

CANADA / JUDGMENT

Feuerhelm v. Morin

2024 BCSC 1619

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Supreme Court of British Columbia

DECIDED

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2024 BCSC 1619 Feuerhelm v. Morin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Feuerhelm v. Morin,

2024 BCSC 1619

Date: 20240904

Docket: E02678

Registry: Abbotsford

Between:

Linda Christine Feuerhelm

Claimant

And

Ryan David Morin

Respondent

Before: The Honourable Justice Francis

Reasons for Judgment

Counsel for the Claimant:

D.R. Thompson

Counsel for the Respondent:

K. Groves

Place and Date of Trial:

Port Coquitlam, B.C.

July 9-11, 2024

Place and Date of Judgment:

Abbotsford, B.C.

September 4, 2024

Introduction

- [1] Ms. Feuerhelm and Mr. Morin started dating in late June 2015. By August 1, 2015, they had moved in together. They separated in late December 2021.
- [2] In July 2016, the couple signed a cohabitation agreement (the "Agreement"). The Agreement was precipitated by Mr. Morin purchasing a new home, located at 20502 Deniza Avenue in Maple Ridge (the "Deniza Property"), in which both parties intended to live, along with Mr. Morin's two daughters.
- [3] The Agreement clearly stipulates that the Deniza Property is separate property, and that neither party will assert any right or interest in the other party's separate property.
- [4] The Deniza Property, like most properties in the lower mainland, has significantly increased in value since 2016. Ms. Feuerhelm seeks to have the growth in the value of the Deniza Property treated as family property, notwithstanding the Agreement. Mr. Morin submits that the Agreement is clear on its face, enforceable, and leaves Ms. Feuerhelm without any interest in the Deniza Property whatsoever.

Issues

- [5] In her notice of family claim, Ms. Feuerhelm pled that the Agreement should be set aside because it is flawed, is substantially unfair, and was drafted without the benefit of legal advice. At trial, Ms. Feuerhelm asserted that the Agreement should be set aside because of inadequate disclosure, because Ms. Feuerhelm was mistaken about the terms of the Agreement when she executed it without receiving legal advice, and because her signature was not witnessed.
- [6] I have considered all the bases advanced by Ms. Feuerhelm for setting aside the Agreement. For the reasons that follow, I am satisfied that the Agreement is valid and enforceable. Therefore, her claim must fail.

Background Facts

- [7] Ms. Feuerhelm is 43 years old. She has one daughter, Kya, who was living with her full-time when she moved in with Mr. Morin in the summer of 2015. Kya was 14 years old when she and her mother moved in with Mr. Morin. She is now 22.
- [8] Mr. Morin is also 43. When the parties met, he had two daughters from a prior relationship. His daughters were 6 and 8 at the time. They are now 15 and 17. When the parties moved in together, Mr. Morin's daughters lived with them half time.
- [9] In the summer of 2015, Mr. Morin and his children were living in a home located at 2552 Burian Drive in Coquitlam (the "Burian Property"). The Burian Property was the former family home of Mr. Morin and his ex-wife. When Ms. Feuerhelm first moved into the Burian Property, on the agreement of both parties, she paid rent of \$1,000 a month.
- [10] When Mr. Morin and his ex-wife resolved the financial issues in their divorce, the Burian Property needed to be sold so that its equity could be divided. As part of the settlement of his divorce, Mr. Morin received approximately \$140,000 from the sale of the Burian Property.
- [11] Mr. Morin purchased the Deniza Property with the proceeds he received from the sale of the Burian Property. The occupancy date for his purchase of the Deniza Property was July 16, 2016.
- [12] Mr. Morin and Ms. Feuerhelm signed the Agreement on the same day that they moved into the Deniza Property.
- [13] The Agreement contains the following provisions relating to property:
1. The Parties acknowledge that with respect to any determination of ownership of property that may occur in the event of the Parties separating, or upon the death of a Party, all property will be treated as property owned solely by either one of the Parties (the "Separate Property") unless there is proof of shared legal ownership, with the property as is listed in the attached Schedules "A1" and "A2" considered Separate Property.
 2. Any Separate Property owned by a Party will be and remain property of that Party and the other Party will have no rights and interests in that property.
 3. All jointly acquired or jointly held property, however and whenever acquired, will remain the property of and be owned by both Parties and will be treated as shared property (the "Shared Property").
- [14] Schedule "A1" lists the following Separate Property of Mr. Morin: "1. Home (20502 Deniza Avenue); 2. Car (VW Jetta); 3. Property owned by Ryan prior to relationship."

- [15] Schedule "A2" lists the separate property of Ms. Feuerhelm: "1. Property owned by Linda prior to relationship; 2. Car (VW Golf); 3. Production office equipment; 4. FS-700 + lenses." The last two items on Schedule A2 were handwritten in by Ms. Feuerhelm and initialed by both parties prior to the Agreement being signed.
- [16] The Agreement is signed by both Mr. Morin and Ms. Feuerhelm. Mr. Morin's signature appears to have been witnessed by Joe Morin and Wendy Morin, who are Mr. Morin's parents. Ms. Feuerhelm's signature appears to be witnessed by Joe Morin.
- [17] Neither party received independent legal advice before executing the Agreement.
- [18] After the parties moved into the Deniza Property, Ms. Feuerhelm began paying \$800 in monthly rent. She testified that there were months where she paid more than this, and months where she didn't pay rent at all. She testified that she contributed as much as she could, and that the amount of money she paid to Mr. Morin by way of rent or contribution to household expenses was at her discretion and in her control. She reduced her rent when she went back to school, as well as when she leased a horse, on the basis that she was unable to afford to pay full rent to Mr. Morin as a result of these other expenses.
- [19] In late 2019 or early 2020, Ms. Feuerhelm opened a stock portfolio using, in part, \$20,000 she had received from a human rights complaint settlement. That portfolio reached a value of \$50,000 by February 2021. Ms. Feuerhelm used a large portion of these funds to pay for her accommodation in Prince Rupert after she moved there in the fall of 2021.

Credibility and Reliability

- [20] Because there are differences in the parties' versions of events with respect to material issues, including the circumstances under which the Agreement came to be and the presence of Joe Morin as a witness to Ms. Feuerhelm's signature on the Agreement, I must consider the credibility and reliability of each witness.
- [21] Credibility and reliability are distinct concepts. Credibility involves considering whether a witness is telling the truth; reliability concerns a witness' ability to accurately recall past events.
- [22] It is important for the Court, in assessing credibility, not to rely solely on the personal demeanour of interested witnesses. To determine credibility, courts must consider whether the witnesses' evidence is consistent with "the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at 357.

- [23] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, Madam Justice Dillon summarized the various factors a court must consider when conducting a credibility analysis. These factors include the witness' ability to observe events, the witness' firmness of memory, the reasonableness of the witness' evidence, harmony with independent evidence, the consistency of the witness' own sworn evidence over time, and any motivation the witness may have to lie: at para. 186.
- [24] Ms. Feuerhelm was a difficult witness. She was argumentative and was often non-responsive in her answers. She frequently answered counsel's questions with questions of her own. She tended to overstate her evidence, and then modify it when faced with documentary evidence that contradicted her previous testimony. For example, she initially denied that she and Mr. Morin had a conversation in December 2015 about a "prenup," but then amended her evidence when presented with a text exchange wherein she proposed this to Mr. Morin. Also, she testified in direct examination that she did not see the Agreement until she was required to sign it in mid-July 2016. On cross-examination, counsel presented her with an email from Mr. Morin wherein he sent her a draft of the Agreement on June 28, 2016. In response, Ms. Feuerhelm initially testified that, while it was possible that she received the draft, she does not necessarily read her emails. She later admitted that she did receive the draft of the Agreement on June 28, 2016.
- [25] Mr. Morin, on the other hand, gave measured and clear answers to questions on direct and cross-examination. His evidence, unlike the evidence of Ms. Feuerhelm, was entirely consistent with the documents in evidence.
- [26] I have sought to consider the evidence surrounding each contested fact on its own terms, as discussed below. However, where the evidence of Ms. Feuerhelm and Mr. Morin conflicts, I have, for the most part, preferred the evidence of Mr. Morin.

Statutory Framework

- [27] Section 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], provides that each spouse has the right to an undivided half interest in all family property "[s]ubject to an agreement or order that provides otherwise and except as provided in this Part and Part 6". Section 81 is contained within Part 5 of the FLA which addresses property division. Sections 92-94 deal with agreements respecting the division of property and debt:

Agreements respecting property division

92 Despite any provision of this Part but subject to section 93 [setting aside agreements respecting property division], spouses may make agreements respecting the division of property and debt, including agreements to do one or more of the following:

- (a) divide family property or family debt, or both, and do so equally or unequally;

- (b) include as family property or family debt items of property or debt that would not otherwise be included;
- (c) exclude as family property or family debt items of property or debt that would otherwise be included;
- (d) value family property or family debt differently than it would be valued under section 87 [valuing family property and family debt].

Setting aside agreements respecting property division

93 (1) This section applies if spouses have a written agreement respecting division of property and debt, with the signature of each spouse witnessed by at least one other person.

- (2) For the purposes of subsection (1), the same person may witness each signature.
- (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
 - (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- (4) The Supreme Court may decline to act under subsection (3) if, on consideration of all of the evidence, the Supreme Court would not replace the agreement with an order that is substantially different from the terms set out in the agreement.
- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
 - (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;
 - (c) the degree to which the spouses relied on the terms of the agreement.
- (6) Despite subsection (1), the Supreme Court may apply this section to an unwitnessed written agreement if the court is satisfied it would be appropriate to do so in all of the circumstances.

Orders respecting property division

94 (1) The Supreme Court may make an order under this Division on application by a spouse.

(2) The Supreme Court may not make an order respecting the division of property and family debt that is the subject of an agreement described in section 93 (1) [setting aside agreements respecting property division], unless all or part of the agreement is set aside under that section.

[28] The interplay between the above sections can be summarized as follows: Equal division of family property is the norm under our FLA, but ss. 81 and 92-94 of the FLA provide that the parties can make agreements that displace equal division. In particular, s. 94(2) provides that the court may not divide property that is the subject of a written, signed and witnessed agreement unless it is first set aside under s. 93. If an agreement is set aside under s. 93, then the presumption of equal division governs. Subsections 93(3)-(5) provide for the circumstances under which a signed and witnessed agreement may be set aside. Subsection 93(6) provides that, despite s. 93(1), the court may set aside a written but unsigned and/or unwitnessed agreement if the court is satisfied it would be just to do so. In addition, s. 95(2) (b) permits the court to consider "the terms of any agreement between the spouses, other than an agreement described in section 93 (1)" in making an order for unequal division based on significant unfairness.

Was the Agreement witnessed?

[29] Ms. Feuerhelm asserts that Joe Morin did not witness her signature on the Agreement. She testified that there was no witness present when she signed the Agreement and that, to the extent that Joe Morin signed his name as witness next to her signature on the Agreement, he must have done so some time after she signed. Both Joe Morin and Mr. Morin testified that Joe Morin was present and witnessed Ms. Feuerhelm sign the Agreement.

[30] I am satisfied, based on the testimony of Mr. Morin and his father, that Joe Morin did indeed witness the Agreement. As discussed, Ms. Feuerhelm proved herself to be an unreliable witness on a number of facts relating to the Agreement, including the fact that she and Mr. Morin discussed the Agreement before it was drafted and the fact that she was sent a draft of the Agreement 17 days before it was signed. The frailties of her memory are such that I cannot have confidence that she is reliable, in the face of contrary evidence from Mr. Morin and his father, when she says Joe Morin did not witness her signature. On a balance of probabilities, I find that Ms. Feuerhelm's signature on the Agreement was indeed witnessed by Joe Morin. Therefore, the issue of whether or not the Agreement should be set aside falls to be determined under s. 93 of the FLA.

Should the Agreement be set aside?

93(3)(a) Non-disclosure

- [31] While counsel for Ms. Feuerhelm argued that there was insufficient disclosure at the time the Agreement was executed, there was no evidence tendered at trial to suggest that any significant property or debts were not disclosed by Mr. Morin before the parties executed the Agreement. The main purpose of the Agreement, on the evidence of both parties, was to set out the respective interests of the parties in the Deniza Property. Further, the Agreement contains a term that the parties "have disclosed to the satisfaction of each of them all assets and liabilities that each may have."
- [32] As such, in my view, there is no basis to set the Agreement aside on the basis of non-disclosure.

Section 93(3)(b): Vulnerability

- [33] On all the evidence, I do not find that Ms. Feuerhelm was particularly vulnerable. She had input into the contents of the Agreement, as evidenced by the two handwritten additions she made to the list of her own separate property. She is an intelligent woman who was given ample time to consider the draft agreement, seek legal advice, and suggest changes. It was open to her to refuse to sign the Agreement. There is simply no evidence that Mr. Morin coerced, manipulated, or took advantage of any vulnerability of Ms. Feuerhelm.

Section 93(3)(c): Understanding of Nature and Consequences of the Agreement

- [34] Ms. Feuerhelm testified that she believed that the purpose of the Agreement was to safeguard the Deniza Property in the event that she was sued over an unrelated matter--specifically, a \$40,000 debt she had incurred with respect to her documentary film-making work. She understood that the Agreement mandated that Mr. Morin would be entitled to his initial capital contribution to the Deniza property, but that she would be entitled to half the growth in value of the Deniza Property after its purchase.
- [35] On its face, this is clearly not what the Agreement says. Pursuant to Clauses 1 and 2 and Schedule A1 of the Agreement, the Deniza Property is to remain the property of Mr. Morin, and Ms. Feuerhelm "will have no rights and interests in that property".
- [36] Ms. Feuerhelm first testified that she only saw the Agreement twice: once when Mr. Morin presented it to her for signature, and once, years later, when she found it lying around the house while she was cleaning. She testified that, at the time she signed, Mr. Morin told her she needed to sign the Agreement or they would lose their family home. She did not review the Agreement in any detail before she signed it. She testified that she "skimmed the Agreement" immediately prior to signing but did not understand its terms.

- [37] Ms. Feuerhelm testified that she signed the Agreement on the date that Mr. Morin got possession of the Deniza Property, which was July 16, 2016. On cross-examination, she admitted that she received the Agreement 17 days before she was asked to sign it, but said she did not read it during this time because she was working 14 hours a day. She admitted that no one prevented her from getting legal advice on the Agreement, but professed that she was too busy to do so.
- [38] At first, Ms. Feuerhelm testified that she did not receive a copy of the Agreement after it was signed. On cross-examination, she admitted that there were two original versions of the signed Agreement and both were kept in the same spot, to which Ms. Feuerhelm had access, in the Deniza Property.
- [39] Mr. Morin's version of how the Agreement came to be was quite different. He testified that it was Ms. Feuerhelm who first raised the idea of the parties entering into a cohabitation agreement. In a text exchange in December 2015, Ms. Feuerhelm raised the notion of the parties having a "prenup" agreement. Mr. Morin testified that he had a number of reasons for wanting an agreement to protect the Deniza Property from any claim by Ms. Feuerhelm, including his concern about the fragility of their relationship, and the fact that Ms. Feuerhelm had \$40,000 in personal debt and was in the midst of a long-standing lawsuit. He wanted to ensure that his interest in the Deniza Property was protected for his daughters. He testified that he and Ms. Feuerhelm discussed his concerns and agreed that the Deniza Property would be protected from any claim by Ms. Feuerhelm.
- [40] As a result of their conversations about the Deniza Property, Mr. Morin found an online form and used it to draft the Agreement. He testified that Ms. Feuerhelm made some modifications to the draft Agreement as early as June 22, 2016, and that she printed the Agreement on June 28, 2016. She then made further handwritten changes to the Agreement at or around the time it was signed on July 16, 2016.
- [41] I do not believe Ms. Feuerhelm when she testifies that she did not know what the Agreement contained when she signed it. On the contrary, I find that Mr. Morin and Ms. Feuerhelm had conversations about the Agreement prior to July 16, 2016, and both parties agreed that the primary purpose of the Agreement was to protect the entirety of Mr. Morin's interest in the Deniza Property from any claim by Ms. Feuerhelm. While it is true that Ms. Feuerhelm did not have independent legal advice, she had the opportunity to obtain it, and she declined.
- [42] The Agreement is fairly simple and uses plain language drafting. Ms. Feuerhelm was a relatively sophisticated individual at the time she signed it. She had a certificate in film writing, had worked for a technology company, and was working as an operations manager at the time. At trial, she came across as intelligent and articulate. I cannot accept that she somehow misunderstood the contents of the Agreement, whose very purpose was to ensure that the entirety of Mr. Morin's interest in the Deniza Property would be protected from a claim by Ms. Feuerhelm.

[43] Later text messages exchanged between the parties support the conclusion that Ms. Feuerhelm was never under any misapprehension about her lack of entitlement to any of the equity in the Deniza Property. The following text exchange took place in March 2017, when the parties had been living in the Deniza Property for less than a year:

Linda: It's YOUR house. So you're asking me to pay 50% of something I don't own and will never own even if we separate? So the improvements made only benefit you.

Ryan: There's also my property tax bill of \$3400/12. So another \$283 per month.

no but if you complain about how much I ask for you either help or you move out. Those are the two options. I can't just pay more than 2/3 and not be worried about it.

Linda: It's not my house. It'll never be my house and I will never be an equal partner can you not see what I'm saying or where I'm coming from?

Ryan: Who cares?

Linda: It doesn't matter if I help raise your kids or buy them beds or do all those things because I'm made to feel like the maid and not a partner.

[44] As of March 2017, Ms. Feuerhelm clearly understood that she had no entitlement to any of the equity in the Deniza Property. While the above text exchange suggests that she may have been unhappy about this arrangement, it appears clear that she understood that the Deniza Property was the separate property of Mr. Morin and, pursuant to the Agreement, she was not entitled to claim any portion of it as family property in the event of separation.

[45] I therefore decline to set aside the Agreement on the basis that Ms. Feuerhelm did not understand its nature or consequences.

Section 93(5)

[46] This Court may also set aside an agreement if it is significantly unfair, on consideration of the following: the length of time that has passed since the agreement was made; the intention of the spouses, in making the agreement, to achieve certainty; and the degree to which the spouses relied on the terms of the agreement.

[47] This is not a case of a long-term relationship in which the circumstances that motivated the parties to enter into an agreement about property division have been severely altered by the passage of time. Just five and a half years passed between the date the Agreement was signed and the date of separation.

[48] The Agreement gave the parties certainty, which was desirable as both parties were facing litigation risk in other areas of their lives (for Mr. Morin, concerning his divorce, and for Ms. Feuerhelm, concerning a pending lawsuit related to a \$40,000 loan and a human rights complaint that was settled). This certainty benefitted them both. While no doubt Mr. Morin, as the party with more assets, had more incentive to enter into an agreement of this nature,

this does not diminish the benefit of certainty for both parties. By including her own list of separate property assets, Ms. Feuerhelm indicated her own desire for certainty.

[49] I also find that the parties relied on the Agreement. Mr. Morin never wavered in his desire to protect the Deniza Property for the benefit of his children. Meanwhile, Ms. Feuerhelm, as a result of her separate finances and lack of obligation to service the mortgage on the Deniza Property, was free to accumulate assets of her own, including a substantial stock portfolio in her own name. Having regard to all of the evidence, I am satisfied that both parties relied on the Agreement.

[50] In light of these circumstances, I cannot find that the Agreement was significantly unfair.

[51] As such, I decline to set aside the Agreement under s. 93(5) of the FLA. The parties are bound by the terms of the Agreement and the claimant's claim to an interest in the Deniza Property is dismissed.

[52] As the successful party, Mr. Morin should have his costs of the proceeding.

"Francis J."

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