

CANADA / JUDGMENT

Getman v. Getman

2023 BCSC 711

COURT

Supreme Court of British Columbia

DECIDED

1 May 2023

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2023 BCSC 711 Getman v. Getman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Getman v. Getman,

2023 BCSC 711

Date: 20230501

Docket: E172010

Registry: Vancouver

Between:

Iryna Getman aka Iryna Vizinskaya aka Iryna Polishchuk

Claimant

And

Aleksandr Getman

Respondent

Corrected Judgment: The text of the Judgment was corrected
at paragraph 14 on May 18, 2023

Before: The Honourable Justice Edelmann

Reasons for Judgment

The Claimant, appearing in person:

I. Getman

The Respondent, appearing in person:

A. Getman

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 3-6, 2023

February 6-7, 2023

Place and Date of Judgment:

Vancouver, B.C.

May 1, 2023

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- [1] This is a family law matter that has been ongoing for several years involving numerous court applications. The only outstanding matter is the division of property.
- [2] The parties have one son together who is now 33 years old. Throughout the proceedings the claimant has asserted that the parties' son remained a child of the marriage given his psychological condition. In her notice of family claim, she was seeking both child support and spousal support. She did not pursue those positions at trial, and is no longer seeking either child or spousal support. Both parties seek a divorce. I will therefore only be addressing the issue of property division.

Date of Separation

- [3] The parties were married in 1988 and separated in 2017. There was some minor disagreement about the date of separation. The respondent says he left the matrimonial home in Vancouver with his dog and his belongings, and rented a residence on the Sunshine Coast starting on March 1, 2017. The claimant says she thought they had had a quarrel but only realized they were separating in the ensuing months. The respondent says that the marriage was over when he left, and that there were discussions about division of property quite soon after his departure. He did not return to the matrimonial home. Both parties withdrew significant sums from the joint bank account between March and May 2017. I find that in the overall context of the respondent's departure, rental of alternate accommodations, bank withdrawals and the ensuing discussions confirm a date of separation of March 1, 2017.

Division of Assets

- [4] The basic principles that apply to the division of assets are well established. Neither party has argued that any of the exclusions in s. 85 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] apply, and therefore all property that was owned by at least one of the spouses on the date of separation is family property (FLA, s. 84). Family debt includes all financial obligations incurred prior to the date of separation as well as any debt incurred for the purpose of maintaining family property (FLA, s. 86). The value of family property is to be based on its fair market value (FLA, s. 87(a)). As neither party suggests that there has been an agreement dividing family property, the date of valuation is the trial date (FLA, s. 87(b)). I will outline the circumstances surrounding each of the family debts and assets before turning to the overall division of property.

Cash

- [5] At the time of separation, the parties had a joint bank account and the respondent had a corporate account he used to run his fishing business. The respondent says that on the date of separation the parties had approximately \$242,000 in cash savings. He says that in the ensuing months the funds were divided equally between them.
- [6] The respondent testified that on May 9, 2017, \$96,000 was transferred from the joint RBC account into the business account. Another \$25,000 was transferred on June 14 for a total of \$121,000. It is common ground that the business account was used exclusively by the respondent after separation.

- [7] On May 16, 2017, the claimant transferred \$85,000 to her own account and another \$5,000 the next day. The claimant does not appear to contest the assertion that she was the only one who used the joint account for personal purposes after March 1, 2017, and that she would therefore have had the benefit of any funds remaining in the account. It is clear that there were regular purchases made for personal items on an ongoing basis following separation, and I accept that those were made by the claimant.
- [8] I note that there is a lack of evidence about all the movement of funds into and out of the joint account. Ultimately, the court must come to a decision on the evidence presented by the parties, with the limitations that it may have. While it is not a perfect accounting, I accept on the evidence before me that the funds in the joint account were split roughly evenly between the parties following separation.
- [9] In the summer of 2017, the respondent took around \$21,000 in cash held in a safe deposit box. He testified that he used the money to repair flood damage in one of their two apartments on Seymour Street in Vancouver (the "Seymour Properties"), and that he provided all the receipts to the claimant. He was not challenged on that assertion, and I accept that the cash in question was used for repairs on family property.

Seymour Properties

- [10] The parties jointly owned the Seymour Properties. The Seymour Properties were sold in 2019. The proceeds from the first sale in April were divided equally after paying off a line of credit and expenses related to the sale. Each party received approximately \$87,995.76 from that sale.
- [11] The second of the Seymour Properties was sold in July and the funds were distributed as follows:
- \$18,634.01 to the claimant (\$7,305.85 unsecured debt; \$11,328.16 legal fees); and
 - \$75,958.26 to the respondent (\$37,239.03 unsecured debt; \$38,719.23 legal fees).
- [12] In addition, after paying the sales related fees, mortgage and joint debts, each party received \$137,058.75 from the sale (\$25,000 initial distribution, and later \$112,058.75).
- [13] In total, the claimant received \$243,688.53 from the sale of the Seymour Properties, and the respondent \$301,012.77. I note that a portion of the funds allocated to the respondent were related to costs in building their property at 5224 Cecil Hill Road in Madeira Park on the Sunshine Coast (the "Sunshine Coast Property"). That issue will be dealt with below. The difference in the allocations received from the Seymour Properties is therefore \$57,324.24 in the respondent's favour.

West 2nd Property

[14] The parties own an apartment at 610-445 West 2nd Avenue, Vancouver (the "West 2nd Property"), which had a BC assessment value of \$645,000 as of July 1, 2022. Both parties accept this as a current valuation for the property and there is no other evidence before me related to valuation.

Rental Receipts

[15] Both of the Seymour Properties were rented until their sale and the West 2nd Property has been rented since separation. Until November 2019, all the rental receipts were deposited into the joint account. Starting in November 2019, the respondent took over the West 2nd Property and has collected the rent directly.

[16] In total, the respondent says that that \$152,944.12 in rental receipts were deposited into the joint account since the date of separation. I also find that, aside from the withdrawals set out above, the claimant has used the joint account for her personal purposes since the date of separation.

[17] As of the date of trial, the respondent had collected \$64,000 in rent from the West 2nd Property.

[18] While the claimant has not provided clear figures for the rental receipts, I do not understand her to take issue with the totals put forward by the respondent. In any event, they would appear to be close to the amounts suggested by the claimant, and, as I will address in greater detail below when I come to the Sunshine Coast property, I find the respondent's calculations to be reliable.

[19] There was limited information before me pertaining to the costs incurred in relation to the rental properties. In the absence of a complete accounting, I find it to be appropriate to attribute the total rental receipts to the respective party. While this might arguably result in some unfairness to the claimant in the period leading up to November 2019, I would note that during this period the claimant also had the benefit of residing in their other property at 304-1128 Quebec Street, Vancouver (the "Quebec Street Property"), while the respondent was renting at his own cost on the Sunshine Coast.

[20] I conclude that the claimant has collected \$80,944.12 more in rental receipts from the West 2nd Property than the respondent since separation.

Quebec Street Property

[21] The parties own the Quebec Street Property, which had a BC assessment value of \$769,000 as of July 1, 2022. Both parties accept this as a current valuation for the property, and there is no other evidence before me related to valuation. The claimant has resided in this property since the date of separation.

Sunshine Coast Property

- [22] Prior to separation, the parties purchased the Sunshine Coast Property. The intention was to build a house on the property. A deposit of around \$50,000 was paid on a prefabricated home prior to separation.
- [23] Following separation, the respondent proceeded with the construction of the home with the agreement of the claimant. It was understood that once the house was built, the property would be resold at a profit. The claimant accepts that the overall expenditures after separation on constructing the house were \$627,453,80.
- [24] From around November 2017 to September 2018, \$353,653.96 was incurred on the parties' joint line of credit to pay for construction costs. The outstanding amount on the line of credit was paid out of the sale of one of the Seymour Properties in 2019.
- [25] As noted above, \$37,239.03 of the funds received by the respondent from the sale of the Seymour Properties was in relation to construction costs. As those funds were attributed to him in the sale of the Seymour Properties, I will include them as part of his personal contributions to the Sunshine Coast Property.
- [26] The claimant and the respondent agree that she provided some additional funds to the construction of the Sunshine Coast Property. The respondent says there were two payments, one of \$15,000 and a second of \$4,000, totalling \$19,000. The claimant's evidence on this issue was much less clear, at one point suggesting she had contributed \$30,000, although in closing submissions she presented a number between \$35,000 and \$40,000. It would appear that the claimant may have been including half of the \$37,239.03 attributed to the respondent from the sale of the Seymour Properties in her contributions, which would be consistent with her testimony to that effect. I find that this would reconcile the difference between the parties' positions.
- [27] In any event, I prefer the evidence of the respondent on this issue. I found his recollection and calculation of the contributions to the Sunshine Coast Property to be careful and that he did not seek to be unfair to the claimant. While I do not find the claimant was deliberately seeking to mislead the court, I found her recollection and understanding of the financial transactions to be less reliable and she was largely unable to point to documentary evidence to support some of her assertions. I therefore find that the claimant made a personal contribution of \$19,000 to the construction of the Sunshine Coast Property after separation, and the remainder of the construction funds were provided by the respondent.
- [28] The BC Assessment value for the Sunshine Coast Property was \$773,000 as of July 1, 2022. It would appear both parties accept this as a current valuation for the property, although the respondent appeared to suggest at one point that the property could be sold for \$776,000 or even \$800,000. In the context of his evidence as a whole, I find it likely that the respondent was seeking to refer to the BC Assessment value when he indicated a value of \$776,000, and there was no evidence before me of the basis upon which the higher valuation was made. I

find that the most appropriate valuation to use in the circumstances is \$773,000, which is the value put forward by the claimant and largely accepted by the respondent.

- [29] The respondent initially appeared to seek an unequal distribution in relation to the Sunshine Coast Property given his contributions to its improvement. I did not understand him to pursue that argument in final submissions. In any event, it does not appear on the evidence before me that the construction on the property has ultimately provided an overall financial benefit, and it would appear that the respondent is motivated to remain on the property. I do not find that an unequal division of the asset beyond actual contributions to the construction costs to be warranted in the circumstances.
- [30] In summary, of the total construction cost of \$627,453.80, the parties jointly contributed \$353,653.96. The claimant personally contributed \$19,000, and the remaining \$254,799.84 were contributed by the respondent. Deducting the personal contributions to construction from the current value of \$773,000, the joint interest in the property is therefore \$499,200.16 or \$249,600.08 each. I therefore find that the claimant's interest in the Sunshine Coast Property to be \$268,600.08 (\$249,600.08 plus \$19,000) and the respondent's interest to be \$504,399.92 (\$249,600.08 plus \$254,799.84).

Kyiv Property

- [31] The parties purchased an apartment in Kyiv, Ukraine prior to separation, which would appear to have been valued at around \$152,000 USD in 2018 (the "Kyiv Property"). The parties do not have an assessment of the property, but they agree that given the current situation in the Ukraine, the Kyiv Property is likely worth between \$25,000 USD and \$30,000 USD, or in the range of \$34,000 to \$41,000.
- [32] At the time the Kyiv Property was purchased, the respondent provided the claimant's mother with a power of attorney so that she could rent the apartment. Since the date of separation, the respondent has made attempts to get the keys to the apartment so that his sister in Kyiv could take care of renting out the apartment. Both the claimant and her mother have refused to provide the keys. The claimant testified that she would have the keys to the Kyiv apartment provided to the respondent once the issue was decided. The claimant says she "may" even have a set of keys herself.
- [33] The claimant provided unclear testimony about the income and expenses related to the Kyiv Property. She says there were a number of ongoing expenses related the apartment that were increasing, and that her mother decided to have a woman take care of the apartment, without providing any dates or details. However, the claimant also says that the apartment was rented out "as needed" to pay for the costs. Notably, the claimant has not provided any documentation related to the income or expenses for the Kyiv Property.
- [34] Not only has the claimant not listed or obtained relevant documentation, but she has also refused to produce documents she has listed despite an order to do so from this Court. The claimant quite candidly admitted in her testimony that she was refusing to provide a

number of her bank statements despite an order to do so. The only basis upon which the claimant says she refused to comply was her concern that the respondent's new partner would see the bank statements. I do not accept this as a basis for refusing to comply with a court order, and I am prepared to draw an adverse inference about what is contained in those records.

- [35] In any event, even setting aside the issue of the court order, I find that the claimant's failure to provide any supporting financial documentation relating to a family property that has been under her control since 2017 undermines any representations that she has made about the property. On the claimant's own evidence, the Kyiv Property was rented out for some undisclosed period of time. I do not accept her evidence that the property was costing money, and that her mother therefore found an unnamed woman to take care of the property without any benefit to the claimant or her mother. If the property had in fact become a financial burden, there would have been no reason to refuse to provide the keys to the respondent or his sister.
- [36] I find on a balance of probabilities that the claimant, either directly or through her mother, has benefited from the renting of the Kyiv Property since March 2017. The respondent submits that the amount of rent collected is likely in the range of \$75,000. Unfortunately, in large part due to the claimant's own choice not to provide any relevant documentation, I am unable to ascertain the exact amount by which she has benefited. Given the approximate value of the apartment in 2018, I am prepared to infer revenues of an average \$1,000 per month over the past five years, acknowledging the impact of more recent developments in the Ukraine. I therefore find a total benefit to the claimant in the range of \$55,000 to \$60,000. In my view, the appropriate resolution in the circumstances is for the respondent to have the Kyiv Property and to be credited an additional \$20,000.

Conclusion

- [37] Both parties agree that ownership of the Quebec Street Property should be transferred to the claimant, and ownership of the Sunshine Coast Property should be transferred to the respondent.
- [38] The respondent seeks to have the option to buy out the claimant's interest in the West 2nd Property. As set out above, the claimant's interest in the Sunshine Coast Property is \$268,600.08. The claimant should be credited with the difference in valuation of \$4,000 between that property and the Quebec Street Property, as well as the difference in the allocations from the Seymour Properties of \$57,324.24. The difference of \$80,944.12 in the West 2nd Property's rental receipts and \$20,000 of the Kyiv Property's rental receipts should be debited:

$$\$268,600.08 + \$4,000.00 + \$57,324.24 - (\$80,944.12) - (\$20,000) = \$228,980.20$$

[39] In conclusion, the respondent will have the option to buy out the claimant's interest in the West 2nd Property for \$228,980.20. Should he be unable or unwilling to do so within 90 days, the West 2nd Property will be listed for sale. The claimant will receive \$228,980.20 of the sale proceeds, and the respondent will receive the balance.

Summary

[40] In summary, I make the following orders as to division of property:

- 1) The respondent will transfer to the claimant the property located at 304-1128 Quebec Street, Vancouver, BC, and legally described as:

PID: 018-496-644

Legal Description: Strata Lot 12, Plan LMS1108, District Lot 2037, New Westminster Land District, Together With an Interest In the Common Property In Proportion to the Unit Entitlement of the Strata Lot as Shown on Form 1.

- 2) The claimant will transfer to the respondent the property located at 5224 Cecil Hill Road, Madeira Park, BC, and legally described as:

PID: 028-270-118

Legal Description: Lot 17, Plan EPP6226, District Lot 1024, Group 1, New Westminster Land District.

- 3) The respondent is the sole owner of the Kyiv Property, and the claimant will arrange to have any keys in her possession or control transferred to the respondent within 30 days.
- 4) The respondent will have the option to buy out, for \$228,980.20, the claimants' interest in the property located at 610-445 2nd Avenue West, Vancouver, BC, and legally described as:

PID: 028-920-279

Legal Description: Strata Lot 74, Plan EPS984, District Lot 302, Group 1, New Westminster Land District, Together With an Interest In the Common Property In Proportion to the Unit Entitlement of the Strata Lot as Shown on Form V.

Should he be unable or unwilling to do so within 90 days, the property will be sold and the proceeds of sale will be distributed, \$228,980.20 to the claimant, and the balance to the respondent.

[41] I also order that the parties are divorced, with the order to take effect 31 days after the issuance of these reasons.

Costs

[42] My initial view is that the parties have had mixed success and should each bear their own costs. However, should either party wish to make submissions on costs, they may arrange to do so within 30 days of receiving these reasons.

"Edelmann J."

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