

CANADA / JUDGMENT

De Araujo v. Monteiro

2020 BCSC 1198

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 1198 De Araujo v. Monteiro

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

De Araujo v. Monteiro,

2020 BCSC 1198

Date: 20200813

Docket: E192208

Registry: Vancouver

Between:

Margaret De Araujo

Claimant

And

Antonio (Tony) Monteiro

Respondent

Before: The Honourable Mr. Justice A. Ross

Reasons for Judgment

Counsel for the Claimant:

T. Wolf

Counsel for the Respondent:

G. Lang

Place and Date of Trial/Hearing:

Vancouver, B.C.

June 18, 2020

Place and Date of Judgment:

Vancouver, B.C.

August 13, 2020

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Introduction

- [1] This application arises in a family law claim. The parties were together in a ten-year relationship that ended in 2019.
- [2] The issues on this application relate to jurisdiction. The claimant commenced this action seeking spousal support and an interest in certain family assets. The respondent submits that the courts of British Columbia do not have jurisdiction over him in this case. Alternatively, he submits that this Court should decline jurisdiction in favour of another jurisdiction.
- [3] The parties agree that, of the ten years they were together, approximately seven years were spent sailing around the world. They divided the remainder of the time between Vancouver, Mexico, and Portugal.

- [4] For the reasons set out below, I find that this Court does have jurisdiction in this matter, and I exercise that jurisdiction.

Issues

- [5] As noted, the respondent seeks an order dismissing the claimant's action on jurisdictional grounds. His application raises the following issues:
- a) Should the notice of family claim be struck out, dismissed, or stayed on the ground that it does not allege facts that, if true, would establish that this Court has jurisdiction over the respondent in respect of the claims made against him?
 - b) Should the notice of family claim be dismissed or stayed on the ground that this Court does not have jurisdiction over the respondent in respect of the claims made by the claimant?
 - c) Should the court decline to exercise jurisdiction over the respondent in respect of the claims made by the claimant?
- [6] Although the respondent's notice of application included the allegation in the above subparagraph (a) (pleadings do not allege facts that, if true, would establish jurisdiction), he did not press that argument at the hearing. The main focus of his submissions related to subparagraphs (b) and (c).
- [7] The issues raised by the respondent engage the Supreme Court Family Rules, R. 18-2 and the Family Law Act, S.B.C. 2011, c. 25 [FLA], ss. 106-108.

Background

- [8] In my discussion of the legal issues below, I delve further into the facts that affect each issue. In that respect, each party focuses on facts suggesting that there either was, or was not, habitual residence in, or a connection to, British Columbia.
- [9] It is evident from the facts set out below that these parties, like most couples, did not consider the appropriate jurisdiction of any family law claim while they lived their lives together. The background facts are as follows:
- a) The claimant was born in 1960 in Portugal. She came to Canada in 1961. She says that, with the exception of the time she spent with the respondent, she has lived in Vancouver her entire life. She owns a condominium in Vancouver. She bought a home in Portugal in 2007. She says that it was always intended to be a vacation home. The claimant's habitual residence is disputed by the respondent.
 - b) The respondent was born in 1951, also in Portugal. He came to Canada in 1967. He lived in Vancouver and was successful in business. In 2011, he purchased a sailboat in the Caribbean with a plan to live aboard. In 2013, he sold his condominium in Vancouver. In 2014, he sold his business in B.C. The claimant disputes the respondent's claim that his habitual residence is not in B.C.

- c) The parties met in 2009 in Portugal.
 - d) Although punctuated by breakups, the parties were together from 2009 until February 2019. During that decade, they spent significant amounts of time in Vancouver, Portugal, and Mexico. However, they spent most of the time, comprising almost seven years, on the respondent's sailboat. They sailed in the Caribbean and across the Pacific Ocean to New Zealand.
 - e) The claimant says that, although they lived aboard the boat, they both considered Vancouver to be their home base. She kept a diary of their whereabouts during the relationship. She says that, apart from time on the boat, the couple spent the largest amount of time in Vancouver. I discuss below her evidence regarding each party's connection to B.C.
 - f) The respondent's argument focusses on the fact that he sold his residence in Vancouver in 2013 and sold his business in 2014. He says that these steps were taken in order to pursue his intention of retiring in Portugal. He purchased a home in Portugal in 2018.
 - g) At the point when the couple separated for the last time, in February 2019, the claimant was living at the respondent's house in Portugal while the respondent was sailing his boat in international waters. The claimant says that she was in Portugal at that time because she was involved in litigation regarding the purchase of her home there. The trial of that action proceeded during early 2019.
- [10] The claimant is seeking relief in the form of an interest in the respondent's assets. Hence, the location of his assets is relevant. An affidavit outlining the respondent's assets as of the date of this application indicates that he owns:
- a) a sailboat in Grenada, valued at US \$550,000;
 - b) a home in Mexico valued at US \$380,000;
 - c) investment accounts in British Columbia valued at \$4,681,000; and
 - d) in Portugal:
 - i. a home valued at 865,000 Euros, and
 - ii. two investment accounts, valued at \$4,150,000 + and 220,000 Euros respectively.
- [11] The respondent also says that he inherited a number of properties in Portugal when his father died. The claimant disputes that claim, noting that the respondent's mother is still alive and is the owner of those properties.

This Application

- [12] The respondent's application requires that I address conflict of laws considerations. In that regard, I must draw the distinction between the issues relating to the existence of jurisdiction and the exercise of that jurisdiction. Different tests apply to each issue.

[13] The respondent applies pursuant to R. 18-2 of the Supreme Court Family Rules:

Disputed jurisdiction

- (1) A party who has been served with a notice of family claim, counterclaim or petition in a family law case, whether that service was effected in or outside British Columbia, may, after filing a jurisdictional response in Form F78,
 - (a) apply to strike out the notice of family claim, counterclaim or petition or to dismiss or stay the family law case on the ground that the notice of family claim, counterclaim or petition does not allege facts that, if true, would establish that the court has jurisdiction over that party in respect of the claim made against that party in the family law case,
 - (b) apply to dismiss or stay the family law case on the ground that the court does not have jurisdiction over that party in respect of the claim made against that party in the family law case, or
 - (c) allege in a pleading or in a response to petition that the court does not have jurisdiction over that party in respect of the claim made against that party in the family law case.

Order declining jurisdiction may be sought

- (2) Whether or not a party referred to in subrule (1) applies or makes an allegation under that subrule, the party may apply to court for a stay of the family law case on the ground that the court ought to decline to exercise jurisdiction over that party in respect of the claim made against that party in the family law case.
- [14] The respondent filed a jurisdictional response. His application mirrors the language of R. 18-2(1)-(2).
- [15] The legislative provisions setting the context for deciding whether the court has jurisdiction over the respondent are contained in FLA, ss. 106-108. Section 106 sets out the considerations for the court:

Determining whether to act under this Part

106 (1) This section applies if an order respecting property division, respecting the same spouses, may be made in more than one jurisdiction.

- (2) Despite any other provision of this Part, the Supreme Court has authority to make an order under this Part only if one of the following conditions is met:
 - (a) a spouse has started another proceeding in the Supreme Court, to which a proceeding under this Part is a counterclaim;
 - (b) both spouses submit, either in an agreement or during the proceeding, to the Supreme Court's jurisdiction under this Part;

- (c) either spouse is habitually resident in British Columbia at the time a proceeding under this Part is started;
 - (d) there is a real and substantial connection between British Columbia and the facts on which the proceeding under this Part is based.
- [16] There is no other proceeding (under s. 106(2)(a)), and the respondent has not submitted to the jurisdiction (under s. 106(2)(b)). Hence, the first two conditions do not apply.
- [17] The habitual residence of each party, under s.106(2)(c), is in dispute. That issue is discussed below.
- [18] With respect to s.106(2)(d), the jurisdiction question to be answered is whether there is a real and substantial connection between this province and the factual underpinnings of the action. In determining that issue, s. 106(3) provides:
- (3) For the purposes of subsection (2)(d), a real and substantial connection is presumed to exist if one or more of the following apply:
 - (a) property that is the subject of the proceeding is located in British Columbia;
 - (b) the most recent common habitual residence of the spouses was in British Columbia;
 - (c) a notice of family claim with respect to the spouses has been issued under the Divorce Act (Canada) in British Columbia.
- [19] For the purpose of establishing a "real and substantial connection", the factors set out in s. 106(3) are "presumptive connections". In other words, the legislation provides that if one of these factors exists, there is a presumed connection to B.C. for determining jurisdiction.
- [20] The test set out in s. 106(3)(b) requires that the most recent habitual residence of the spouses to be in B.C. As noted, when together, the couple spent most of their time on the respondent's boat. At the time of their final separation, the respondent was on his boat, and the claimant was setting up the home that the respondent purchased in Portugal. On those facts, neither party argues that their "most recent common habitual residence" was in B.C. Hence, s. 106(3)(b) does not apply. (Despite that finding, there is no agreement on the habitual residence of each party as of August 2019 when this action was commenced. That issue is discussed below.)
- [21] The parties were never married, so s. 106(3)(c) does not apply.
- [22] Thus, the remaining issue derives from s. 106(3)(a): Is there property that is the subject of the proceeding located in British Columbia?
- [23] I address the "real and substantial connection" issues first, then proceed to address the issues relating to determining each party's habitual residence as of August 2019 (s. 106(2)(c)).

Real and Substantial Connection - Applicable Test

- [24] The claimant's position is straightforward: the evidence establishes, and the respondent acknowledges, that he has property in B.C.
- [25] In response, the respondent argues that the connection to B.C. is weak. He says that the "presumptive connection" is rebuttable and that his assets outside B.C. are far greater than those in the province.
- [26] Thus, the first issue relates to the proper application of the "real and substantial connection" test.
- [27] The respondent relies on the decision of Justice Adair in *Aleong v. Aleong*, 2013 BCSC 1428. He says the reasoning and facts of that case are analogous and he urges me to follow it.
- [28] However, while the *Aleong* case is well-reasoned and informative, it differs both on the facts and the applicable law. *Aleong* pre-dates the coming-into-force of the FLA in 2013. In determining the jurisdiction issue, Adair J. applied the provisions of the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 [CJPTA]. The respondent argues that the same considerations apply in this case. However, for the reasons set out below, I approach the reasoning from *Aleong* with caution.
- [29] In the CJPTA, the factors to be considered in deciding jurisdiction are set out at s. 10. Those considerations address the same fundamental issue as s. 106 of the FLA (establishing the existence of jurisdiction). However, s. 10 of CJPTA sets out 12 types of presumptive connections relating to all manner of legal claims from contracts to torts. The subsection most applicable to family law claims is s. 10(a), which provides that a real and substantial connection is presumed to exist if the proceeding "is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property". That provision is analogous to, but not identical to, s. 106(3)(a) of the FLA.
- [30] My cautionary approach is dictated by the fact that the provisions of the FLA do not mirror the correspondent provisions of the CJPTA.
- [31] The B.C. Court of Appeal addressed the distinction between the two Acts in *Jiang v. Shi*, 2017 BCCA 276. The court noted that, with the CJPTA provisions in mind, the FLA was designed to simplify the considerations for the parties and the court. The Court of Appeal's analysis was as follows:
- [19] In most cases, the law in relation to the assumption and exercise of jurisdiction over disputes in British Columbia is governed by the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28.

- [20] In 2011, however, the British Columbia legislature enacted the FLA, which, in Division 6 of Part 5, contains a specific set of rules to guide the Court in determining both when it may assume jurisdiction in cross-border family property disputes and the circumstances when jurisdiction should be declined in favour of a more appropriate forum (*forum non conveniens*). These provisions were brought into force in March 2013.
- [21] Division 6 of Part 5 of the FLA is based on the Uniform Jurisdiction and Choice of Law Rules in Domestic Property Cases adopted by the Uniform Law Conference of Canada in 1997. In an explanatory note to this part of the FLA provided in the Family Law Act Transition Guide (Vancouver: Continuing Legal Education Society, 2012) at 3-146, the Ministry of Justice suggests that the impetus for this adoption was a belief that "the common law is inconsistent with family law principles and is too complex and technical, which makes resolving these cases expensive and time-consuming".
- [22] Whether the jurisdictional principles in Division 6 of Part 5 of the FLA are less complex and technical than the common law may be open to question.
- [32] In *Jiang*, the Court of Appeal referenced the CJPTA, but indicated that the enactment of the FLA contains its own set of rules for determining when the court may assume jurisdiction. Hence, the proper assessment should focus on the FLA without reference to the CJPTA.
- [33] In *Jiang*, the court further confirmed that the FLA contains a specific set of rules, a code, regarding the circumstances where the court can assume jurisdiction, and where it should decline jurisdiction in favour of another forum. The Court of Appeal wrote:
- [24] Thus, the first question to be asked when jurisdiction is called into question because of cross-border elements is whether an order respecting property division, respecting the same spouses, may be made in more than one jurisdiction. If the answer is yes, the determination as to whether the Court has authority to make an order to resolve the dispute and, if so, whether to exercise jurisdiction must be made "solely by reference to" section 106: s. 106(6).
- [25] Subsection 106(2) sets out four conditions for the assumption of jurisdiction. One of these conditions must be met for the Court to assume jurisdiction over the dispute.
- [26] If the Court determines that it has authority to make an order, a separate question may arise as to whether jurisdiction should be exercised in the particular case. This was the question that divided the parties in the case at bar. Subsections 106(4) and (5) set out the considerations for this determination.
- [34] The Court of Appeal in *Jiang* also confirmed (at paras. 60-61) that the onus lies on the person asking the court to decline jurisdiction.
- [35] Based on that analysis, I have used caution when considering arguments relying on the reasoning in *Aleong* and the provisions of the CJPTA. Instead, I have applied the plain language of the provisions of the FLA, ss. 106-108.

[36] Structurally, there are three issues to address:

- a) Is there a possibility of an order regarding property division in another jurisdiction?
- b) Does this Court have authority to resolve the dispute (s. 106)?
- c) Should this Court exercise that authority (forum conveniens)?

[37] I discuss each issue below.

Possibility of Orders in Multiple Jurisdictions

[38] According to Jiang, the first question for the court is whether an order may be made in another jurisdiction regarding the same assets. On that point, I note that both parties own assets, including real property, in Portugal. Hence, there is a possibility that an order "may" be made in Portugal. Apart from Portugal and B.C., there are no other possible jurisdictions.

[39] I further note, because it is relevant for the forum conveniens considerations below, that:

- a) there is no evidence that a proceeding has been commenced, nor any suggestion that a proceeding will be commenced, in Portugal; and
- b) I find it unlikely that such a proceeding will be commenced because:
 - i. the claimant has commenced her action in B.C., claiming an interest in the respondent's assets worldwide;
 - ii. the respondent would achieve no benefit by commencing a proceeding in Portugal. His assets and income far exceed the claimant's.

[40] So, although it is possible that an order "may be made" in more than one jurisdiction (B.C. and Portugal), from a practical standpoint, I find that prospect unlikely.

[41] However, the mere prospect is sufficient that I am required to move to the next steps and determine whether this Court can assume jurisdiction over this dispute and, if so, whether to exercise that jurisdiction.

Does Jurisdiction Exist in B.C.?

[42] On the facts of this case, in order for the court to ground jurisdiction in B.C., there would have to be either property in B.C. (ss. 106(2)(d), 106(3)(a)) or one of the parties must have been habitually resident in B.C. in August 2019 when the action was commenced (s. 106(2)(c)).

[43] I deal with the issues in that order.

Real and Substantial Connection - Property in B.C.

- [44] Pursuant to s. 106(2)(d), this Court has jurisdiction if there is a real and substantial connection between B.C. and the facts on which the proceeding is based. Section 106(3)(a) provides that a real and substantial connection is presumed to exist if property that is the subject of the proceeding is located in B.C.
- [45] I set out above the evidence of the respondent's assets. His total net worth is in the range of \$11,000,000-\$12,000,000. Of those assets, approximately \$4,650,000 is held in investment accounts in this province. The majority of his holdings are located in Portugal, including a home and certain investment accounts. The remainder of his assets consist of his sailboat (registered in B.C., but located in Grenada), and a Mexican condominium.
- [46] The claimant seeks an interest in the respondent's assets worldwide.
- [47] Hence, the claimant submits that a real and substantial connection is established because, pursuant to s. 106(3)(a), property that is the subject of the proceeding is located in B.C.
- [48] The respondent acknowledges that he has property in B.C., but he argues, based on the reasoning in *Aleong*, that the existence of some assets in B.C. is a weak presumptive connection. He says the presumption set out in s. 106(3)(a) is rebuttable: *Shinatani v. Tang*, 2017 BCSC 1938 at para. 42. Once rebutted, he argues, there is no connection to B.C., and the court does not have jurisdiction.
- [49] Echoing the language used by Adair J. in *Aleong*, the respondent seeks to rebut the presumptive connection to this province on the basis that his assets in B.C. are "dwarfed" by his other assets. In *Aleong*, the couple held less than \$300,000 in B.C., but had more than \$10,000,000 in other jurisdictions. Applying the considerations from the CJPTA, Adair J. wrote:
- [96] There would be no question that the B.C. Court would have jurisdiction if Ms. *Aleong's* claims were limited to movable property in B.C. However, they are not. But does this matter? Is it sufficient to establish territorial competence that part of a family law case relates to movable property in B.C.? Such a rule offers the benefits of simplicity and certainty. But is it consistent with order and fairness? Would having an old beater of a car and a small amount (say, \$1,000) in a bank account in B.C. be enough to establish jurisdiction based on the presumption in s. 10(a) of the CJPTA, even if all other assets in issue were outside of B.C.? Would it establish a real and substantial connection with the forum?
- [97] Neither Mr. Albi nor Mr. Gudmundseth were able to provide me with a case directly on point.
- [98] I have concluded that, although Ms. *Aleong* can bring herself within the presumption in s. 10(a) of the CJPTA, Mr. *Aleong* has rebutted the presumption of a real and substantial connection based on movable property in B.C.
- [99] The value of the property located in B.C. is dwarfed by the value of the assets (including immovables) located outside of B.C.

[Emphasis in original.]

[50] On that basis, among others, Adair J. found that the B.C. courts did not have any jurisdiction over the dispute in *Aleong*. The respondent says this case is analogous.

[51] In response, the claimant submits, quite simply, that:

- a) holding \$4,600,000 in B.C. is not the same as the respondent owning an "old beater of a car" in the province; and
- b) \$4,600,000 constitutes a large percentage of the respondent's total assets.

[52] Further, the claimant makes a compelling argument that the respondent has not provided any evidence regarding the timing of his acquisition of assets in, or transfer of assets to, Portugal. The claimant deposed that, during the course of their relationship, she understood that the vast majority of the respondent's investment accounts and assets were held in B.C. Hence, she argues that it is possible that the respondent may have moved some of his assets out of the province after being served with notice of this litigation.

[53] The respondent did not address that issue in his affidavit material. Because he filed a jurisdictional response, he has no disclosure obligations until these reasons are released. However, as noted in *Jiang*, the onus lies with the respondent to establish that this Court does not have jurisdiction. Further, the onus lies with him to raise facts that would rebut the presumptive connections set out in ss. 106(2)-(3). The claimant has pointed to evidence on an issue that the respondent has not addressed.

[54] I am not able to determine this issue without document production. However, it would create a significant unfairness if the claimant were precluded from investigating whether funds were moved out of the province by a decision of this Court finding that I have no jurisdiction over the respondent because those funds were not in the province.

[55] Turning back to the main issue, I accept the claimant's submission that \$4,600,000 constitutes substantial assets in this province. It is not analogous to the asset distribution in *Aleong*.

[56] On that basis, I find that there is a real and substantial connection to B.C. because the property that is the subject of the proceeding is located here. Put another way, the respondent has not rebutted the presumptive connection to B.C. created by ss. 106(2)(d), 106(3)(a).

Habitually Resident in B.C. in 2019

[57] Having found that the respondent's property in B.C. creates a real and substantial connection, I do not need to progress to determine the habitual residence of each of the parties as of August 2019. However, in the event that I am mistaken on the issue above, I undertake half of that analysis below.

- [58] Section 106(2) provides that this Court has jurisdiction if one of the conditions in that subsection is met. Section 106(2)(c) provides that this Court has jurisdiction if one of the parties is habitually resident in B.C. at the time the action was commenced (August 2019).
- [59] The parties do not agree on whether either of them was habitually resident in B.C. when this action was commenced. Again, the onus of establishing that the court does not have jurisdiction is on the respondent.
- [60] The evidence as to either party's habitual residence after the breakup is scant. That paucity of evidence weighs in against the respondent.
- [61] The claimant does not say, in her affidavits, that she moved back to Vancouver following the breakup of the relationship. She notes that she was required to stay in Portugal in early 2019 because of pending litigation regarding the purchase of her property there.
- [62] Instead, the claimant says that she has always been habitually resident in Vancouver. She owns an apartment here. She has never rented that apartment to anyone apart from her daughters. She considers Vancouver to be her home base. She says that she has rarely used her home in Portugal. She never intended to live there. She had it listed for rent on vacation websites for the vast majority of her relationship with the respondent.
- [63] The claimant further notes that both she and the respondent continued to file income tax returns in B.C. throughout the relationship. Further, they both retained their Medical Services Plan ("MSP") coverage in this province.
- [64] In response, the respondent argues that the claimant was already resident in Portugal when they met in 2009, noting that she had household articles and a car shipped over from Vancouver. His affidavit states that, when he sold his condominium in Vancouver in 2013, the couple resided in the claimant's father's home in Vancouver, because the claimant's home "was rented full time". I note that the respondent's affidavit did not mention that the claimant's tenants were her daughters and that the claimant continued to pay the utilities. Those facts put a different tint on that evidence.
- [65] I am not able to find that the claimant's habitual residence, as of August 2019, was outside of B.C. As noted, the claimant's residence in Portugal was used as a vacation home. It was usually listed for rent on vacation websites.
- [66] After the relationship ended, the claimant was no longer spending long stretches at sea. As a result, the only two possible locations for her "habitual residence" as of 2019 were Portugal or Vancouver.
- [67] It is evident from all of the facts that the claimant was more connected to B.C. in August 2019. Her home in Portugal was intended for vacations. It was not her habitual residence. Based on the facts available, I find that B.C. was her habitual residence as of August 2019 when she commenced this action.

- [68] Based on that finding, the requirements of s. 106(2)(c) are met, and this Court has jurisdiction.
- [69] The habitual residence of the respondent in August 2019 is more complicated. Due to health concerns, he moved back to B.C. in August 2019 for surgery and recovery. However, he says that, for several years, he followed a path and took steps because he chose not to be resident in B.C.
- [70] On the facts available, I am unable to make a finding on the respondent's habitual residence as of August 2019.
- [71] However, having found the existence of two bases for the necessary connections to establish jurisdiction, I do not need to progress to determine the habitual residence of the respondent as of August 2019. On the basis of my findings above, this Court clearly has jurisdiction.
- [72] I now turn to the issue of whether B.C. is the most convenient forum.

Forum non Conveniens

- [73] The respondent submits that, in the event that I find that the B.C. courts have jurisdiction over this dispute, I should decline to exercise that jurisdiction because Portugal is the more convenient jurisdiction for the parties.
- [74] The respondent notes the discussion in *Aleong* at para. 96 that if the claimant only claimed against movable property in B.C., then the court would clearly have jurisdiction. Here, the claimant is seeking relief relating to his worldwide assets.
- [75] Again, relying on *Aleong*, the respondent argues that family law cases should be decided under the same analytical framework as other types of cases (e.g., tort and contract).
- [76] The respondent says that, applying the reasoning in *Aleong*, the court should decline jurisdiction in favour of Portugal.
- [77] There are two significant problems with that argument.
- [78] First, *Adair J.* in *Aleong* did not consider any arguments on *forum non conveniens*. There was no need for that consideration because she found that the B.C. courts had no jurisdiction over the claim.
- [79] Second, the proper considerations for the court are set out under s. 106(5) of the FLA, which did not exist when *Aleong* was decided. Section 106(6) provides that those provisions constitute a complete code for the determination. Hence, *Aleong* and the cases that consider the CJPTA have no direct application.
- [80] The proper considerations for a *forum non conveniens* argument are set out in the FLA, ss. 106(4)-(6):

106 (4) Despite subsection (2), a court may decline to make an order under this Part if the court, having regard to the interests of the spouses and the ends of justice, considers that it is more appropriate for jurisdiction to be exercised outside British Columbia.

(5) In determining whether to decline jurisdiction under subsection (4), the court must consider all of the following:

- (a) [Repealed 2014-9-15.]
 - (b) the relative convenience and expense for the spouses and their witnesses;
 - (c) if section 108 [choice of law rules] applies, the law to be applied to issues in the proceeding;
 - (d) the desirability of avoiding multiple proceedings or conflicting decisions in different courts or tribunals;
 - (e) the extent to which an order respecting property or debt
 - (i) made in another jurisdiction would be enforceable in British Columbia, and
 - (ii) made in British Columbia would be enforceable in another jurisdiction;
 - (f) the fair and efficient working of the Canadian legal system as a whole;
 - (g) any other circumstances the court considers relevant.
- (6) A determination of authority under subsection (2) or of whether to decline jurisdiction under subsection (4) is to be made solely by reference to this section.

[81] I review and assess each of the factors in s. 106(5) below:

- a) Repealed.
- b) Relative convenience and expense: The respondent provided no evidence that it would be less expensive or more convenient to litigate these issues in Portugal. I infer, from the fact that she commenced this proceeding, that the claimant believes that this jurisdiction will be better (at least, more convenient) than Portugal.
- c) Choice of law rules: The factors relating to the proper law of the relationship and choice of law rules are set out in ss. 107-108 of the FLA. Neither party made any submission, nor provided any evidence, on the choice of law issue. I make no determination as to the application of choice of law rules, but note that the respondent had the onus in this regard.
- d) Avoiding multiple proceedings: I noted, at the outset, that I find it unlikely that any proceeding will be instituted in Portugal. Hence, I am not concerned about multiple proceedings.
- e) Reciprocal jurisdiction: It is my understanding Portugal is not a reciprocating jurisdiction with Canada.

- f) Fair and efficient working of Canadian legal system: I see no part of this claim that will diminish the fair and efficient working of the Canadian legal system.
- g) Other circumstances: I see none.
- [82] Taking all of those factors into consideration, I find no reason to decline jurisdiction in this claim. The legal issues between the parties relating to their relationship can be decided by the courts of British Columbia.
- [83] It follows from this analysis that I find that this Court should exercise its jurisdiction over this claim.

Conclusions

- [84] The respondent's application to strike out, dismiss, or stay this action is dismissed. This Court has jurisdiction over this action and over the respondent. Further, I decline to exercise my discretion to decline jurisdiction over these claims.

Costs

- [85] The claimant has been successful on this application. She is entitled to her costs.

"A. Ross J."

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