

CANADA / JUDGMENT

Etemadi v. Maali

2021 BCCA 298

COURT

British Columbia Court of Appeal

DECIDED

3 August 2021

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

2021 BCCA 298 Etemadi v. Maali

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Etemadi v. Maali,

2021 BCCA 298

Date: 20210803

Dockets: CA47203; CA47209

Docket: CA47203

Between:

Koorosh Etemadi

Appellant

(Claimant)

And

Mehrsa Maali

Respondent

(Respondent)

And

Soheila Samimi and Daryoush Etemadi also known as

Darioush Etemadi and also known as Dario Etemadi

Respondents

(Respondents by Counterclaim)

- and -

Docket: CA47209

Between:

Koorosh Etemadi

Respondent

(Claimant)

And

Mehrsa Maali

Respondent

(Respondent)

And

Soheila Samimi and Daryoush Etemadi also known as

Darioush Etemadi and also known as Dario Etemadi

Appellants

(Respondents by Counterclaim)

Before:

The Honourable Mr. Justice Harris

The Honourable Madam Justice Dickson

The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated

December 9, 2020 (Etemadi v. Maali, 2020 BCSC 1908, Vancouver Docket E18120).

Counsel for the Appellant, Koorosh Etemadi--CA47203

(via videoconference):

S.L. Specht

Counsel for the Appellants, Soheila Samimi and Daryoush Etemadi--CA47209

(via videoconference):

C.E. Drake

Counsel for the Respondent, Mehrsa Maali

(via videoconference):

T. Bant

M.T. Dinh

Place and Date of Hearing:

Vancouver, British Columbia

May 10, 2021

Place and Date of Judgment:

Vancouver, British Columbia

August 3, 2021

Dissenting Reasons by:

The Honourable Mr. Justice Butler

Written Reasons by:

The Honourable Madam Justice Dickson (page 42, para. 113)

Concurred in by:

The Honourable Mr. Justice Harris

Summary:

The appellant, Koorosh Etemadi, and respondent, Mehrsa Maali, are scheduled to go to trial in February 2022 in contested family litigation. A central issue at trial is the division of property, including a townhouse that was the former family home, which Mr. Etemadi maintains is 50% owned by his father, Dr. Etemadi, who is also a party to the litigation. Before trial, Ms. Maali applied for an interim distribution of property of \$250,000 pursuant to s. 89 of the Family Law Act to fund her legal costs. A judge in chambers granted her application and ordered that if Mr. Etemadi did not advance \$250,000 to Ms. Maali within 30 days, the townhouse was to be sold pursuant to Rule 15-8(1) of the Supreme Court Family Rules to fund the distribution. He also granted Ms. Maali sole conduct of sale. On appeal, the appellants submit, inter alia, that the judge erred in ordering an interim distribution and sale in a (final) manner that impacts the interests of a third party to the family litigation.

Held: Appeal allowed in part. The judge's orders granting an interim distribution of \$250,000, and if not paid, for the sale of the townhouse within 30 days, are upheld. The order granting sole conduct of sale to Ms. Maali is set aside. The judge did not err in his analysis of harm and necessity in finding that an interim distribution was appropriate under s. 89, nor in ordering the sale of the townhouse as necessary to fund the distribution. Courts may order a sale under Rule

15-8(1) even where it impacts the interests of third parties if it is necessary or expedient that the property be sold. As to the quantum of the distribution ordered, courts are to determine what is necessary to fund dispute resolution in light of the issues to be determined and the apparent value of the family property. In this case, the judge's assessment was discretionary and is owed deference on appeal. However, the judge erred in granting sole conduct of sale to Ms. Maali without any such application from her and without justification of her inability to cooperate with Dr. Etemadi regarding the sale.

Dissent: Butler J.A. dissents on the quantum of the distribution and would substitute the figure of \$125,000. The judge did not undertake the requisite analysis to determine the amount necessary to fund the litigation within the strict parameters of s. 89, under which distributions are extraordinary in nature and must be assessed carefully. The judge further drew inferences and resolved contested issues in a manner beyond that which was appropriate on the application before him. The \$250,000 ordered was disproportionate in the circumstances of the case.

Table of Contents

Introduction

[1] - [4]

Background and Reasons

[5] - [22]

Subsequent Events

[23] - [26]

Issues

[27]

Positions of the Parties

[28] - [39]

Discussion and Analysis

[40] - [108]

REASONS FOR JUDGMENT OF THE HONOURABLE MADAM JUSTICE DICKSON

[113] - [120]

Reasons for Judgment of the Honourable Mr. Justice Butler:

Introduction

- [1] Koorosh Etemadi ("Mr. Etemadi"), one of the appellants, and the respondent, Mehrsa Maali ("Ms. Maali"), are engaged in what has been described as "fiercely contested" family litigation. They are scheduled to proceed to trial for 15 days in February 2022. At issue in this appeal is an order for an interim distribution of property made pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], in the amount of \$250,000 (the "Order"), to fund Ms. Maali's legal costs. If the distribution was not paid, the Order included a term that would require the sale of the former family home--a townhouse on Homer Street in Vancouver (the "Townhouse")--in order to provide the necessary funds. The Townhouse is registered solely in Mr. Etemadi's name but he and his father, Daryoush Etemadi ("Dr. Etemadi"), maintain that Dr. Etemadi holds a 50% beneficial interest in it.
- [2] Ms. Maali's application was heard in chambers in November 2020. The judge concluded that it was in the interests of justice to order an interim distribution of \$250,000 in Ms. Maali's favour: 2020 BCSC 1908 (the "Reasons"). Under the terms of the Order, if Mr. Etemadi did not advance the funds to Ms. Maali within 30 days, the Townhouse was to be sold, with Ms. Maali having conduct of sale. Of the net proceeds of sale, \$250,000 would be paid to Ms. Maali to satisfy the interim distribution and the balance would be held in trust by Mr. Etemadi's solicitors.
- [3] In January 2021, Mr. Etemadi and Dr. Etemadi (together, the "appellants") sought leave to appeal the judge's interim distribution order and the order for sale. Justice Gomery stayed the order for sale pending the outcome of the leave applications, which were granted by a judge of this Court in March 2021.
- [4] For the reasons below, I would allow the appeal in part.

Background and Reasons

- [5] Mr. Etemadi and Ms. Maali were married in Tehran in 2006. They separated in 2016 and have no children together. In 2017, Mr. Etemadi commenced an action for divorce and the division of family property. Ms. Maali filed a response and counterclaim seeking spousal support and joining Mr. Etemadi's parents, Dr. Etemadi and his wife, Soheila Samimi, alleging that a condominium owned by Ms. Samimi in Vancouver (the "Strathmore Mews condominium"), the Townhouse, and a condominium in Malaysia are family property in which she is entitled to share. Mr. Etemadi maintains that the only family property of any significance is the Townhouse. Ms. Maali disputes the appellants' contention that Dr. Etemadi holds a 50% beneficial interest in the Townhouse. The matter was set for trial for three weeks in September 2019 but has been adjourned twice.
- [6] Ms. Maali applied for an interim distribution of property pursuant to s. 89 of the FLA to fund her litigation expenses. The order she sought would require the sale of the Townhouse unless Mr. Etemadi was able to borrow the requisite funds. Ms. Maali submitted that a compensation order in her favour is inevitable at trial and that an interim distribution was

necessary to level the playing field between the parties during the litigation. Mr. Etemadi, who was unemployed and residing in the Townhouse with his new partner and their two young children when the application was heard, said he would suffer irreparable harm if it was ordered to be sold before the trial. Dr. Etemadi did not consent to the sale or refinancing of the Townhouse and objected to an order for sale which affected his third party interest therein.

[7] Section 89 of the FLA provides:

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.

[Emphasis added.]

[8] The judge found that this required him to address, in accordance with this Court's guidance in *Bartch v. Bartch*, 2018 BCCA 271, the following issues: (1) whether the interim distribution sought related to family property; (2) whether the interim distribution would harm Mr. Etemadi's interests; (3) whether an interim distribution was necessary to fund resolution of the dispute; and (4) whether such an order would be in the interests of justice: Reasons at para. 10. The judge discussed the purpose of s. 89, which is to assist economically disadvantaged spouses access to justice in matrimonial disputes or otherwise 'level the litigation playing field' (citing *Bartch* and *I.F. v. R.J.R.*, 2015 BCSC 793 at para. 192).

[9] In this case, the family property at issue was real property which Ms. Maali sought to convert into funds for an interim distribution by way of a court-ordered sale or loan. The judge noted that a sale must be "necessary or expedient" in accordance with Rule 15-8(1) of the Supreme Court Family Rules:

- (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.

[Emphasis added.]

[10] The judge found that factors to be taken into account in the exercise of the court's discretion under Rule 15-8(1) include whether the sale will promote early settlement; whether the sale will defeat a spouse's claim for reapportionment; and whether the sale is inevitable or whether a spouse might be able to retain the property on a division of assets, citing *G.J.U. v.*

J.L.U., 2017 BCSC 1352 at para. 57. The judge also found that while Rule 15-8 expressly authorizes a court-ordered sale, it does not authorize a loan. While there was some trial court authority in which interim distributions were ordered to be funded by a refinancing of real property, the court's jurisdiction to do so was unclear: Reasons at paras. 15-16.

Is the Townhouse "family property"?

- [11] Turning to the issues identified above, the judge first considered whether the Townhouse and the Strathmore Mews condominium were family property for the purposes of Ms. Maali's application. He noted that Mr. Etemadi purchased the Townhouse in 2009, during the marriage, for \$878,000; its assessed value in 2020 was \$2,046,000. While the increase in value would "on the face of it" be family property, the judge found that it was not to the extent that it is held in trust for Dr. Etemadi. Though title was taken in Mr. Etemadi's name, he and his father signed (and later registered with a notary) a 50:50 co-ownership agreement before purchasing the Townhouse. On this basis, the judge concluded:
- [21] Because Mr. Etemadi Sr.'s claim to a 50% interest in the Homer St. Property is supported by a notarized contemporaneous co-ownership agreement, for the purpose of this application, I find that only Mr. Etemadi's 50% interest should be considered as family property for the purpose of an interim distribution pursuant to s. 89 of the FLA. It is subject to a claim that all or a part of the initial purchase price is excluded property pursuant to s. 85(1)(a) of the FLA, but that claim would not extend to at least \$550,000 (50% of the increase in value of at least \$1.1 million).

[Emphasis added.]

- [12] Ms. Samimi holds title to the Strathmore Mews condominium in trust for herself and Dr. Etemadi. Ms. Maali claimed that this property was purchased as a marriage gift to her and Mr. Etemadi and that they renovated and lived there from 2008-2009. However, given the absence of any evidence to substantiate a legally valid gift, the judge did not consider the Strathmore Mews condominium to be family property for the purposes of the application for an interim distribution.

Will an interim distribution harm Mr. Etemadi's interests?

- [13] Mr. Etemadi submitted that an interim distribution would be harmful to his interests pursuant to s. 89 for a number of reasons. If the Townhouse is sold, his family would lose its home and have to pay capital gains tax. He also argued that Ms. Maali may be entitled to a distribution of less than \$250,000 at the conclusion of the trial, based on his claims for the repayment of interim support and related to property she allegedly stole.
- [14] As of the time of the application, Ms. Maali was living in a rented two-room basement suite shared with a university student, "a situation very much to Mr. Etemadi's advantage": Reasons at para. 29. The judge found that unless Mr. Etemadi is able to raise funds to buy Ms. Maali out, the property would have to be sold in any event:

[29] Bearing in mind that the trial has already been adjourned twice, it is not harmful to Mr. Etemadi's interests, within the meaning of s. 89, that the moment of decision should arrive today rather than at the conclusion of the trial when it eventually takes place.

[15] With regard to Mr. Etemadi's claims that Ms. Maali may be entitled to a distribution of less than \$250,000, the judge noted that parties lived "very comfortably" during their marriage and raised questions about Mr. Etemadi's role as a board member and director of a medical imaging centre in Iran. Despite his and his parents' involvement in this company, they listed only real property in Canada and debt secured against that property in their financial disclosure statements:

[54] In sum, for the past 11 months, in the face of repeated requests, all of the respondents have resisted producing documents that would shed light on the presence or absence of Iranian assets and income belonging to Mr. Etemadi. They have offered no explanation for their failure to make this information available. I draw an adverse inference that full and proper responses would assist Ms. Maali in the litigation.

[Emphasis added.]

[16] The judge referred briefly to evidence presented by Mr. Etemadi about his back problems and his father's assistance in paying for his medical insurance. The judge did not examine the evidence presented or express any view on the nature and extent of Mr. Etemadi's disability. He concluded that despite his health problems, Mr. Etemadi was "not living the life of someone who is suffering financial difficulty", and that:

[57] It is plausible that he has undisclosed sources of income and is not simply surviving on loans from a benevolent parent. On this record and for the purpose of this application, I find it likely that financial resources and income will be imputed to him at trial, and his application for the return of spousal support paid on an interim and without prejudice basis will fail.

[Emphasis added.]

[17] He concluded that it was unlikely that an interim distribution limited to 50% of the apparent value of Mr. Etemadi's interest in the Townhouse (i.e., after accounting for Dr. Etemadi's 50% beneficial interest) would harm Mr. Etemadi's interests within the meaning of s. 89 of the FLA.

Is an interim distribution 'necessary' to fund resolution of the dispute?

[18] The judge noted that since the separation in 2016, Ms. Maali claimed that she has been reduced to a "hand-to-mouth" existence. She is employed as a part-time instructor at LaSalle College, earning \$20,000 annually, and was dependent on spousal support before Mr. Etemadi stopped paying in 2020. The judge noted:

[61] If Ms. Maali is correct, there is a gross imbalance of resources between the parties because Mr. Etemadi is generously supported by his parents and there are grounds for suspicion that he has access to undisclosed assets of his own.

He later declined to find, as alleged by Mr. Etemadi, that Ms. Maali has undisclosed assets and properties in Iran.

[19] The judge found that Ms. Maali should be able to pursue her case under a reasonable fee agreement, with counsel of her choice. He noted that, in this expensive litigation, the estimated cost of taking the case through trial of \$250,000 was a "reasonable, high-level estimate, with some room for manoeuvre". He concluded that the imbalance in the parties' resources made an interim distribution necessary to fund resolution of the dispute, to avoid financial pressure placing Ms. Maali at an "unfair disadvantage" in the litigation: Reasons at paras. 63, 68.

Is it necessary or expedient that the property be sold to fund the distribution?

[20] To the extent that an interim distribution was appropriate, the judge found that it made the sale of the Townhouse necessary unless an alternate means of funding the distribution could be found. He dismissed the "obvious alternative" of borrowing money against the security of the Townhouse, finding that despite obvious advantages to borrowing for the Etemadi family:

[71] I do not think that I can order Mr. Etemadi to refinance the Homer St. Property by borrowing money from a third party against mortgage security. Assuming that the Court's inherent jurisdiction extends to making such an order in some circumstances, in this case, the mortgage would prejudice Mr. Etemadi Sr.'s beneficial interest in the property.

[72] Mr. Etemadi Sr.'s beneficial interest is not an obstacle to an order for sale, because Mr. Etemadi Sr. could receive everything he was entitled to from the net proceeds of sale.

[73] I think it is entirely possible that Mr. Etemadi Sr. would prefer to lend the funds required for an interim distribution, rather than see the Homer St. Property sold at this time. If he were to do so, his beneficial interest in the property would increase to the extent of the loan and he would be secured to the extent of the loan.

What order is in the interests of justice?

[21] Lastly, "[h]aving established that the prerequisites to an interim distribution were satisfied", the judge considered the interests of justice in determining whether to make such an order. He emphasized the disadvantage faced by Ms. Maali:

- [75] ... She is litigating against three apparently well-funded adversaries in a case complicated by foreign elements and substantial uncertainty as to the facts. To make out her case, she requires full discovery that, to date, the respondents have been reluctant to provide. If she is to have a chance of success, either at trial or through the negotiation of a reasonable settlement, she requires energetic and capable legal representation. That costs money.
- [22] As to quantum, the judge dismissed the appellants' claims that the \$250,000 distribution sought was excessive and disproportionate, stating:
- [78] If the respondents are right, Ms. Maali will be wasting her own money by pursuing improvident litigation. She is in a much better position than the court to assess the risk she is running.

He held that it was too soon to say whether Ms. Maali's claims would fail at trial, but that the parties would not be well served by an interim order for a lesser amount that would "take the case to the brink of trial" but find Ms. Maali unable to afford to pursue her claims at trial: Reasons at para. 79. For these reasons, the judge ordered:

[81]

- a) Within 30 days, Mr. Etemadi will advance \$250,000 to Ms. Maali as an interim distribution of family property.
- b) The advance is without prejudice to the parties' rights and will be taken into account in the division of family property and debt at trial.
- c) If Mr. Etemadi Sr. loans to Mr. Etemadi the funds necessary for the advance, he will be secured for the loan by an equitable charge against Mr. Etemadi's interest in the Homer St. Property in priority to any interest claimed by Ms. Maali in this action.
- d) If Mr. Etemadi does not advance \$250,000 to Ms. Maali within 30 days, the Homer St. Property will be sold and Ms. Maali will have conduct of sale;
- e) For the purpose of effecting a sale, Ms. Maali or a realtor engaged by her may enter the Homer St. Property during daylight hours on weekdays and Saturdays on at least 48 hours' notice in writing or by email to Mr. Etemadi;
- f) Any sale of the Homer St. Property will be subject to court approval; and
- g) \$250,000 of the net proceeds of any sale of the Homer St. Property will be paid to Ms. Maali as an interim distribution of family property and the balance will be paid to and held in trust by Mr. Etemadi's solicitors, pending further order of the Court.

Subsequent Events

- [23] Mr. Etemadi has since moved out of the Townhouse, which has been listed for sale at \$2,198,000. On February 9, 2021, Justice Gomery stayed the portions of his order granting conduct of sale to Ms. Maali and ordering the Townhouse sold pending the outcome of the appellants' leave applications. As a result of the successful leave applications, the stay remains in effect.
- [24] At the hearing of the appeal, counsel for the appellant advised that the parties had recently appeared before Master Keighley, the case management judge, for three days to argue the parties' applications for further disclosure and were awaiting his decision. On May 27, 2021, two weeks after the matter was heard in this Court, counsel for Mr. Etemadi forwarded reasons for judgment of Master Keighley addressing the issue of disclosure. In detailed reasons released on May 25, 2021, Master Keighley dismissed Ms. Maali's claims for further document disclosure relating to a Malaysia condominium purchased and sold by Dr. Etemadi; the Strathmore Mews condominium; documentation relating to a property in Tehran and to the medical imaging company ("KDMIC") referenced above; financial statements from the parents; and others. In doing so, Master Keighley was critical of Ms. Maali's approach to the litigation and, in particular, in seeking disclosure. Referring to the oft quoted statement in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.) that "non-disclosure of assets is the cancer of matrimonial litigation", he observed that "opportunities for abuse arise not only on the "disclosing" side but also on the "requesting" side and this application may be seen, at least in part, as an example of the latter": at para. 2.
- [25] At the conclusion of his reasons, and after having dismissed the vast majority of Ms. Maali's applications for further disclosure, Master Keighley also dismissed her claim for fines against Mr. Etemadi and his parents, stating:
- [63] The respondent has been largely unsuccessful on her application, in part because it appears that, having received responses from the claimant and the parents prior bringing this application, that, for example, the documents sought do not exist, are not in their possession or control or are documents which she, herself, has in her possession, she nonetheless proceeded with it. If the goal of the respondent is, as I fear it may be, to conduct the prosecution of her claims in a way which maximizes the cost of this litigation for all parties in an attempt to achieve favourable results through emotional or financial attrition, that is not a goal which this Court should help her achieve.
- [Emphasis added.]
- [26] The appellants submit that these reasons are relevant to the extent that they address concerns of alleged non-disclosure referenced by Justice Gomery; provide a clearer position on "what matters still require further funds for the purposes of dispute resolution"; and because they were raised in Mr. Etemadi's factum on appeal. Ms. Maali takes the position that the disclosure reasons are not relevant to the appeals, as they were not in evidence on the application before Justice Gomery and were therefore not considered in the exercise of

his discretion. She says that the Court ought to consider the record before the judge to determine the appeals.

Issues

[27] On appeal, the appellants allege various errors by the chambers judge. I will describe these positions in more detail below. In my view, the issues on appeal are as follows:

1. Did the judge err in making an order for an interim distribution under s. 89 of the FLA?
2. If not, did the judge err in finding that a distribution of \$250,000 was necessary to fund resolution of the dispute?
3. Did the judge err in ordering the sale of the Townhouse pursuant to Rule 15-8(1) to fund the interim distribution, taking into account the impact of the Order on the rights of a third party; namely, Dr. Etemadi?
4. If the judge erred, what order should be made?

Positions of the Parties

[28] Mr. Etemadi and his parents filed separate factums, though their positions are closely aligned. Both appeals challenge the court's jurisdiction to order an interim distribution pursuant to s. 89 of the FLA (or sale pursuant to Rule 15-8(1)) where the orders impact the financial interests and/or property of a third party.

Mr. Etemadi

[29] First, Mr. Etemadi submits that s. 89 orders should not permanently affect the rights of third parties. He says that Part 5 of the FLA applies only to property division between spouses (in this case, him and Ms. Maali); s. 89 requires that an interim distribution not be "harmful to the interests of a spouse" and makes no reference to the interests of a non-spouse. As such, he argues that the legislature either did not contemplate, or expressly intended to exclude, interim distributions which affect third party interests. While the judge was alive to this issue--which is why he determined that only Mr. Etemadi's 50% interest in the Townhouse could be considered for the purpose of an interim distribution--he failed to consider whether "even that 50% interest was actually accessible for an interim distribution".

[30] Mr. Etemadi also says it is notable that s. 89 does not provide any power to order a party to obtain a mortgage or line of credit to fund interim distributions. Rather, it presumes an existing source of funds or family asset that can be distributed. He says that if Dr. Etemadi would be prejudiced by an order to borrow money against the Townhouse (as the judge found at para. 71), then he would clearly be prejudiced by a forced sale of the same asset.

- [31] As in the court below, Mr. Etemadi questions Ms. Maali's entitlement to the sum of \$250,000 once his claims are adjudicated. He also notes his own inability to pay an interim distribution, based on his back condition, limited assets, and substantial debt incurred in reliance on assistance from his family. He says the judge's conclusion that he was "not living the life of someone who is suffering financial difficulty" was apparently based on a previous lifestyle, prior to more recent medical expenses and the devaluation of the Iranian currency, among others. He notes that he has been unable to comply with the interim spousal support order and cannot get an application to vary set down. He says he has no means to finance further debt to pay out an interim distribution and that his parents' assistance ("with his basic needs for survival") should not have been found to lead to a gross imbalance of resources between the parties.
- [32] Mr. Etemadi says that the order, in essence, indirectly required a third party to pay the interim distribution, failing which the Townhouse would be sold. He submits that the judge failed to provide an analysis of why the sale of the Townhouse was necessary or expedient as it related to Dr. Etemadi's interests, nor to Dr. Etemadi's rights as distinct from his own. He argues that any doubts about the justice of an order for an interim sale should have been resolved in favour of the status quo.
- [33] Lastly, regarding the sole conduct of sale granted to Ms. Maali, he says she did not seek such relief and that he is the best person to manage the sale. He submits that the judge did not engage in any analysis before granting sole conduct to Ms. Maali despite her "less than 25% interest in" the Townhouse.

Dr. Etemadi

- [34] Dr. Etemadi alleges many of the same errors as Mr. Etemadi, focusing on his own third party interest in the Townhouse. He emphasizes that its sale was neither necessary nor expedient as it related to his interest and that the judge erred in requiring him, as a non-spouse, to effectively fund the interim distribution between the parties. He also says that the judge erred in granting Ms. Maali sole conduct of sale where no application had been made and there was insufficient evidence to justify such an order.
- [35] Dr. Etemadi submits that the scope of Part 5 of the FLA is limited to the determination of issues between spouses relating to "family assets". In this case, only the increase in value of Mr. Etemadi's one-half share of the Townhouse is family property and that portion of the Townhouse cannot be separated from the whole and sold. He further says that his support of Mr. Etemadi does not render his own assets "family property", and that orders made under Rule 15-8 and its predecessor are not intended to involve properties subject to third party claims such as his own. As argued before the judge, he wants to have the opportunity to buy out Ms. Maali's interest, as opposed to selling the Townhouse, once the parties' respective interests have been determined at trial.

Ms. Maali

- [36] Ms. Maali submits that the appellants conflate the judge's interim distribution order with the sale order, the latter of which is not 'interim' (as often referred to by the appellants) but rather a final order. She says that this also causes the appellants to conflate the different legal bases for the orders.
- [37] With respect to the judge's interim distribution order under s. 89, she says there is no dispute that the Townhouse is family property and that the appellants cannot show any reversible error in the judge's exercise of discretion. She submits that the amount of \$250,000 was "measured and appropriate" and a sum that was less than half the value of what all parties agree to be family property, i.e., 50% of the increase in the value of the Townhouse (totaling at least \$500,000). She also says that even if this Court sets aside the sale order, the interim distribution order should stand, characterizing the sale order as an "enforcement mechanism".
- [38] Regarding the order for sale, Ms. Maali says that even if Dr. Etemadi's claim to a 50% interest was proven, the court would still have the power to order the Townhouse to be sold. Under Rule 15-8, courts may order the sale of property in which a third party has an interest, citing *Judge v. Judge*, 2015 BCSC 1764. She submits that the judge did not err in exercising his discretion to order a sale, and that maintaining the status quo for one spouse may perpetuate injustice for another. As to the interests of Dr. Etemadi, she says it is significant that he does not live in the Townhouse, a factor relevant in other cases in which courts have declined to order the sale of property co-owned by a spouse and parent. As an investment, Dr. Etemadi assumed the risk that the Townhouse would have to be sold--despite his preference--by virtue of the realities of co-ownership. Moreover, his interest (if confirmed at trial) will be paid out from the proceeds of the sale held in trust by Mr. Etemadi's counsel.
- [39] Lastly, Ms. Maali submits that the judge did not err in granting her conduct of sale "in circumstances where the appellants cannot reasonably be expected to cooperate" and in a situation where the appellants have "every incentive to delay". However, she does not resist other procedural changes to the sale order.

Discussion and Analysis**Standard of review**

- [40] Orders made in family law cases are generally considered discretionary and the standard of review is deferential. To succeed on appeal, the appellants must show that there was a material error, a serious misapprehension of the evidence, or that the judge erred in law. In *Hickey v. Hickey*, [1999] 2 S.C.R. 518, the Court discussed the deference to be given to trial judges in relation to support orders:

[12] There are strong reasons for the significant deference that must be given to trial judges in relation to support orders. This standard of appellate review recognizes that the discretion involved in making a support order is best exercised by the judge who has heard the parties directly. It avoids giving parties an incentive to appeal judgments and incur added expenses in the hope that the appeal court will have a different appreciation of the relevant factors and evidence. This approach promotes finality in family law litigation and recognizes the importance of the appreciation of the facts by the trial judge. Though an appeal court must intervene when there is a material error, a serious misapprehension of the evidence, or an error in law, it is not entitled to overturn a support order simply because it would have made a different decision or balanced the factors differently.

[Emphasis added.]

[41] In *Van de Perre v. Edwards*, 2001 SCC 60, the Court clarified that the discretion afforded to trial judges extended beyond support orders and applies equally to all family law matters: at para. 14. In *H.S.S. v. S.H.D.*, 2018 BCCA 199, at para. 46, this Court confirmed that this standard of review is applicable to all family law cases including orders dealing with the division of family property.

[42] The standard of review is particularly deferential when considering a judge's exercise of discretion, as discussed in *A.A.A.M. v. Director of Adoption*, 2017 BCCA 110:

[6] In *Fleetwood v. Percival* 2014 BCCA 502, also a case involving family issues, we observed that where the judge was required to exercise her discretion, we will interfere with the exercise of discretion only where the judge acted on a wrong principle or failed to give sufficient weight to all relevant considerations: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3; *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561; and *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2. This standard is recognized with particular emphasis in cases in which leave to appeal a discretionary interlocutory order or an order made by a trial management conference judge is sought.

[Emphasis added.]

Analysis

[43] Division 3 of Part 5 of the FLA allows a spouse to apply to the Supreme Court for three types of interim orders: interim distributions of family property to fund dispute resolution, including litigation (s. 89); orders for the temporary exclusive occupation of a family residence (s. 90); and temporary restraining orders to protect against dispositions of property (s. 91). Section 88 authorizes such applications to be made "at any time before a final agreement or final order is made in relation to a family law dispute respecting property division." That such applications may be made before the final resolution of property issues explains why courts have urged a careful approach to s. 89 orders.

- [44] In I.F., Justice Ballance noted that a purposive interpretation of s. 89 is required within the context of the objectives endorsed by the FLA:
- [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.
- [Emphasis added.]
- [45] In McKenny v. McKenny, 2015 BCSC 1345, Justice Fitch (as he then was) ordered an interim distribution of \$150,000 based on funds available to be borrowed against two separate properties. At para. 57, he observed that the "claimant correctly notes that the order sought by the respondent is extraordinary in nature and must be assessed carefully." (My emphasis.)
- [46] In Bartch, Justice Saunders discussed the two requirements an applicant must meet before obtaining an order for an interim distribution under s. 89:
- [56] The first is that the distribution will not be harmful to the distributing party. The second is that the applicant needs money to fund the family law proceedings or pursue the resolution of the family dispute. Even where those conditions are met, the issuance of an interim distribution remains a discretionary exercise, as s. 89 provides that the court "may" make such an order. Consequently, in exercising his or her discretion under s. 89, a judge must consider whether, in the particular circumstances of the case, it would be in the interests of justice to grant the order sought.
- [47] In Bartch, the opposing spouse argued that no distribution should be made because she was relying on the existence, denied by the applicant, of a final separation agreement. This required Justice Saunders to consider how a court should approach the assessment of the merits of a triable issue in order to assess harm and necessity for the purpose of an advance distribution. She took guidance from Justice LeBel's comments in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71:
- [37] Although a litigant who requests interim costs must establish a case that is strong enough to get over the preliminary threshold of being worthy of pursuit, the order will not be refused merely because key issues remain live and contested between the parties. If the court does decide to award interim costs in such circumstances, it will in a sense be predetermining triable issues, since it will have to decide that one side will receive its costs before it is known who will win on the merits (and since the winner is usually entitled to costs). As a result, concerns may arise about fettering the discretion of the trial judge who will eventually be called upon to adjudicate the merits of the case. This in itself should not, however, preclude the granting of interim costs if the relevant criteria are met. As

Macdonald J. noted in *Organ*, supra, the court's discretion must be exercised with particular caution where it is being asked to predetermine an issue in this sense, but it does not follow that the court would be going beyond the limits of its discretion if it were to grant the order.

[Emphasis added.]

[48] Justice Saunders returned to the merits issue in considering the argument advanced by the opposing spouse that she would be harmed if she was required to distribute property that is not family property:

[73] This issue is much like the "final agreement" issue in that it cannot be determined at the interlocutory stage. In my view, whether an asset is family property is a question which, like the "final agreement" issue, should have been the subject of a preliminary merits assessment. For example, it would be an error to order property distributed that has only the most tenuous family property characteristics.

[49] Justice Saunders concluded her discussion of s. 89 with an explanation of its purpose and a caution regarding making orders that do not meet the "necessary" criterion:

[75] Section 89 is a special provision crafted to allow a financially disadvantaged spouse funds to participate in family dispute resolution by sharing in financial resources despite the parties' ultimate respective entitlement not having been determined. While sometimes this is referred to as 'levelling the playing field', I would describe this as a measure to further balanced participation in the dispute resolution processes. Every order under s. 89 entails a degree of risk the case will not turn out as expected, with prejudice to the distributing spouse. This special character demands careful application of the section, so to keep any distribution squarely within the parameters of s. 89.

[76] Where, as here, the evidence did not establish that all \$150,000 was "necessary" to fund family dispute resolution, all or part of a proceeding under the FLA, or obtaining information in support of such endeavours, the order went beyond the parameters of s. 89. In my view, it was an error of principle to make an order on the scale of the order appealed - the amount should have been kept to the amount accepted by the judge as necessary to allow the case to go forward.

[Emphasis added.]

[50] With a view to the live issues in this appeal, I would summarize the principles applicable to s. 89 interim distribution orders as follows. First, a chambers judge must determine whether the applicant is economically disadvantaged in relation to the prosecution of the litigation or otherwise in pursuit of dispute resolution. If so, then it may be appropriate to make an order that "levels the playing field" or provides for "balanced participation" in dispute resolution. Justice Saunders' reference to "balanced participation" is instructive because it emphasizes the need for an order that establishes or maintains some equality between the parties to the family litigation as to their ability to pursue dispute resolution. An order made under s. 89 should seek to achieve balance between the spouses (as opposed to parties by counterclaim),

as they are the parties contemplated within "the parameters of s. 89", to use Justice Saunders' language, and the property to be distributed is family property.

- [51] Second, in determining whether to order an interim distribution, a judge must go through a preliminary assessment of the circumstances and arguments that touch on both requirements: whether the applicant can show that it would not be harmful to distribute property and whether it is necessary for a purpose listed in s. 89. A preliminary assessment means determining whether the applicant can establish a "prima facie case of sufficient merit to warrant pursuit." Each issue that is raised with respect to necessity and potential harm must be examined contextually, with a view to the objectives endorsed in the FLA. As I will expand on later in these reasons, I am of the view that in making a preliminary assessment of the merits, a judge should not attempt to resolve hotly contested issues or draw inferences on conflicting affidavit evidence.
- [52] Third, whether an interim distribution is necessary for a purpose enumerated in s. 89 involves careful consideration of the amount or quantum required. This follows from the principle that such orders are extraordinary in nature and must be assessed carefully. As Justice Saunders noted, it is an error of principle to make an order that goes beyond the parameters of what is necessary under s. 89.
- [53] Finally, a judge must always exercise their discretion by deciding whether, in the particular circumstances of the case, it is in the interests of justice to grant the order sought.
- [54] With these principles in mind, I turn to consider the issues raised on this appeal.

Did the judge err in making an order for an interim distribution under s. 89 of the FLA?

- [55] As the judge was required to do, he undertook a preliminary assessment of the circumstances relevant to the two requirements for a s. 89 order: whether Ms. Maali had established that some distribution of family property to her was necessary; and whether such a distribution would harm Mr. Etemadi.
- [56] The judge had no difficulty in concluding that Ms. Maali was economically disadvantaged and thus in need of financial assistance to pursue dispute resolution. On the evidence before him, he concluded that she was "reduced to a hand-to-mouth existence" and that there was an imbalance in resources because of the support that Mr. Etemadi was receiving from his parents. The judge properly discounted the appellants' allegations that Ms. Maali may possess property in and have access to funds from Iran. Such allegations could not and should not have been resolved at this stage of the proceedings and on the basis of the challenging record, which included 16 affidavits containing argumentative assertions and conflicting evidence that made credibility a live issue.
- [57] The conclusion that Mr. Etemadi would not be harmed by an interim distribution was more challenging. After conducting a preliminary merits assessment regarding the existence of family property that might be available for distribution, the judge concluded that Mr. Etemadi's one-half interest in the increase in value of the Townhouse but not the Strathmore

Mews condominium should be considered family property for the purpose of the application. There is no basis on which these conclusions could be criticized and the appellants do not take any issue with them.

- [58] Instead, the appellants say that the judge should not have made an order for an interim distribution because a distribution based on Mr. Etemadi's half-interest in the Townhouse impacts or harms the interests of Dr. Etemadi. I would not accede to this argument.
- [59] As Ms. Maali argues, if the criteria of necessity and absence of harm are satisfied, then the provisions of s. 89 are met and such an order can be made, provided it is in the interests of justice and there is family property of sufficient value to do so. Here, the s. 89 order was made with a view to these considerations. While other judges may not have exercised their discretion in the same manner, in light of the difficulty that Mr. Etemadi may have in funding the interim distribution, I cannot say that the judge acted on a wrong principle or failed to give sufficient weight to relevant factors in determining that an interim distribution of some amount was appropriate. In that regard, I agree with Ms. Maali that the proper approach to s. 89 applications is to consider, first and separately, whether such an order should be made, as the judge did here. The issue about how Mr. Etemadi might fund the order is a secondary and separate issue.
- [60] I will return to the amount ordered below, but I am of the view that in considering the interests of justice, the judge properly took into account the question of how the interim distribution might be funded, including how it related to Dr. Etemadi's beneficial half-interest in the Townhouse. The judge considered Dr. Etemadi's interests in two ways. First, there was ample evidence from the appellants about Dr. Etemadi's willingness to support his son. With that in mind, the judge was reasonably of the view that it was "entirely possible" that Dr. Etemadi would prefer to lend funds for the interim distribution, which would correspondingly increase his beneficial interest in the property. The judge could also find support for this view from Dr. Etemadi's expressed intention (to both courts) that he may want to purchase Ms. Maali's interest in the Townhouse once the quantum of that interest was established at trial. Second, if it was necessary for Mr. Etemadi to raise funds for the interim distribution by selling his interest, Dr. Etemadi's beneficial interest would be protected through preservation of his share of the sale proceeds: Reasons at paras. 72-73. Again, while other judges may not have exercised their discretion in this way, I cannot say that the judge failed to consider relevant factors or acted on a wrong principle in deciding that an interim distribution was appropriate--even though the only family property of sufficient value to support a distribution was Mr. Etemadi's 50% interest in the Townhouse.
- [61] Mr. Etemadi also argues that the judge failed to give any effect to his submission that Ms. Maali may be entitled to something less than half of his half-interest in the increase in value of the Townhouse. It is clear from a review of the reasons that the judge did consider Mr. Etemadi's arguments but discounted them. While I am of the view that the judge ordered a distribution in an amount that is excessive, bearing in mind the cautious and careful assessment required in making interim distribution orders under s. 89, I would not give

effect to the appellants' submissions on whether an interim distribution was appropriate in the first place.

Did the judge err in finding that a distribution of \$250,000 was necessary to fund resolution of the dispute?

- [62] As I have already indicated, interim distribution orders under s. 89 are considered "extraordinary in nature". A court's discretion to make such an order "must be exercised with particular caution" and "assessed carefully". I would repeat Justice Saunders' caution in *Bartch*:
- [75] Every order under s. 89 entails a degree of risk the case will not turn out as expected, with prejudice to the distributing spouse. This special character demands careful application of the section, so to keep any distribution squarely within the parameters of s. 89.
- [63] In my view, while it was appropriate for the judge to make an order for interim distribution, the Order was made without exercising the caution or careful assessment required to determine what was "necessary" within the parameters of s. 89. As a result, the interim distribution he ordered was excessive in the circumstances of the case. I would find, as Justice Saunders did in *Bartch*, that the judge erred in principle in making an order on the scale appealed from. There are two reasons I would come to this conclusion. First, the judge improperly drew conclusions about highly contested issues of fact that were not directly before him for resolution. Second, the judge failed to exercise the requisite caution in determining the quantum of the interim distribution.
- [64] First, I would find that the judge went beyond his role in assessing or determining the merits of the case for the purposes of an application for an interim distribution. This can be seen with regard to two contested issues that the judge effectively "resolved" in Ms. Maali's favour when it was premature to do so. Specifically, he: 1) drew an adverse inference from the failure of Mr. Etemadi to make full disclosure of documents pertaining to alleged property and income that he might have in Iran; and 2) concluded that it was likely that Mr. Etemadi would have income imputed to him at trial.
- [65] At the time of the interim distribution application, there were two outstanding applications that had yet to be heard to consider these issues. Both had been deferred for some time. Mr. Etemadi was applying to vary the interim spousal support that had been ordered earlier in the proceeding; Ms. Maali was seeking further disclosure of documents from the appellants. Neither application had been heard and both were highly contested. Those applications were not before the judge on the application for the interim distribution. While it would have been appropriate for the judge to take note of the competing positions of the parties on those issues, it was not appropriate for him to effectively determine who would succeed on those applications. It should have been apparent to the judge that the resolution of those issues could have the effect of significantly limiting the issues for trial.

- [66] On the issue of Mr. Etemadi's income for spousal support, there was substantial, uncontradicted evidence about Mr. Etemadi's disability and inability to work. Mr. Etemadi stated that he suffered from debilitating degenerative disc disease, undergoing three surgeries (in Iran and Arizona) since 2017. He appended letters from his physicians in Iran, Vancouver and the Mayo Clinic in Arizona confirming his medical condition and attached MRI and radiological reports to demonstrate the progression of the disease. In 2019, he swore that he was on medical leave earning only 30% of his normal salary. In 2020, he swore that he was in "excruciating pain" 24 hours a day and was then unemployed. Mr. Etemadi also swore that he was borrowing funds from his father to provide for his new wife and children and to pay the ordered support to the respondent (which he stopped paying in June 2020).
- [67] Ms. Maali asked the judge to draw an inference that he must have undisclosed sources of income based on her statements about his travel and lifestyle. However, there was evidence from both Dr. Etemadi and Mr. Etemadi explaining how he was supporting his family and travelling to Arizona and Iran for medical treatment: his father was funding both. On the s. 89 application, the judge should not have gone so far as to make a finding (at para. 57) that income would likely be imputed to Mr. Etemadi. The risks in doing so prior to the hearing of Mr. Etemadi's application (or the determination at trial) to set aside or vary the interim spousal support order are evident. The trial or chambers judge who hears that application may be inclined to come to a different conclusion but feel constrained or limited by a previous "finding" that Mr. Etemadi should have income imputed to him.
- [68] I would make the same observation about the adverse inference the judge drew from an alleged failure to disclose documents: Reasons at para. 54. The application for disclosure had yet to be heard. It was not for the judge on the interim distribution application to draw such conclusions on a hotly contested issue that was not before him. In my view, by drawing an adverse inference that full and proper responses would assist Ms. Maali in the litigation, the judge again ventured into determination of an issue that was better left for the proper time and application. As I have already indicated, after a three-day application, Master Keighley came to very different conclusions on issues of disclosure.
- [69] Second, the judge did not conduct the requisite analysis to determine what amount was necessary to fund Ms. Maali's legal costs in the circumstances of this case. He accepted, without the "careful" analysis required under s. 89, counsel's estimate that costs would exceed \$250,000. In Ms. Maali's affidavit accompanying her application, she states that she was advised by her counsel that \$140,000 would be required to prepare for and attend 14 days of trial (with two lawyers attending). Other expenses included over \$55,000 for expert reports on the value of corporate interests and property in Canada, Iran and Malaysia, among others.
- [70] It is true that this is "fiercely contested" litigation, and that the parties' appear to suffer from an imbalance of resources. But in his consideration of necessity, the judge simply concluded that an interim distribution was necessary to fund litigation of the dispute through a full

trial on all issues, without adequate consideration of the amount that was necessary at this stage. As I have noted, Mr. Etemadi (supported by his father) has consistently denied the existence of assets or family property or a source of income outside of British Columbia. If there are no such properties (which will likely be known before trial), then much of the legal expense set out in Ms. Maali's very rough estimate will not be necessary to resolve the remaining claims. The judge was required to consider what amount was necessary for an interim distribution having regard to the issues for trial and the available evidence about the nature and value of family property including the possibility that some claims may lack real substance. This is a case in which both sides assert that the other is attempting to mislead the court and is hiding or fabricating evidence. In such a case, great care must be taken with respect to the risk that the case will not turn out as expected. It must be remembered that the purpose of the interim distribution is to promote balanced participation in dispute resolution. Assessment of the amount of the interim advance, as well as the need for one, should have been approached with caution to keep any distribution within the parameters of s. 89. Where there is a risk (as there was in this case) that one or both parties are pursuing positions in the litigation that may be seriously lacking in merit, a cautious approach would mean ordering an interim distribution of an amount that would allow for further exploration of issues, not an order that would effectively provide funding of legal expenses through a full trial.

- [71] Later, under the 'interests of justice' criterion, the judge considered whether a distribution was in the interests of justice and if so, in what amount. There, he noted the respondents' argument that the \$250,000 sought by Ms. Maali was excessive and disproportionate:
- [78] The respondents' submission that a \$250,000 interim distribution is disproportionate assumes that, except for the Homer St. Property, Ms. Maali's claims will fail. It is too soon to say whether that will happen. If the respondents are right, Ms. Maali will be wasting her own money by pursuing improvident litigation. She is in a much better position than the court to assess the risk she is running.
- [72] In my view, it is wrong in principle, when determining the amount of an interim distribution, to accept, without appropriate caution and careful assessment, the applicant's view of the case. What is necessary to fund dispute resolution within s. 89 does not depend on Ms. Maali's choice or her assessment of the risk. It is not enough to observe that a party "may be wasting her own money", but that if she wishes to do so, that is her choice. It must be remembered that the distribution is to fund dispute resolution, not litigation at any cost. To emphasize, s. 89 demands careful application to determine what is necessary, because of the extraordinary nature of the remedy. Given the starkly different views of the family property available for distribution, appropriate caution would suggest ordering a lesser amount, with a right to apply for a further distribution once the issues were better defined. As such, I agree with the appellants' characterization of the judge's approach to the amount of the interim distribution as based on a wrong principle or irrelevant considerations.

- [73] Distributions of the scale ordered may be appropriate in other circumstances depending on the value and nature of the family property and the issues to be considered in the litigation. However, where substantial interim distributions have been ordered, the circumstances have been very different from those in this case.
- [74] In *Nelson v. Woodward*, 2020 BCSC 399, the court ordered an interim distribution of \$200,000 after consideration of the precise estimate of the total required (\$197,048) to satisfy the spouse's existing legal obligations and proceed to trial. It was not unreasonable to expect the opposing spouse to borrow that amount against family property worth roughly \$1.6 million (a property not encumbered by a third party interest): at paras. 9-13, 33, 39. In *Bandpey v. Talebpourazad*, 2019 BCSC 2059, a judge ordered an interim distribution of \$200,000 in a complex case where the distributing spouse had net equity of over \$6,000,000 in multiple properties in Vancouver and elsewhere: at paras. 35, 38. In *Murtack v. Murtack*, 2019 BCSC 487, the master ordered a \$200,000 distribution in a complex case involving "several companies, different jurisdictions, and several real properties". The respondent controlled all of the family assets and admitted that the claimant's share of value in one company was at least \$2.4 million: at para. 70.
- [75] In other cases, interim distributions have been ordered for higher amounts, depending on the circumstances and the value of the assets in question. In *Negus v. Yehia*, 2015 BCSC 857, the judge granted an interim distribution of \$300,000 to be paid by a respondent with business assets over \$30 million: at paras. 5-7. In *Zhang v. Fan*, 2018 BCSC 2162, the judge granted an interim distribution of \$350,000 to be borrowed against a property worth in excess of \$2,000,000, and in circumstances where the claimant would "probably abandon [the] litigation" without an advance: at paras. 28-30. In *Devathasan v. Devathasan*, 2017 BCSC 1010, the judge ordered a \$400,000 interim distribution made from a bank account in the respondent's name that was frozen in "high conflict" proceedings, involving assets estimated to be worth \$50 million: at paras. 2, 157.
- [76] In this case, Mr. Etemadi's apparent financial position and income are nowhere near the levels seen in cases in which higher interim distributions were ordered. If Ms. Maali is unsuccessful in establishing the existence of undisclosed or additional family property, then the ordered interim distribution would effectively amount to a distribution of her entire share of the family property, or a majority thereof. It would be disproportionate given the parties' financial situations, including the limited family property and the parties' limited employment income. The fact that Mr. Etemadi is receiving financial support from his parents--while a factor in determining that there is an imbalance in their financial resources--does not mean that Mr. Etemadi should be required to make an interim distribution of what could be fully one-half of the family property.
- [77] In my view, the correct approach to interim distributions under s. 89 is to determine what is necessary to fund dispute resolution in light of the issues to be determined and the apparent value of the family property. A cautious approach would avoid making an order for an interim distribution of one-half of the apparent or undisputed family property. If the

appellants' position is correct, it would mean that the Order would effectively require Dr. Etemadi and Ms. Samimi to fund not only their legal costs but also those of Mr. Etemadi. This is because his legal costs will be similar in magnitude to those of Ms. Maali, and if the appellants' position is correct, he has no income or assets to fund his own legal costs. Such an order would create an imbalance in the parties' participation in dispute resolution.

- [78] In summary, I would conclude that the judge did not conduct the required analysis to determine, on careful application, the amount necessary to fund resolution of the dispute within the parameters of s. 89. Given the risks and uncertainty in the litigation, the scope of the order was disproportionate in the circumstances of this case. While interim orders generally attract a deferential standard on review, the judge did not adequately consider the amount necessary to fund dispute resolution within the strict parameters of s. 89. Rather, his order appears to have been based on wrongful principles or irrelevant considerations relating to Ms. Maali's ability to "wast[e] her own money by pursuing improvident litigation" or otherwise assess the risk she was running.

Did the judge err in ordering the sale of the Townhouse pursuant to Rule 15-8(1) to fund the interim distribution, taking into account the impact on the rights of Dr. Etemadi?

- [79] I have already indicated that I am of the view the judge took the correct approach when he considered whether Ms. Maali had satisfied the requirements of s. 89 before considering whether to order the sale of the Townhouse pursuant to Rule 15-8(1) in order to fund the interim distribution. In making the Order under s. 89, the judge had to decide whether it was in the interests of justice to order an interim distribution. It was at this "interests of justice" stage of the analysis that the judge was required to consider Dr. Etemadi's claimed interest in the Townhouse. This is because, to fund an interim distribution of the magnitude sought by Ms. Maali, it appeared necessary for the Townhouse to be sold.
- [80] In my view, the judge properly considered the impact of the Order on Dr. Etemadi's rights as a beneficial owner of the Townhouse. As discussed above, the Order requiring Mr. Etemadi to fund the interim distribution through the sale of the Townhouse (if it could not be paid through other means such as borrowing) was an exercise of discretion and was entitled to considerable deference. I would not intervene on appeal, as the judge took into account the relevant considerations, including the effect of a sale on Dr. Etemadi's interests.
- [81] This issue raises a similar question: whether Rule 15-8(1) can be relied on to order the sale of family property prior to a final distribution order where the property is partially owned by a third party. However, as that question must be considered after the determination is made under s. 89, the analysis is simplified.

- [82] This Court has not considered whether Rule 15-8(1) empowers a judge to order the sale of property in which a third party has an interest. Trial courts that have considered the issue seem to accept that the Rule does permit such orders. In Judge, Justice Fitch, as he then was, ordered the sale of property in which a third party held a minority interest: see paras. 366, 449-450.
- [83] In *Lit v. Lit*, 2018 BCSC 2023, Justice Skolrood ordered an interim distribution of half of the amount sought by the applicant in circumstances where there were allegations that property was held in trust for a non-party, but he did not order sale of the property in question to effect the distribution. In making the order, the judge observed that he had been directed to no cases where s. 89 orders were made where there were third party claims to the property in question. Nevertheless, there is nothing in *Lit* to suggest that Rule 15-8(1) does not permit orders for the sale of property in which a third party holds or alleges an interest.
- [84] I am of the view that a plain reading of Rule 15-8(1) leads to the conclusion that it is not limited to sales of property solely owned by one or both of the spouses. For convenience, I will set out again the relevant language of Rule 15-8(1):
- (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.

[Emphasis added.]

The language of the Rule makes it clear that the court may order a sale even though it impacts the interests of others--such as a person in possession or in receipt of rents, profits or income. The only requirement is that "in a family law case it appears necessary or expedient that the property be sold".

- [85] As the judge observed, the language of Rule 15-8(1) is disjunctive; an order for sale may be made where it is necessary or expedient. There is no requirement for a party seeking such an order to satisfy both. In this case, the judge rested his conclusion on the necessity of an order for sale to fund the interim distribution. He was of the view that this meant he did not need to consider whether the sale of the Townhouse was expedient, from the perspective of either Mr. Etemadi or Dr. Etemadi as co-owners. I would agree that the court may order a sale of property if the applicant can satisfy one or the other of the two prerequisites. This may be the case even where a sale is clearly not expedient to the parties, which this Court has interpreted to mean "advantageous": see *Reilly v. Reilly* (1992), 99 D.L.R. (4th) 47 (B.C.C.A.) at para. 35; *Tomic v. Tough*, 2013 BCCA 355 at para. 26. In this case, while a sale was clearly not advantageous from the appellants' perspective, it could be justified on the basis of necessity alone.

- [86] The effect of ordering a sale under Rule 15-8(1) as "necessary" to fund an interim distribution under s. 89 would seemingly allow orders for sale to be made respecting properties that are not fully "family property" without consideration of third party interests at stake. However, that is not correct, just as it is inaccurate to say that Dr. Etemadi's interests were not considered in this case. As I have explained, his interests were examined, as they should have been, as part of the "interests of justice" assessment under s. 89, given the likely means required to fund the interim distribution. It would not be possible to order a sale of property to enforce an interim distribution order without considering the interests of justice, which would necessarily include any impact such an order would have on third parties.
- [87] Further, when the judge considered whether the sale was necessary, he clearly looked at the issue of necessity of the sale for the purpose of the "family law case". Of course, Dr. Etemadi is a party to this family law case, and his interest in the Townhouse was taken into account in deciding whether the sale was necessary under Rule 15-8(1). The judge reasoned that even if the positions of the appellants regarding family property were successful at trial, the sale of the Townhouse would very likely be necessary to fund a compensation payment, based on the limited family property available.
- [88] I would agree with Ms. Maali's submission that when Rule 15-8(1) is used to order a sale to fund an interim distribution, the sale order is effectively an enforcement mechanism. To the extent that Dr. Etemadi might want to buy out Ms. Maali's interest, the Order facilitated that by giving him the opportunity to loan the money for an interim distribution pending the final court decision. In these circumstances, it cannot be said that Dr. Etemadi's interests were not considered.
- [89] The appellants also argue that "any doubts about the justice of an order for sale on an interim application should be resolved in favour of the status quo": *Bodo v. Bodo* (1990), 66 D.L.R. (4th) 700 (B.C.S.C.) at para. 21. While the status quo may be preferred in many situations, the circumstances before the court led to the conclusion that an interim distribution order was necessary given Ms. Maali's disadvantaged position. Again, this assessment goes to the core of the judge's exercise of discretion. As this Court observed in *Reilly*, "the status quo for one spouse may be the perpetuation of an injustice for another": at para. 35. The judge found that to be true in this case and I cannot say that he erred in reaching that conclusion.
- [90] The inevitability of a sale of the Townhouse was the key consideration in these circumstances. Dr. Etemadi says he may otherwise have attempted to maintain ownership of the Townhouse by buying out Ms. Maali, depending on the result at trial. To this end, the judge noted:

- [29] ... At the end of the day, unless he is able to raise funds to buy Ms. Maali out, the Homer Street Property will have to be sold. Bearing in mind that the trial has already been adjourned twice, it is not harmful to Mr. Etemadi's interests, within the meaning of s. 89, that the moment of decision should arrive today rather than at the conclusion of the trial when it eventually takes place.
- [91] I would agree with this observation. If Dr. Etemadi truly wishes to buy out Ms. Maali, I see no reason why he could not loan the money now to retain his interest in the property and avoid the sale. The terms of the Order provided an opportunity for him to do so, and the terms of the order I would make also provide that opportunity.
- [92] In summary, I am of the view that Rule 15-8(1) is not restricted to orders for sale of property wholly owned by one or both spouses. Rather, it may in some circumstances permit the sale of property which impacts the interests of a third party, even prior to trial. However, I would caution that it should be a rare case where such an order is made. Distribution of property should usually await determination of disputed facts at trial. This particular order was made because of the somewhat unique situation under which the s. 89 application was brought, combined with the fact that the third party who was impacted by the Rule 15-8(1) order was a party to the family litigation and it appeared inevitable that an order would be made for the sale of the Townhouse. That would be the case even if Mr. Etemadi succeeded in establishing that there was no other family property available for distribution. In light of these unusual circumstances, I cannot say that the judge acted on a wrong principle or failed to give sufficient weight to all relevant considerations in ordering the sale pursuant to Rule 15-8(1).

What order should be made?

- [93] I will briefly deal with other issues that require resolution to determine the order that I would make in this case.

Fresh evidence application

- [94] At the hearing of this appeal, Mr. Etemadi applied to admit fresh or new evidence on a number of issues, including evidence that he and his new family had moved out of the Homer Street property. The fresh evidence was presented in Mr. Etemadi's affidavit of February 3, 2021 that was sworn for the purpose of the disclosure application heard by Master Keighley in his role as case management judge. At the hearing of the appeal, counsel for Mr. Etemadi indicated that the only fresh evidence he sought to have admitted from that affidavit was correspondence from the Chief Operating Officer of KDMIC to support his position that he was not employed by that company and had no other involvement with it after November 2011. This was tendered to counter evidence that had been presented by Ms. Maali at the hearing of the application and to respond to the conclusions and inferences drawn by the judge (Reasons at paras. 49-51) that Mr. Etemadi was a "main shareholder" of KDMIC in the years after 2006, and that he probably did not leave that company for a

reduction in income.

- [95] I would not admit this fresh evidence as it does not meet the test set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759. In particular, it does not meet the second criterion, that the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in this case. As I have already emphasized, the application before the judge was not an application to determine outstanding disclosure issues nor make findings of fact about Mr. Etemadi's role in KDMIC and his employment income. The appellants had placed considerable evidence before the court below setting out their position in relation to his role with the company. While the proposed fresh evidence, which would have been available in some form at the time of the application, would have provided additional support for that position, the judge should not have purported to resolve those questions. I have already indicated that by weighing the evidence as he did, the judge went beyond his appropriate role on the application for an interim distribution pursuant to s. 89 of the FLA. As the judge should not have engaged with the merits of applications that were not before him, including the disclosure applications, this Court need not admit fresh evidence that could only be decisive or potentially decisive in relation to those other applications.

Can this Court refer to the disclosure decision of Master Keighley?

- [96] The appellants take the position that Master Keighley's ruling, and the reasons for it, are relevant to the issues on this appeal because they address questions of non-disclosure raised in paras. 52-63 of the Reasons; and that they are relevant to the proper quantum of any interim distribution under s. 89, as they serve to focus and clarify the issues remaining for dispute resolution. They also note that the disclosure application was outstanding at the time of hearing of the appeal. Ms. Maali says the issues on this appeal must be determined on the record before the court below because the judge exercised his discretion on the basis of that record.
- [97] I would agree with Ms. Maali that the questions on appeal are confined to a consideration of the judge's exercise of discretion based on the record before him. My conclusion that the judge erred in principle in making an interim distribution order of this scale in light of the circumstances was reached without considering Master Keighley's disclosure ruling. As I have expressed above, the Order was disproportionate in light of the nature and value of the family property, the dispute before the court, and the risk that matters may not turn out as expected. Further, the judge attempted to resolve issues that were not before him on the application.
- [98] However, having found that the judge erred in that regard, this Court must determine what the quantum of the interim distribution order should be. In the evolving circumstances of this case, I am of the view that it is necessary, and in the interests of justice, to consider Master Keighley's ruling. It is settled that courts have the jurisdiction to set aside or vary an order based on facts arising or discovered after an order was made. This includes having regard to orders made in related proceedings which clarify the record: see *Canada (Justice)*

v. Khadr, 2008 SCC 28 at para. 14; *Kaynes v. BP P.L.C.*, 2016 ONCA 601 at paras. 11-18. Here, Master Keighley's ruling clarifies the record to some extent, as it addresses disclosure issues that the judge considered in making the Order. My conclusion that the judge erred in drawing conclusions on disclosure issues in the manner he did (on the interim application before him) is underscored by the contrary conclusions reached by Master Keighley on many of the same issues. While Master Keighley's ruling may not be the final word on this issue in this case, it is further reason to exercise caution in setting the quantum of the interim distribution order in this case.

[99] In light of the foregoing, I have taken Master Keighley's ruling into account in determining the proper amount for an interim distribution. I have done so only insofar as that ruling serves to focus and clarify the issues remaining for dispute resolution. In other words, the ruling suggests that there remains a real risk that the only family property available for distribution is Mr. Etemadi's interest in the Townhouse; and that there may be no need for expert evidence to evaluate foreign real estate or business assets, and thus no need for a lengthy trial on those issues. I am not suggesting that those issues have been decided, merely that there is a realistic possibility that the appellants may establish their position on these issues.

Quantum of interim distribution

[100] Taking into account the relevant circumstances, I am of the view that the appropriate amount to order as an interim distribution to provide for balanced participation in dispute resolution is \$125,000. I arrive at this conclusion on the basis of the affidavit evidence presented by Ms. Maali of her estimated costs; the possibility that the issues will be narrowed based on Master Keighley's disclosure ruling; in light of the quantum of interim distributions granted in other cases; and the circumstances of this case, including that the parties' apparent financial positions do not merit an interim award that may ultimately amount to Ms. Maali's full entitlement after trial (or a majority thereof). I would find that \$125,000 is both necessary within the parameters of s. 89 and in the interests of justice in the particular circumstances before us, given the nature and value of the apparent family property.

[101] I also note that Mr. Etemadi argued in the alternative that if this Court were to uphold the previous interim distribution of \$250,000, he should also be granted an interim distribution to fund his own legal costs. I am of the view that it is not appropriate to consider this application for the first time on appeal in circumstances where it has not been considered by the court below. However, on the basis of the record before us, there is no reason why Mr. Etemadi could not advance such an application or receive an interim distribution of some amount out of the proceeds of the sale of the Townhouse. Accordingly, the order I would make is without prejudice to Mr. Etemadi's ability to apply in the court below for an interim distribution to fund his own legal expenses.

Order for sole conduct of sale

[102] In *Dhillon v. Khumar*, 2014 BCSC 2366, Master Keighley set out considerations relevant to orders for conduct of sale in family litigation:

[34] As to whether the claimant should be given sole conduct of sale, while there is no singular test for granting sole conduct of sale, the Court should consider all factors including the willingness of a party to facilitate sale, the inability of the parties to agree on routine aspects of sale and the inability of the parties to cooperate: *McLachlan v. McLachlan*, 2013 BCSC 1733.

[Emphasis added.]

[103] These considerations have been applied in many cases. In *Dosanjh v. Lalli*, 2021 BCCA 204, this Court set aside the approval of a non-arm's length sale to the respondent's parents and granted an order for joint conduct of sale. Justice Dickson made the order for joint conduct, with liberty to apply for directions and such further orders as may be necessary, because the evidence failed to establish that the parties could not cooperate with one another in connection with the court-ordered sale, particularly with the assistance of professional advisors: at para. 40.

[104] Trial courts frequently make orders for sale of property jointly held by spouses in acrimonious family disputes. Usually courts grant orders for joint conduct of sale because both parties have a profound interest in the terms of any sale. This is so even where there is evidence that the parties have difficulty in cooperating. For example, in *McClaughry v. McClaughry*, 2009 BCSC 501, at paras. 41-43, the court granted joint conduct of sale despite the husband's position that the sale could not proceed in an orderly fashion if a joint conduct order was made because the wife would not cooperate and would "take steps to block any timely sale". In *Kubas v. Kubas*, 2017 BCSC 81, at para. 81, the court ordered joint conduct of sale over the wife's objection. The judge noted that the husband's lack of cooperation related to separate issues of document disclosure, not the sale of property, and that he should be given the opportunity to cooperate in joint conduct of sale. Similarly, in *Steward v. Sanddar Estate*, 2020 BCSC 1898, at paras. 15-18, although not a family case, the court-ordered joint conduct of sale despite the petitioner's allegations that the parties could not cooperate.

[105] In my view, the judge erred in granting Ms. Maali sole conduct of sale in the circumstances of this case. First, to the extent there is evidence about some animosity between Mr. Etemadi and Ms. Maali, there is no evidence about Dr. Etemadi's inability to cooperate with her over the sale of property. While they may disagree as to ownership, this is contested litigation, and it would appear that Dr. Etemadi has a 50% interest in the Townhouse. The fact that Dr. Etemadi takes a position contrary to Ms. Maali does not mean that they cannot cooperate under a court order regarding the sale of the Townhouse. The judge does not adequately explain an evidentiary basis for excluding Dr. Etemadi, who appears to have the largest beneficial interest in the Townhouse, from having some say in a court-ordered sale

of that property.

[106] Second, I am of the view that it would be unjust, in the first instance, to deprive Dr. Etemadi of any say in the listing agent, price, other terms and conditions, or in considering whether to seek court approval for any offers ultimately received. It is usual to give spouses in family litigation the opportunity to work together, through an order for joint conduct of sale, and only if they are unable to do so, to grant sole conduct to one party on specific terms: see, e.g., McClaughry at para. 43; Kubas at para. 81; Dosanjh at para. 40. I would conclude that Dr. Etemadi should have been given that same opportunity in this case.

[107] Third, I would find that the Order is particularly problematic given that Ms. Maali never actually applied for sole conduct of sale. In an affidavit accompanying her s. 89 application, she merely stated that she believed both Mr. Etemadi and Dr. Etemadi were residing overseas and that she would therefore "be in the position to have conduct of sale". Without an application for sole conduct, the appellants were not given notice to put forward evidence on whether sole or joint conduct was appropriate in the circumstances. Despite this, the judge granted Ms. Maali sole conduct of sale (at para. 81) without adequate explanation or justification.

[108] In the circumstances, I am of the view that it would be unnecessary and inappropriate to give Mr. Etemadi conduct of sale as well as Dr. Etemadi given their similar interests. Further, if there is any likelihood of a lack of cooperation in dealing with an order for sale, it is more likely to be between Ms. Maali and Mr. Etemadi. Accordingly, I would order that Ms. Maali and Dr. Etemadi have joint conduct of sale. If they are unable to agree on issues arising during the sale process, they are at liberty to apply to the trial court for directions and such further orders as may be necessary to give effect to the order for sale, in the event that Mr. Etemadi is unable to raise the funds necessary to make the interim distribution of \$125,000.

Disposition

[109] In summary, I would allow the appeal in part. I would allow the appeal with respect to the quantum of the interim distribution required by paragraph 1 of the Order so that it provides:

1. Within 30 days of the pronouncement of this order, the Claimant will advance \$125,000 to the Respondent as an interim distribution of family property and debt.

[110] Paragraphs 2, 3, 6 and 8 of the Order are not varied. I would vary paragraphs 4 and 5 of the Order to state:

4. If the Claimant does not advance \$125,000 within 30 days, the Homer Street Property will be sold and the Respondent and the defendant by counterclaim, Daryoush Etemadi, will have joint conduct of sale.

5. If the Claimant and Daryoush Etemadi are unable to come to an agreement on specific terms of the joint conduct of sale, they may apply to the Supreme Court of British Columbia for directions and such further orders as may be necessary to give effect to this order.

[111] I would vary paragraph 7 of the Order to read:

7. The sum of \$125,000 from the net proceeds of sale of the Homer Street Property will be paid to the Respondent as an interim distribution of family property and the balance will be paid to and held in trust by the Claimant's solicitors, pending further order of the Court.

[112] In addition, I would add the following paragraph to the Order:

9. This order is without prejudice to the rights of the Claimant and the Respondent to apply for additional interim distributions pursuant to s. 89 of the Family Law Act.

"The Honourable Mr. Justice Butler"

Reasons for Judgment of the Honourable Madam Justice Dickson:

[113] I have had the privilege of reading the draft reasons for judgment of Justice Butler in which he has helpfully outlined the principles that apply on an application for an interim distribution of property brought pursuant to s. 89 of the FLA. I agree with his application of those principles on the questions of whether the judge erred in ordering an interim distribution of family property and the sale of the Townhouse, taking into account the rights of Dr. Etemadi. Like Justice Butler, I am of the view that the judge did not act on a wrong principle or fail to give sufficient weight to relevant factors in deciding that such orders were appropriate. I also agree that the questions on appeal are confined to a consideration of the judge's exercise of discretion based on the record before him and that based on that record, the judge erred in granting Ms. Maali sole conduct of the sale.

[114] However, I have reached a different conclusion on whether the judge erred by effectively resolving contested issues when it was premature to do so and by failing to exercise the requisite caution in determining the quantum of the interim distribution. In my view, he made no such error. Bearing in mind the significant deference that must be given to a judge's exercise of discretion in family law matters, I would not interfere with the quantum of the interim distribution order. As Justice Butler has described the facts, the parties' positions and the judge's reasons in detail, and as we differ only on the application of the relevant principles to the circumstances, my explanation for this conclusion will be brief.

[115] In my view, when the reasons are read as a whole it is apparent that the judge did not effectively resolve the hotly contested issues of who would succeed on the outstanding document disclosure application or whether Mr. Etemadi would have income imputed to him at trial. On the contrary, he confined his analysis to a preliminary assessment of both matters based on the record before him for the sole purpose of deciding whether to make an interim distribution order, as directed in *Bartch*: at para. 18. For example, he found only that it was "likely" Mr. Etemadi was held out as a main shareholder in KDMIC after 2006 and

"unlikely" that a contentious letter was a forgery "for the purpose of this application" based on the evidence placed before him: at para. 49. He also noted there was nothing in that evidence to explain Mr. Etemadi's purported decision to abandon KDMIC or the Etemadis' failure to make the disclosure repeatedly requested and apparently contemplated by a court order in drawing an adverse inference on the application: at paras. 51-54.

[116] Finally, and importantly, the judge summarized his preliminary assessment of the merits of the case in terms that were expressly directed at future "plausible" or "likely" trial findings, confined to the record and stated for the purpose of the interim distribution application:

[57] Despite his health problems, so far as the record discloses, Mr. Etemadi is not living the life of someone who is suffering financial difficulty. It is plausible that he has undisclosed sources of income and is not simply surviving on loans from a benevolent parent. On this record and for the purpose of this application, I find it likely that financial resources and income will be imputed to him at trial, and his application for the return of spousal support paid on an interim and without prejudice basis will fail.

[Emphasis added.]

[117] As to the judge's analysis of the quantum of the interim distribution, in my view it reflected an appropriate level of caution, bearing in mind the extraordinary nature of the remedy, as mandated in *Bartch*. It is also free of any error in principle. Although he acknowledged that Ms. Maali's claim was not limited to the Townhouse, he cautiously focused on her likely entitlement to that property alone, which was largely uncontroversial. He also based his consideration of the cost of proceeding to trial on the only estimate provided to him on the application: at paras. 25, 75-78. In my view, it is notable in this regard that Justice Saunders was critical of the quantum ordered in *Bartch* on the basis that it did not align with the evidence on the amount required to complete the trial, which she treated as an appropriate basis upon which to quantify the interim distribution order that was made: *Bartch* at paras. 74-77.

[118] In this case, the judge considered, but rejected, the solution favoured by my colleague to balance the parties' participation in the dispute resolution process, namely, ordering an amount sufficient to move the litigation forward toward resolution, but less than that required to complete a full trial. As he explained, on balance, he thought an order that gave the parties more to argue about and offered the Etemadis an opportunity to practice "funding brinksmanship" would not serve them well: at para. 79. While I agree with Justice Butler that the order he favours would represent a justifiable exercise of discretion, bearing in mind the limited scope of appellate review and given the state of the record, including the hard-fought nature of this litigation, in my view it was open to the judge to make the judgment call on quantum that he did. Accordingly, I would not interfere with this aspect of the Order.

[119] For these reasons, I would dismiss the appeal except to the extent of varying paragraphs 4 and 5 of the Order to state:

4. If the Claimant does not advance \$250,000 within 30 days, the Homer Street Property will be sold and the Respondent and the defendant by counterclaim, Daryoush Etemadi, will have joint conduct of sale.
5. If the Claimant and Daryoush Etemadi are unable to come to an agreement on specific terms of the joint conduct of sale, they may apply to the Supreme Court of British Columbia for direction and such further orders as may be necessary to give effect to this order.

[120] I would also add the following paragraph to the Order:

9. This order is without prejudice to the rights of the Claimant and the Respondent to apply for additional interim distributions pursuant to s. 89 of the Family Law Act.

"The Honourable Madam Justice Dickson"

I AGREE:

"The Honourable Mr. Justice Harris"

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/ca/21/02/2021BCCA0298.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/etemadi-v-maali-2021-bcca-298>

Prepared on 29 October 2026 · Esheria