

CANADA / JUDGMENT

Du v. Hu

2024 BCSC 2530

COURT

Supreme Court of British Columbia

DECIDED

23 October 2024

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

2024 BCSC 2530 Du v. Hu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Du v. Hu,

2024 BCSC 2530

Date: 20241023

Docket: E222205

Registry: Vancouver

Between:

Ya Lin Du also known as Emily Du

Claimant

And

Ming Hu and Mingo Investments Ltd. and Mingo Farming Ltd. and Mingo Holding Ltd.

Respondents

Before: The Honourable Madam Justice Wilkinson

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

L. Klass

N. Farouky, A/S

Counsel for the Respondent Ming Hu:

S. Pun

W. Zhou

Counsel for the Respondent Mingo Investments Ltd. and Mingo Farming Ltd. and Mingo Holding Ltd.:

Z. Suche

Place and Date of Hearing:

Vancouver, B.C.

October 3, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 23, 2024

[1] THE COURT: These are my reasons for judgment on an application by the claimant for an interim advance from family property in this family law matter.

Background

[2] The claimant submits the parties commenced a marriage-like relationship in mid March 2020, when she informed the respondent that she was pregnant. The respondent submits they were not in a marriage-like relationship until they were married on May 16, 2020.

[3] There is one child of the marriage born in November 2020, who is now almost four years old.

[4] The parties agree that their date of separation was February 26, 2022.

[5] Mingo Investments Ltd., Mingo Farming Ltd., and Mingo Holding Ltd., (collectively, the "Companies") are Companies which the claimant alleges are under the control of the respondent and in which the respondent has an interest. Before this litigation was commenced, it would appear that the respondent was the sole director of Mingo Farming and Mingo Investments, and the respondent's mother, Su Qin Xia, is the sole director of Mingo Holding. The respondent states he resigned his directorships at some point after the claimant filed her notice of family claim.

Litigation History

[6] The claimant filed her notice of family claim on September 7, 2022.

[7] The respondent filed his response to family claim on October 27, 2022.

- [8] Mingo Investments Ltd., Mingo Farming Ltd., and Mingo Holding Ltd. (together, the "Corporate Respondents") filed a response to family claim on December 5, 2022. The Corporate Respondents and the respondent have separate legal counsel in this proceeding.
- [9] The parties attended a JCC on February 7, 2023.
- [10] On August 17, 2023, the respondent spouse filed notice of trial for 15 days commencing January 20, 2025. That date has now been adjourned.

The Properties

Former Family Home

- [11] The parties resided at a property located on 164A Street in Surrey, BC (the "Former Family Home"). The Former Family Home was purchased by the respondent spouse in 2016, prior to the commencement of the relationship.
- [12] The claimant submits that from the start of the marriage-like relationship until February 26, 2022, the parties both lived in the Former Family Home. The claimant was the primary caregiver to their child. She and the child moved out of the Family Home on the date of separation.
- [13] On January 1, 2021, the Former Family Home had an outstanding mortgage balance of \$804,285.21. On July 2, 2021, the respondent refinanced the home and registered a new mortgage against the property, increasing the principal amount to \$1.4 million.
- [14] Post separation, the respondent again refinanced the Former Family Home on August 29, 2022, such that the principal amount owing on a new mortgage increased to \$1,556,000.
- [15] The claimant deposes she had no knowledge of or participation in the refinancing. She submits that as a result of the refinancing the available equity was reduced when the home was sold.
- [16] She seeks further documentation about the refinancing, as she is concerned the respondent artificially reduced the available equity in the home in order to hide assets from division pursuant to the claimant's family law claim or otherwise hide family assets from her prior to separation.
- [17] Equity withdrawn from the Former Family Home through the refinancing may have been applied by the respondent spouse to purchase other assets. Without full information, the claimant is unable to assess the amount of equity the respondent withdrew from the home prior to its sale, or what other assets those funds may have been applied towards, which may constitute family property.

The 168 Street Property

- [18] The second property at issue is located on 168th Street in Surrey, BC (the "168 Street Property"). The respondent purchased the 168 Street Property in August 2015, before the commencement of the relationship. The respondent is the registered owner of the 168 Street Property.
- [19] Its 2020 BC Assessment value was approximately \$4,943,000 and 2024 BC Assessment value is \$9,059,000. This is an increase of over \$4 million since the marriage commenced.
- [20] The ownership of the 168 Street Property is disputed. The respondent takes the position that it holds the property as a bare trustee, with Mingo Investments Ltd. and YICA Investments Ltd. as beneficiaries. He alleges that he entered into two separate bare trust agreements: the first, entered into on August 31, 2015, by which Mingo Investments Ltd. nominated the respondent to be the bare trustee of a 97 percent of the legal title to the 168 Street Property. The Corporate Respondents support this position. The second agreement entered into on July 15, 2017, by which YICA Investment Ltd. nominated the respondent to be the bare trustee of 3 percent of the legal title to the 168 Street Property. Both bare trust agreements indicate the consideration paid by each party was \$1.
- [21] The claimant's position is that the respondent, or a company owned by him, is the legal and beneficial owner of the 168 Street Property. She submits this due to recent findings made by this court in a Civil Proceeding in which the respondent was a defendant, indexed at Zhang v. Lin, 2024 BCSC 1591 (the "Civil Proceeding").
- [22] In the Civil Proceeding, Justice Funt set out a portion of the Agreed Statement of Facts in relation to the 168 Street Property. There is no mention of any bare trust agreement as between the respondent and Mingo Investments Ltd. The respondent is relying on arguments in this proceeding which appear to be absent in the Civil Proceeding, despite both dealing with the same property.
- [23] Justice Funt made a finding of fact in the Civil Proceeding that the respondent and the plaintiff in that proceeding each contributed \$809,261.51 to purchase the 168 Street Property on August 31, 2015, and at the time it was purchased the respondent was the registered owner and held an unregistered 50 percent interest for Ms. Zhang. There is no indication that the respondent purchased the 168 Street Property with Mingo Investments as the beneficial owner, as the respondent claims in this proceeding.
- [24] In the alternative, the claimant's position is that the respondent is the beneficial owner of Mingo Investments Ltd., and thereby the owner of the 168th Street Property which is registered in the name of that company. The respondent's mother, Ms. Xia, deposes that the respondent transferred his ownership in Mingo Investment to her as partial payment of an alleged \$15 million loan, but no evidence has been produced demonstrating that any funds were actually advanced by Ms. Xia to the respondent or the evidence of the origin of those funds.

- [25] In the Civil Proceeding, the court found that the respondent granted a \$4.2 million mortgage on the 168 Street Property in favour of his mother, for which no documentation was provided and which was ultimately cancelled. He admitted in the proceeding that he used this mortgage to protect assets from the division as against his former spouse.
- [26] Justice Funt found the respondent not to be a credible witness in the proceedings before him.
- [27] The claimant alleges the respondent has taken a similar approach in this proceeding. He has alleged a \$15 million loan between himself and his mother and provided no documentation to support that these funds existed, their origin, or whether \$15 million was actually advanced by his mother to himself. Given the above, the claimant questions the veracity of the \$15 million loan and the alleged bare trust agreements, as well as the transfer of ownership in one of the Companies to the mother. Loan documents and share transfers to repay some of the outstanding amounts were created after the debt reached \$15 million or more. The shares were not valued, nor was there any documentation as to what amount of the debt was satisfied by the transfer.
- [28] The plaintiff's mother deposes that she decided to document the loans and take the shares in partial payment at a time when she was concerned her alleged interests may be defeated by a family claim.
- [29] The Civil Proceeding before Justice Funt involved 79 days of trial between December 2019 and July 2022, and addressed commercial disputes between the respondent and two other parties involving "valuable real estate", including real property that is at issue in this proceeding.
- [30] The respondent claimed in the Civil Proceeding that he granted a \$4,200,000 mortgage in favour of his mother over the 168 Street Property and other properties in March 2017. The respondent testified that he granted this mortgage to his mother in order to protect his assets from division as against his former spouse. This Mortgage was later cancelled on November 1, 2017. The mother did not testify.
- [31] The respondent also testified to the fact that he owned a Pagani Huayra Roadster vehicle (the "Pagani"), which was purchased for approximately 2.8 million Euros, an amount in excess of \$4,000,000 Canadian. During re-examination he described his purchase of the Pagani and other supercars, to have been "a way of investment".
- [32] However, the respondent listed in his F8 financial statement, made February 3, 2023, that the Pagani Roadster had been leased and disposed of, though it was not listed in the "Disposal of Property" section in his F8.

Surrey Development Lands

- [33] The Civil Proceeding also references two additional properties on 176 Street in Surrey (the "Surrey Development Lands"), which were owned by 123172289 BC Holdings Ltd. (the "Holding Company") of which the respondent was indicated to be a shareholder, along with the other defendant in that case. The respondent in testimony admitted that he received a total of \$1,425,000 from a mortgage that was used to purchase other properties. These mortgages were obtained from the 168 Street Property to use in the purchase of the Surrey Development Lands.
- [34] The Civil Proceeding indicates that the Holding Company completed the sale of the Surrey Development Lands on March 30, 2022, approximately one month after the date of the separation.
- [35] The respondent did not disclose his ownership of the Holding Company or the Surrey Development Lands, or the fact he had disposed of any or all of these assets, in his form F8 financial statement or otherwise. The claimant was not aware of the existence of these entities until the respondent filed his Affidavit number 3, and she seeks further disclosure with respect to these assets and the net sale proceeds.

Sale of the Former Family Home

- [36] After the claimant delivered application materials on July 24, 2023, the parties entered into an Agreement with respect to the sale of the Former Family Home (the "Agreement"), resulting in the home being sold and the respondent making a \$40,000 lump-sum payment towards child support on an interim, without prejudice basis (the "Without Prejudice Payment"), and respondent's counsel and claimant's counsel would respectively hold one half of the remaining proceeds of sale of the Former Family Home in trust.
- [37] The home was sold, and payment was made on February 8, 2023. The claimant received \$40,000 for the Without Prejudice Payment and \$344,343.24 was held by each counsel in trust (the "Sale Proceeds").

Application for an interim advance

- [38] Section 89 of the Family Law Act, S.B.C. 2011, c. 25, provides for interim advances as follows:

Orders for interim distribution of property

89 If satisfied that it would not be harmful to the interests of the spouse and is necessary for the purposes 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 the proceeding under this Act, or

- c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[39] The purpose of the provision and the approach to be taken by the court under s. 89 are as follows:

- a) Section 89 of the FLA assists economically disadvantaged spouses to access justice and helps to level the playing field, especially where one spouse controls all or the majority of the family wealth and assets;
- b) The harm contemplated relates to actual or potential economic harm and includes a prejudicial impact on the other party's argument for reapportionment or position;
- c) An interim distribution that the applicant will later be unable to repay in a reasonable amount of time is a form of enduring prejudice; and
- d) To illustrate necessity, the applicant must show that an advance is required to mount a challenge to the other spouse's position at trial, which should include a budget and anticipated legal expenses and why the applicant is unable to meet those expenses via other resources.

See *I.F. v. R.J.R.*, 2015 BCSC 793; *McKenny v. McKenny*, 2015 BCSC 1345; *Coglon v Coglon*, 2021 BCSC 410; *Etemadi v. Maali*, 2021 BCCA 298; and *Jin v. Zhang*, 2023 BCSC 761.

Preliminary Assessment

[40] The court will undertake a preliminary assessment of the evidence to determine if the applicant has a *prima facie* case of "sufficient merit to warrant pursuit" or a "reasonable prospect of success" under s. 89: *Jin* at para 26. However, this does not require accepting or rejecting evidence or making findings of fact: *Jadavji v. Khadjieva*, 2022 BCCA 116, at para. 28, citing *Etemadi* at para. 51.

[41] Regarding the issue of the commencement of the marriage-like relationship, there is little other than broad statements by each party about the timing of their marriage-like relationship and when the parties started living together prior to the marriage.

[42] Either way, given the short length of the relationship, and the limited information I have about the education and skills of the claimant, regardless of what date it became a marriage-like relationship, the claimant's entitlement to spousal support after trial is likely very limited.

[43] However, the claimant's claim for child support is likely to succeed.

[44] I also find that the claimant's position regarding the status of the Corporate Respondents has merit and that she has a reasonable chance of success on her claims based on the record before me.

- [45] The claimant will likely be entitled to a portion of the increase in value of family assets, at least for the period of the marriage until trial, which at this point will be at least five years. There is a good possibility that financing funds may be traced to assets purchased during the relationship, as well as proceeds of sale from undisclosed properties. See, for example, the properties described in the Civil Proceeding.
- [46] The respondent's position that there is no equity in the disclosed other properties for division belies his efforts to extract equity from those properties for undisclosed purposes.

The parties' respective economic positions

- [47] The respondent contests the claimant's position that there is economic inequality as between the parties.
- [48] In 2021, the claimant's taxable income was \$36,000 in the form of income splitting from Mingo Farming Inc. In 2020, that amount was \$25,000. In 2019 she had no taxable income. The claimant deposes that since separation she has been relying on her mother and a friend for financial support for herself and the child. To date, she has borrowed approximately \$350,000 from them to pay for her living expenses and legal fees. She has an outstanding legal fees debt. She has also received the lump sum of \$40,000 in support to date.
- [49] She leases a 2022 Audi. She rents her accommodation where she resides with the child.
- [50] The claimant deposes that she has been unable to find employment which would accommodate her childcare needs.
- [51] During the relationship, the parties had a high standard of living. The respondent values gifts he purchased for the claimant costing him up to \$150,000.
- [52] The respondent deposes he only earns \$72,000 a year from one of the Companies and that he too is in debt. His mother deposes that the alleged \$15 million debt has significant funds owing and that she continues to lend money to the respondent with the expectation that it will be repaid.
- [53] The respondent deposes that he will take on childcare himself to enable the claimant to enter the work force. Given the history of childcare between the parties and the respondent's own employment, I find this to be disingenuous.
- [54] Apart from the alleged parental loans, the respondent has had access to significant sums of money over the past few years, which is unaccounted for. The positions taken by the respondent and his mother regarding the operation and ownership of the Companies is suspect.
- [55] On the limited record before me, the respondent likely controls the family wealth and assets, and the claimant is significantly economically disadvantaged in comparison to the respondent.

Harm to the Interests of the Other Spouse

- [56] In assessing harm to the respondent, the court must assess whether the distribution sought would require the encumbering of assets, whether income tax ramifications might be triggered, and any other transactional costs that might arise: I.F. v. R.J.R., at para. 193.
- [57] There is over \$300,000 held in trust separately for each party. No further disposition of property is required to satisfy the claimant's request. Without the extracted equity, other known properties, subject to the claim, have significant value.

Necessity for the purposes of funding dispute resolution

- [58] The claimant provided evidence based on her legal expenses to date and budget based on her counsel's estimates and fee rates of the need for \$75,000 to enable her to pursue an application to have the court determine the respondent's guideline income for the purposes of support, to bring a further application dealing with disclosure, and to pay for her outstanding legal fees and for the costs of this application.
- [59] In light of the respondent's application materials and the recent Civil Judgment this matter has become much more complex.
- [60] An amount of \$75,000, even if the claimant is ultimately not entitled to that interest in the Former Family Home or any other asset and therefore has to repay that amount over a period of time, would not pose a hardship to the respondent.

Conclusion

- [61] I will exercise my discretion in these circumstances to grant the application.

Costs

- [62] The claimant is entitled to ordinary costs in the cause.

"Wilkinson, J"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/25/2024BCSC2530.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/du-v-hu-2024>

Prepared on 26 October 2026 · Esheria