

CANADA / JUDGMENT

Chapman v. Chapman

2020 BCSC 1896

COURT

Supreme Court of British Columbia

DECIDED

3 December 2020

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

2020 BCSC 1896 Chapman v. Chapman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chapman v. Chapman,

2020 BCSC 1896

Date: 20201203

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

Reasons for Judgment (Special Costs)

Counsel for the Claimant:

T.R. Bell

Counsel for the Respondents:

J.M. Reid

Written Submissions of the Claimant Received:

August 14, 2020

Written Submissions of the Respondents Received:

August 26, 2020

Reply Submissions of the Claimant Received:

September 8, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 3, 2020

I. OVERVIEW

- [1] On July 10, 2020, I issued Reasons for Judgment in this family law case, indexed as 2020 BCSC 1029, in which I made an order dealing with child support and property division and found the claimant had been the substantially successful party (the "Trial Reasons"). I will continue to use the same terms defined in the Trial Reasons in these Reasons except where noted.
- [2] The claimant seeks special costs against the respondent, or in the alternative, for costs to be assessed at more than ordinary difficulty. The respondent argues none of his actions during the litigation merit an order of special costs. Alternatively, he submits that if the Court is of the view that any of his actions warrant special costs, the scope of that order should be limited to the legal work required as a result of that specific conduct.
- [3] For the reasons that follow I have concluded that the respondent's conduct during the litigation was reprehensible warranting an award of special costs against him in favour of the claimant.

II. LEGAL PRINCIPLES GOVERNING SPECIAL COSTS

- [4] This Court has the discretion to order costs of a family law case be assessed as special costs: Supreme Court Family Rules, R. 16-1(1)(b)(i) [SCFR]. Awards of special costs in family and civil proceedings are governed by the same principles.
- [5] Special costs are punitive and imposed to sanction a party's reprehensible conduct during the litigation, conduct from which the court seeks to disassociate itself: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740 at 745, 9 B.C.L.R. (3d) 242 (C.A.) [Garcia]; *R.A.C. v. V.L.C.*, 2009 BCSC 1207 at para. 11. The word "reprehensible" is broad and

encompasses scandalous or outrageous conduct as well as milder forms of misconduct deserving of reproof or rebuke: *Garcia* at 746-747. Improper pre-litigation conduct is excluded from consideration: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 133-134.

- [6] The Court of Appeal recently reviewed the purpose underlying special costs in *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69, leave to appeal ref'd 39145 (1 October 2020) [*Le Soleil*]. The Court affirmed the purpose of special costs is to punish and deter litigation misconduct, not to compensate the other party: at paras. 40-42.
- [7] However, special costs also enable a court to substantially indemnify a successful party: *Everywoman's Health Centre Soc. (1988) v. Bridges* (1991), 54 B.C.L.R. (2d) 294 at 297, [1991] B.C.W.L.D. 816 (C.A.); *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, leave to appeal ref'd 38924 (20 February 2020), at para. 49. The indemnification function is particularly relevant where one party has had to incur excessive costs due to misconduct on the part of the other party: *D'Atri v. Gonzalez*, 2017 BCSC 1244 at para. 55 [*D'Atri*].
- [8] It is not necessary for the party's conduct throughout the litigation to have been reprehensible to warrant an award of special costs for the entire action: *Bradshaw Stenner*, 2012 BCSC 237 at para. 9, leave to appeal ref'd 2012 BCCA 481. Nonetheless, while special costs are usually awarded for the whole proceeding, where such an award would be disproportionate, the court has the discretion to award special costs with respect to particular steps in the litigation: *SCFR R. 16-1(1)(b)(ii)*; *Gichuru v. Smith*, 2014 BCCA 414 at para. 91, leave to appeal ref'd 36221 (16 April 2015).
- [9] Where previous orders are silent as to the scale of costs, the trial judge's cost order for special costs will govern: *Le Soleil* at para. 109. However, if a previous order for a particular step in the litigation has expressly addressed the scale of costs, or has summarily assessed costs, it cannot be varied by the trial judge: *Le Soleil* at paras. 101 and 108.
- [10] While not exhaustive, the types of conduct that may attract an award of special costs include delayed disclosure of or a failure to disclose documents, dissipating or not disclosing assets, depriving the other party of financial assets, disregarding the other party's interest in family assets, pursuing meritless claims and being reckless with regard to the truth, improper allegations of fraud or conspiracy, or making the resolution of an issue far more difficult than it should have been: *Hu v. Dickson*, 2015 BCSC 218 at para. 49; *McIntyre v. McIntyre*, 2018 BCSC 472 at paras. 7-8; *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 11; see also *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [*Westsea*] and *D.G.S. v. J.D.S.*, 2014 BCSC 2183.

- [11] Non-disclosure of assets and financial information, in particular, has been described as the cancer of family litigation and is viewed as being particularly egregious, potentially justifying an award of special costs: *Leskun v. Leskun*, 2006 SCC 25 at para. 34, citing with approval *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93, [1994] B.C.W.L.D. 2804 (S.C.); *Jin v. Cheng*, 2019 BCSC 148 at para. 59.

III. DOES THE RESPONDENT'S CONDUCT DURING THE LITIGATION WARRANT AN AWARD OF SPECIAL COSTS?

- [12] The claimant relies on the following conduct of the respondent as justifying an award of special costs against him:
- a. generally engaging in dishonest behaviour;
 - b. attending the claimant's home under cover of darkness, attempting to enter, all while taking steps to avoid detection, and failing to disclose all the photographs he took during that attendance;
 - c. encumbering the Adera Family Residence by way of a private \$700,000 mortgage against it without the claimant's knowledge or consent in order to frustrate the CPL the claimant had registered against the property;
 - d. failing to particularize his excluded claim until closing submissions;
 - e. preparing false financial statements and other financial records, some of which were provided to the business valuator jointly retained by the parties to provide expert opinion evidence of the corporate properties to assist the court in determining their value;
 - f. interfering with the work of the expert jointly retained to value the personal property at issue in this family law case;
 - g. disregarding the Court's order governing the removal and storage of disputed household items in the Adera Family Home and, without the claimant's knowledge or consent, unilaterally renting back the Adera Family Residence from the purchaser;
 - h. mismanaging storage of the chattels to such a degree that they were left in a complete state of chaos resulting in it being effectively impossible for the claimant to retrieve any of her own excluded property including sentimental items;
 - i. suppressing and concealing key financial information for his personal benefit, including the \$444,910 Tax Refund until the 11th hour before a mediation was scheduled to begin, a rental penalty of \$301,457 being claimed by the purchaser of the Pender Property for late delivery of its vacant possession, a Density Bonus worth approximately \$700,000, a CDA tax shelter with significant value, and historical records necessary for the Court to undertake an analysis of the historical value of ECL;

- j. delaying the listing of the Point Road Property and the Little Lane Property for more than a year, contrary to an order of this Court;
- k. frustrating the attempts of the business valuator to provide historical valuations of the Family Business Corporations by not producing requested information that was in his sole control; and
- l. failing to be forthright with his legal team, undermining their ability to execute their duties as officers of the Court.

[13] The claimant argues special costs should run from the commencement of the proceeding because the respondent's reprehensible conduct spans the entirety of the litigation. She argues the case opened with the respondent making an end run around the CPL, was marked throughout by repeated failures by the respondent to make timely disclosure of material facts and documents, and that his conduct was not limited to time or situation. The claimant argues the respondent's reprehensible conduct "was constant from the filing of his response to notice of family claim to his last word in evidence".

[14] The claimant further argues an order of costs for "more than ordinary difficulty" is inadequate to address the conduct of the respondent in this case. The claimant notes that the financial consequence of ordering costs assessed at more than ordinary difficulty would be a mere \$5,000 "bump" associated with increased tariff amounts for such things as correspondence, filings and service, and the process and discovery of documents: SCFR Appendix B, Schedule Items 1-2. However, that argument is irrelevant to the issue of whether special costs are warranted: *American Creek Resources Ltd. v. Teuton Resources Corp.*, 2014 BCSC 2214, aff'd 2015 BCCA 170, at para. 117. The focus of my analysis must be on whether the respondent's conduct deserves the punishment of special costs.

[15] The respondent argues that the claimant's request for special costs is based essentially on an adverse credibility finding against the respondent, which is not an appropriate basis upon which to order the extraordinary measure of special costs. With respect, the respondent has mischaracterized the claimant's argument. The claimant is not seeking special costs based on the Court's adverse credibility finding against the respondent, but rather based on his deceptive conduct throughout the litigation, which provided part of the foundation for that adverse credibility finding.

[16] I agree with the claimant that the respondent engaged in repeated, intentional, deceptive practices throughout the litigation and that those actions are reprehensible and warrant rebuke by this Court. While the respondent denies the scope of his actions is measured in the "millions" of dollars as the claimant alleges, whether it is "millions" or in excess of a million (as the respondent concedes), the fact remains there were numerous, repeated failures to disclose financial information, either in a timely fashion or at all. The respondent suppressed key financial information of significant value in this family law case including the Tax Refund, the claimed rental penalty, the Density Bonus, and the CDA. He did so in an effort to secure personal advantage for himself and to disadvantage the claimant. That

conduct is reprehensible.

- [17] The respondent argues that his attendance at the claimant's home does not constitute misconduct in the litigation because it is collateral to the litigation and should be treated in the same way as pre-litigation conduct is treated, namely not considered. However, the respondent's evidence was that he attended there for purposes related to identifying family property he believed (erroneously) the claimant had taken. As such, I find his attendance there was directly related to the issues in the litigation. However, because special costs are a sanction, and because the respondent was criminally charged arising out of that incident and resolved those charges by entering into a peace bond under the Criminal Code, R.S.C. 1985, c. C-46, which restricted his liberty, I am of the view he has already been censured for those actions and that further sanction by way of special costs is unwarranted. As a result, I exclude this aspect of the respondent's conduct from my consideration of the claimant's request for special costs.
- [18] The respondent argues there was nothing inappropriate in him encumbering the Adera Family Residence because the property was registered in his name alone and the mortgage was similarly solely in his name. He further argues the claimant did not suffer irreparable prejudice by these actions because in the event the funds were not used to support family property, there was adequate other family property to compensate. I disagree with the respondent's argument. It was not for the respondent to make decisions about whether his actions presented a manageable risk of prejudice to the claimant. As the claimant points out, at the time the CPL and the private mortgage were registered, the value of the family property and family debt were not fully known. The appropriate course of action would have been for the respondent to apply to the Court for the relief he was seeking, rather than unilaterally encumbering the Adera Family Residence without the claimant's consent.
- [19] While conceding that his excluded property claim was not "entirely particularized" until later, the respondent argues he disclosed estate documents, some historical financial records, and attempted to classify the chattels he believed to be excluded in the timeline reports earlier in the litigation process. With respect, providing a hodgepodge of documents amidst a mass of document production, thus requiring the claimant to attempt to piece together a jigsaw puzzle of what the respondent might be claiming as excluded property, is not a substitute for particularizing an excluded property claim.
- [20] The prejudice inherent in late particularization of an excluded property claim is obvious. Fundamental legal principles of fairness include the right to know the claim one has to meet: *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37 at para. 41; *L.J.G. v N.B.*, 2017 BCSC 350 at para. 90; *Chapman v. Summer*, 2005 BCSC 1359, rev'd in part 2007 BCCA 103, at para. 125. The failure to particularize need not be intentional to warrant rebuke; a failure grounded in a weak claim or resulting from a party's failure to take adequate, timely steps to ascertain the foundation of their excluded property claim can be equally reprehensible. In making this comment I wish to reiterate that the Trial Reasons place no fault at the feet of the respondent's legal team. The fact, as I found it, remains that the

respondent did not particularize his excluded property claim until the second day of his closing submissions. That is conduct I view as unacceptable and worthy of denunciation.

- [21] I agree with the respondent that his pre-litigation deceptive actions, such as his repeated false representations to multiple financial institutions, are not conduct that are properly considered as a basis for special costs.
- [22] The respondent argues he has already suffered for his actions with respect to the joint chattel appraiser because his application to have the expert's reports finalized, heard on April 9, 2019, by Master Taylor, was dismissed. However, the dismissal of the respondent's application was not a punishment.
- [23] The respondent also submits special costs arising from those actions is foreclosed by the fact that the claimant did not seek special costs on that application. I agree. Master Taylor ordered that the claimant was entitled to costs of, and summarily assessed costs for, that application. As a result, Master Taylor's order is binding absent an appeal and cannot be impacted by any costs order I make: *Le Soleil* at paras. 101 and 108.
- [24] The respondent argues there is no finding that he failed to produce historical financial documents. However, the respondent acknowledged at trial that the corporate financial statements, mortgages, and leases had all been stored in an office at the Pender Property, the contents of which the respondent ultimately moved without the claimant's involvement. He did not disclose them during the litigation. The explanation he offered at his examination for discovery was that he had not been able to find them, which I found to be improbable. On this application, the respondent argues his failure to make disclosure was not the result of a specific desire to mislead the Court in order to succeed at trial, as evidenced by the fact that providing the documents would have benefited him. The latter point appears to be a personal observation of the respondent made in hindsight, because the evidence does not establish the documents he solely controlled and did not disclose would have benefited him in any way. Even if the respondent's failure to disclose documents was unintentional (although I make no finding that was the case), but rather the result of his complete disorganization, it is still conduct I find to be reprehensible.
- [25] With respect to the late listing of the recreational properties, the respondent correctly points out that the Point Road Property was listed for sale shortly after the consent order was made. It was only the listing of the Little Lane Property that was delayed. The respondent argues that this behaviour in and of itself is insufficient to warrant an order for special costs for the entire action. I agree that alone it would not suffice, but it is one of several steps in the litigation that reflect a pattern of conduct disregarding orders of this court which I consider to be reprehensible and worthy of rebuke.

- [26] With respect to the respondent's management of the chattels and renting back the Adera Family Residence, the respondent submits his actions complied with the spirit of the order of Justice Russell regarding the management and storage of the chattels, and in any event, that the remedy for any breach of the order would be an application for contempt. I disagree that the only consequence that can flow from disregard of a court order is the initiation of a contempt process.
- [27] I also reject the respondent's argument that his "decision to rent the Adera Family Residence to store the disputed household items did not add to or change any part of the litigation". The September 3, 2015 order of Russell J. required all the Disputed Items to be removed from the Adera Family Residence before it was sold and placed into storage units, with the keys held by parties' counsel on their undertakings not to release the keys to their clients except by mutual consent or court order. Under that order, the claimant and the respondent had equal opportunity for access. However, none of that happened. Instead, the respondent unilaterally decided to keep possession of the Adera Family Residence, the keys to the Adera Family Residence, and the Disputed Items, all to the exclusion of the claimant. These actions, coupled with his other actions related to the chattels outlined in the Trial Reasons, created the state of chaos referred to in the Trial Reasons. As my findings in the Trial Reasons reflect:
- [227] The respondent's actions, in demanding that he be solely in control of the chattels, and then electing to mingle the chattels of ECL and the family without, according to him, any detectable system that would make them accessible to both parties, has resulted in the complete inability of the claimant to salvage any of her own excluded property or allow any meaningful differentiation between corporate and family chattels.
- [28] The respondent made no submissions in response to the claimant's argument that he failed to be forthright with his legal team which undermined their ability to execute their duties as officers of the Court, nor was he obliged to do so in my view. This argument, in effect, seeks to pry into the respondent's communications with his legal team, which are confidential and privileged. No application to withdraw was made by any of the respondent's lawyers, from which I infer they assessed they were able to fulfil their professional duties to the Court throughout the trial.
- [29] I recognize that special cost awards are exceptional and not all forms of misconduct justify an award of special costs: *Westsea* at para. 73. However, they are warranted in this case. I find the respondent's behaviour throughout the litigation as outlined above was reprehensible and worthy of reproof. I conclude it is an appropriate exercise of my discretion to order special costs against him as a sanction for that behaviour.
- [30] The respondent argues any order for special costs should be limited to the special costs caused by his actions, relying on *Grewal v. Grewal*, 2013 BCSC 2153, *aff'd* 2016 BCCA 237 [Grewal]; *Ng v. Ng*, 2011 BCSC 791 [Ng]; and *Gidda v. Hirsch*, 2014 BCSC 1286 [Gidda]. However, in *Grewal* Justice Crawford was able to isolate the percentage of the total trial time

attributable to the plaintiff's reprehensible conduct, namely pursuit of a meritless claim regarding a trust or oral agreement: at paras. 41-44. It appears that Justice Cullen was similarly able to identify a correlation between specific acts of reprehensible conduct and a quantifiable percentage of the overall litigation in Ng (paras. 42-43) and Gidda (paras. 88-89).

[31] In this case, the respondent's reprehensible conduct is wide-ranging and permeated every stage of the litigation process. It is not possible to quarantine certain actions by the respondent within the boundaries of particular steps in the family law case or even connect it to a limited percentage of the overall litigation. I am of the opinion the respondent's pervasive reprehensible conduct warrants an award of special costs for the family law case in its entirety. I do not consider this to be disproportionate.

IV. CONCLUSION:

[32] The respondent shall pay special costs of the proceedings to the claimant to be assessed by the Registrar. For clarity, my order includes the assessment of costs, which I anticipate will be a substantial process given the history of the proceeding: Le Soleil at paras. 137 and 138. My order of special costs excepts costs arising from the application before Master Taylor on April 9, 2019, which have already been assessed summarily.

"Jackson J."

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/20/18/2020BCSC1896.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/chapman-v-chapman-2020>

Prepared on 24 October 2026 · Esheria