
CANADA / JUDGMENT

Chan v. Tam

2007 BCSC 1884

COURT

Supreme Court of British Columbia

DECIDED

11 December 2007

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

2007 BCSC 1884 Chan v. Tam

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chan v. Tam,

2007 BCSC 1884

Date: 20071211

Docket: E041736

Registry: Vancouver

Between:

Irene Oi Lin Chan

Plaintiff

And:

Alan Wai Hing Tam

Defendant

Before: The Honourable Mr. Justice Groves

Oral Reasons for Judgment

In Chambers

December 11, 2007

Counsel for Plaintiff

K. Fong

No one appearing for the Defendant:

Place of Hearing:

Vancouver, B.C.

- [1] THE COURT: These are my reasons for judgment on the matter of Irene Oi Lin Chan versus Alan Wai Hing Tam. In this application before the court by way of Rule 18A, the plaintiff wife applies for divorce, custody and guardianship of a child, and corollary relief in the form of spousal support retroactive, child support retroactive and ongoing and division of property.
- [2] There is one child of the marriage, Angus Yick Chun Tam, born the 4th of February 1997. Angus is slightly over ten years old. The parties were married in October of 1991, and they separated in September of 2000 after approximately a nine-year marriage. It is of note that the separation of the parties is now in excess of seven years.
- [3] In terms of the divorce, oral evidence was required of the plaintiff and she provided that evidence this morning in court. I am satisfied that the grounds for divorce, one year separate and apart, have been made out, and the divorce order is granted, subject to the usual 31-day waiting period.
- [4] In terms of the factual matters necessary to deal with the corollary relief portion of this application, as noted earlier, the parties separated in September of 2000. At the time, the plaintiff wife was responsible for and cared for the child who was then almost three. She had no job skills. She immediately found almost if not full time employment and has continued at that employment. Despite this employment, she still has, as is evident by her testimony, limited English language skills which are no doubt a prohibitive factor in her achieving economic self-sufficiency. Despite working on a full time basis, she is still a minimum wage earner.
- [5] Unfortunately for the plaintiff, but to her credit and to the benefit of the child Angus, she has had to provide for herself and Angus virtually on her own since the separation, despite the fact that the defendant husband was the family provider prior to the separation. She had to find work to support herself and the child immediately. She had to find work in order to maintain the matrimonial home, which is now clearly the largest family asset. She has maintained this home exclusively since separation. Despite her having no form of income at the beginning, she still managed to pay, and paid throughout the course of the parties' separation, some seven years, approximately \$1,316 per month on the mortgage.
- [6] She has paid this. This is despite the fact she had no job skills at the time of separation. This is despite the fact that the defendant clearly works and has continued to work since the separation and prior to the separation as the sole worker supporting the family. She has essentially been left to manage the child almost exclusively and left to manage the major asset of the parties.

- [7] In terms of the defendant's contribution towards his wife, towards the assets and towards his son, this can aptly be described as minimal at best. From May of 2001, approximately nine months after the separation, until January of 2004, for a period of 33 months he contributed \$800 a month. From January of 2004, he paid nothing. Then in April of 2006, he was ordered by this court to pay child support and Section 7 expense contribution in the amount of \$299 per month to the plaintiff wife. He was also required to pay \$150 per month directly to the childcare provider, his sister-in-law.
- [8] It is unknown as to what contribution, if any, he made to the child care provider, but in terms of complying with the order of April in 2006, there has been minimal compliance. He paid the \$299 for seven months and for the next 13 months to today's date, he has again paid nothing.
- [9] It is frankly a miracle that the plaintiff and the child have survived based on what she has been able to earn as a minimum wage employee, and it is also a miracle that she has been able, through her efforts, to maintain the family home. She claims to have done so with the assistance of friends and a generous employer and with borrowing from friends and her employer.
- [10] The home, which I have talked about briefly, as will be seen, is the major asset between the parties. An historical analysis of the home's purchase and its various refinancing sheds some light on the various equities between the parties in terms of division of assets. The home was purchased after the marriage in November of 1991. Its value at the time was \$196,000. There was \$100,000 mortgage on the home. In other words, a \$96,000 down payment. The home has gone through a series of refinancing since November of 1991.
- [11] The first of these refinancings was by placement of a second mortgage on the home by the defendant in November of 1993. This second mortgage generated funds of \$43,596.27.
- [12] In May of 1996, a further \$33,666.47 was, to use my language, pulled out of the equity of the home, again monies controlled by the defendant. At that time, a new mortgage was obtained of \$125,000 and the existing mortgages then total \$91,333.53 were paid out, resulting in the \$33,666.47 in equity being pulled out.
- [13] A final refinancing occurred in November of 1998. At that time, an additional \$84,000 in equity was pulled out by the defendant. A new mortgage was placed on the home in the amount of \$182,000, and \$98,000 in existing mortgages was paid out equalling the \$84,000 drawn out of the equity. In total on these three occasions, the defendant threw out \$161,262.74 in equity from the home. From those withdrawals, the plaintiff only received \$30,000. The defendant had the balance to play with, \$131,262.74.

- [14] The evidence suggests that each time the defendant drew money out of the home on these three occasions or at least around that time or subsequent to these withdrawals, he purchased interests in commercial buildings in Richmond. These seemed to be strata units at various addresses in which businesses are operated and the defendant appears to be acting as a landlord renting out these businesses to various third parties.
- [15] There is a lack of information due to the lack of the defendant's response or interest in this litigation, or so it appears. So we do not really know at this stage much about what happened with the money drawn out of the equity in the family residence and what the defendant actually did with the money. But we do know, or at least it is suggested, that these funds were used to purchase these three interests in commercial buildings.
- [16] These commercial units are of significantly less value than the money that was available to the defendant. They were appraised around the time all appraisal were done in this matter, October of 2006, and those three interests were appraised with a combined value of \$75,200.
- [17] What this history shows, allows the court to make a few conclusions.
- [18] The first conclusion is that the defendant in his drawing equity out of the family residence and purchasing commercial interests has been, bluntly, financial irresponsible to both his and the plaintiff's detriment.
- [19] Secondly, I can conclude that since the separation, the defendant has failed in his obligation to support his wife, who had no job skills, and his child. And as I have said, it is a miracle that they have both survived.
- [20] Earlier today, I at the beginning of this matter, I gave reasons as to why I was proceeding today in the absence of the defendant. I do not propose in these reasons to expand on those earlier comments and my earlier decision, other than in a summary way. The summary is that the defendant has a lawyer, that his lawyer is on record, that his lawyer was served in early November with this notice of motion, and despite the rules did not reply. Despite efforts to contact the defendant's counsel by plaintiff's counsel, there was no response received.
- [21] Defendant's counsel was notified by plaintiff's counsel as a matter of courtesy, not as a requirement, but as a matter of courtesy, that this matter would be proceeding on today's date. The response from counsel for the defendant was that he had not been in touch with his client and did not wish to proceed until he did. In other words, a suggestion that the matter will left in limbo for a period of time.
- [22] Noting that this matter has been outstanding for some seven years and noting the costs associated with adjourning the matter, costs which would no doubt be borne by the plaintiff, and noting the complete lack of materials filed by the defendant despite notice and noting that even if their lawyer did attend, having not filed a reply, having not filed materials, there is not much the lawyer for the defendant could have said. I decided to proceed today.

- [23] Turning to the issues in the motion. I have granted paragraph 1 of the motion, the divorce order. In regards to considerations respecting paragraphs 2, 3 and 4, the plaintiff seeks sole custody and guardianship of the child, Angus. She offers to the defendant reasonable access, and she requests of the court liberty to apply for a renewal of passport on behalf of the plaintiff and that the defendant's consent to the said application for renewal be dispensed with. All those three orders requested in paragraphs 2, 3 and 4 are granted as sought.
- [24] The reason for doing so is as follows: the defendant, having completely ignored his responsibility to his wife and his child, also ignored his moral responsibility to his son. He has exercised no access to his child since separation. The only time he has apparently seen his son has been at times incidental to his visiting his sister-in-law who provides the daily care for the child while the plaintiff works. This has been indirect access and only really haphazard.
- [25] Specifically the defendant has had no overnight access, has no made no effort to telephone the child and has not acknowledged the child apparently in any way. The mother has provided virtually all the financial support for this child and has clearly provided all the emotional and required care that a child growing from ages three to ten would require.
- [26] This child can be described as somewhat of a handful, though I am sure his mother would not describe him as such. He has asthma, he is diabetic, and he has what used to be called hyperactivity. He seems, like I say, to be a bit of a handful.
- [27] There is no basis, in my view, for an order for joint custody or joint guardianship for a child that one parent has simply chose to ignore. There is no reason why the plaintiff, who has essentially raised this child since age three on her own, should not be entrusted with sole custody and guardianship. The defendant can have reasonable access if he chooses to exercise it, and certainly there should be no restriction on the plaintiff's ability to apply and renew a passport. The requirements of the defendant to consent to either an application or a renewal is hereby dispensed with.
- [28] I now turn to my analysis of the claim for retroactive spousal support and the claim for division of property. I am satisfied that the following are family assets: first off, the home in Richmond, which has a civic address of 3411 Trumond Avenue, is clearly a family asset. This is the asset the parties purchased shortly into their marriage, that the parties resided in throughout their marriage and that the plaintiff has continued to reside in at separation. I am satisfied that that home is valued for the purposes of division as having an equity of \$370,000. It was appraised at \$500,000 and there is a mortgage owing of approximately \$130,000.
- [29] Next I am satisfied that there are three commercial properties, the addresses and descriptions of which are noted in paragraphs 7, 8 and 9 of the motion. Those three commercial properties are all family assets. They were purchased through refinancing of the family home. They are as such family assets. Their current value for the purposes of valuation is \$75,200, and I will treat them as a group. Additionally, I am satisfied on the

evidence that there were sale proceeds of assets in Hong Kong, which by the best evidence before me it seems clear were worth \$33,000 Canadian. That is also a family asset.

- [30] Finally there was a vehicle in the name of the plaintiff which the defendant surreptitiously sold while the plaintiff was out of the country. That was a \$14,000 asset, that and the sale proceeds from Hong Kong were retained by the defendant, its value is \$14,000. As such, there are, for the purposes of division, four assets which are family assets: the home in Richmond worth \$370,000; the commercial properties worth \$75,200; the Hong Kong sale proceeds worth \$33,000 and a vehicle worth \$14,000.
- [31] These assets combined total \$492,200. If one was to look at dividing property equally, each party should have \$246,100 in their possession. With the plaintiff retaining the home, she has \$123,900 more than she should under an equal division.
- [32] But there are, however, a number of factors which must come into play in balancing the equities between the parties. There are, in my view, a number of contributions which the defendant was either practically obligated to contribute to, morally obligated to contribute to or legal obligated to contribute to. For the most part he has failed in these required contributions.
- [33] An analysis of those contributions and an adjustment for them is as follows: first off in regards to the mortgage on the family home, since the separation, the plaintiff wife has made all the mortgage payments, despite a joint obligation on the parties to do so. She's paid \$106,159 in mortgage payments. I would allocate half of that responsibility to the defendant. Meaning that he should now pay the plaintiff \$52,080 as a contribution towards mortgage payments she made to his ultimate benefit.
- [34] This is particularly true in light of the fact that the main asset that the parties had has grown substantially since the separation. At the time of separation, the evidence before me suggests that the home was assessed at \$230,000. It had a mortgage on it of \$167,624 and as -- at that time, has equity of \$62,370. Today the equity is \$370,000, or over five times what it was at the time of separation.
- [35] Additionally, there are taxes and municipal utilities which have been paid by the wife to which the husband should have contributed. These total \$21,978, and his half is \$10,989 that he should have paid.
- [36] There is a maintenance on the home. There are two aspects of maintenance which I would like to consider first, the lawn maintenance and the insurance. The lawn care for the home was \$2,080. The defendant should have paid half or \$1,040. The insurance on the home was \$6,804 in the years since separation. The defendant should have paid half, \$3,402.

- [37] There have been some modest repairs on the home, though not many as the plaintiff has been unable to afford them. The first of these repairs appears from the evidence to be repairs to the cement floor which cost \$2,300. Those I would allocate half to the defendant or \$1,150.
- [38] The final aspect of repair to the home was repair to the door as a result of the defendant kicking in the door and assaulting the plaintiff. I would allocate this cost 100 percent to the defendant. He should pay the plaintiff the \$1,500 it cost to repair.
- [39] In all those expenses which I have articulated in regards to the home, the defendant should have contributed to the plaintiff his half of all those expenses except for the door, which I find he should contribute 100 percent of. The total of these contributions is \$71,161.
- [40] I now turn to child costs. This is a bit more complicated. In looking at child support, realistically there is no explanation as to why the defendant did not pay child support. From the time of separation to today's date, 88 months have gone by. He should have paid child support, and I would fix his obligation at \$299 for all 88 of those months, or \$26,312. Additionally for two years, the child went to a specialized preschool. I would allocate two-thirds of the preschool cost to the defendant, as his income is, in my view, substantially above that of the plaintiff. Two-thirds of the \$6,000 is \$4,000.
- [41] Additionally, with the exception of the months since April of 2006 when the defendant, by way of order of this court, has an obligation to pay directly to his sister-in-law for the support of the child's daycare, the defendant should have made a contribution towards the daycare. In those 68 months from September of 2000 until April of 2006, the plaintiff paid \$150 per month for daycare or \$10,200. I would allocate two-thirds of those expenses to the defendant and I would allocate to him \$6,800 in a contribution towards daycare costs paid by the plaintiff during that time.
- [42] The total of these expenses related to the child are \$37,112, (\$26,312 and \$4,000 and \$6,800). What did he pay? He paid seven months under the order \$299. That is \$2,093. Also from May of 2001 to January of 2004, he contributed \$800 to the plaintiff wife in some combination of contributions towards the home and child support. That totalled \$26,400. So what he paid was \$28,493.
- [43] A summary so far. He should have paid property related costs of \$71,161. He should have paid child expenses of \$37,112. He paid \$28,943. The difference is \$79,780.
- [44] I now turn to the issue and directly to the claim under paragraph 6 of retroactive spousal support. The plaintiff was clearly entitled to spousal support. At the time of separation, she had no job. The only work that she has been able to get is minimum wage employment. This is no doubt due to the requirement she has to look after her son and is no doubt due to the limited language skills and limited job skills that she has at the time of entering employment. The best evidence of her limitations in terms of long term economic prosperity are that some six or seven years after separation, though working full time, she is

still only able to earn minimum wages.

- [45] There is a complete paucity of information as to the defendant's ability to contribute to his wife's support. Of note, by earlier application, his income was determined at \$28,000, but of note, that was only an interim basis. He is a businessman involved in managing a number of properties, and I find the \$28,000 to be a highly unlikely level of income, especially when one looks at the small bit of financial disclosure that he has made, which is his financial statement.
- [46] The financial statement is of particular interest when it is noted that he claims expenses of \$61,000 a year and income of only \$20,000 a year. He claims an interest in a number of assets, and has virtually no debt. It is hard to imagine that someone could be running a deficit, as he suggests, in excess of \$30,000 between his income and his expenses and not be bankrupt.
- [47] Considering the information I have, I would fix retroactive spousal support for the 88 months from the time of separation until today's date at \$500 per month. That totals \$44,000.
- [48] Getting back to my analysis then, I direct that the home in Richmond at 3411 Trumond Avenue be vested in the wife's name solely. That asset on the face of it is worth \$370,000 and as I have indicated earlier, that creates a discrepancy on an equal division between the wife and the husband of some \$123,900.
- [49] However, the husband, as I have determined, owes the wife \$79,780 through a combination of failed contributions on the home while the equity grew and failed contributions towards the child. That coupled with the \$44,000 in retroactive spousal support total \$123,780.
- [50] I have concluded therefore that an equal division of property, considering the lack of contribution to child and spousal support and the lack of contribution by the husband to the main asset which the wife and the wife on her own maintained to their joint benefit for some seven years is achieved by the Richmond property on Trumond Avenue vesting solely in the wife's name, and the balance of the family assets, the three commercial properties, the sale proceeds from Hong Kong and the sale proceeds from the vehicle vesting in the husband's name.
- [51] The wife shall be the sole owner of the home. The husband shall be the sole owner of the commercial properties and the proceeds from Hong Kong and the vehicle.
- [52] Before I conclude, I would note the following: first there are three factors which I really have not considered in coming to these decisions. I have not considered Section 65 of the Family Relations Act. Though in fact Section 65(1)(e) and Section 65(1)(f) are most applicable to the plaintiff's circumstances. Those paragraphs relate to the need of each spouse to become or remain economically independent and self-sufficient, and any other circumstances related to the acquisition, preservation, maintenance, improvement or use of the property or the capacity and liabilities of the spouse.

- [53] Under both Section 65(1)(e) and Section 65(1)(f), the wife would have a good argument for reapportionment of property in her favour. As indicated, I have not dealt with that because I feel, having heard the evidence and concluded as I have, that an equal division is fair between the parties and the wife maintaining the home is, in fact, an equal division.
- [54] Secondly, I have not dealt with a future claim for spousal support. I have allocated spousal support from the date of separation to today's date in the wife's favour. It would be possible and reasonable in these circumstances to either continue spousal support or provide for the wife to have a lump sum pay out of spousal support. She has worked hard, and yet she has still not been able, due to her limitations, to maintain economic self-sufficiency. She would be a spouse, in my view, that would in most circumstances be entitled to long term or perhaps permanent spousal support.
- [55] The third factor that I have not considered is the rental income. The defendant during this entire time has had the benefit of all rental income from the three family assets which he has controlled, the commercial properties. He has never accounted for this and it is certainly something that the wife could have argued.
- [56] Turning back to the motion itself, I have dealt with paragraph 5, the spousal support, retroactively, by making the conclusions I have. I have dealt with the claim for child support, will order that from this point on, the husband continue to pay \$299 a month in child support based on his income.
- [57] There will be a declaration, as requested in paragraph 7, 8, 9 and 10, related to the family assets, the three commercial properties and the home. The three commercial properties are family assets and will vest in the name of the defendant. And the family residence at 3411 Trumond Avenue is a family asset and will be vested in the plaintiff's name absolutely.
- [58] Finally in terms of paragraph 11, the plaintiff is entitled to her costs of this proceeding throughout at Scale B.
- [59] Turning back to the final consideration, which is the defendant's non-attendance. I am going to direct that the defendant has liberty to bring this matter back on before me within 30 days should he choose to. However, there will be conditions: First off, the plaintiff's costs to date will have to be paid. Secondly, the defendant will have to pay into his lawyer's trust account the sum of \$10,000 and that those funds are to be held for the costs associated with a review by the plaintiff.
- [60] The plaintiff will be entitled to a full day's examination for discovery of the defendant under circumstances which I will articulate a bit more in the future, but that \$10,000 is designed to cover the costs which the plaintiff would have to incur for discovery and further investigation should the defendant wish to bring this matter back before me. The defendant will have to make himself available for a one-day examination for discovery.

[61] Prior to that examination for discovery, the defendant will have to file a new property and financial statement and will have to produce all his records of income and expenses related to his rental properties from September of 2000 to date and all financial statements related to his rental properties or any corporation on which he is a shareholder from September of 2000 to date. And finally, the defendant will have to produce all his income tax records for the taxation years of 2000 to 2007.

"The Honourable Mr. Justice Groves"

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/SC/07/18/2007BCSC1884.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/chan-v-tam-2007>

Prepared on 26 October 2026 · Esheria