

CANADA / JUDGMENT

Derkatch v. Derkatch

2025 BCSC 593

COURT

Supreme Court of British Columbia

DECIDED

1 April 2025

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2025 BCSC 593 Derkatch v. Derkatch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Derkatch v. Derkatch,

2025 BCSC 593

Date: 20250401

Docket: E31901

Registry: Cranbrook

Between:

Lori Leanne Derkatch

Claimant

And

David Sigurd Derkatch and 1079274 B.C. Ltd. and 118808 B.C. Ltd. and 1194940 B.C. Ltd. and 1314736 B.C. Ltd. and Wildcat Timber Ltd.

Respondents

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for the Claimant:

B.L. Veenstra

Appearing in person:

D. Derkatch

Place and Date of Trial/Hearing:

Cranbrook, B.C.

January 16 and 22, 2025

Place and Date of Judgment:

Cranbrook, B.C.

April 1, 2025

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Introduction

- [1] The claimant, Lori Derkatch, and the respondent, David Derkatch, were married on August 16, 2009 and separated on or around January 12, 2023. There is some dispute about the date they began living together in a marriage-like relationship prior to marriage, but this decision does not address that issue.
- [2] The parties have four children, born between 2004 and 2017. They live primarily with the claimant. There is a dispute as to whether the eldest child, who is Ms. Derkatch's biological child whom Mr. Derkatch adopted, continues to be a child of the marriage, but this decision does not address that issue.

- [3] The parties owned and operated a number of real estate businesses during their relationship: 1079274 B.C. Ltd., 118808 B.C. Ltd., 1194940 B.C. Ltd., 1314736 B.C. Ltd. and Wildcat Timber Ltd. Since their separation, Mr. Derkatch has continued to operate these businesses; Ms. Derkatch is no longer involved in their day-to-day operations. Historically, both parties earned their income from these businesses. These companies own a number of pieces of real property, some of which are in issue in the applications before me.
- [4] This decision addresses two notices of application. Ms. Derkatch filed her application on December 3, 2024. She seeks a number of orders, including: the disclosure of documents and other information from Mr. Derkatch; orders that he file his personal and corporate income tax returns for 2022 and 2023, and have corporate financial statements prepared for those same years; an order that one or two identified Cranbrook properties be listed for sale, with Ms. Derkatch having sole conduct of sale; an order that the proceeds from that sale or sales be used to fulfil an order for interim distribution made by Justice Weatherhill; directions to ensure the Weatherhill order is complied with; and costs.
- [5] Mr. Derkatch filed his notice of application on December 16, 2024. He seeks a number of orders, including: the variation of an order made by Justice Groves with respect to child and spousal support; an order appointing a named person to provide the parties with financial and/or accounting advice; an order that Ms. Derkatch produce a number of documents; orders relating to the manner in which the parties report dividend income for 2022, 2023 and 2024; and costs.

Previous Orders

- [6] This is a high conflict family law file, in which a number of previous orders have been made by this court, two of which are important for the purposes of the present applications. The first was made by Justice Groves on March 6, 2023 (the "Groves Order"), on Ms. Derkatch's application, and without notice to Mr. Derkatch. It provides as follows:

THIS COURT ORDERS that:

1. An order pursuant to section 90 of the Family Law Act that the Claimant, Lori Leanne Derkatch (the "Claimant") and the children, Emily Grace Derkatch, born July 30, 2004; Troy Philip Derkatch born May 10th, 2012; Sadie Mary Christiane Derkatch, born April 23, 2014; and Adelle Jade Derkatch, born January 30th, 2017 (collectively, the "Children") be granted exclusive occupancy of the family residence located at 4249 Silver Spring Drive, Cranbrook, British Columbia (the "Family Residence") and use of its contents until further court order.
2. An order pursuant to section 226 of the Family Law Act that the Respondent, David Sigurd Derkatch (the "Respondent") will be responsible for making payments respecting the mortgage, utilities, taxes, Insurance and other expenses relating to the Family Residence, and Is prohibited from terminating any utilities for the Family.

3. An order under Section 91 of the Family Law Act that the Respondent be restrained and enjoined from disposing of, encumbering, assigning, or In any similar manner dealing with family property, or of any assets in which the Claimant has, or may have, an interest, pending final determination of this action, without the consent in writing of the Claimant or without further order of this Court.
4. An order under section 91 of the Family Law Act that the Respondent be restrained from causing, allowing, or permitting any international, national, or provincial company in which the Respondent Individually or together with the Claimant or any other party in which the Respondent has control, whether legal or de facto, to dispose of, encumber, sell or similarly deal with its assets, until further order of this Honourable court or the written consent of the Claimant.
5. An order that the Court is satisfied that the Claimant and the Respondent are guardians of the Children under section 39(1) of the Family Law Act.
6. The following orders to be made on an interim and without prejudice basis:
 - a. An order that pursuant to section 40(3)(a) of the Family Law Act, the Claimant will solely have all of the parental responsibilities for the Children as set out in section 41 of the Family Law Act.
 - b. An order that the Claimant and the Respondent will have the obligation to advise each other of any matters of a significant nature affecting the Children.
 - c. An order that the Children shall reside primarily with the Claimant.
 - d. An Order that the Respondent shall have reasonable and generous parenting time with the Children at dates and times as agreed between the parties, or as determined by this Honourable Court
 - e. An order under section 227 of the FLA that the Respondent will continue to pay the sum of \$5,000.00 per month to the Claimant for expenses relating to the Children and the Family Residence.
7. An order that the Respondent may apply to set aside the terms of this Order on seven (7) days notice to the Claimant.
- [7] Of particular importance to Mr. Derkatch's current application are terms 2 and 6(e). On that same date, Groves J. also made a protection order against Mr. Derkatch.
- [8] Mr. Derkatch applied to vary some of the terms of the Groves Order and the protection order. On May 16, 2023, Justice Riley varied the terms of the Groves Order and terminated the existing protection order and pronounced a new protection order. Terms 2 and 6(e) of the Groves Order remained unchanged.

- [9] The second order of significance to the matters now before the court is an order made by Justice G. C. Weatherill on October 30, 2023 (the "Weatherill Order"), on application of Ms. Derkatch. The Weatherill Order appointed Derek Sanders of the Spence Valuation Group to determine the current market value of the five respondent companies. It also appointed Rob Norton of Keystone Consulting and Appraisals to determine the current market value of 15 real properties owned by the parties or the respondent companies. A s. 211 report was ordered to be prepared by one of two named experts. Pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] an interim distribution of \$150,000 to each of the parties was ordered. The interim distribution was to be funded by mortgage or other financing on three named Cranbrook real properties. Mr. Derkatch was ordered to co-operate with any expert retained by Ms. Derkatch to prepare a Federal Child Support Guidelines, SOR/97-175 [Guidelines] income report. The costs of the valuation report, appraisals and s. 211 report were to be shared equally. Either party was permitted to apply for directions in relation to the carriage of the Weatherill Order.
- [10] No interim distribution has been made pursuant to the Weatherill Order. It is for this reason that Ms. Derkatch now applies for an order for sale of one, or if necessary, two of the properties that were ordered in the Weatherill Order to be mortgaged in order to finance the interim distribution.
- [11] The valuation of the companies has not been completed due to a lack of funds. Some, but not all, of the property appraisals have been completed, again due to a lack of funds. The s. 211 report has been completed by Dr. Elterman, but not released, again due to non-payment.
- [12] Effectively, this litigation is stagnating due to previous court orders not being fulfilled due to a lack of funds to complete them.

Ms. Derkatch's Application

Disclosure arising from examination for discovery

- [13] Ms. Derkatch seeks an order pursuant to Rule 9-2(18) and 9-2(19) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Family Rules] requiring Mr. Derkatch to either inform himself and provide answers by letter or to produce documents in 46 enumerated categories. The information and documents are requested further to an examination for discovery conducted on April 8, 2024. No objections to the information and documents requested were made at the examination for discovery. Since then, counsel for Ms. Derkatch has made repeated requests in writing for the documents and information to be provided, most recently on November 8, 2024.
- [14] Mr. Derkatch provided his initial list of documents in June 2023. Since then, the only documents he has provided were rent rolls, provided on November 27, 2024.

- [15] I do not propose to list all 46 categories of information and documents requested. In general terms the information and documents requested related to Mr. Derkatch's income, his assets, his financial activities such as bank statements, the share structure of the companies, and personal and corporate tax returns, as well as copies of messages between the parties sent via the Telegram app.
- [16] All of the documents and information sought by Ms. Derkatch are clearly relevant to matters in issue in this case. They are necessary to identify family property and debt, to the valuation of family property and debt, to determine Mr. Derkatch's income for the purposes of spousal and child support, and to ascertain if Mr. Derkatch has breached any court orders, in particular the restraining orders made in the Groves Order pursuant to s. 91 of the FLA.
- [17] In the course of submissions, Mr. Derkatch stated that it was not a good use of his time to go looking for the documents requested, that it was nothing more than a make-work project, and that he did not understand the point of it. These submissions reflected Mr. Derkatch's unacceptable attitude towards his disclosure obligations in this case.
- [18] I order Mr. Derkatch to produce the information and documents identified in paragraph 1 of Part 1 of Ms. Derkatch's notice of application. He is required to do so no later than one month from the date of this decision.

Financial Statement and related documents

- [19] Ms. Derkatch seeks an order pursuant to Rule 5-1 and 9-1 and s. 212 of the FLA requiring Mr. Derkatch to produce a number of documents. The documents sought are as follows:
2. An order pursuant to Rules 5-1 and 9-1 of the Supreme Court Family Rules, and Section 212 of the Family Law Act, that the Respondent must produce the following documents by no later than February 28, 2025:
 - (a) a Financial Statement in Form F8, including all required attachments;
 - (b) Copies of all bank statements, including personal and corporate, from January 1, 2023 until present date;
 - (c) Copies of all credit card and line of credit statements, including personal and corporate, from January 1, 2023 to present date;
 - (d) Copies of all investment account statements, including registered and unregistered accounts, including any cryptocurrency investments, from January 1, 2023 until present date;
 - (e) Copies of all mortgage statements, including personal and corporate, from January 1, 2023 to present date;

- (f) Current and historical rent rolls for all properties owned personally or through any of the companies, from January 1, 2023 to present date;
 - (g) Financial Statements for 2022 and 2023 for all of the companies;
 - (h) Personal and corporate tax returns and notice of assessments for taxation year 2022 and 2023;
 - (i) Copies of any documents relating to applications for credit made by the Respondent or any of the companies, from January 1, 2021 to present date, including mortgages, lines of credit, bridge loans, private loans, and credit cards.
 - (j) Copies of any documents relating to the purchase and/or sale of real property, owned either individually by the Respondent or jointly with any other third party, or through any of the companies, from January 1, 2021 to present date;
 - (k) Copies of any corporate shareholder and/or director resolutions from the companies from January 1, 2021 to present date;
 - (l) Copies of any accountant(s) and/or bookkeeper(s) file that exists for the companies or for the Respondent personally, including any and all correspondence with the Respondent, from January 1, 2022 to present date.
- [20] Ms. Derkatch has made formal demands for the documents sought, and with the exception of the rent rolls, no documents have been provided by Mr. Derkatch. Further, many of the documents sought are ones Mr. Derkatch is specifically required by law to disclose.
- [21] Section 21(1) and (2) of the Guidelines provide as follows:

Obligation of applicant

21 (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:

- (a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;
- (b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;
- (c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;
- (d) where the spouse is self-employed, for the three most recent taxation years
- (i) the financial statements of the spouse's business or professional practice, other than a partnership, and

- (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
- (e) where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;
- (f) where the spouse controls a corporation, for its three most recent taxation years
- (i) the financial statements of the corporation and its subsidiaries, and
- (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
- (g) where the spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and
- (h) in addition to any income information that must be included under paragraphs (c) to (g), where the spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.

Obligation of respondent

- (2) A spouse who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court, as well as the other spouse or the order assignee, as the case may be, with the documents referred to in subsection (1).

[22] Rule 5-1(4) of the Family Rules provides that:

Who must provide Part 1 of a Form F8 financial statement

- (4) Each party who is required under the child support guidelines to provide income information must file the following documents and must serve them under subrule (11):
 - (a) Part 1 of a Form F8 financial statement;
 - (b) the party's applicable income documents;
 - (c) any other documents that the party is required to file and serve under subrules (5) to (7).

[23] Rule 5-1(1) of the Family Rules defines the "applicable income documents" which must be provided as follows:

Interpretation

(1) In this rule:

"applicable income documents" means, in respect of a person,

- (a) a copy of every personal income tax return filed by the person for each of the 3 most recent taxation years,
- (b) a copy of every notice of income tax assessment or reassessment issued to the person for each of the 3 most recent taxation years,
- (c) if the person is receiving employment insurance benefits, a copy of the 3 most recent employment insurance benefit statements,
- (d) if the person is receiving workers' compensation benefits, a copy of the 3 most recent workers' compensation benefit statements,
- (e) if the person is receiving income assistance, current documentary evidence of the income assistance that is being received by that person,
- (f) if the person is an employee,
- (i) the most recent statement of earnings indicating the total earnings paid to the person in the year to date, including overtime, or
- (ii) if that statement is not provided by the employer, a letter from the person's employer setting out the information referred to in sub-paragraph (i) and including the person's rate of annual salary or remuneration,
- (g) if the person is self employed, the following information for the 3 most recent taxation years:
 - (i) the financial statements of the person's business or professional practice, other than a partnership;
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the person does not deal at arm's length,
- (h) if the person is a partner in a partnership, confirmation of the person's income and draw from, and capital in, the partnership for each of its 3 most recent taxation years,
- (i) if the person controls a corporation, the following information for the corporation's 3 most recent taxation years:
 - (i) the financial statements of the corporation and its subsidiaries;

(ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation and every related corporation does not deal at arm's length,

(j) if the person is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's 3 most recent financial statements, and

(k) if the person owns or has an interest in real property, a copy of the most recent assessment notice issued from an assessment authority for each property;

[24] The court has the authority to order disclosure of the documents sought. Rule 9-1(14) of the Family Rules provides the court with the authority to order the production of documents which have been demanded in accordance with Rule 9-1. Section 212(1) of the FLA provides that the court may order disclosure of information in accordance with the Family Rules.

[25] Mr. Derkatch has filed two Financial Statement Form F8s in this proceeding, the first on May 26, 2023 and the second on December 11, 2024. The first is incomplete and out-of-date. In it, Mr. Derkatch claims to have a Guidelines income for child support purposes of \$59,662.25, while claiming annual expenses of \$231,722.48.

[26] The second Form F8 filed by Mr. Derkatch is entirely inadequate. He has failed to attach any of the required documentation. He says that he has net self-employment income of \$60,000, but no basis for this net income amount is provided. He claims annual expenses of \$145,135.20.

[27] The income claimed by Mr. Derkatch on both of his Form F8s is difficult to reconcile with the fact that the rent rolls he has produced show that his gross rental income is \$875,000 per year. It is also impossible to reconcile with his testimony at his examination for discovery in which he stated that his net income after personal expenses was \$59,662.25, after subtracting personal expenses of \$231,722.88, meaning that he had a gross income of \$291,385.13.

[28] Adding even greater confusion to the picture of Mr. Derkatch's income is a document he attached as an exhibit to his sixth affidavit, filed December 11, 2024. He describes it as a spreadsheet he prepared to summarize the funds that were drawn from the business accounts for personal reasons between January and November 2024. Those funds come to a total of \$118,278.92, of which Mr. Derkatch says he spent \$31,615.23 on himself for personal purposes. If what he paid to lawyers, Dr. Elterman and accountants is added to that amount it comes to a total of \$57,315.12. This is entirely inconsistent with the information provided on Mr. Derkatch's contemporaneous Form F8. When asked about that in the hearing before me, Mr. Derkatch said that these were the real expenses. If that is so, his Form F8, as he acknowledged in court, is completely unreliable.

[29] To say that greater clarity is required with respect to Mr. Derkatch's income is an understatement.

[30] The documents sought are all ones which Mr. Derkatch is required by law to provide and which are necessary to determine the matters at issue in this case. I, therefore, order Mr. Derkatch to produce the documents listed at paragraph 2 of Part 1 of the notice of application no later than one month from the date of this decision.

Conduct orders

- [31] Ms. Derkatch seeks conduct orders pursuant to ss. 222 and 227 of the FLA requiring that Mr. Derkatch file his personal and corporate income tax returns for the taxation years 2022 and 2023, and have financial statements prepared for the companies for those same years. Ms. Derkatch seeks these conduct orders in order to ensure that Mr. Derkatch takes timely steps to comply with his disclosure obligations under the Family Rules and the Guidelines, as well as the disclosure orders made in this decision. She also seeks these conduct orders in order to ensure that Mr. Derkatch takes timely steps to produce the documents necessary to facilitate the appraisals ordered in the Weatherill Order and any sales of any real property, whether ordered by this court or by agreement of the parties.
- [32] Section 222 of the FLA gives the court authority to make conduct orders for the following purposes:
- (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
 - (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
 - (c) to prevent misuse of the court process;
 - (d) to facilitate arrangements pending final determination of a family law dispute.
- [33] Section 227(c) of the FLA gives the court authority to make conduct orders requiring a party to "do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222".
- [34] In support of the conduct orders sought, Ms. Derkatch relies on the decision of the Court of Appeal in *A.B. v. C.D.*, 2020 BCCA 11 [A.B.]. At para. 182, the Court referred to ss. 222 and 227(c) of the FLA as provisions that "give the court broad powers to regulate the conduct of parties to a family law proceeding". At para. 187, the Court stated that ss. 222 and 227 do not limit the court's authority to the scope of the current proceedings. The Court stated that "the power to 'manage behaviours that might frustrate resolution or 'facilitate arrangements' similarly suggest court power to reach into issues incidental to the litigation". At para. 188, the Court emphasized that the conduct order provisions are guided by the best interests of the child, including minimizing the impact of conflict, as referenced in s. 199 of the FLA.

- [35] In *Bedard v. Bedard*, 2022 BCSC 1977, at paras. 44-47, Justice Brongers discussed A.B. in the context of an application for conduct orders which would have removed one of the parties as president and CEO of a company and bestowed his duties on the other party. Justice Brongers accepted that conduct orders could potentially include such matters, but declined to make them in that case because, on the evidence before him, he was not persuaded that they would facilitate settlement or manage behaviours that might frustrate the resolution of the dispute.
- [36] Ms. Derkatch has deposed that the children are unhappy with the prolonged nature of these proceedings. She says that she urgently needs access to family property to obtain the outstanding s. 211 report, set trial dates, and continue to have access to legal counsel.
- [37] As I understand Mr. Derkatch's position, he says that he cannot complete his personal and corporate tax filings, nor have up-to-date financial statements prepared, until he has an agreement with Ms. Derkatch about dividend allocation. I do not agree. I agree with Ms. Derkatch's submission that Mr. Derkatch can and indeed should file his tax returns. At trial, it would be open to him to argue that his tax burden was higher than it ought to have been because Ms. Derkatch ought to have been paid higher dividends. The financial consequences could be addressed at trial if Mr. Derkatch persuades the court that he took an excessive share of the parties' tax burden.
- [38] Mr. Derkatch's conduct in failing to ensure that his tax filings, and those of the companies, are up-to-date is frustrating the resolution of this dispute. This litigation cannot move forward unless Mr. Derkatch files the necessary tax returns and ensures that the companies' financial statements are completed. It is in the best interests of the children of the marriage that this litigation is resolved.
- [39] I am satisfied that it is appropriate to make the conduct orders sought to manage Mr. Derkatch's behaviours that are frustrating the resolution of this dispute and to facilitate arrangements pending the final resolution of this dispute. I, therefore, grant the conduct orders sought requiring Mr. Derkatch to file his personal and corporate income tax returns and ensure that corporate financial statements are prepared within one month of the date of this decision.

Order for sale and directions re carriage of the Weatherill Order

- [40] Ms. Derkatch requests an order for sale of one, or if necessary, two named properties. These are both rental properties located in Cranbrook. One is owned solely by Mr. Derkatch and the other is owned by a numbered company owned by Mr. Derkatch. Ms. Derkatch seeks sole conduct of sale. She seeks an order that the net proceeds of sale be used to fulfill the interim distribution order made by Weatherill J., with any remaining funds held in trust.
- [41] Ms. Derkatch seeks these orders in order to be able to continue to retain legal counsel, and pay for the s. 211 report and the other expert reports ordered by Weatherill J. She indicates that, as of the filing of her seventh affidavit, made January 5, 2025, she has outstanding

invoices and requires the following funds to proceed: legal fees in the amount of \$69,575.63 and an ongoing retainer; appraisals in the amount of \$9,405.63 and \$6,425.00; Dr. Elterman in the amount of \$4,059.50; and amounts to be determined for the Guidelines income report and company appraisals.

- [42] Ms. Derkatch says that, with the exception of the former family home, Mr. Derkatch controls all family assets and the income generated from those assets. She is not the legal owner of any of the three properties that were to be used to finance the interim distribution pursuant to the Weatherill Order, so she is unable to seek refinancing or access any equity in those properties. Mr. Derkatch has told her that he has explored refinancing options, and found them unfeasible. While he has not provided supporting documentation, Ms. Derkatch is willing to accept his statements in this regard as truthful until proven otherwise.
- [43] Ms. Derkatch submits that Mr. Derkatch is using his control of family assets to exclude her and obstruct her ability to proceed with this action. She submits that this is a continuation of financial control he exerted during their relationship and since separation, which she submits constitute family violence.
- [44] Ms. Derkatch says that Mr. Derkatch ceased all payments payable under the Groves Order in June 2024. Because of the manner in which that order is drafted, which refers to "expenses relating to the Children and the Family Residence", she is unable to have the order enforced by BC Family Maintenance. As of the date she made her sixth affidavit on December 3, 2024, the arrears totalled \$35,000. Ms. Derkatch's financial situation has deteriorated as a result.
- [45] I do not have a transcript of Weatherill J's reasons for decision granting the interim distribution order, and Ms. Derkatch says she cannot afford to order one. In her notice of application, filed October 16, 2023, Ms. Derkatch indicated she would rely upon *Farjam v. Panahandeh*, 2022 BCSC 409, and *McKenny v. McKenny*, 2015 BCSC 1345 in support of the application for an interim distribution. *Farjam* provides at paras. 41-44 the following with respect to the purpose of s. 89 of the FLA:
- [41] An interim distribution of family property under s. 89 of the FLA may be justified when it is necessary to permit the parties to advance their respective cases on a relatively level playing field: *M.A.L. v. N.A.L.*, 2014 BCSC 203.
- [42] Section 89 provides that:
- 89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund
- (a) family dispute resolution,
 - (b) all or part of a proceeding under this Act, or

- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.
- [43] In general terms, the applicant must demonstrate that: (a) an advance is necessary to challenge the other's position at trial, and (b) the advance will not jeopardize the other party's claim: *McKenny v. McKenny*, 2015 BCSC 1345 [McKenny], at para. 57.
- [44] In *I.F. v. R.J.R.*, 2015 BCSC 793 [I.F.], Justice Balance explained the purpose of s. 89 in terms of promoting access to justice with an eye to the overall objectives of the FLA, as follows:
- [192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets. Application of s. 89 calls for a purposive interpretation, where the need of the applicant spouse to receive an interim distribution and the potential entailing harm to the other spouse are evaluated contextually with an eye on the larger objectives endorsed by the FLA.
- [46] Ms. Derkatch submits, and I accept, that the basis for the interim distribution order was to level the financial playing field to some extent, and to assist her, as an economically disadvantaged spouse, to access justice in this family law dispute. There is no other basis upon which such an order would have been made.
- [47] Ms. Derkatch submits that at the hearing of that application, Mr. Derkatch indicated that the interim distribution order could be funded through refinancing or otherwise accessing equity in the properties. Since the Weatherill Order was made, however, Mr. Derkatch has advised that he is unable to refinance the properties in question.
- [48] Mr. Derkatch opposes any order for sale of any property being made at this time. As set out in his application response:
6. This is a "cart before the horse" situation. The Claimant wants to sell properties, but a buyer will insist on up to date tax filings before any sale can be completed.
 7. The Respondent resists the sale of other properties at this time because there is already a process in place to sell the two Creston properties - the 14 unit Mountain View Property, and the vacant lot described as the Erickson Property.
 8. Another reason for resisting the sale of other properties is that some of the properties may end up in a financial loss after income tax considerations.
 9. The Respondent says the immediate focus of the parties ought to be to resist losing the high rent cash flows from the two Cranbrook multi-unit properties (Parkview Manor -15 units and Mountain Spring Chalet ("MSC") - 24 units). Those two properties generate the highest potential rental income and have the most potential for financial success on a long-term basis.

10. With respect to the Claimant's request that 2000 2nd Street North and 362 Van Horne Street ("MSC") properties, the parties already decided the order of sale of property as set forth at paragraph 4 of Mr. Justice Weatherill's order of October 30, 2023. The Claimant has not provided any evidence to justify why that order should be varied.
 11. The sales of the aforementioned properties will still not generate sufficient income to raise the interim distribution of \$150,000 to each party contemplated by Mr. Justice Weatherill's order.
 12. The Respondent says further that any income generated from the sale of real properties should prioritize avoiding foreclosure/receivership proceedings.
- [49] Mr. Derkatch submits that the Royal Bank of Canada ("RBC") is threatening to call the loans on one or more of the properties. In support of this, he provides an email from a lawyer for the RBC, dated January 8 (I assume 2025), in which the lawyer writes "Further to our discussion, we wish to confirm that we have been instructed by RBC to issue demands for repayment of the outstanding indebtedness". There is no evidence as to what indebtedness on which property or properties the lawyer was referring to, or whether further steps have been taken by RBC, or any other lender, to call any loans or to force any of the properties owned by the parties into foreclosure.
- [50] It may be, as submitted by Mr. Derkatch, that there is a risk of some or all of the properties owned by the parties, whether personally or through the respondent companies, being foreclosed on or the companies going into receivership. The opacity of Mr. Derkatch's document disclosure makes it impossible to come to any conclusions about this. What is clear is that Mr. Derkatch opposes any properties not currently listed for sale being listed or sold. So far as I can see on the evidence before the court, there is only one property currently listed for sale, and the lack of financial statements for the company that owns that property, together with the parties' lack of agreement about the list price, has prevented any sale of that property.
- [51] If the parties' finances are as precarious as Mr. Derkatch suggests, that does not mean that an order for sale ought not to be made. If anything, it adds weight to the argument that it is necessary for some of the properties to be sold, to make any equity available to the parties to put their financial houses in order and resolve this dispute.
- [52] The manifest purpose of the interim distribution order has been frustrated by Mr. Derkatch's inability to refinance the identified properties and his unwillingness to take meaningful action to sell them.
- [53] The parties have explored other potential means of funding the interim distribution, in whole or in part. For example, Mr. Derkatch proposed selling some cryptocurrency assets that he holds, which he states in his fifth affidavit, made December 11, 2024, might raise between \$50,000 and \$100,000. On December 16, 2024, counsel for Ms. Derkatch wrote Mr. Derkatch, agreeing to the sale of cryptocurrency, on a number of terms. Those terms were

not acceptable to Mr. Derkatch. The sale of cryptocurrency does not appear at this time to be an available means of raising funds to finance the interim distribution.

- [54] Earlier, the parties explored the possibility of selling Mr. Derkatch's interest in some properties in Creston and Kaslo, which the parties own through a two different corporate vehicles with a business partner, Tim Van Straten. To that end, the parties and Mr. Van Straten entered into a settlement agreement dated for reference March 29, 2024. Under that agreement, the properties were either to be put up for sale or Mr. Van Straten would buy out the parties' interests in them. The settlement agreement contemplated that the proceeds payable to the parties would be used to fund the interim distribution.
- [55] This settlement agreement has not borne any fruit to date. On August 16, 2024, counsel for Ms. Derkatch wrote Mr. Derkatch and counsel for Mr. Van Straten. He noted that appraisals had been conducted on all of the properties subject to the agreement. He noted his understanding that Mr. Van Straten wished to moved forward with a share purchase agreement on one property and that his counsel would be providing a draft copy of that agreement. With respect to another property in Creston, Mr. Derkatch had indicated he wished to secure a private sale, but no efforts or offers had been made. Counsel for Ms. Derkatch indicated that the Creston property needed to be listed for sale and asked for the names of mutually agreeable realtors.
- [56] On September 6, 2024, counsel for Ms. Derkatch wrote to a realtor whom the parties to the settlement agreement had agreed upon to sell the Creston property. On October 16, 2024, the realtor reported they had five solid inquiries, but they were all seeking financial statements for the company that owns the Creston property for the last three years. These are among the corporate financial statements which Mr. Derkatch has failed to produce in these proceedings. The realtor also suggested that it might be worthwhile considering reducing the listing price.
- [57] Counsel for Ms. Derkatch followed up on the listing price on November 8 and December 16, 2024. The realtor replied on December 17, 2024, indicating that they were still waiting on the corporate financial statements they had requested some time ago. The realtor recommended a price reduction. On December 19, 2024, the realtor reported that Mr. Derkatch and Mr. Van Straten would not agree to a price reduction.
- [58] In light of Mr. Derkatch's continuing failure or refusal to have the corporate financial statements for the company that owns the Creston property prepared, and his refusal to consider a reduction in the listing price, it is apparent that the Creston property is unlikely to sell in the foreseeable future.
- [59] Rule 15-8(1)-(3) of the Family Rules provide that the court may make an order for sale in the following terms:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

Conduct of sale

- (2) If an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner the person considers appropriate or as the court directs.

Directions for sale

- (3) The court may give directions for the purpose of effecting a sale, including directions
- (a) appointing the person who is to have conduct of the sale,
 - (b) fixing the manner of sale, whether by contract conditional on the approval of the court, private negotiation, public auction, sheriff's sale, tender or some other manner,
 - (c) fixing a reserve or minimum price,
 - (d) defining the rights of a person to bid, make offers or meet bids,
 - (e) requiring payment of the purchase price into court or to trustees or to other persons,
 - (f) settling the particulars or conditions of sale,
 - (g) obtaining evidence of the value of the property,
 - (h) fixing the remuneration to be paid to the person having conduct of the sale and any commission, costs or expenses resulting from the sale,
 - (i) that any conveyance or other document necessary to complete the sale be executed on behalf of any person by a person designated by the court, and
 - (j) authorizing a person to enter on any land or building.

[60] I find that it is both necessary and expedient that one, or if necessary, two of the Cranbrook properties identified in the notice of application be sold to fund the interim distribution ordered by Weatherill J. It is necessary, because there appears to be no other means currently available to the parties to fund the interim distribution, and it is apparent that Ms. Derkatch needs the funds from the interim distribution to finance this litigation and move it forward to resolution. Further, the sale will be advantageous to both parties, as both parties are entitled to an interim distribution of \$150,000 under the terms of the Weatherill Order.

[61] Mr. Derkatch opposes any order for sale being made, and given his general approach to this litigation and in particular the sale of the Creston property, I find that he would be unlikely to co-operate with a joint order for sale of the Cranbrook properties. I, therefore, order that Ms. Derkatch have sole conduct of sale on the terms proposed in paragraph 4 of the notice of application.

Mr. Derkatch's Application

Variation of Groves Order with respect to support

[62] Mr. Derkatch applies to vary paragraphs 2 and 6(e) of the Groves Order as follows:

- a) The requirement that Mr. Derkatch pay the sum of \$5,000 per month relating to the children and the family residence be terminated effective July 1, 2024;
- b) An order that Mr. Derkatch's annual income for Guidelines purposes be fixed on an interim basis at \$60,000;
- c) An order that Ms. Derkatch's annual income for Guidelines purposes be fixed on an interim basis at \$53,050;
- d) An order that Mr. Derkatch pay Ms. Derkatch interim child support for the three younger children in the amount of \$1,522 per month, effective July 1, 2024;
- e) A declaration that no spousal support is payable by either party effective July 1, 2024; and
- f) An order that the determination of retroactive child and spousal support for the period March 6, 2023 to June 30, 2024 be referred to trial.

[63] For the following reasons, I dismiss this part of Mr. Derkatch's application.

[64] First, the monthly payment of \$5,000 which Mr. Derkatch seeks to terminate, effective July 1, 2024, was made on the basis of an offer he made. Mr. Derkatch sent Ms. Derkatch an email dated January 5, 2023, with a subject line "Budge jan 2023 until resolution". In that email he wrote "I am willing to pay you and all kids costs 60k per year/12 months for total of 5k a month, and this is supposed to cover all costs including food for family (including myself for meal, vitamins, and any other past included personal costs)." He further stated that "our mortgage is paid in addition to this amount".

[65] Second, I find there is no merit in Mr. Derkatch's argument that he has in fact been overpaying due to misinterpreting the Groves Order. He submits that the \$5,000 was supposed to include the mortgage, property taxes and house insurance. This is inconsistent both with his January 5, 2023 email, and more important, it is contrary to the clear meaning of the Groves Order.

[66] Third, Mr. Derkatch has failed, as I have already outlined in addressing Ms. Derkatch's applications for document disclosure, to disclose the documents necessary to determine his income. This is a fatal flaw, particularly as Mr. Derkatch is seeking to retroactively reduce

the amount of support payable: *Colucci v. Colucci*, 2021 SCC 24 at paras. 47-54, 63 and 110. As stated by the Court at para. 54, the exercise of judicial discretion "must encourage financial disclosure and in no way reward those who improperly withhold, hide or misrepresent information they ought to have shared". At para. 110, the Court stated that "full and complete disclosure is required to quantify the appropriate support for the period of retroactivity " Further, the onus is on the payor spouse to show the extent to which their income decreased. Mr. Derkatch has failed to meet this onus.

[67] In *Goodhew v. Summers*, 2022 BCSC 1080, at paras. 67-105, Justice D. MacDonald provided a thorough overview of the avenues open to the court where a party has failed to provide necessary financial disclosure. Rule 5-1(28) provides the court with discretion to make a number of orders where, as here, a party has failed to file a Form F8 Financial Statement or other applicable income documents. Among the potential orders the court may make is an order that the missing documents be filed. I have already done that. Rule 5-1(28)(b) also permits the court to dismiss a party's claim or application. I am of the view that the circumstances of this case call for such an order against Mr. Derkatch.

[68] At para. 98 of *Goodhew*, MacDonald J. stated that "where the court finds it difficult to determine a party's income due to that party's inadequate financial disclosure, the non-disclosing party must bear the consequences". Citing Justice Abrioux, then of this court, in *S.K.R. v. K.S.R.*, 2015 BCSC 914 at para. 55, MacDonald J. noted that "it is not the court's role to 'ferret out' the necessary information in the face of confusing and inadequate disclosure".

[69] The court has the authority to impute an income to a party, pursuant to Rule 5-1(28) and s. 19 of the Guidelines. On the evidence before the court, any income I might impute to Mr. Derkatch would be little more than a guess. In my view, given the inconsistent evidence provided by Mr. Derkatch about his income, and the wholly inadequate state of his financial disclosure, it is preferable to dismiss his application to vary the Groves Order, leaving the support payable as offered by him in his January 5, 2023 email, and ordered by Groves J.

[70] I have considered apportioning the \$5,000 payment between child and spousal support, in order to make it enforceable by BC Family Maintenance. I have concluded I ought not to do so at this time. No application seeking that relief was filed by either party. Ms. Derkatch may make such an application at any time. Mr. Derkatch may do so only once he has complied with this court's disclosure orders.

Appointment of an expert

[71] Mr. Derkatch seeks an order pursuant to Rule 13-3(20) appointing Bruce Murdoch on a joint engagement basis to provide the parties with financial and/or accounting advice and recommendations with respect to the refinancing and/or distribution of real property in the most tax advantageous manner. He further seeks an order that Mr. Murdoch prepare and file a formal report setting out his recommendations in the event that the parties are unable to come to an agreement based on the expert's recommendations.

- [72] I accept that these parties would benefit from receiving joint advice with respect to how to deal with their property portfolio, including refinancing options and how to distribute it in a tax advantageous manner. There is no evidence that the person put forward by Mr. Derkatch to provide that advice has the requisite expertise and experience to provide these parties with the advice they need. A CV was provided by Mr. Murdoch to Mr. Derkatch's former counsel, but it does not allow the court to assess his qualifications for the purposes for which he is now put forward. Mr. Murdoch does not appear to be a professional accountant or a member of any other relevant regulated profession. There is no evidence that Mr. Murdoch has any experience providing advice in a family law context and there is no evidence whatsoever that he has any experience doing so for couples in a high conflict family law dispute such as this. The evidence does not establish that Mr. Murdoch is independent of Mr. Derkatch, which is of particular concern in light of Mr. Derkatch's abusive text communications to Ms. Derkatch about financial matters, both before and after separation, which I accept are evidence of family violence.
- [73] I dismiss Mr. Derkatch's application for the appointment of Mr. Murdoch to provide the parties with financial and/or accounting advice. Either party is at liberty to apply for the appointment of a properly qualified and independent expert to provide the parties with joint tax and financial advice, in Mr. Derkatch's case, once he has fully complied with this court's disclosure orders.

Disclosure of documents

- [74] Mr. Derkatch seeks an order pursuant to Rule 9-2(18) and (19) that Ms. Derkatch produce 17 categories of documents, as set out in paragraph 5 of Part 1 of his notice of application. Many, if not all, of the documents requested by Mr. Derkatch are relevant to matters in issue in this case.
- [75] Ms. Derkatch has provided many of the documents sought; she located approximately 4500 pages of documents in the former family home which were provided to Mr. Derkatch in December 2024. It is not entirely clear on the evidence and submissions before me which, if any, relevant documents remain outstanding. Mr. Derkatch says that there are more documents still in the former family home, while Ms. Derkatch says that she has provided everything she has been able to locate, and is unaware of any more documents in the home.
- [76] I accept that Ms. Derkatch has provided all requested documents that she is aware of and that are in her possession or control. Mr. Derkatch is materially delinquent in his document production, and only filed this application after and in response to Ms. Derkatch's application. In the circumstances of this case, his conduct in doing so draws into question the bona fides of his application. I dismiss Mr. Derkatch's application for document disclosure. If, following his compliance with the orders made against him in this decision, Mr. Derkatch identifies any outstanding documents, he may make an application for document disclosure.

Dividend orders

- [77] Mr. Derkatch seeks an order that the parties report all dividend income for the 2022, 2023 and 2024 tax years as recommended by their personal and corporate accountants that best minimizes the overall income tax burden to the parties. Further, he seeks an order that the parties be at liberty to apply in the event they cannot agree on the name of a jointly engaged accountant for the purposes of dividend allocation.
- [78] Ms. Derkatch says in response that she did not receive any dividends from the parties' companies in 2023 or 2024. She says she would need to seek independent tax advice to determine whether she received any in 2022.
- [79] It is unclear whether the court has jurisdiction to make the orders sought by Mr. Derkatch. Possibly conduct orders could encompass orders of the type requested by Mr. Derkatch, but I make no determination in this regard. What is clear is that the court does not have the evidentiary basis necessary to make the orders sought. No financial statements or tax returns have been provided for the companies in issue. Until that has happened, and the parties have received joint or independent financial and tax advice, the court is unable to make the orders sought.
- [80] I dismiss this part of Mr. Derkatch's application.

Summary

- [81] In summary, I have granted the orders sought by Ms. Derkatch, and dismissed the orders sought by Mr. Derkatch.
- [82] Pursuant to s. 221(2)(a)(ii) of the FLA, I order that Mr. Derkatch must comply with the disclosure and conduct orders made against him in this decision before bringing any further applications in this matter.
- [83] Ms. Derkatch has been successful on both applications, and is entitled to her costs of both applications, forthwith and in any event of the cause.

"L.M. Lyster J."

LYSTER J.

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