

CANADA / JUDGMENT

Chan v. Tran

2025 BCSC 1991

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1991 Chan v. Tran

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chan v. Tran,

2025 BCSC 1991

Date: 20251015

Docket: E212760

Registry: Vancouver

Between:

Brandi Chan

Claimant

And

Tien Dung Tran

Respondent

And

Nu Thi Pham, Truong Tien Tran, Nga Thi Tran, The Anh Nguyen and David Anh Tran

Respondents by Counterclaim

Before: The Honourable Justice Hoffman

Reasons for Judgment on Costs

Counsel for the Claimant:

N.D. Allen

Counsel for the Respondent and

The Respondents by Counterclaim:

P.W. Cote

E. Duke

Written Submissions of the Claimant:

Written Submissions of the Respondent:

Reply Submissions of the Claimant:

August 14, 2025

August 29, 2025

September 19, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 15, 2025

Overview

- [1] After an 11-day trial, I dismissed the claimant's claim against the respondents for the division of family property and debt and for the payment of spousal support on the basis that the claimant and the respondent did not meet the definition of spouses as set out in s. 3 of the Family Law Act, S.B.C. 2011, c. 25.
- [2] I also dismissed her claim that a property, referred to at trial as the MacPherson property, was excluded property. I found that the MacPherson property was a joint investment and that the claimant and the respondent were entitled to a share of the property and its rental income in proportion to their monetary contribution.
- [3] To distinguish between the various respondents, I will refer to Tien Tran by his name and the remainder of the respondents as the respondents by counterclaim. I will refer to them collectively as the respondents.
- [4] The claimant does not dispute that the respondents were substantially successful at trial and, as a result, would ordinarily be entitled to costs. However, she seeks to have the court exercise its discretion under Rule 16-1(7) of the Supreme Court Family Rules to otherwise order that each of the parties is to bear their own costs. The claimant says that such an order is justified because it was necessary for the court to determine the key issues in this proceeding, namely whether and when the parties entered in a marriage-like relationship. The claimant says that this was not a straightforward finding but rather one that required

the identification and analysis of various non-determinative factors throughout the course of the relationship. The claimant further submits that based on her financial hardship, the disparity of her income in relation to that of the respondent justifies a departure from the ordinary rule. Finally, the claimant takes the position that because Tien Tran deliberately gave untruthful evidence in this proceeding, I should rebuke this conduct by depriving him of costs despite his success.

- [5] The respondents submit that there is no judicial basis to exercise the court's discretion to deprive them of costs and argue that financial hardship and the disparity in the parties' respective incomes is no longer a basis to deprive a successful party of costs. Further, Tien Tran submits that his litigation conduct is not sufficient to warrant the deprivation of his trial costs. If the court is to consider exercising its discretion to order costs otherwise than to the respondents, the respondents submit that the court should consider their attempts to settle this proceeding.
- [6] The respondents also seek an order of double costs pursuant to Rule 11-1 from February 25, 2025, onward on the basis that the respondents delivered an offer to the claimant on that date which was more favourable than the result she achieved at trial.
- [7] For the reasons that follow, I find that Tien Tran is disentitled to costs to sanction his litigation conduct and that the respondents by counterclaim are entitled to double costs on the basis that the claimant unreasonably failed to accept the respondents' settlement offer.

Issue #1 - Is there a basis to order that the respondents are not entitled to recover their costs?

Principles to Apply in Exercising Discretion under Rule 16-1(7)

- [8] The general rule in family law litigation is that the party who is ultimately successful at trial is entitled to be awarded their costs unless the court "otherwise orders": Rule 16-1(7).
- [9] The policy rationales behind the costs provisions in the Rules are to encourage parties to appropriately assess the strengths and weaknesses of their case, to discourage the advancement of unmeritorious claims, and to promote reasonable settlements: *Brown v. Kucher*, 2016 BCSC 194 at para. 10; *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16 at para. 16.
- [10] Counsel for both parties referred me to the decision of *O'Connor v. Mills*, 2024 BCSC 804, which, in turn, refers to the helpful and succinct summary of the principles applicable to costs awards in family cases in *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7. The principles applicable to the issues before me are as follows:

- a) The court's discretion to "order otherwise" must be exercised judicially with reference to non-exhaustive factors that include hardship, earning capacity, the purpose of the particular award, the conduct of the parties in relation to the litigation, and the importance of not upsetting the balance achieved by the court in relation to the substantive issues: *Gold v. Gold*, 82 B.C.L.R. (2d) 180 at para. 20, 1993 CanLII 1248 (C.A.).
 - b) The party who asks the court to "order otherwise" bears the onus of persuading the court why it should do so: *S.D.W. v. C.W.W.*, 2006 BCSC 162.
 - c) Financial hardship, standing alone, is not a sufficient basis for the court to exercise its discretion to depart from the usual rule that successful parties are entitled to their costs: *S.D.W.; K.D.P. v. A.R.K aka R.K.*, 2012 BCSC 1025; *Brown v. Kucher*, 2016 BCSC 194.
 - d) Where financial hardship is relied upon, the party claiming the hardship must provide sufficient and credible evidence to establish that the hardship arising from being ordered to pay costs is extreme or severe: *O'Connor* at para. 51.
- [11] In *LeClair v. Mibrella*, 2011 BCSC 533 at para. 10, Justice Voith summarized the principles applicable to a consideration of whether a successful party's litigation conduct should deprive them of costs. The failure to make thorough and timely document disclosure can justify a denial of costs. A party whose evidence was merely exaggerated or given in error, generally speaking, should not be sanctioned by a denial of costs. However, when a party deliberately and intentionally misleads the court, that party will normally be deprived of their costs: see *Cardwell et al v. Perthen et al*, 2007 BCSC 366 at para. 13; *Noyes v. Stoffregen*, [1995] B.C.J. No. 73 at paras. 79-80, 1995 CanLII 1058 (S.C.).

Finding that the Respondent Tien Tran is Not Entitled to Costs

- [12] I will address in turn the three grounds upon which the claimant says the respondents should be deprived of costs. First, the claimant submits that the question of whether there was a marriage-like relationship was one that required judicial intervention to resolve. I am not persuaded that this is an appropriate factor for me to consider.
- [13] While I recognize that the issue of whether a marriage-like relationship existed was multi-factorial, this does not relieve parties from their obligations to consider the risks of proceeding to trial. If anything, the fact that this question is to be resolved by reference to a large number of non-determinative factors increases the risk of proceeding to trial and, in turn, heightens the obligations of the party to consider the strengths and weaknesses of their case and whether the risks of proceeding to trial should be mitigated through a negotiated resolution.
- [14] To deprive the respondent of costs merely because this was a marriage-like relationship case would amount to a return to the state of the law that the five- member panel rejected in *Gold*. The Court of Appeal in *Gold* held that there is nothing inherent in the issues dealt with in family law litigation that justify a departure from the ordinary rules applicable in civil

litigation that costs should follow the event: Gold at paras. 11-17. In *T.K. v. R.J.H.A.*, 2015 BCCA 8 at para. 86, the Court of Appeal held that circumstances to be considered in exercising the court's discretion to depart from the ordinary rule do not include the nature of the issues in dispute.

- [15] The second ground relied upon is the financial hardship of the claimant. The claimant did not tender any additional evidence of financial hardship for my consideration on the issue of costs. The claimant submits that at the conclusion of the trial, the parties are left with a considerable disparity in their net worth. She claims that Tien Tran's net worth consists of millions of dollars of interests in property whereas her assets are limited to approximately \$600,000 of equity in the MacPherson property that now must be divided.
- [16] I am not persuaded that the disparity between the claimant and Tien Tran's income is as vast as the claimant contends. Although it was not necessary to make findings at trial regarding the nature of Tien Tran's property interests, there was considerable evidence called to the effect that Tien Tran was put on title in respect of properties purchased by his parents to facilitate his ability to manage the properties and that he made no contributions towards the purchase of these properties. Accordingly, it is not an established fact that Tien Tran is the legal and beneficial owner of these properties.
- [17] The claimant's bare assertion that being required to cover the costs of trial from her share of the equity in the MacPherson property will cause her financial difficulties is insufficient to meet the onus to establish severe hardship. There is considerable equity in this property and, as I discuss further below, as the proportion of her share has yet to be determined, it is possible that her share will considerably exceed that of Tien Tran following an accounting.
- [18] Turning to the final ground, the claimant submits that Tien Tran should be deprived of costs because he was untruthful with the court regarding the nature of a rural property, referred to in my trial judgment as the Gibson Road property, he was alleged to have an interest in. The claimant also says that the respondents should be rebuked for disclosing documents on the eve of trial, leaving her little time to consider them.
- [19] With respect to the late disclosure of documents, the claimant has not submitted any evidence to explain what documents were disclosed shortly before trial. The only reference in the claimant's closing submissions to the late disclosure of documents was to point out that a document, identified in cross-examination as one she had not previously reviewed, was disclosed only two days prior to trial. The claimant has not provided specifics as to how this late disclosure impacted either her preparation or the conduct of the trial. While I agree that parties should be discouraged from last minute disclosure, a party seeking a departure from the normal rules of costs on the basis of litigation conduct is required to go beyond bare assertions to articulate how the misconduct resulted in disadvantage or prejudice.
- [20] In my trial decision, I concluded that Tien Tran lied under oath at discovery when he denied that the Gibson Road property was being used for the purposes of a marijuana grow operation. He allowed his counsel to unknowingly perpetuate this lie when his counsel

made submissions to the court in response to my inquiries as to why the appraiser could not access the property. Tien Tran only admitted to the lie when confronted with contrary information from the appraiser on cross-examination. Lying under oath is a serious matter. It is even more serious for the respondent, who, as a former member of the bar, is well aware of the consequences of being untruthful to the court, and despite that knowledge, allowed his counsel to unknowingly mislead the court.

- [21] Tien Tran argues that his lie should not deprive him of his costs because he did not lie to gain an advantage in the litigation but rather to keep his mother and brother in law safe from break-ins or other criminal activity while working at the property. I find this explanation suspect. It is not plausible that a former lawyer, who should be aware that discovery evidence is subject to an undertaking of confidentiality and can only be used for the purpose of the proceeding in which it is given, would be concerned that criminal elements would learn about the grow operation if he told the truth on discovery. The fact that Tien Tran was not forthcoming with this explanation from the outset raises the concern that there are additional reasons why the respondent chose to perpetuate the lie he gave on discovery during the trial. Even if Tien Tran lied solely for reasons unrelated to the litigation, his conduct is still worthy of rebuke. The court cannot be seen to sanction this conduct by allowing him to recover his costs.
- [22] Tien Tran further submits that the court should consider his attempts to settle this matter in exercising its discretion in respect of costs. I am not persuaded that this is sufficient to exonerate the respondent's decision to deliberately mislead the court. To do otherwise, would leave the unacceptable impression that untruths can be "papered over" with settlement efforts.
- [23] Accordingly, I exercise my discretion to order that the claimant is not responsible for the costs of Tien Tran. However, the respondents by counterclaim should not be deprived of their costs of participating in the trial because of Tien Tran's misconduct. The respondents by counterclaim are entitled to their costs attributable solely to their preparation for and participation in the trial from the date that they were added as parties. Only those costs that are over and above what Tien Tran would have otherwise incurred are recoverable.

Issue #2 - Are the respondents entitled to an order for double costs?

- [24] My finding to deprive Tien Tran of costs renders it unnecessary to consider whether he is entitled to double costs: *Paul v. Pumble*, 2013 BCSC 1844 at paras. 26-27. The respondents by counterclaim submit that the court ought to order that they can recover double costs under Rule 11-1(5)(b) on the basis that the result at trial was less favorable for the claimant than had she accepted the respondents' offer made on February 25, 2025, to enter into a consent order in the following terms:
- a) The parties would agree that they were not spouses;
 - b) The parties each had a 50% beneficial share in the MacPherson property;

- c) Within 60 days of the consent order, the parties would list the MacPherson property for sale or that the claimant would buy out Tien Tran's interest once the value of the MacPherson property had been determined;
 - d) Tien Tran was entitled to 50% of the rental income from the MacPherson property less any related expenses that the claimant claims as reimbursable;
 - e) The claimant could keep the engagement ring; and
 - f) The parties would bear their own costs.
- [25] This offer, which expired on March 13, 2025, was made shortly after the respondents by counterclaim were added to the proceedings by the claimant and before they had taken any litigation steps. The offer was renewed in the same terms on April 22, 2025, one business day before the commencement of trial.
- [26] Under Rule 11-1(5)(b) where an offer to settle has been made, the court may "award double costs of all or some of the steps taken in the family law case after the date of delivery or service of the offer to settle". Rule 11-1(6) sets out the considerations in making such an order:
- (6) In making an order under subrule (5), the court may consider the following:
 - (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment of the court;
 - (c) the relative financial circumstances of the parties;
 - (d) any other factor the court considers appropriate.
- [27] In assessing the relationship between the terms of the settlement offered and the result at trial, the court should consider whether the party who declined the offer would have been better off financially, on a global basis, if they had accepted the offer rather than going to trial: *Heirat v. Heidari*, 2025 BCSC 1451 at para. 18.
- [28] The court is also to consider whether it was unreasonable for the declining party to reject the offer at the time it was open for acceptance rather than whether the offer was reasonable: *Hopson v. Hannon*, 2022 BCSC 1013 at para. 75; *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 27. The assessment of reasonableness is done without considering the final outcome achieved at trial. Instead, reasonableness is assessed by considering the timing of the offer, its relationship to the claim advanced, whether it was capable of being evaluated, and whether it was supported by some rationale: *Hartshorne* at para. 27.

- [29] The respondents' offer, at least in one respect, is clearly favourable to the claimant as it would have allowed her to keep the engagement ring valued at \$38,000. My decision at trial was that the ring should be returned to Tien Tran subject to an accounting to determine whether any of the claimant's funds were used to purchase the ring. I determined that an accounting was required due to the high number of unexplained transfers of funds from the claimant to Tien Tran and corresponding withdrawals by Tien Tran in the joint account that was opened for the purposes of managing the income and expenses associated with the MacPherson property. These transactions also occurred during the month that the engagement ring was purchased.
- [30] It is also the case that had the claimant accepted the offer, she would not have incurred the costs of attending trial and conducting the directed accounting before the registrar.
- [31] It is not yet clear whether the most financially significant term that each party would receive a 50% interest in MacPherson property is more favorable than the result that will be achieved once the directed accounting is completed. However, taking the offer as a whole and considering the costs that remain to be incurred for the accounting as compared to the benefits of finality and certainty and the avoidance of potentially substantial trial costs had the offer been accepted, I find that the claimant would have been better off from a financial perspective if she had accepted the offer.
- [32] I turn now to a consideration of whether the claimant unreasonably rejected the offer. In terms of timing, the offer was made shortly after the respondents by counterclaim had been added by the claimant and at a time when the parties would have been preparing for the April 24, 2025, trial date. It was open for two weeks on the basis that the respondents by counterclaim had not yet taken any litigation steps.
- [33] I do not accept the claimant's submission that the lack of an appraisal of the MacPherson property prevented her from properly evaluating the offer. The offer provided for a joint appraisal to be done and offered her 50% of the appraised value. What the claimant had to consider was whether it was reasonable to accept a 50% share. This would be based upon an assessment of her ability to prove the value of her contributions versus what the respondent said he contributed. The rationale offered by the respondents for the offer was that the claimant contributed \$81,000 to the purchase price, and Tien Tran contributed \$74,500 and, in addition, made extra mortgage payments to cover tax and insurance payments. The claimant offers no submission as to why such an assessment was not possible as she presumably had access to at least her own financial records to calculate her contribution to compare against what Tien Tran claimed to have contributed.
- [34] As to the central issue regarding the nature of the parties' relationship, a key consideration for the claimant in weighing the offer would have been the fact that it was her onus at trial to prove that the parties had entered into a marriage-like relationship. In reliance on Hopson, the claimant argues that because this was a difficult issue involving a detailed analysis of both fact and law, it was challenging to assess the likelihood of a particular outcome. While I

accept that there are many considerations and factors required to resolve the question of whether the parties had entered into a marriage-like relationship, there were only two possible outcomes: they were in a marriage-like relationship for two years or they were not. This is not the type of issue where a party stood to recover a different level of damages if certain facts were proved.

- [35] The claim against the respondents by counterclaim hinged entirely on the claimant being able to prove that she was in a marriage-like relationship with Tien Tran. To succeed in her claim to the division of the various properties in which Tien Tran had an interest, the claimant would also be required to prove that they were not excluded properties due to the interests of Tien Tran's parents.
- [36] Adding the respondents by counterclaim was done late in the day and, as the claimant points out in her submissions, before the respondents by counterclaim had filed any pleadings or attended a discovery. Although it was not necessary for me to adjudicate these claims, there was very little evidence tendered at trial to support the contention that these properties were legally and beneficially owned by Tien Tran who made no financial contributions towards the acquisition of these properties. As such evidence was not tendered at trial, the claimant presumably did not have this evidence when the offer was made and should have understood that there were significant risks that this aspect of her claim would not be accepted at trial.
- [37] Taking all of this into account, I find that the claimant was unreasonable in not accepting the respondents' offer by March 13, 2025, by which point she would have had sufficient time to assess the benefits and risks of rejecting it. The respondents by counterclaim are entitled to recover double costs from this date. For clarity, I repeat that these costs are limited to those attributable to their preparation, attendance, and participation in the trial over and above what Tien Tran would have been able to recover but for my order disentitling him to costs.

"Hoffman J."

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