

CANADA / JUDGMENT

Chapman v. Chapman

2020 BCSC 1409

COURT

Supreme Court of British Columbia

DECIDED

18 September 2020

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2020 BCSC 1409 Chapman v. Chapman IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Chapman v. Chapman, 2020 BCSC 1409 Date: 20200918 Docket: E150548 Registry:

Vancouver Between: Janet Sarah Chapman Claimant And Edward James Chapman, Osborne

Holdings Ltd., Page Ponsford Bros Ltd., 454740 B.C. Ltd., Chapy's Stores Ltd., Edward Chapman

Ltd., and Edward Chapman Limited Respondents Before: The Honourable Madam Justice Jackson

Oral Reasons for Judgment (via teleconference) Counsel for the Claimant via telephone: T.R. Bell

Counsel for the Respondent, Edward James Chapman, via telephone: G. Lang The defendants

Osborne Holdings Ltd., Page Ponsford Bros Ltd., 454740 B.C. Ltd., Chapy's Stores Ltd., Edward

Chapman Ltd., and Edward Chapman Limited No appearance Place and Date of Hearing:

Vancouver, B.C. September 17, 2020 Place and Date of Judgment: Vancouver, B.C. September 18,

2020 OVERVIEW

- [1] On July 10, 2020, I issued Reasons for Judgment in this family law case, indexed as 2020 BCSC 1029, in which I pronounced an order dealing with child support and property division (the "Trial Reasons"). I will continue to use the same terms defined in the Trial Reasons in these Reasons.
- [2] Orders made by this Court under the FLA, which the order pronounced in the Trial Reasons is, remain in effect throughout an appeal process unless the Court orders otherwise: FLA, s. 234. The respondent applies to the Court to stay the execution of part of the order pronounced in the Trial Reasons pending his appeal, namely: · the Sealed Bid Process, but only with respect to the Ontario Street Property, the West 3rd Property, and the Palm Desert Property; · the contingent, consequential term of the order that if the claimant has the highest Sealed Bid for either or both of the West 3rd Property and the Ontario Street Property, those properties shall be transferred to a new company incorporated by the claimant for that purpose, by way of a Butterfly Transaction, on terms and conditions to be agreed upon by the parties within 90 days of the Trial Reasons or imposed by me if the parties cannot agree on the terms; · that the "storage costs", which I understand to be a reference to rent and any other expenses associated with the Adera Family Residence and the Granville Storage, are the sole responsibility of the Respondent. (It is not clear from the notice of application whether the respondent intends to seek a stay with respect to the costs associated with the draft Timelines Reports.); and · the requirement that the respondent

personally indemnify the claimant for any liability associated with Chapy's, ECL, or any of its predecessor companies, including but not limited to corporate income taxes no matter when incurred or attributed.

- [3] The Claimant opposes the application.
- [4] I have concluded the respondent's application should be dismissed. Although the respondent has satisfied the low burden of establishing his appeal is not vexatious or frivolous, he has not established he will suffer irreparable harm if the stay is not granted and I find the balance of convenience favours the claimant. The interests of justice do not demand the claimant be denied the fruits of her judgment while the respondent pursues his right of appeal.

LEGAL FRAMEWORK

- [5] The starting point for the analysis of whether a stay of pending appeal should be ordered is that a successful party in a family law case is entitled to the fruits of their judgement and should not be deprived of them unless the interests of justice require it: FLA, s. 234; Gold v. Gold (1992), 70 B.C.L.R. (2d) 216 (S.C.). However, the Court has inherent jurisdiction to stay the execution of its orders where it is just and equitable to do so: Google Inc. v. Equustek Solutions Inc., 2017 SCC 34 at para. 25; Concord Pacific Acquisitions Inc. v Oei, 2020 BCSC 832 at para. 26. That inherent jurisdiction is echoed in Rule 15-4(31) of the Supreme Court Family Rules, B.C. Reg. 169-2009, which expressly permits the Court to stay the execution of an order until such time as it thinks fit.
- [6] An application for a stay of execution engages issues similar to those involved in the granting of an injunction and is governed by the same three-part analysis set out in RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311; Negus v. Yehia, 2018 BCSC 2319 at para. 52; Nie v. Kwang Chyun Enterprise Ltd., 2017 BCSC 1941 at para. 54; Concord Pacific Acquisitions Inc. at para. 62. The RJR -MacDonald framework requires the applicant to establish:
- a) there is a serious question to be tried;
 - b) the applicant will suffer irreparable harm if the stay is not granted; and
 - c) the balance of convenience favours the granting of the stay because the harm the applicant would suffer if the stay is refused exceeds the harm the respondent would suffer if the stay is granted. IS THERE A SERIOUS QUESTION TO BE TRIED?
- [7] Whether there is a serious question to be tried is to be determined using common sense and on extremely limited review of the case on the merits: RJR -- MacDonald at 348. So long as the grounds for (in this case appellate) review are not frivolous or vexatious, this stage of the test is satisfied: RJR -- MacDonald at 348; Rotaru v. Rotaru, 2009 BCSC 480 at para 12.

- [8] Although not conceding there is any merit to the respondent's appeal, recognizing the threshold for this aspect of the test is a low one, the claimant concedes this aspect of the test has been satisfied.
- [9] Given that concession, and knowing my review of the merits of the appeal should be a limited one, it is not necessary for me to delve into the specifics of all of the errors the respondent alleges I made. I am satisfied the appeal is neither frivolous nor vexatious. HAS THE RESPONDENT ESTABLISHED HE WILL SUFFER IRREPARABLE HARM IF THE STAY IS REFUSED?
- [10] Irreparable harm refers to the nature of the harm rather than its magnitude and includes harm that cannot be quantified in monetary terms or which cannot later be cured, including where it will be difficult to obtain monetary redress: *RJR -- MacDonald* at 341. In order to satisfy this stage of the *RJR -- MacDonald* test, the respondent must establish, based on a sound evidentiary foundation and not simply speculation, that he will suffer irreparable harm if the stay of execution is not granted: *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 at para. 60; *Bartch v. Bartch*, 2017 BCSC 1381 at para. 60.
- [11] Despite acknowledging this aspect of the *RJR - MacDonald* analysis is the "key" issue on this application, there was a paucity of submissions by the respondent on this point and a striking absence of any evidence to support a finding of irreparable harm.
- [12] The respondent argues that if the claimant does have the highest bid for the Palm Desert Property and the respondent's appeal is ultimately successful, the parties will face "tax ramifications", "trouble", and "stress" associated with reversing the transfer. The respondent filed no evidence to support that bald assertion.
- [13] Similarly, while the respondent submits the expense associated with moving forward with a Butterfly Transaction with respect to the West 3rd Property and the Ontario Street Property would cause irreparable harm to both parties and that the tax consequences of reversing such a transaction "could be significant", there was no evidence led to support that conclusion, nor any evidence suggesting attempts to gather that information had been made. Instead, the respondent submits I should take judicial notice of the potential costs associated with such transactions. Even if I were to take judicial notice of the fact that a butterfly transaction and its reversal would trigger some financial cost, which I am not prepared to do on an application of this nature, the respondent conceded during argument that those costs are capable of being quantified and thereby compensable in money: *RJR - MacDonald* at 341; *Rotura* at para. 19; *Bartch* at para. 69; *Negus* at para. 55. Harm of that nature is not properly characterized as irreparable.

- [14] Further, the question of whether any costs will be incurred as a result of the Butterfly Transaction, the transfer of the Palm Desert Property to the claimant, or a subsequent reversal of those transactions, is completely speculative given that the Sealed Bid Process has not been undertaken and it is not yet known who will have the highest bid for each of the three real properties. It may be the respondent.
- [15] With respect to alleged irreparable harm arising from a stay of the order regarding the respondent's responsibility for rent and any other expenses associated with the Adera Family Residence and the Granville Storage, the respondent argues that there is not a lot of cash available to the parties because it is tied up in real estate. Again, there was no evidence to support a finding that he is unable to pay those expenses. There have been several interim distributions to the parties under various court orders and at the close of trial approximately \$4,798,571 remained held in trust with the respondent's counsel. I ordered those monies to be divided equally subject to the First Accounting and the Second Accounting. The respondent's submission that refusing a stay of this term of my order would cause "some difficulty to him" is woefully insufficient to establish irreparable harm.
- [16] Finally, with respect to alleged irreparable harm arising from the term of my order that the respondent personally indemnify the claimant for any liability associated with Chapy's, ECL, or any of its predecessor companies, there is no evidence before me any such liabilities exist. Nor is there an evidentiary foundation for finding the imposition of such a liability is causing the respondent any irreparable harm, whether in the form of impairing his ability to secure financing or otherwise.
- [17] I find the respondent has failed to establish he will suffer irreparable harm if the stay is not granted. WHERE DOES THE BALANCE OF CONVENIENCE LIE?
- [18] At the final stage I am to consider whether the applicant or the respondent will suffer greater harm from the granting or refusal of the stay: *RJR -- MacDonald* at 342. While the factors to consider vary in each individual case, *Canadian Broadcasting Corp. v. CKPG Television Ltd.* (1992), 64 B.C.L.R. (2d) 96 (C.A.) at 102 lists the following as factors that may be relevant. In the context of a stay pending appeal those considerations include: · the adequacy of monetary compensation as a remedy for the applicant if the stay is not granted, and for the respondent if it is; · the likelihood that any losses incurred will be recovered; · the preservation of contested property; · other factors affecting whether harm from the granting or refusal of the stay would be irreparable; · any factors affecting the public interest; and · any other factors affecting the balance of justice and convenience.
- [19] I have already noted the harm the respondent asserts is financial in nature. The respondent did not submit he had any particular sentimental attachment to either of the corporate properties or even the Palm Desert Property.

- [20] The respondent did not suggest, nor is there any evidentiary basis on which to find, there is a risk that the speculative and contingent costs he refers to, could not, or would not, be paid by the claimant if she obtains any of the three real properties through the Sealed Bid Process.
- [21] The claimant has agreed to consent to an order that she will not sell the Palm Desert Property pending the outcome of the respondent's appeal if she has the highest bid for it in the Sealed Bid Process. As a result, there is no risk that the Palm Desert Property will be unavailable if the respondent's appeal succeeds. Consequently there is no need for a stay to preserve that property.
- [22] Although the respondent argues the claimant will suffer no prejudice as a result of a stay of parts of my order, the order I made is interconnected and called for a single, timely, Sealed Bid Process. In addition, the claimant will be unable to determine whether to seek reapportionment until after the Sealed Bid Process is fully completed, thereby potentially delaying determination of the final aspects of the trial.
- [23] Although the respondent has committed to moving quickly, the appeal will nonetheless stretch out over at least the next several months. In the interim, the affidavit filed on behalf of the claimant reflects that post-trial the respondent has continued to direct ECL in litigation which has the potential to affect its share value without any notice to the claimant, despite my declaration that half of the ECL shares are impressed with a constructive trust in the claimant's favour. In this regard, claimant's counsel referred to the reported decision of *Edward Chapman, Limited v. FS Property Inc.*, 2020 BCSC 1350, a foreclosure proceeding argued August 13, 2020 with judgment delivered August 14, 2020, in which Master Harper granted an order nisi with a nine-month redemption to expire May 14, 2021, and also issued personal judgement against FS Property Inc. in the amount of \$714,324.02, suspending execution of that judgement until May 14, 2021.
- [24] I find the balance of convenience favours the claimant.

CONCLUSION

- [25] For all these reasons, I find the respondent has failed to establish the stay he seeks is in the interests of justice in this case.
- [26] The respondent's application is dismissed. COSTS
- [27] The claimant was significantly successful on the application and, subject to further submissions, is entitled to her costs in accordance with Appendix B to be assessed by the Registrar and payable forthwith upon assessment. "Jackson J."

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Prepared on 25 October 2026 · Esheria