have no opportunity to respond to it if it were to be allowed into evidence. I decline to admit it.
- [55] The respondent also met with realtor Darcy McClary on July 31, 2025 to solicit her opinion about a list price. He attached to his affidavit a Comparative Market Analysis which she had prepared. In it, she recommends a list price between \$1,779,000 - \$1,825,000, based on the Family Home's current condition. She goes on to suggest the property is not ready to sell because it needs decluttering, cleaning and renovations. She suggests renovation costs could run \$200,000 - \$300,000, but does not indicate what renovations this would involve or how she arrived at that cost range.
- [56] The respondent also tendered a "with prejudice" letter he sent to the claimant dated July 31, 2025 in which he proposed to buy out her interest in the Family Home for \$211,251.50, less a \$32,000 holdback for costs ordered by Justice MacNaughton, to be paid within 30 days. This was based on the property having a value of \$1.8 million. I note that this is \$250,000 below the most recent BC Assessment valuation. He suggests the BlueShore mortgage has a principal balance owing of \$518,000, and he values his excluded property claim at \$797,244. He assigns no value to the claimant's excluded property claim. The claimant characterizes this as an extreme lowball offer and says she rejected it.
- [57] The respondent notes that the Family Home is a 7-minute drive from [G.]'s school and one block from his best friend's home. [G.] has lived in the Family Home his entire life.

Analysis

- [58] At issue is whether the sale of the Family Home is necessary or expedient.
- [59] The claimant says that the sale is necessary and inevitable. The Family Home is their principal asset. She has exhausted her savings and has no further ability to borrow. She is in desperate need of a litigation advance to help fund the s. 211 report and to her legal expenses to get to and through the upcoming trial. Accessing her equity in the Family Home is the only possible way to accomplish that. The respondent's financial history and current circumstances are such that he has no real prospect of buying out her interest in the property. The financing he has been looking into is short-term, interest only and would likely lead to a foreclosure in roughly a year. She also argues that the sale would be expedient, as it would free up the equity in the property and allow the parties to better manage their debt and expenses, and to fund this litigation. She suggests it would also promote an earlier settlement of the property issues and allow the parties to focus on resolving child support and parenting issues.

- [60] The respondent says the sale of the Family Home is neither necessary nor expedient. He has presented a short-term refinancing path which will allow him to buy out the claimant's interest, give him time and funds to complete construction of a basement suite and allow him to pursue a Collaborative Ownership approach to helping him afford and achieve a longer term refinancing solution. He also emphasizes that selling the home would deprive [G.] of his long-time community and proximity to school and to his best friend.
- [61] While I appreciate and understand the respondent's desire to come up with a creative solution to try to keep the Family Home, I have concluded that a sale of the property is inevitable. His actual net income is roughly \$3,200 per month. That is the "before support" figure. He focuses on the monthly mortgage payment, for which he has been responsible since January 2025, as indicating the property's current affordability, but he fails to include the other property-related expenses; his proportionate share of [G.]'s special and extraordinary expenses, and his and [G.]'s other monthly expenses while [G.] is in his care. The respondent's spending pattern since separation demonstrates a significant monthly shortfall which requires him to access either his own savings or family assets in the Tangerine Account. He also does not factor in legal costs associated with this litigation.
- [62] I am not persuaded that the respondent's proposed plan for buying out the claimant's interest in the Family Home represents a realistic or sustainable solution for him to acquire her interest. He has proposed an extremely short-term solution in the form of a 12-month interest-only loan, at an interest rate which is substantially higher than the current BlueShore mortgage's interest rate. It would only provide a 12-month window for the respondent to renovate the basement suite and find a Collaborative Ownership purchaser.
- [63] The respondent has been contemplating basement suite renovations since 2021, and thus far has not made appreciable progress. He now works full time, so presumably he will have even less time available to do the renovation himself. Hiring a contractor will presumably be substantially more expensive. He has not presented a building plan, a budget, or a timeline for a proposed renovation.
- [64] The other feature his plan relies on is finding someone to purchase the basement suite in a Collaborative Ownership arrangement. He has provided no estimate of how much he would expect to raise from such a sale or what the prospects are for actually finding an arm's length person who would be interested in such a co-ownership arrangement, and of him achieving this within the timeframe that the short-term financing would force on him.
- [65] As presented, the respondent's plan is simply not realistic, viable or sustainable. My frank impression is that it is more likely an effort to delay the issue of selling the property to a point closer to or beyond the trial date and to fend off the claimant's efforts to gain early access to her equity in the property. The respondent has acknowledged in his recent with prejudice settlement offer that the claimant has a significant interest in the property, albeit the parties disagree sharply regarding what that value is.

- [66] The respondent argues that selling the Family Home would disrupt his routine and home life with [G.] during a critical period when a s. 211 report assessor will be doing interviews required for the report. He suggests this would be unduly prejudicial to him and his shared parenting rights. This is speculative, as I was not provided a timeline for when those interviews might take place and when a sale of the property might take effect. The respondent should be able to arrange an interview time which works around any critical sale dates which may arise. Having seen the cluttered state of many rooms in the property via the pictures in the appraisal, the uncluttering process which will presumably be necessary as part of the sale process may actually be beneficial overall by making the Family Home a more comfortable and attractive living space.
- [67] I am aware and I appreciate that a sale of the Family Home would temporarily disrupt [G.]'s life to some extent for the 50% of the time he currently spends with the respondent. The claimant notes that [G.] has already adapted well to living elsewhere with her, through having lived primarily with her at her new residence since July 2024, and through the ongoing shared parenting arrangement that was ordered by Justice MacNaughton. Given my conclusion that a sale of the Family Home is inevitable, it is just a matter of time before [G.] will have to go through this adjustment in any event. He appears to have adjusted reasonably well to the numerous changes that have occurred since the claimant established a separate residence. There is no reason to expect this will not continue when the respondent eventually arranges a new residence.
- [68] I am not persuaded that the respondent's suggestion that he would incur storage expenses is a valid reason for resisting or delaying sale of the Family Home. To the extent this includes construction materials, these will not be needed if the property is being sold as-is. They can presumably be sold rather than stored. It is not clear what other equipment, etc., the respondent has in mind. The photographs of the various rooms in the home do show many that appear overly filled. If that is family property, the parties can decide whether to sell, store or dispose of it together. If it is the respondent's separate property, he will have to make those determinations himself. Once the Family Home sells and the property issues are resolved, presumably the respondent will have sufficient funds available to arrange suitable new accommodation for himself and [G.], including space for any personal property he wants to store.
- [69] Given my conclusions that the sale is necessary and inevitable, it is not strictly necessary for me to address whether it is also advantageous. It is advantageous for the claimant. The respondent argues strenuously it is not at all advantageous for him. In view of my conclusion that his plan for buying out the claimant's interest in the property is not realistic, viable or sustainable, my view is that forcing a sale will be more objectively advantageous for him in the medium and long run, as it will allow for the orderly division of his interest in the Family Home and generate liquid sale proceeds he can use for arranging his next living arrangements.

[70] The claimant's application for a sale of the Family Home is granted. The parties will have joint conduct of sale, with liberty to reapply for sole conduct or for directions if either party unreasonably frustrates, delays or obstructs the sale process. Either party is at liberty to apply to the court for directions regarding the sale process if they cannot agree. The respondent is to arrange to unclutter the Family Home, with a view to having the property actively listed for sale within 30 days, unless the parties agree in writing to a different date or the court orders a different date.

Interim Distribution

[71] Section 89 of the FLA provides as follows:

Orders for interim distribution of property

89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution,
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[72] In *Farjam v. Panahandeh*, 2022 BCSC 409 at paras. 41, 43-45, Justice Elwood summarized the principles applicable to an application for interim distribution:

[41] An interim distribution of family property under s. 89 of the FLA may be justified when it is necessary to permit the parties to advance their respective cases on a relatively level playing field: *M.A.L. v. N.A.L.*, 2014 BCSC 203.

[43] In general terms, the applicant must demonstrate that: (a) an advance is necessary to challenge the other's position at trial, and (b) the advance will not jeopardize the other party's claim: *McKenny v. McKenny*, 2015 BCSC 1345 [McKenny], at para. 57.

[44] In *I.F. v. R.J.R.*, 2015 BCSC 793 [I.F.], Justice Balance explained the purpose of s. 89 in terms of promoting access to justice with an eye to the overall objectives of the FLA, as follows:

[192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets. Application of s. 89 calls for a purposive interpretation, where the need of the applicant spouse to receive an interim distribution and the potential entailing harm to the other spouse are evaluated contextually with an eye on the larger objectives endorsed by the FLA.

- [45] The balancing consideration in s. 89 is whether the interim distribution would be "harmful to the interests of a spouse". This factor is broader in scope than simply the ability of the responding spouse to mount a defence to the family law claim. As Justice Balance explained in I.F.:
- [193] Determination of the presence of harm requires the court to reasonably anticipate and then assess the consequences that may flow from the interim order being sought. That approach, in turn, invites a highly individualized component to the inquiry. For example, would the distribution being sought in the particular case require a sale of property or of the encumbering of assets; what income tax ramifications might be triggered and what other transactional costs would arise? The concept of harm under s. 89 would also encompass economic implications such as whether the distribution would adversely impact the other spouse's lifestyle or effectively undermine or prejudice his or her argument for reapportionment.
- [73] In *Karrington v. Morrisonn*, 2023 BCSC 577 at paras. 15-16, Justice E. McDonald summarized as follows:
- [15] Recently in *Etemadi v. Maali*, 2021 BCCA 298 [Etemadi], at paras. 50-53, our Court of Appeal summarized the principles applicable to applications under s. 89 seeking an interim distribution:
- a) the chambers judge must first determine if the applicant is economically disadvantaged in advancing the family law proceeding and if so, an order that "levels the playing field" may be appropriate because it attempts to achieve balance between the parties;
 - b) the chambers judge must then embark on a preliminary assessment of whether the applicant can demonstrate that it would not be harmful to distribute property and whether it is necessary to do so for a purpose stated in s. 89;
 - c) in recognizing the extraordinary nature of the order, the chambers judge must carefully consider the amount of the interim distribution to ensure that it does not exceed what is necessary under s. 89; and
 - d) the chambers judge must always consider whether it is in the interests of justice to make the order.
- [16] The court must examine each issue raised by the applicant regarding necessity and potential harm, contextually, and with a view to upholding the statutory objectives: *Etemadi* at para. 51.

Analysis

- [74] The claimant seeks an interim advance of \$85,000 to each of the parties from the net sale proceeds of the Family Home. She tendered an estimate of her legal fees to complete the estimated 10-day trial, with senior counsel Ms. Sodagar (\$575 per hour) and junior counsel Ms. Jalilian (\$350 per hour). The costs work out to about \$115,000, of which \$40,000 relates to preparing for and obtaining the s. 211 report and a Guideline income report.
- [75] The respondent's primary challenge to the costs estimate is focus on the 10-day estimate of trial likely being more time than will actually be required. Considering that Justice MacNaughton's parenting order has already established a 2-2-5-5 shared parenting regime, he suggests a trial focused on support and property issues will likely require considerably less time.
- [76] The respondent argues that litigation advances are intended to level the litigation playing field and help financially disadvantaged spouses afford the litigation process. In this case, the claimant has a considerably higher income than he does, so she cannot fairly be considered to be at a financial disadvantage relative to him. He also argues the claimant has the capacity to continue borrowing additional amounts to meet her anticipated litigation expenses.
- [77] The claimant's evidence is that she was paying for the vast majority of the Family Home-related expenses and living expenses during their relationship. She did not accumulate a significant pool of assets from which she can now draw. Her largest asset is her interest in the Family Home. That is effectively tied up until and unless it is sold or the respondent buys out her interest, which I have concluded is not a realistic possibility. She is also now obliged to pay spousal support and child support to the respondent.
- [78] The respondent, while having a more modest income than the claimant, has also had unimpeded access to family funds via his Tangerine Account and appears to have been living beyond the means to which his income would normally allow. The claimant does not have similar access to other liquid family property. She has said she has exhausted her avenues of borrowing and will not be able to afford counsel for trial absent an advance. The respondent simply insisted she could borrow more, but he did not point me to evidence which supports this proposition.
- [79] The respondent has also acknowledged, via his "with prejudice" settlement offer, that the claimant's interest in the Family Home, which he values at about \$211,000, is substantially higher than the \$85,000 she seeks from net proceeds of sale of the Family Home. Accordingly, I am satisfied that allowing the interim distribution sought would not be harmful to the respondent's interests.
- [80] The claimant's application for interim distribution of \$85,000 to each of the parties from the eventual net proceeds of sale of the Family Home is granted.

Costs

[81] The claimant has been successful and is entitled to costs of the application from the respondent, at the conclusion of the action.

"Associate Judge Bilawich"

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