

CANADA / JUDGMENT

Carter v. Gobi

2024 BCSC 357

COURT

Supreme Court of British Columbia

DECIDED

26 January 2024

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2024 BCSC 357 Carter v. Gobis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Carter v. Gobis,

2024 BCSC 357

Date: 20240126

Docket: E67236

Registry: New Westminster

Between:

Brian Anthony Carter

Claimant

And

Barbara Gobis

Respondent

Before: The Honourable Justice Chan

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

P.F. Schmidt

Counsel for the Respondent:

J.M. Stein

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 19, 2024

Place and Date of Judgment:

New Westminster, B.C.

January 26, 2024

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Introduction

- [1] There are three applications before the Court in relation to a breakdown of the relationship between the parties. Barbara Gobis applies to sell a property in Kelowna jointly owned by the parties. Brian Carter applies to move the trial from New Westminster to Abbotsford, to take advantage of earlier trial dates. Ms. Gobis also applies to have unredacted copies of Mr. Carter's credit card statements.
- [2] The parties were in a relationship from approximately 2007 to 2022. However, Ms. Gobis' position is they were not in a "marriage-like" relationship, as defined by the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Mr. Carter disagrees, and argues they were in a spousal relationship for 15 years. Mr. Carter filed a notice of family claim on April 19, 2023.

Factual Background

- [3] I take the following from affidavits filed by the parties. Where the evidence is in conflict, I make no findings of fact.
- [4] Mr. Carter is 65 years old and Ms. Gobis is 60 years old. My understanding is both parties work in the pharmacy industry. The parties started dating in 2007. They each have children from previous relationships, but they do not have any children together. Through most of their relationship, they lived in different cities. Mr. Carter lived in Edmonton, then Vancouver, then Kelowna. Ms. Gobis lived in North Vancouver and Vancouver. There was a period of time where the parties lived together in Vancouver; however, while Mr. Carter claims this period was approximately three years from 2016 to 2019, Ms. Gobis claims this period was less than two years. The parties dispute the nature of the relationship and when it started and ended.
- [5] In November 2016, the parties purchased an undeveloped lot in Kelowna. Ms. Gobis initially paid the entire purchase price of \$425,000. The parties were registered owners as tenants in common, with Ms. Gobis having a 75% interest and Mr. Carter having a 25% interest in the property. The parties signed a trust deed on November 15, 2016, confirming that Mr. Carter would contribute his 25% of the purchase price once he sold his home in Edmonton ("Trust Deed"). The Trust Deed also sets out that the costs of construction of the home and taxes, mortgage payments, maintenance, charges and assessments were to be paid 75% by Ms. Gobis and 25% by Mr. Carter.
- [6] A home was built. Mr. Carter moved into the Kelowna home in May 2019, and continues to reside there. Ms. Gobis did not move into the Kelowna home and continues to reside in a rental apartment in Vancouver. In December 2020, Mr. Carter paid an additional \$75,000 to Ms. Gobis, increasing his share of the property to 30%. In total, Mr. Carter paid approximately \$456,300 towards the cost for the land and the construction of the home, while Ms. Gobis paid approximately \$1,064,700.

- [7] The relationship ended some time in 2022. Initially, Mr. Carter agreed with Ms. Gobis to sell the property. However, by October 2022, Mr. Carter advised he did not wish to proceed with listing the property for sale. He has deposed that he wishes to buy out Ms. Gobis' interest in the property.

Procedural History

- [8] On April 17, 2023, Ms. Gobis filed a petition to sell the property pursuant to the Partition of Property Act, R.S.B.C. 1996, c. 347 [PPA].
- [9] On April 19, 2023, Mr. Carter started this action by filing a notice of family claim. He seeks property division and spousal support.
- [10] An order was made at a judicial case conference in this family law case on June 14, 2023, that the issue of whether the parties are spouses within the meaning of the FLA should be determined first.
- [11] On June 16, 2023, Ms. Gobis' petition pursuant to the PPA was heard by Justice Matthews. I am advised Justice Matthews dismissed the petition, finding that where there is a PPA claim and a family law claim, the application for sale of the property should be dealt with in the family action.
- [12] On July 25, 2023, Ms. Gobis filed a counterclaim in the family action. If the parties are found to be spouses, Ms. Gobis is seeking to enforce the Trust Deed which sets out unequal division of the Kelowna property.
- [13] The parties had initially booked a four-day trial in New Westminster in January 2024. However, during a trial management conference in December 2023, the parties were directed to reduce their witness lists as the Court was concerned four days would not be sufficient. While the parties were able to find an additional day for trial, Mr. Carter was not able to reduce his number of witnesses. As such, at the next trial management conference, the Court ordered the January 2024 dates to be adjourned, as the five days would be insufficient. No new trial dates have been set. The time estimate for trial is now seven or eight days.

Application for Sale of the Kelowna Property

- [14] Ms. Gobis applies pursuant to R. 15-8(1) of the Supreme Court Family Rules, B.C. Reg. 169/2009, for an order that the Kelowna property be sold. Rule 15-8(1) 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.

Conduct of Sale

- (2) If an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner the person considers appropriate or as the court directs.
- [15] Mr. Carter submits Ms. Gobis cannot bring this application in this family law case, as Ms. Gobis takes the position the parties were never spouses within the meaning of the FLA. As I understand it, he argues this Court does not have jurisdiction to grant the order sought unless Ms. Gobis agrees the parties are spouses, or the Court has determined the parties are spouses. Mr. Carter's argument is that R. 15-8(1) requires there be a family law case before the Court can make an order for sale of property. Until there has been a concession or a court finding that the parties are spouses within the meaning of the FLA, Mr. Carter takes the position there is no family law case which can form the basis for any relief pursuant to the FLA. Mr. Carter argues Ms. Gobis' application cannot be determined in this family law case and ought to be dismissed.
- [16] With respect, I do not find this reasoning persuasive. Mr. Carter commenced this family law case when he filed the notice of family claim. An interim order for sale of the property is not an order pursuant to the FLA. It is a discretionary order granted under the Supreme Court Family Rules. An order for sale does not deal with property division between the parties, should they be found to be spouses. By ordering the property sold, the Court is not making any predetermination of whether the parties are spouses within the meaning of the FLA, how long the spousal relationship lasted, or how property ought to be divided. Mr. Carter cites *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786, as support for his argument that the Court ought to be cautious in determining substantive rights of spouses in interim applications. In my view, that case is distinguishable as it involved an interim award of spousal support before trial, where the issue of entitlement was disputed. In this case, the Court is not being asked to decide any substantive issue of entitlement or division of property before trial on the merits.
- [17] I find the decision of Justice Veenstra in *Nyrose v. Dunn*, 2023 BCSC 516 to be on point. In *Nyrose*, the respondent's position is the parties did not meet the definition of spouses within the FLA. The claimant's position is they were common law spouses. The respondent brought an application to sell the family home before trial, pursuant to R. 15-8. The respondent referenced the PPA in her application. The PPA at s. 6 also provides for an application for an order for sale of property. Justice Veenstra found that where the matter is governed by both the PPA and the FLA, the court will consider the more detailed tests set out in the FLA and the Supreme Court Family Rules: *Nyrose* at para. 16. In *Nyrose*, an order for sale of property was made in a family law case on application by the party who disputed there was a spousal relationship. As such, I find the Court can determine this application pursuant to R. 15-8.

Legal Framework

- [18] The test for ordering sale of property is whether it appears "necessary or expedient" that the property be sold. In *Gatson v. Gatson*, 2023 BCSC 1361, Justice Norell succinctly summarized the law in this area:
- [6] The onus is on the applicant to establish that a sale is necessary or expedient. Where a sale is not necessary, and the applicant relies upon expediency, the sale must be advantageous to both parties: *Dosanjh v. Lalli*, 2021 BCCA 204 at para. 33.
- [7] The following is a non-exhaustive list of relevant factors in family law cases that may be considered with respect to the interim sale of a home:
- a) the financial circumstances of the parties--for example, if the property is wasting, or if a sale is inevitable, or if a party might be able to keep the home upon reapportionment of property;
 - b) the availability and affordability of suitable alternative accommodation for each spouse and his or her dependents;
 - c) the needs of the children, including stability, access to school, activities and friends, particularly in the period just after separation;
 - d) external economic factors such as a falling market;
 - e) the emotional condition of the spouses;
 - f) whether a sale would promote early resolution of the matter; and
 - g) whether the status quo should be preserved until trial.
- See: *Dosanjh* at para. 33; *Bodo v. Bodo* (1990), 66 D.L.R. (4th) 700, 1990 CanLII 2291 (B.C.S.C.); *R.R.S. v. B.R.M.S.*, 2021 BCSC 1330 at paras. 17-22; *Reilly v. Reilly* (1992), 74 B.C.L.R. (2d) 101, 1992 CanLII 742 (C.A.); *Tomic v. Tough*, 2013 BCCA 355 at para. 26.
- [8] If the applicant does not establish that an interim sale is necessary or expedient, or there are any doubts regarding the justice of such an order, then the status quo should prevail: *Kapoor v. Makkar*, 2020 BCCA 223 at para. 22.

Whether the Sale is Inevitable

- [19] Ms. Gobis argues that sale of the property is necessary because it is inevitable that Mr. Carter will not be able to buy her out. Ms. Gobis does not wish to keep the property. Mr. Carter argues the evidence does not support that he will not be able to afford to buy out her interest. He argues if he is ultimately successful in proving the parties began a common law relationship in 2007, he may be entitled to at least 50% of the increase in value of all family property since that time. Further, he argues he is seeking spousal support, and if he is found to be entitled to ten years of support based on a 15-year relationship, that could be as much

as \$426,000 if paid as a lump sum.

- [20] Ms. Gobis argues the evidence is clear that Mr. Carter does not have the financial resources to buy her out. Mr. Carter is currently earning \$80,000 per year, according to his sworn financial statement. From 2007 to 2016, Mr. Carter earned more than Ms. Gobis; however, since 2017, Ms. Gobis now earns more. Currently, Mr. Carter is working as a consultant and his 2022 tax return shows earnings of approximately \$65,000 a year. Ms. Gobis deposed that since 2020, Mr. Carter has not worked full time.
- [21] The property is assessed at approximately \$1.9 million. Ms. Gobis argues the best case scenario for Mr. Carter is that if the property is sold, after taxes and fees, the parties will receive \$1.8 million. Each party would be entitled to approximately half of that amount, being \$900,000. Mr. Carter would need to pay Ms. Gobis \$900,000 to buy out her share. Even if Ms. Gobis pays \$450,000 to him as equalization payments for her assets, she argues Mr. Carter still needs to come up with an additional \$450,000 to buy her out. Based on his current income, he would not qualify for a mortgage in that amount.
- [22] This calculation assumes Mr. Carter will be successful in setting aside the Trust Deed, which sets out that the property is owned 70% by Ms. Gobis and 30% by Mr. Carter. This calculation also assumes the higher amount of down payment paid by Ms. Gobis for the property will be found to not be excluded property.
- [23] Further, Ms. Gobis argues Mr. Carter's position that he will be entitled to any spousal support, let alone support for ten years paid in a lump sum, is unrealistic. In my view, based on the ages of the parties and their respective abilities to earn considerable income in the past, it is difficult to envision a spousal support order for that length of time.
- [24] Mr. Carter has not put forth evidence that he has taken any concrete steps to arrange financing to buy out Ms. Gobis' interest in the property. He has led no evidence of the amount he would qualify for as a mortgage. He has no evidence of being able to borrow a substantial amount from family or friends. His arguments that he may be able to afford to buy out her interest are vague and speculative.

The Availability of Alternative Accommodations

- [25] Ms. Gobis has put forth evidence of other rental options for Mr. Carter in the Kelowna area. There are currently multiple rental listings for one-bedroom apartments in Kelowna as well as Edmonton for under \$2,000 a month, should Mr. Carter wish to move back to Edmonton. While this would be more than what Mr. Carter currently pays, this is because Ms. Gobis has been paying 75% of the costs of the Kelowna property.

The Needs of the Children

- [26] There are no children so this factor does not apply.

External Economic Factors Such as a Falling Market

[27] No evidence was led about any external economic factors.

Emotional Condition of the Spouses

[28] No evidence was led about any specific emotional conditions of either party. However, I infer from Ms. Gobis' evidence that she believes the current arrangement to be unfair to her, as she has a greater amount of equity tied up in the Kelowna property which she currently does not access. Mr. Carter is living in a new four-bedroom home while she is paying more in rent to live in a small apartment in Vancouver.

Whether a Sale Would Promote Resolution

[29] This is the largest asset in this family law case. In my view, once the property is sold and both parties know how much equity exists, it may assist the parties in softening their positions and their negotiations over the other assets.

Whether the Status Quo Should Be Preserved

[30] In my view, I see no reason to preserve the status quo. It seems quite clear that Mr. Carter is not in a position to buy out Ms. Gobis' interest in the property. Ms. Gobis is clear she does not want to keep it. The property ought to be sold.

Terms For Order For Sale

[31] While Ms. Gobis has sought sole conduct of sale, in my view, the evidence does not go so far as to suggest that Mr. Carter would not cooperate with a court ordered sale. Mr. Carter initially agreed to list the property for sale, but later after consultation with counsel, did not wish to do so. That is not evidence that he would not cooperate. In my view, the parties should have joint conduct of sale and each party can be represented by their own realtor.

[32] The property will not be listed for two months from the date of this ruling.

[33] The parties will pay the following expenses from the proceeds of sale:

- Real estate commissions;
- Adjustments;
- Legal fees and disbursements; and
- Any other adjustments as agreed to between the parties;

[34] The remaining net sale proceeds shall be allocated on a without prejudice basis as follows:

- Mr. Carter is to receive his original down payment of \$456,300;
- Ms. Gobis is to receive her original down payment of \$1,064,700; and

- The remainder is to be divided on a 50/50 basis and deposited into each counsel's trust account until further agreement between the parties or court order.

Application to Move Trial From New Westminster to Abbotsford

- [35] Mr. Carter applies to move the trial to Abbotsford. The parties have lost their trial dates in New Westminster in January 2024, as their time estimate exceeded the number of days available. There are potentially trial dates available for a seven to eight-day matter in Abbotsford in May or August 2024. In New Westminster, trial dates would likely not be available until spring 2025.
- [36] Ms. Gobis opposes the change to Abbotsford. She is concerned it will increase the cost of litigation for her, as her witnesses and counsel are based in Vancouver. Her counsel advises while she is technically available for the May 2024 dates in Abbotsford, those dates come at the end of another lengthy trial and she will not have the assistance of co-counsel or an articulated student for that time. Mr. Carter's witnesses reside outside of B.C. and most of them were planning to testify remotely.
- [37] The court has discretion to transfer a family law case from one registry to another. The two considerations are: (1) the claimant has the right to choose the venue; and (2) the onus is on the person seeking the move to establish that the balance of convenience requires the file to be transferred: *Matteucci v. Greenberg*, 2016 BCSC 1773; *Schuler v. Schuler*, 2000 BCSC 1498; and *Hov v. Hov*, 2021 BCSC 558.
- [38] In this case, Mr. Carter chose the venue of New Westminster when he filed the notice of family claim. He now wishes to transfer the file to Abbotsford, to take advantage of earlier trial dates. He argues the distance from New Westminster to Abbotsford is not that great.
- [39] However, he does not consider that Ms. Gobis, her counsel and her witnesses, are based in North Vancouver or Vancouver, not New Westminster. The additional distance to travel to Abbotsford would cause some logistical difficulties.
- [40] I am not convinced that setting a trial date some eight months earlier is sufficient reason to change the location of the trial. The evidence suggests moving to Abbotsford would cause great inconvenience to Ms. Gobis, her counsel and her witnesses, who will all have to travel extra distance. It would not affect Mr. Carter as much, as he has to travel from Kelowna for the trial in any event, and most of his witnesses are from out of town and will be testifying remotely. Mr. Carter presumably took these factors into consideration when he chose to start this action in New Westminster.
- [41] Further, as the trial is set to be run in stages, there may be additional trial time required to deal with the remaining issues if the court determines the parties are spouses. As such, this will necessitate Ms. Gobis to attend multiple hearings in Abbotsford.

[42] In my view, the balance of convenience does not favour a move to Abbotsford. This trial should be set in Vancouver or New Westminster at the earliest dates available.

Application for Unredacted Credit Card Statements

[43] Ms. Gobis applies for disclosure of unredacted credit card statements from December 1, 2016 to November 30, 2017, and from June 1, 2019 to March 30, 2020. She advises that Mr. Carter has disclosed these credit card statements, as requested from him during his examination for discovery, but that they are heavily redacted.

[44] Mr. Carter argues the transactions from Vancouver have not been redacted, but that other transactions from different locations have been redacted as they are not relevant.

[45] In my view, as a general statement, transactions that did not occur in Vancouver may be relevant, as it shows the times when Mr. Carter was not present in Vancouver. As I understand it, the parties seek these credit card statements to prove how much time they spent together, or how much time they were apart. As such, the locations of the transactions may be relevant, wherever they may be.

[46] However, the parties did not make fulsome submissions on this issue. If there is still disagreement, the parties have leave to reapply on this issue.

Conclusion

[47] The Court makes the following orders:

- 1) The property will be sold. The conditions are set out above in paragraphs 31 to 34.[1]
- 2) The parties can set this matter for trial in Vancouver or New Westminster.
- 3) Mr. Carter is to disclose unredacted credit card statements as set out above.

[48] As Ms. Gobis has been substantially successful, my preliminary view is she is to have the costs of these applications on the ordinary scale. If either party wishes to make different submissions on costs, they are to contact the registry within 30 days.

"Chan J."

[1] The terms originally included a term that the property be vacant. Immediately after my oral ruling, the parties made submissions on this term. After discussion with counsel and on consent of both parties, it was decided that a term that the property be vacant is not required. The parties have leave to reapply on the issue of whether it is necessary for a term that the property be vacant.

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