

CANADA / JUDGMENT

Fillion v. Fillion

2025 BCSC 321

COURT

Supreme Court of British Columbia

DECIDED

26 February 2025

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2025 BCSC 321 Fillion v. Fillion

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fillion v. Fillion,

2025 BCSC 321

Date: 20250226

Docket: E2362446

Registry: Prince George

Between:

Mark Emery Fillion

Claimant

And

Tammy Elizabeth Lillian Fillion, also known as Tammy Elizabeth Lillian Loisel, also known as
Tammy Elizabeth Lillian Martin

Respondent

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

Counsel for the Claimant:

K. Repstock

Counsel for the Respondent:

G. Petrisor, K.C.

Place and Date of Hearing:

Prince George, B.C.

December 9, 2024

Place and Date of Judgment:

Prince George, B.C.

February 26, 2025

[1] The respondent, Tammy Elizabeth Lillian Fillion, also known as Tammy Elizabeth Lillian Loiselle, also known as Tammy Elizabeth Lillian Martin pursuant to a Notice of Application filed October 1, 2024, seeks the following orders:

1. An Order that the Claimant pay to the Respondent the sum of \$24,904.18 forthwith.

[]

4. An Order that the Claimant pay to the Respondent an amount not exceeding \$5, 000.00 for her own benefit.

5. An Order that the Claimant pay costs to the Respondent in respect of this Application, and a further Order that those costs be assessed or fixed as special costs, and further, that those costs be summarily assessed.

6. Such further and other relief as this Honourable Court deems meet and just.

[2] The claimant, Mark Emery Fillion, is opposed to the orders sought by the respondent.

Background

[3] The parties began living together in a marriage-like relationship in the summer of 1993. The parties were married on June 20, 1997 and separated in June 2022.

[4] The parties operated a trucking business together known as MT Enterprises.

[5] On January 12, 2024, the parties entered into a comprehensive consent order in front of Madam Justice Church (the "Consent Order"). As part of the Consent Order, the respondent was to retain a 2020 Toyota 4Runner vehicle (the "Toyota") and the claimant was to retain a 2019 GMC Sierra pickup truck (the "GMC").

[6] The Consent Order provided for the following at paragraph 13:

13. Mark Fillion will forthwith have Tammy Fillion removed from liability under the debts listed in Cause 12 of this Order.

[7] Clause 12 of the Consent Order included the GMC.

- [8] On March 19, 2024, the respondent paid out the existing loan on the GMC (the "GMC Loan") so that she could finance the purchase of a home.

Position of the Parties

Respondent

- [9] The respondent argues that while the claimant insisted on her prompt compliance with the Consent Order, he failed to promptly remove her from liability on the GMC Loan.
- [10] The respondent says that the claimant has been relieved of a \$548 bi-weekly loan payment on the GMC Loan since March 2024 and he has failed to reimburse her for the GMC Loan which she paid.
- [11] The respondent, in her 2nd affidavit made on June 25, 2024, deposes to the following at paragraphs 5-9:
5. On repeated occasions following entry of the Consent Order, I asked the Claimant to have me removed from liability under the loan secured by the 2019 GMC Sierra pickup truck so that it would not interfere with my financial affairs.
 6. Following my separation, I relocated from Prince George to Courtney, British Columbia. In approximately February, 2024, I found what I considered to be a suitable home in a price range I could afford. I made an offer on that home, subject to financing, and applied for a mortgage. I was advised by the bank officer I was dealing with that I needed to have myself removed from liability under the loan secured by the 2019 GMC Sierra pickup truck before I could be approved for financing for the mortgage which would allow me to complete the purchase, and with that liability removed, I would qualify for the mortgage. Accordingly, as set out above, I asked the Claimant to have me removed from liability under the loan.
 7. Based on the advice I received from the bank officer I was dealing with, I had to have myself removed from liability under the loan secured by the 2019 GMC Sierra pickup truck by March 22, 2024, so that it would not interfere with the my obtaining the mortgage.
 8. On approximately Tuesday, March 19, 2024, I received further advice from the bank officer I was dealing with in respect of the mortgage, and was told that I needed myself removed from liability under the loan secured by the 2019 GMC Sierra pickup truck by mid-week which was the following day to ensure that it would not interfere with my obtaining the mortgage. Without the mortgage, I could not complete the purchase. I tried to contact the Claimant as soon as I received that advice but was only able to leave a message on his voicemail. He did not call me back that day or the next day. Accordingly, the only practical means I saw was to pay the loan out so that I was certain I was not liable under the loan and could proceed with securing the mortgage.

9. Attached to this my Affidavit and marked as Exhibit "B" is a copy of documentation confirming my payment of the amount of the loan secured by the 2019 GMC Sierra pickup truck. I paid that loan out on March 19, 2024, in the amount of \$24,904.18.
- [12] The respondent argues that she should be made whole in this matter.
- [13] The respondent argues that she should not have had to make an application to be reimbursed for monies that the claimant was obligated to pay pursuant to the Consent Order. The respondent says that the claimant has done nothing but offer excuses and has not reimbursed her for these monies. The respondent says that a fine of up to \$5,000 should be ordered against the claimant.
- [14] The respondent argues that she should be awarded special costs summarily assessed between \$5,000 and \$6,000 for this application.

Claimant

- [15] The claimant argues that the respondent in effect pre-empted him from obtaining the respondent's removal from the GMC Loan. The claimant says that he intended to make the periodic payments on that loan after he had the respondent's name removed from the loan.
- [16] The claimant argues that the respondent paid the GMC Loan prior to the date that she advised the claimant that he needed to have her removed from the loan.
- [17] The claimant also argues that the emails that the respondent produced asking him to have her removed from the GMC Loan were all in March 2024.
- [18] The claimant argues that the respondent has not provided him with any documentation confirming that the loan on the Toyota has been paid out by the respondent.
- [19] The claimant argues that he attended at the bank on March 20, 2024 to deal with the GMC Loan and was advised that the loan had been paid.
- [20] The claimant argues that he has lost the ability to receive a tax deduction through his business with regard to the GMC Loan's bi-weekly payments.
- [21] The claimant proposes that he can pay the respondent back the money that she paid on the GMC Loan by paying her \$568 bi-weekly until the loan is paid.

Decision

- [22] The Consent Order required that the claimant, among other things, would be solely responsible for the debts on a variety of assets and indemnify the respondent from any claims or damages arising from those liabilities. One of those liabilities was the GMC Loan.
- [23] On March 18, 2024, the respondent's lawyer, Mr. Petrisor, K.C., sent a letter to Ms. Davis who was the claimant's lawyer, stating in part the following with regard to the GMC Loan:

Ms. Fillion's continued liability of that loan is interfering with her financial affairs and unless she is removed from liability by March 22, 2024, she will have no choice but to seek damages or other compensation from Mr. Fillion for his failure to comply with his obligations

- [24] Ms. Davis acknowledged receipt of Mr. Petrisor's March 18, 2024 letter and indicated that the claimant had an appointment at the Scotia Bank on March 20, 2024 to remove the respondent from liability on the GMC Loan.
- [25] Despite the respondent providing a deadline of March 22, 2024 to the claimant to remove her from liability on the GMC Loan, the respondent paid out the GMC Loan on March 19, 2024.
- [26] There is no dispute that the claimant owes the respondent for the monies she paid to extinguish the GMC Loan, however, the claimant says that he would have continued to pay the GMC Loan by way of bi-weekly payments and would receive a tax deduction because that vehicle would be used as part of his business.
- [27] Section 97 Family Law Act, S.B.C. 2011, c. 25 [FLA] reads:

Giving effect to property division

97 (1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6 [Pension Division], the Supreme Court may

- (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
 - (b) despite sections 94 (2) [orders respecting property division] and 215 (2) [changing, suspending or terminating orders generally], and subject to subsections (3) to (4.3) of this section, as applicable, make any order that is necessary, reasonable or ancillary to give effect to the division.
- (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:
- []
- (h) subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt;
- []
- (j) transfer property to a spouse.

- [28] The claimant has not made any payments to the respondent for the GMC Loan which was his responsibility under the Consent Order and which the respondent paid. However, in my view, the respondent prematurely paid out the GMC Loan after telling the claimant that he had until March 22, 2024 to remove the respondent from liability under the GMC Loan.

[29] The respondent has been deprived of the \$24,904.18 since March 2024 and the claimant has been deprived of the ability to make monthly payments which he can claim as a business expense for income tax purposes.

[30] In my view, a necessary and reasonable order would be for the claimant to pay the respondent one-half of the GMC Loan being \$12,452.09 forthwith and the outstanding balance to be paid to the respondent in \$1,000 monthly instalments, commencing April 1, 2025 and continuing on the first of each month until the debt is paid in full.

[31] I order that the claimant shall pay the respondent the sum of \$24,904.18 as follows:

1. \$12,452.09 forthwith; and
2. \$1,000 in monthly instalments commencing April 1, 2025 and continuing on the first of each month until the debt is paid in full.

[32] The respondent also seeks a fine of up to \$5,000 for having to enforce the Consent Order.

[33] Section 230 of the FLA reads:

Enforcing orders generally

230 (1) Subject to section 188 [enforcing orders respecting protection], an order under this section may be made only if no other provision of this Act applies for the purposes of enforcing an order made under this Act.

(2) For the purposes of enforcing an order made under this Act, the court on application by a party may make an order to do one or more of the following:

[]

(b) require a party to pay

(i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution,

(ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or

(iii) a fine not exceeding \$5 000.

[34] I am not satisfied, given the fact that the respondent paid out the GMC Loan prior to the deadline that she gave the claimant, that a fine is appropriate on the circumstances of this case.

[35] The respondent's application with regard to a fine for enforcing the Consent Order is dismissed.

[36] Finally, the respondent seeks special costs with regard to this application. I note in the materials there has been various correspondence between the parties seeking a resolution to this matter. I am not satisfied that the claimant's behaviour is of such a reprehensible nature that special costs should be awarded.

[37] The respondent, however, has been substantially successful on this application and is entitled to her costs, which I summarily assessed at \$1,000.

Summary

[38] The claimant shall pay the respondent the sum of \$24,904.18 as follows:

1. \$12,452.09 forthwith; and
2. \$1,000 in monthly instalments commencing April 1, 2025 and continuing on the first of each month until the debt is paid in full.

[39] The respondent's claim for a fine imposed on the claimant is dismissed.

[40] The respondent's claim for special costs is dismissed.

[41] The respondent is entitled to her costs of this application which are summarily assessed at \$1,000.

"R.S. Tindale J."

TINDALE J.

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