
CANADA / JUDGMENT

Cooper v. Cooper

2021 BCSC 2042

COURT

Supreme Court of British Columbia

DECIDED

20 August 2021

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2021 BCSC 2042 Cooper v. Cooper

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cooper v. Cooper,

2021 BCSC 2042

Date: 20210820

Docket: E180014

Registry: Vancouver

Between:

Ashley Duff Romney Cooper

Claimant

And

Julie Denise Cooper

Respondent

Before: The Honourable Madam Justice MacNaughton

Oral Ruling Re Application for an Order of Divorce

In Chambers

Counsel for the Claimant:

P.M. Daykin, Q.C.

Counsel for the Respondent:

G.C. Allison

Place and Date of Hearing:

Vancouver, B.C.

August 20, 2021

Place and Date of Ruling:

Vancouver, B.C.

August 20, 2021

- [1] THE COURT: So, as I indicated, I am in a position to render reasons.
- [2] The claimant, Ashley Cooper, seeks a divorce pursuant to s. 8 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [Act]. The respondent, Julie Cooper, opposes the application for a divorce on the basis that Mr. Cooper has repudiated the parties' separation agreement and that she will suffer prejudice if a divorce is granted before the financial arrangements with respect to the parties' separation are finalized.
- [3] The facts relating to the grounds for a divorce are not in dispute.
- [4] Mr. Cooper is 57 years of age and is the chief executive officer of the Paladin Security Group of companies ("PSG"). Ms. Cooper is 54 years of age and is not employed. The parties began cohabiting on or about July 1, 1996, were married on April 11, 1998, at Victoria, BC, and separated on or about November 1, 2016. They have lived separate and apart since then. They agree that there is no prospect of them reconciling. There has been no collusion or connivance with respect to obtaining the divorce order. The parties have made satisfactory arrangements for the support of their two children, both of whom are now attending UBC and living primarily with Mr. Cooper. One of them appears to no longer be a child of the marriage.
- [5] On these agreed facts, there is no issue with respect to the court's jurisdiction to grant a divorce.
- [6] Ms. Cooper has a daughter from a previous relationship who is also living primarily with Mr. Cooper.
- [7] Nonetheless, the court retains a residual inherent discretion to postpone the granting of a divorce if doing so would prejudice the rights of one of the parties: *Mann v. Mann*, 2013 BCSC 1726, and *Kirk v. Kirk*, 2007 BCSC 67. The onus is on the party asserting prejudice to establish sufficient prejudice to warrant the court declining to exercise its divorce power: *Dhillon v. Dhillon*, 2017 BCSC 247. If sufficient prejudice is established, the burden then shifts to the party seeking the divorce to show a compelling or urgent need for the divorce to be granted, which overrides the prejudice.

- [8] As Justice Blok explained in Mann at para. 21, the exercise of discretion turns on the evidence of prejudice, the weighing of any proven prejudice, and the balancing of the interests and prejudice to the parties.
- [9] I have concluded that in the circumstances of this case, Ms. Cooper has not established that she will suffer prejudice if a divorce order is granted on the terms that I propose later in these reasons. As there is no currently scheduled trial date and no current proceeding in which Ms. Cooper challenges the terms of the formal validity or fairness of the separation agreement, Mr. Cooper is entitled to the divorce order he seeks.
- [10] Turning now to the separation agreement. The parties entered into a separation agreement dated July 3, 2019. At the time, they were both represented by senior family law counsel, and they retained a senior and well-recognized business valuator. After negotiation, the settlement agreement was signed.
- [11] In brief, the most significant terms of the separation agreement provided that:
- a) the parties would share joint guardianship of their remaining dependent child and that, so long as he was dependent, and living at least half the time with his mother, Mr. Cooper would pay to Ms. Cooper child support of \$5,133 per month;
 - b) Mr. Cooper would transfer to Ms. Cooper his interest in the former family home in West Vancouver, which was appraised at \$5,400,000 and was subject to a mortgage with an outstanding balance of approximately \$1,700,000;
 - c) the parties' respective RRSP accounts were to be equalized by a spousal rollover, resulting in each of them receiving approximately \$820,000 in RRSPs. Vehicles were dealt with, as were the contents of the family home;
 - d) Mr. Cooper was required to cause Ms. Cooper to be added as a beneficiary of the Ashley Cooper Family Trust ("ACTF") and to distribute to her class 4 preferred shares in PSG with an aggregate redemption value of \$16 million and to cause PSG to pay to Ms. Cooper, by way of redemption of shares, a total of \$16 million in equal installments of \$1 million per year, commencing August 31, 2019, and continuing until August 31, 2034.
- [12] Ms. Cooper had the option under the separation agreement of receiving the redemption payments on a tax-deferred basis by incorporating a holding company and having the payments made from ACTF to her holding company.
- [13] Also pursuant to the separation agreement, Mr. Cooper was required to pay interim spousal support in accordance with an interim order of Justice Giaschi in the amount of \$17,216 a month until Ms. Cooper or her holding company had received \$3 million in cumulative share redemptions.

- [14] Following execution of the separation agreement, Ms. Cooper elected to incorporate a holding company that I will refer to as Julie Co. as the parties did, and to receive her capital payments on a tax-deferred basis. The parties agreed that they would instruct their respective independent tax advisors to create a tax plan to provide for the tax-deferred transfer of Class 4 preferred shares from ACTF to Julie Co. The sole reason for the election to receive the PSG preferred shares in Julie Co. was to defer income taxes.
- [15] There were difficulties with respect to the transfer of the shares from ACFT to Julie Co., and the parties engaged in discussions regarding various ways of addressing those difficulties.
- [16] Nonetheless, following the execution of the separation agreement, Mr. Cooper transferred his interest in the family home to Ms. Cooper, and I understand she has now sold it. The parties' RRSPs were equalized. Ms. Cooper was added as a beneficiary to ACTF, and Mr. Cooper paid \$3 million to Julie Co., by way of redemption of PSG shares, representing the first three installments due under the separation agreement. As I said, the separation agreement contemplated that Mr. Cooper could escalate the payment of those funds, and it appears that he did so.
- [17] Following the execution of the separation agreement, in addition to their family law lawyers, the parties engaged tax professionals. Ms. Cooper engaged a tax accountant, Karen Fraser, and, later, a tax lawyer, Mark Ritchie. Mr. Cooper engaged a corporate lawyer, Rod Pierce, and a tax accountant, Peter Lewis.
- [18] By memorandum dated June 3, 2020, Ms. Fraser, on behalf of Ms. Cooper, suggested a tax plan under which Mr. Cooper would incorporate a new holding company ("Hold Co.") and roll his shares of PSG into that company. ACTF would distribute the preferred shares of the holding company, having a redemption value of \$13 million, to Julie Co. on a tax-deferred basis. Hold Co. would repurchase its preferred shares owned by Julie Co. for \$13 million by issuing to Julie Co. a promissory note under which the payments would be made in accordance with the schedule set out in the separation agreement.
- [19] I accept that Ms. Fraser's memorandum was intended as a discussion memorandum, and on its face, it suggested a number of different options and areas in which further exploration and discussion should occur. Nonetheless, at some point Ms. Cooper retained Mr. Ritchie, a tax lawyer, to engage with Mr. Pierce, Mr. Cooper's tax lawyer, in preparing the documents for the purposes of the transfer of the PSG shares. All of the documents required to implement the plan have been drafted but are not signed.
- [20] In or about January 2021, Mr. Ritchie indicated that he had been instructed to take no further steps on Ms. Cooper's behalf. As explained in the letter from Mr. Lewis, the draft documents created by the parties' corporate lawyers are for Ms. Cooper's benefit. By repurchasing the \$13 million worth of shares and exchanging them for a promissory note for the payment of \$13 million over time, Ms. Cooper's ability to defer the tax payable on those payments is preserved.

- [21] Ms. Cooper has concerns about the promissory note and the fact that it is subordinate to Mr. Cooper's other debt, but she has not suggested, either through her counsel or her tax advisor, a solution that would address her concerns.
- [22] Since December 2020, Mr. Cooper has been ready, willing, and able to sign the corporate documents implementing the tax plan and to make the payments now due. Ms. Cooper has not signed the documents and has taken no further steps except to oppose this divorce application.
- [23] Both parties have already implemented significant terms of the separation agreement, and Mr. Cooper wants to pay Ms. Cooper the next installment. Although Ms. Cooper's materials in response to this application, in particular Ms. Fraser's memo and affidavit, suggest that there may be tax consequences to Ms. Cooper as a result of the transfer of the PSG shares to her, she suggested a way that this prejudice could be mitigated. There is no evidence on the record from Mr. Ritchie which suggests that there is a continuing prejudice to Ms. Cooper in the manner in which the terms of the separation agreement are currently proposed to be implemented.
- [24] After instructing Mr. Ritchie to take no further steps at the end of December 2020, Ms. Cooper has not engaged in the process of negotiating. Nor has she taken steps to challenge the separation agreement.
- [25] In all the circumstances, Ms. Cooper has not satisfied me that she will suffer prejudice if the divorce order is granted. As a result, I have concluded that the divorce order should be granted, but I order that it take effect 90 days after its pronouncement. This will give the parties' lawyers and tax advisors a further three months to complete and execute the necessary corporate documents to ensure that Ms. Cooper receives the payments to which she is entitled under the separation agreement.
- [26] I find that Ms. Cooper will not be prejudiced by the granting of a divorce. If she intends to challenge either the former validity, or the fairness of the separation agreement, under s. 198(2) of the Family Law Act, S.B.C. 2011, c. 25, she has two years in which she may do so.
- [27] Mr. Cooper did not seek his costs of the application.

"MacNaughton J."

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