

CANADA / JUDGMENT

Frost v. Osadchuk Estate

2023 BCSC 169

COURT

Supreme Court of British Columbia

DECIDED

6 February 2023

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2023 BCSC 169 Frost v. Osadchuk Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Frost v. Osadchuk Estate,

2023 BCSC 169

Date: 20230206

Docket: E1853454

Registry: Prince George

Between:

Claudia Hazel Frost

Claimant

And

The Estate of Jack Alexander Osadchuk and

Tom Hawkins also known as Thomas Ward Hawkins or

Tom Hockin, Executor of The Estate of Jack Alexander Osadchuk

Respondents

Before: Master Krentz

Reasons for Judgment

In Chambers

Counsel for the Claimant:

K. Pavao

Counsel for the Respondents:

H.A. Lloyd

Place and Dates of Hearing:

Prince George, B.C.

August 25, 2022

December 2, 2022

Place and Date of Judgment:

Prince George, B.C.

February 6, 2023

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BACKGROUND

- [1] This is a family law proceeding. Claudia Hazel Frost (the "claimant") and Jack Alexander Osadchuk (the "respondent") commenced a marriage-like relationship on December 15, 1990. It is the claimant's position that the parties separated on October 31, 2016, although the respondent's position may have been that they separated in 2014. However, in his 2015 income tax return, the respondent indicated he was still in a marriage-like relationship with the claimant on December 31, 2015. In any event, the parties were in a long-term relationship.
- [2] During the relationship, the parties adopted two children: Kyle Osadchuk, now 27 years of age; and Cody Osadchuk, now 19 years of age.
- [3] The claimant is 68 years of age and commenced this proceeding on March 16, 2018.
- [4] On December 16, 2020, the respondent passed away and at the time of his death, was 67 years of age.
- [5] The respondent left a will appointing Tom Hockin as the trustee of his estate (the "Estate"). In his will, the respondent made provisions for his Estate to pass on to Kyle and Cody.

- [6] During the relationship, the parties were owners of Tomcat Enterprises Ltd. ("the Company"), with the claimant holding 49% of the shares and the respondent holding 51% of the shares. After the death of the respondent, the claimant continued to hold 49% of the shares and the Estate continued to own 51% of the shares. Prior to the respondent's death, he was the director and the claimant was an officer of the Company.
- [7] In 2021, the respondent's brother, Jerry Osadchuk, was appointed as the sole director of Tomcat Enterprises Ltd. The claimant apparently was not involved or had any input in that appointment.
- [8] Prior to his death, the respondent was semi-retired but continued to work part-time as a helicopter engineer. He also received income from the Company and from another business enterprise that he owned with Jerry Osadchuk, namely, the Whiskey Fill Ranch. That business was started by the respondent and his brother after the separation of the parties.
- [9] The Company is primarily an enterprise that held commercial real estate and operated a campground. The Company did not regularly employ any persons other than the claimant and respondent. However, during tourist season, the Company would hire seasonal workers to assist in operating the campground.
- [10] The Company also earned revenue through leases and rental of commercial lands owned by the Company. Also, during their relationship, the parties operated a towing and garage business known as "Monashee Motors". When the parties sold that business and were operating the campground, the claimant would assist in its operation, including hiring staff and doing bookkeeping. After the separation, the claimant continued to manage the campground, and the respondent would do maintenance and groundskeeping at the campground.
- [11] During their relationship, the parties purchased two residential properties in their joint names located in Valemount, British Columbia. One property was the former family residence and the other was a rental property.
- [12] There were numerous other assets that were owned by the parties at the time of separation, including assets that the respondent brought into the relationship. After the separation and until his death, the respondent lived in the former family residence. In December 2020, the claimant moved into the family residence, where she continues to reside.
- [13] At the time of separation, the Company owned three commercial properties, which included the campground. The parties also owned a manufactured home but not the land that the home is situated upon.
- [14] The respondent and his brother, Jerry Osadchuk, also owned seven tracts of land which are referred to as "timber stands".
- [15] In her notice of family claim, the claimant seeks an equal division of family property, which includes the assets referred to above. The claimant also sought spousal support.

THE APPLICATIONS

[16] On May 9, 2022, the claimant filed an application seeking the following orders (at paras. 1-7, 9-11 and 16-17):

1. An Order pursuant to rule 8-2 of the Supreme Court Family Rules that Jerry Osadchuk be added as a party to these proceedings.
2. An Order pursuant to rule 5-1 and 9-1 (11) of the Supreme Court Family Rules, that the Estate of Jack Alexander Osadchuk and Tom Hawkins also known as Thomas Ward Hawkins or Tom Hockin, Executor of the Estate of Jack Alexander Osadchuk file a List of Documents and provide copies of the following documents to counsel for the Claimant within 30 days of the date of this Order, the following documents:
 - a.
 - b. monthly statements related to the assets and liabilities of Jack Alexander Osadchuk as they existed at the time of his death, Including but not limited to, any bank accounts, RRSPs, GIC, TFSAs, Pensions Funds or other investments with a designated beneficiary that would have passed from outside of the Estate of Jack Alexander Osadchuk, such documents to outline the balances, transactions and changes in value of those assets from 2016 to present;
 - c. Copies of all documents showing the transfer of accounts or Investments to designated beneficiaries and the amounts that have been transferred since the date of Mr. Osadchuk's death; and
 - d. all Valuations and Appraisals that have been completed by the Estate in order to ascertain the value of Mr. Osadchuk's assets, including the share value of Tomcat Enterprises Ltd.
3. An Order that Jerry Osadchuk, provide copies of documents showing the date of opening of the Whisky Fill Ranch account # 92-18610 and joint account held with Jerry Osadchuk account #75-38685 and monthly statements from date of opening to present;
4. An Order pursuant to section 91 of the Family Law Act, that the Estate of Jack Alexander Osadchuk, Tom Hockin Trustee of the Estate of Jack Alexander Osadchuk and Jerry Osadchuk are prohibited from disposing of, transferring, converting or exchanging into another form any property at issue in this proceeding, including but not limited to bank accounts, investment accounts, RRSPs, or any like instrument in the control of the Estate.
5. An Order pursuant to section 91 of the Family Law Act, that the Estate of Jack Alexander Osadchuk and Tom Hockin, Trustee of the Estate of Jack Alexander Osadchuk and Jerry Osadchuk are prohibited from disposing of, or transferring shares in Tomcat Enterprises Ltd., until agreement between the parties or a Court Order.

6. An Order pursuant to section 91 of the Family Law Act, that the Estate of Jack Alexander Osadchuk and Tom Hockin, Trustee of the Estate of Jack Alexander Osadchuk and Jerry Osadchuk are prohibited from voting shares, in Tomcat Enterprises Ltd., for the purposes of paying out shares, disposing of company assets, issuing shares, or other, without agreement of the parties or a Court Order.
7. An Order pursuant to section 91 of the Family Law Act that the Estate of Jack Alexander Osadchuk and Tom Hockin, Trustee of the Estate of Jack Alexander Osadchuk and Jerry Osadchuk are prohibited from disposing of, removing from their regular storage or the premises of Tomcat or transferring ownership of assets or selling assets of Tomcat Enterprises Ltd., until agreement between the parties or a Court Order.
9. An Order pursuant to section 91 of the Family Law Act that all shares in Tomcat Enterprises Ltd. be transferred to Claudia Frost to hold in Trust until agreement between the parties or a Court Order.
10. An Order that Claudia Frost as trustee of the shares of Tomcat Enterprise Ltd., be permitted to exercise those shares for the purpose of continuing Company operations, including but not limited to decision making, and voting shares, including election of officers and directors, for the purpose of continuing usual business operations.
11. An Order pursuant to Supreme Court Family Rule 8-1 to Amend the style of Cause of the Notice of Family Claim filed March 16, 2018, to change the Style of Cause to reflect the addition of any parties added to this proceeding by way of court order.
16. An Order that Jerry Osadchuk cooperate with the appraisers and permit the appraisers to enter and be upon any property that is being appraised and to provide any information or documentation required by the appraiser.
17. An Order that the Estate of Jack Alexander Osadchuk provide a summary of any leases, income and expense statements for the campground and for the commercial lands.
- [17] On July 26, 2022, the Estate filed an application and sought the following orders (at paras. 3-7):
 3. Pursuant to Rule 15-8 of the BC Supreme Court Family Rules and Section 97(2) of the Family Law Act, an Order that the company, Tomcat Enterprises Ltd., (the "Company") be sold;
 4. Pursuant to Rule 15-8(2) of the BC Supreme Court Family Rules, an Order that the Respondents have sole conduct of sale;
 5. In the alternative, pursuant to Rule 15-8, an Order that the Company be listed for sale and that the parties average out the first 5 offers to purchase the Company for the purposes of negotiating a buy-out of the Estate's shares by the Claimant, and if the parties cannot agree on a buy-out amount within 30 days of the fifth offer of purchase, the Company will be sold to the highest bidder.

6. In the alternative:
- (a) an Order that the parties retain KPMG or other mutually-agreeable company to conduct a business valuation of the Company (the "Business Valuation"), with the Company to pay for the Business Valuation; and
 - (b) an Order that the Claimant purchase the Estate's shares in the Company at a price agreed-upon by the parties following the completion of the Business Valuation, should the Claimant not agree to list the Company for sale;
7. An Order pursuant to 9-1(11) of the Supreme Court Family Rules, that the Claimant file a List of Documents and provide copies of the following documents to counsel for the Respondents within 30 days of the date of this Order:
- (a) Monthly statements related to the assets of the Claimant, including but not limited to any bank accounts, RRSP's, GIC, TFSA's, Pension Funds, or other investments, such documents to outline the balances, transactions and changes in value of those assets from January 1, 2014 to present;
 - (b) Monthly statements related to the liabilities of the Claimant, including lines of credit, credit cards, mortgages and any other liabilities from January 1, 2014 to present;
 - (c) Documentation with respect to the rental income collected from the property located at 220-17th Avenue, Valemount, BC, from December 2020 to present.
- [18] There were other orders sought by the claimant other than set out above, however, those orders were made by consent at the commencement of the hearing. Those orders included the Estate providing copies of the respondent's income tax returns and the parties agreed to a joint appraisal of the subject properties, including the timber stands.
- [19] In response to the claimant's application, Jerry Osadchuk signed an affidavit on July 25, 2022, wherein he indicated that he was willing to provide the documents set out in paragraph 3 of the claimant's notice of application and that he does not have any other documents related to the respondent's assets in his possession. Both the Estate and Jerry Osadchuk are opposed to the application that Jerry Osadchuk be added as a party to these proceedings.

POSITION OF THE PARTIES AND ANALYSIS

- [20] Rule 8-2(7)(b) provides that at any stage of a family law case, the court, may on application, order that a person be named as an additional party if:
- (i) that person ought to have been named as a party, or
 - (ii) that person's participation in the family law case is necessary to ensure that all matters may be adjudicated on .

[21] Pursuant to Rule 8-2(7)(c) the court may also order that a person be named as an additional party if there may exist, between the person and any other person who is a party to the family law case, a question or issue relating to or connected with:

- (i) any relief claimed in the family law case, or
- (ii) the subject matter of the family law case

that, in the opinion of the court, it would be just and convenient to determine as between the person and the other person who is named as a party.

[22] In opposing the application, the Estate submits that adding Jerry Osadchuk is unnecessary and will only further complicate this matter. They further note that Jerry Osadchuk, in his affidavit, has indicated that he will comply with document disclosure and, in any event, as he is a non-party recordholder, the court still has jurisdiction to order that he provide documents relevant to this proceeding.

[23] In the course of her submissions, the claimant resiled somewhat on her position that Jerry Osadchuk needed to be added as a party, given that he has agreed to cooperate in providing document disclosure and in the appraisal of the timber stands that he co-owned with the respondent.

[24] I am not of the view that Jerry Osadchuk's participation as a party in this proceeding is necessary to ensure that all matters may be adjudicated on, nor am I of the opinion that there may exist a question or issue related to, or connected with him, that would make it just and convenient to add him as a party.

[25] Accordingly, the application to add Jerry Osadchuk as a party is dismissed. However, as a non-party and pursuant to his agreement as set out in his affidavit, I will make the orders set out in paragraph 3 of the claimant's notice of application.

[26] As I previously indicated, Jerry Osadchuk has indicated that he will cooperate in the appraisal of the timber stands, so I hereby adjourn generally the application set out in paragraph 16 of the claimant's notice of application, with liberty to reapply in the event he is not cooperative.

[27] As I have dismissed the application to add Jerry Osadchuk as a party, it follows that paragraphs 11 and 18 of the claimant's notice of application are also dismissed.

[28] I will now address the remainder of the claimant's application, along with the application of the Estate.

[29] The discovery and inspection of documents in family law litigation is governed by Rule 9-1 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules]. The rule concerns a party's obligation to disclose documents that exist.

- [30] Under Rule 9-1(7), a party who has received a list of documents, but believes the list omits documents or a class of documents that should have been disclosed under Rule 9-1(1), may, by written demand, require the party who prepared the list to disclose those additional documents. A demand under Rule 9-1(7) is restricted to documents that should have been disclosed under Rule 9-1(1). As only documents that exist can be produced, a party demanding documents pursuant to Rule 9-1(7) should indicate why they believe the documents exist and should be disclosed.
- [31] Rule 9-1(8) can be used when a party has received a list of documents but believes there are additional documents within the listing party's possession, power or control, that relate to matters in question in the family law case. A party seeking documents pursuant to Rule 9-1(8) must provide a written demand identifying the additional documents or classes of documents with reasonable specificity and indicate why the additional documents should be disclosed.
- [32] The test for disclosure of documents under Rule 9-1(8) is wider than the test in Rule 9-1(1). It is whether the document or class of documents can reasonably be expected to contain information which may enable the party seeking the document to either advance their own case or damage their opponent's case, or which may fairly lead the requesting party on a train of inquiry in relation to either of those consequences (*Global Pacific Concepts Inc. v. Strata Plan NW 141*, 2011 BCSC 1752).
- [33] In support of her application for the documents set out in paragraph 2(b) and (c) of her application, the claimant notes that in the respondent's Form F8 financial statement that he signed on August 9, 2018, he indicated that he had in his CIBC personal chequing account the sum of \$24,811.13 and a Scotia Wealth RRSP in the sum of \$404,498.
- [34] The claimant further notes that in the Estate's statement of assets, attached to an affidavit of Thomas Hockin that was prepared in the application for a grant of probate, the personal account was reduced to \$3,919 and the RRSP is not listed as an asset of the Estate.
- [35] The claimant further submits that upon review of the list of documents prepared for the respondent, there are significant gaps in the banking and investment records of the respondent that have been disclosed. For example, for a period of approximately three years, there are no RRSP statements that have been provided.
- [36] In response, the Estate submits that in early 2022 the respondent prepared a list of documents that was provided to the claimant and the only investments, including RRSPs, that have been distributed were to the claimant, and that the RRSPs that were to go to Kyle and Cody as beneficiaries have not yet been distributed. The RRSP was not listed as an asset of the Estate for probate purposes as it devolves to the named beneficiaries.

- [37] They did, in March 2022, provide a supplemental list of documents that included additional documents with respect to the respondent's banking records. In essence, they say that they have disclosed what was available and, as many investments were joint, the claimant would have her own access to some of the records. Nonetheless, the Estate is prepared to continue to use their best efforts to obtain the requested documents.
- [38] Therefore, with respect to paragraph 2(b), I order that within 60 days of the date of this order, the Estate shall make their best efforts to provide to the claimant copies of the monthly statements related to the assets and liabilities of the respondent as they existed at the time of his death, including but not limited to any bank accounts, RRSPs, GICs, TFSAs, pensions funds or other investments with a designated beneficiary that would have passed from outside of the Estate of the respondent from January 1, 2016 to date, with liberty to the parties to seek further directions or orders from this Court.
- [39] With respect to paragraph 2(c), although the claimant as a beneficiary would have knowledge of the amount of the transfers to her, she is entitled to information and documents related to the transfer of any and all amounts. Therefore, I further order that within 60 days of the date of this order, the Estate shall provide to the claimant copies of all documents showing the transfer of accounts or investments to designated beneficiaries, along with the amounts that have been transferred since the date of the respondent's death.
- [40] The claimant also seeks copies of all business valuations and appraisals that were completed by the Estate, as they may assist in ascertaining the value of the respondent's assets.
- [41] In response, the Estate submits that such valuations and appraisals are now stale-dated, they were completed for the purpose of the probate application and may not be reflective of current fair market value. They previously offered to provide the claimant with copies if she agreed to pay for one-half of the cost of the business valuation that had been paid by the Estate but she refused.
- [42] In the Estate's application, as an alternative position to the sale of the Company, the Estate proposes that the parties jointly retain a business valuator. Later in these reasons, I will deal with that application. At this juncture, I will say that previous appraisals and valuations that may be stale-dated will be of limited utility, therefore, paragraph 2(d) of the claimant's notice of application is dismissed.
- [43] The claimant seeks various orders pursuant to s. 91 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] which includes orders prohibiting non-parties such as Jerry Osadchuk from disposing of assets.

- [44] In response to the application for a s. 91 order, the Estate submits that the orders sought are unnecessary, overly broad and significantly unfair to the Estate, as the claimant has already exerted control over the Company and its operations. They further submit there is no evidentiary basis for making such an order, as there is no evidence that there has been threats to dispose of, or transfer, any of the property at issue without the prior consent of the claimant.
- [45] Pursuant to s. 91 of the FLA, the court can only make orders with respect to spouses and as a Master of this Court, I do not have jurisdiction to grant injunctive relief, outside of s. 91. When I raised this issue with counsel, the claimant indicated they still wanted to proceed with paragraphs 9 and 10 of her application.
- [46] In order to ensure that the shareholding structure of the Company remains intact until the trial, I will order that pursuant to s. 91 the parties are prohibited from disposing of, or transferring shares in any manner, of Tomcat Enterprises Ltd. until further order of this Court or the written agreement of the parties.
- [47] I am not prepared to make orders pursuant to paragraphs 9 and 10 of the claimant's notice of application, as the evidence before me is that the claimant has been able to continue the operations of the Company, including the operation of the campground which continues to be a source of revenue for her. As indicated above, the shareholding of the Company should remain intact, so the application by the claimant that the shares in the Company be transferred to her for her to hold in trust is dismissed. It would follow that paragraph 10 should also be dismissed.
- [48] With respect to the others orders sought in paragraphs 4, 6 and 7 of the claimant's notice of application, those will be adjourned generally. In the event that there may be evidence of company assets being disposed of, or threats to do so, the claimant may reapply but would be well advised to bring such application before a judge in chambers, as it may include injunctive relief against a non-party.
- [49] Lastly, the claimant seeks an order that the Estate provide a summary of the leases, income and expense statements for the campground and for the commercial lands. During submissions, the claimant limited that request for a period of time from July 2021 to date.
- [50] I find that the claimant is entitled to this information, for the same reasons that she is entitled to the banking records set out in paragraph 2(b) of her application. Therefore, I will grant the order set out in paragraph 17 of the claimant's notice of application, for the period from July 2021 to the date of this order, to be provided within 60 days of the date of this order.

- [51] I will now deal with the relief sought by the Estate in their notice of application. In support of their application for the Company to be sold, the Estate submits that although Jerry Osadchuk was appointed as director of the Company and the Estate currently holds 51% of the shares, the claimant has essentially taken control of the Company and is not acting in its best interest.
- [52] The Estate further submits that since Jerry Osadchuk's appointment, the claimant has failed to consult with him or provide to him information regarding the operation of the Company, including an explanation as to why she is paying herself a significantly larger salary from the Company than had been paid to her, or to the respondent, prior to the respondent's death.
- [53] The Estate further submits that the claimant does not have the necessary skills to maintain the campground, as that was mostly done by the respondent and under her management, since his death, the claimant has spent considerable sums on subcontractors which may have been unnecessary.
- [54] Finally, they note that one of the sons has been attempting to assist the claimant but such attempts have been rejected by her and that the Estate has no interest in operating the Company jointly with the claimant.
- [55] In his affidavit, Tom Hockin has deposed that the claimant refuses to allow the Estate to "cut ties" with her and nobody wants to be in business with her. He claims that she is not willing to work with others, meaning Jerry Osadchuk or her sons, and her attitude is "her way or the highway".
- [56] In further support of their application that the Company be sold, the Estate submits that the claimant does not have the ability to purchase the shares of the Company from the Estate, as was confirmed by her counsel in a letter dated July 26, 2022, which included the following:

After discussing the matter with our client, we confirm that she is not in a financial position to purchase all of the Estate's shares of the Company. At this time Ms. Frost is not agreeable to sell the Company as it continues to be profitable and is a source of income to her. While your client may apply to sell the Company, it is our view that it is premature to take that step in the circumstances.

- [57] In the affidavit of Jerry Osadchuk, he deposes that the claimant's solution with respect to maintenance and upkeep of the campground is to "throw money at it". In his affidavit, he refers to some examples of unnecessary costs incurred by the claimant to operate and maintain the campground.

- [58] The Estate further submits that in order to preserve the value of the sons' share of the Estate, it is prudent to sell the Company at this time, as they believe the claimant is devaluating the Company as she does not operate it as a client-centred business. While they correctly note that there are some negative customer reviews of the campground online, in reviewing them I also noted that during the claimant's operation of the campground there were some positive reviews.
- [59] Lastly, the Estate submits that the Company financial statements show increases in management salaries of 130% and increases in salary and benefits of 184% from 2020 to 2021. However, I note that the actual increase in management salary remains modest, as it went from \$10,000 in 2020 to \$23,000 in 2021. With respect to salary and benefits, the increase was from \$18,562 in 2020 to \$52,865 in 2021.
- [60] In response, the claimant submits the campground is her primary source of income and she sees it as a potential retirement vehicle for her. She notes that during the relationship, the respondent and her did not have a need to draw income from the Company to support themselves, rather it was an investment to provide an income stream in their retirement years. Furthermore, during those years there was no advantage to them to draw out vast sums of money from the Company, only to be taxed at a high rate.
- [61] In her Affidavit #4, the claimant sets out a spreadsheet, supported by the financial statements of the Company that shows, from 2021 to 2022, there was a 24% increase in the campground revenue and when you add in other sources of revenue for the Company, there is actually a 40% increase in the gross corporate revenue. Meanwhile, there was no change in the expenses of the Company from 2021 to 2022. As for the net income of the Company, there is an increase from \$23,342 to \$96,839. Accordingly, the claimant submits that under her management the campground is profitable.
- [62] The claimant further submits that when you look at the global value of the family property (subject to further appraisals and valuation) the estimated gross value of the Estate, which does not include the claimant's shares in the Company or her interest in the real estate holdings, is \$2,186,000. It is quite conceivable that even on an equal division of assets, where certain assets are allocated to and remain with the Estate, that the claimant at trial could retain assets of the Company, including the campground.
- [63] The law with respect to the interim sale of property pursuant to Rule 15-8 of the Rules is well established. The court has the discretion to order an interim sale if it is necessary or expedient to do so. The onus is on the spouse seeking the sale of the property to upset the status quo. If the sale is not necessary, the sale must be advantageous to both parties.
- [64] In *Tomic v. Tough*, 2013 BCCA 355, at para. 26, the Court of Appeal reiterated that the criteria for an interlocutory order for sale of property are whether it is expedient (including advantageous) and necessary:

- [26] The criteria for an interlocutory order for sale of property are whether it is expedient and necessary. Those words were described in Bodo [Bodo v. Bodo, 1990 CanLII 291] as encompassing, in family law proceedings, a number of factors: the needs of the children; the availability of alternative accommodation; the emotional condition of the spouses; external economic factors; wasting of the asset; and the capacity of both parties to maintain the asset.
- [65] While I recognize that most of the cited authorities involve the sale of family residences and some of the factors do not apply, factors may also include whether the sale will promote early settlement and whether a spouse might be able to retain a property upon division of assets (Wilson v. Wilson, 2009 BCSC 1834).
- [66] In reviewing the above noted factors, I do not conclude that the assets of the Company, such as the campground, are being wasted. I further find that the claimant currently has the capacity to maintain the asset and I do not find that the sale is inevitable. It is unclear at this juncture if the sale will promote an early settlement and I accept that the claimant might be able to retain assets of the Company, such as the campground, upon the division of the assets at trial.
- [67] Accordingly, I dismiss paragraphs 3, 4 and 5 of the Estate's notice of application.
- [68] In the alternative, the Estate seeks an order for a business valuation of the Company to be paid for by the Company and an order that the claimant shall purchase the Estate's shares following the completion of the valuation.
- [69] Rule 13-4 requires that if a party wishes to present to the court expert opinion with respect to a financial issue, it must be provided through a jointly appointed expert. If the parties do not agree that a joint expert is required or do not agree on any matter related to the appointment, a party may apply for an order.
- [70] In Aquilini v. Aquilini, 2012 BCSC 1616, the court found no basis for an order exempting the parties from retaining a joint expert on a valuation issue. The court then considered whether to exercise jurisdiction under Rule 13-4(3) and held (at para. 43) that the matters to consider are:
1. whether the financial issue is one on which the court is likely to require expert evidence;
 2. if so, whether there is evidence of a properly qualified expert who is available and who the parties, or either of them, can afford to retain; and,
 3. whether the appointment of a joint expert is consistent with the purpose and intent of the Rules.

- [71] The Estate suggests the expert be KPMG or some other expert agreed upon. I am satisfied that the current market value of the Company is a financial issue that requires expert evidence and the appointment of a joint expert is consistent with the purpose and intent of the Rules.
- [72] I am also satisfied that a qualified expert is available such as at KPMG, however, there is no evidence before me as to their fees to prepare an expert report, so it is difficult to determine if the Company and/or the parties can afford to retain them.
- [73] Although they are somewhat dated, the initial Financial Statement of the respondent indicated that he had approximately \$287,000 in non-registered financial assets, held in his sole name or joint with the claimant. In the Statement of Assets prepared for the probate application, the Estate had approximately \$287,000 in non-registered financial assets. It is likely that there are sufficient financial assets held by the Estate to pay for the report, although I recognize that the Estate has already incurred costs to obtain the earlier business valuation.
- [74] In the most recent financial statement for the Company, I note that it held \$690,589 in cash and investments and its only long-term debt is \$40,000 owed for an interest free CERB. It is also likely that there are sufficient financial assets held by the Estate to pay for the report.
- [75] Accordingly, I find that the Company can afford to retain a joint expert, so I order that the parties shall retain a joint expert to conduct a business valuation of the Company, with the Company to pay for the business valuation. The parties may choose KPMG, but I leave that up to them to agree. If they are unable to agree on the identity of the joint expert, they have liberty to apply to the court.
- [76] For the same reasons that I provided in dismissing the application for the sale of the Company, I also find it inappropriate at this juncture to require the claimant to purchase the Estate's shares in the Company, as that is a matter better left for trial. Accordingly, paragraph 6(b) is dismissed.
- [77] The Estate seeks from the claimant similar banking records that were sought by the claimant in her application, except going back to 2014. The claimant has provided four lists of documents from May 2018 to April 2022. The documents that are sought by the Estate are relevant to the relief sought by the claimant in this proceeding, as they relate to the assets and liabilities of the claimant.
- [78] The claimant submits that upon further examination for discovery the period of time may be shortened, as she claims the separation date is October 31, 2016. As I ordered that the Estate should use their best efforts to find banking records for the respondent going back to January 1, 2016, I find it is appropriate to make the same order for the claimant.

- [79] Therefore, pursuant to paragraphs 7(a) and (b) of the Estate's application, I order that within 60 days of the date of this order, the claimant shall make her best efforts to provide to the Estate copies of the monthly statements related to her assets and liabilities, including, but not limited to any bank accounts, RRSPs, GICs, TFSAs, pensions funds or other investments, from January 1, 2016 to date, with liberty to the parties to seek further directions or orders from this Court.
- [80] Rule 7-1(11) requires that a written demand for additional documents or classes of documents be identified "with reasonable specificity". Where the demand is overly broad and vague, the lack of specificity which characterizes the application is fatal to its success: *Lit v. Hare*, 2012 BCSC 1918 at para. 68.
- [81] The Estate failed to make the required written demand for the documents with respect to rental income, which is fatal to that application. Accordingly, the order sought in paragraph 7(c) is dismissed.

COSTS

- [82] I find that each party had achieved some success in their application but cannot conclude that upon a global determination with respect to all matters in dispute that one party was substantially successful. The costs of the applications will follow the final award of costs of the entire proceeding.
- [83] The party who is awarded the costs of the proceeding at trial may include the cost of the applications in their bill of costs. Accordingly, the cost of the applications will be costs in the cause.

"Master Krentz"

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