

CANADA / JUDGMENT

Greenough v. Greenough

2022 BCSC 2051

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Supreme Court of British Columbia

DECIDED

26 October 2022

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2022 BCSC 2051 Greenough v. Greenough

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Greenough v. Greenough,

2022 BCSC 2051

Date: 20221026

Docket: E18166

Registry: Chilliwack

Between:

Theresa Mary Greenough

Claimant

And

Bruce Douglas Greenough and

Blue Seas Holdings Inc.

Respondents

Before: Master Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

C.L. Gleeson

Counsel for the Respondent,

Bruce Greenough:

A.T. Briscoe

Counsel for the Respondent,

Blue Seas Holdings Inc.:

D. Terpylo

Place and Date of Hearing:

Chilliwack, B.C.

October 17, 2022

Place and Date of Judgment:

Chilliwack, B.C.

October 26, 2022

- [1] THE COURT: I am giving these reasons for judgment orally. If a transcript is requested, I reserve the right to edit for grammar, to provide clarification where necessary and to insert citations. Such editing will not change my decision.
- [2] The claimant, Ms. Theresa Greenough, seeks interim spousal support at the high end of the Spousal Support Advisory Guidelines [SSAG] range. She seeks an order retroactive to the date of separation. She also seeks an order that a business valuation be obtained for various companies with the cost to be paid by the respondent, Mr. Bruce Greenough, or by one of the companies; and that commercial property owned by the corporate respondent, Blue Seas Holdings Inc., be appraised.
- [3] While acknowledging entitlement to spousal support, at least at this interim stage, Mr. Greenough proposes that funds recently paid to him as a dividend be used to satisfy the need for spousal support; or in the alternative, if monthly spousal support is ordered, that it be calculated on a needs basis only. Furthermore, he submits that the claimant should be solely responsible for paying the expenses related to the family home that she occupies. Lastly, he opposes a retroactive order for spousal support.
- [4] Mr. Greenough agrees that the business valuator proposed by Ms. Greenough should be retained but submits she should contribute to that cost. Ms. Greenough added the corporate respondent to the action so that Certificates of Pending Litigation ("CPLs") could be registered against the commercial properties, but no other relief appears to be sought against the corporate respondent. The corporate respondent filed a response to the notice of family claim and its counsel attended to seek an adjournment of this hearing. Although I denied that application, I granted leave for the corporate respondent's counsel to make

submissions with respect to the applications for a business valuation and appraisals.

- [5] The parties were married on July 4, 1998, and separated in January 2022. The parties have three adult children. However, there are currently no children of the marriage as defined by the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The claimant currently resides at the family home in Chilliwack. The parties are joint equal shareholders of Bruce Greenough Holdings Inc. The claimant alleges that she contributed both directly and indirectly to the maintenance and preservation of various companies, of which Mr. Greenough has an interest, throughout the marriage and she assisted the respondent by her homemaking duties, childrearing, assisting in the family business, along with other tasks.
- [6] Mr. Greenough is self-employed in the business of manufacturing and selling covers and other equipment for swimming pools. Bruce Greenough Holdings Inc. has shares in Blue Seas Holdings Inc. and the latter company owns the commercial properties. Mr. Greenough's business partner is Mr. Michael Buckingham and Mr. Buckingham, through his company, has similar shares in Blue Seas Holdings Inc.
- [7] The holding companies of the husband and his business partner also own shares in Blue Seas Enterprises Inc. and that is the company that operates the business. Any income payable to Mr. Greenough goes from Blue Seas Enterprises through Bruce Greenough Holdings to him. Blue Seas Enterprises has other minority shareholders. I am advised that both Mr. Greenough and Mr. Buckingham are considering selling their interests in Blue Seas Enterprises.
- [8] Blue Seas Enterprises is a successful business with gross revenue of several millions of dollars each year. The net income before taxes was as follows:
- 2018 - \$1.6 million;
 - 2019 - \$1.6 million; and
 - 2020 - \$2.5 million.
- [9] No financial statements for Blue Seas Enterprises after 2020 were provided. However, according to Mr. Greenough's personal income tax returns, his total income, which includes dividends, was as follows:
- 2018 - \$345,000;
 - 2019 - \$733,000; and
 - 2020 - \$1,322,000.
- [10] Mr. Greenough receives a regular salary from Blue Seas Enterprises, which is \$3,176 biweekly. He deposits this into an account held by Bruce Greenough Holdings and Ms. Greenough has been allowed to withdraw those deposits tax free. Mr. Greenough submits that from those payments, Ms. Greenough receives \$6,800 each month, along with disability benefits of about \$3,600 each month. Mr. Greenough has also been paying the mortgage and

utilities for the home, which is another benefit of about \$5,000 each month. However, those payments also benefit him. In addition, one of the adult children along with her family are living there, so they could contribute to those expenses. The husband estimates that the benefits he provides to Ms. Greenough are approximately \$15,000 per month.

[11] As for Ms. Greenough's personal circumstances, she states the following in her affidavit:

8. I suffer from a degenerative brain disease diagnosed in 2017. This is an extremely rare disease which gradually causes worsening deterioration of my brain function. I am totally disabled from working, and I currently live on a [disability payment], Canada Pension Plan and Federal Pension income in the sum of \$37,897 annually. I cannot always manage my own affairs due to my memory loss, paranoia and cognitive issues related to this disease. I have been told by my neurologist that I require a new medication costing \$10,000 per month. [The neurologist] is in the process of trying to get funding for me for this medication.

[First Affidavit of Ms. Greenough filed on April 25, 2022.]

[12] In another affidavit, she further deposes:

3. I have difficulty processing mental tasks and my cognitive abilities are declining further as time passes. My daughter Natasha has Power of Attorney over me so that she can assist me with some tasks as I continue to lose more and more of my independence.
4. In March of [2022,] [the neurologist] discussed a new form of treatment for my condition that [may cost] \$10,000 a session and is required every 3 weeks for a [specified] period of time . Another treatment that will be reintroduced to me is neurofeedback, which is not covered under insurance and can cost an average of \$500 per week or in the alternative I can purchase my own machine for \$10,000 . These expenses are in addition to my monthly costs for chiropractic services, acupuncture, and counselling.

[Second Affidavit of Ms. Greenough filed on September 14, 2022.]

[13] With respect to the daughter living in her home, she deposes:

12. [M]y daughter and her family reside with me to assist me with day-to-day living in light of my neurological condition that restricts my ability to live alone. I would not be capable of living alone currently due to my medical condition.

[Second Affidavit of Ms. Greenough filed on September 14, 2022.]

[14] She further deposes:

14. I attend a counsellor which is part of treating my medical condition as my counsellor helps me to understand how to deal with my deteriorating disability. My counselling is no longer covered under extended medical due to being capped at \$500 per year.

[Second Affidavit of Ms. Greenough filed on September 14, 2022.]

[15] With respect to her role during the marriage, she deposes:

26. During our 24 year marriage, I worked full-time at CRA to assist with finances during the start up of our business and I assisted with the development of the business moving forward. Throughout our marriage I was the primary caregiver for two children since their birth. This involved caring for them as infants and toddlers and then it progressed as they got older to taking them to and from school, facilitating their extracurricular activities and many other responsibilities associated with raising successful children. Some of my time and energy was spent volunteering for my local union.

[Second Affidavit of Ms. Greenough filed on September 14, 2022.]

[16] In conclusion, she deposes:

26. Many of [my] contributions allowed the respondent to progress [in] his career by developing our business and accumulating assets.

[Second Affidavit of Ms. Greenough filed on September 14, 2022.]

[17] That is the background to this application.

- [18] I will deal firstly with the application for the business valuation and appraisals. The commercial properties were appraised in July 2022, and the combined value was \$3,520,000. The appraisals were done for a purpose outside of this litigation and Ms. Greenough believes the property is worth considerably more. Pursuant to the Supreme Court Family Rules [SCFR] once an expert is appointed, that is the only expert that can give evidence on the issue unless the court otherwise orders.

- [19] In my view, Ms. Greenough should be involved in selecting an appraiser and be satisfied from an expert as to the value of the commercial properties. Accordingly, she should have input in selecting the appraiser. I will make the order set out in paragraph 2 of the notice of application, which relates to the appraisal of the commercial property. I further order that the claimant and Mr. Greenough shall agree upon an appraiser, with liberty to apply to the court if they cannot agree. I will deal with the costs of the appraisals when I deal with the business valuation.

- [20] Mr. Greenough is not opposed to the business valuation being done by the valuator proposed by Ms. Greenough. However, the corporate respondent has argued the following.

- [21] The parties do not personally own shares in Blue Seas Enterprises or Blue Seas Holdings. Therefore, they only need the shares of Bruce Greenough Holdings Inc. to be valued, as neither of the parties personally have shares in the other named companies.

- [22] There may be a sale of the shares in Blue Seas Enterprises, so a business valuation may have to be disclosed to prospective purchasers. That could be detrimental to their shareholders. They argue that the business valuator would be provided with the financial statements of the Blue Seas companies and that is all they need for a valuation of the shares held by the parties in Bruce Greenough Holdings Inc.
- [23] In a decision of this Court (*Aquilini v. Aquilini*, 2012 BCSC 1616), the parties did not agree on whether a joint expert was required. So the court had to decide whether or not to appoint an expert pursuant to Rule 13-4(3) and that exercise required a consideration of the following matters:
- 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 SCFR.
- [24] As I have already indicated with respect to the appraisals, once appointed the joint expert is the only expert who can give evidence on the issues that are the subject of the matter before the court, unless the court otherwise orders. I am satisfied that and it is largely not disputed, the financial issue with respect to the value of the shares of companies will require expert evidence and that the proposed business valuator is a properly qualified expert. I am satisfied that the appointment of a joint expert is consistent with the purposes and intent of the SCFR.
- [25] Section 84(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides specific examples of family property. It includes shares in a corporation. Although Mr. Greenough deposed in an affidavit that he personally owned shares in Blue Seas Enterprises, that appears to be in error as the parties only have shares in Bruce Greenough Holdings Inc. Accordingly, pursuant to the FLA, I am of the view the only shares that need to be valued are the shares in Bruce Greenough Holdings Inc.
- [26] The court only requires expert evidence as to the value of those shares. The business valuator will require certain information in order to provide his opinion, which undoubtedly includes the financial statements of the other companies along with the commercial property appraisals once they are completed.
- [27] While I make no findings as to whether a valuation of Blue Seas Enterprises would have to be disclosed to prospective purchasers, I will leave it up to the expert to determine what documents and information he will need to value the shares of Bruce Greenough Holdings Inc. If after discussions with the expert it appears the valuation of the other companies is appropriate, the parties have leave to bring that issue back before the court.

- [28] Accordingly, I order that pursuant to Rule 13-4(3) of the SCFR, that Mr. Kiu Ghanavizchian shall complete a business valuation of the corporate shares of Bruce Greenough Holdings Inc. The application for a business valuation of Blue Seas Holdings Inc. and Blue Seas Enterprises Inc. is adjourned generally with liberty to reapply after consultation with the appointed business valuator.
- [29] As the cost of the business valuation may become a business expense, I also order that the costs of the business valuation and the commercial appraisals shall be paid by Bruce Greenough Holdings Inc., unless the parties agree to a different means of payment. I further make an order for a Guideline income report of Mr. Greenough as sought in paragraph 3 of the notice of application and that cost will be paid in the same manner.
- [30] I will now deal with the application for interim spousal support. The wife seeks \$40,000 per month in spousal support retroactive to the date of separation. She acknowledges that she received after separation a lump-sum payment of \$70,000. Greenough Holdings has two accounts, one at Coast Capital and the other at RBC. Mr. Greenough deposed in an affidavit:
18. I did remove the funds that the claimant refers to, but only after I discovered that she removed \$16,000.00 from the Coast Capital account without any prior consultation. From the funds I took I paid off the claimant's car and I also transferred another \$70,000.00 to her.

[Second Affidavit of Mr. Greenough filed on August 22, 2022.]

- [31] However, as pointed out Ms. Greenough, on March 7, 2022, Mr. Greenough withdrew \$295,000 from the account, which he tries to justify as being warranted simply because Ms. Greenough had previously withdrawn \$16,000 to pay her credit card debt.
- [32] In August 2022, after \$220,000 was transferred into the account from Blue Seas Enterprises, Mr. Greenough transferred out another \$249,000 leaving that account at a minimal balance. He says that deposit was for the payment of a 2021 dividend (he declared a dividend of \$881,000 in that year) and there is still another \$180,000 due to him from Blue Seas Enterprises for the balance of the declared dividend.
- [33] In addition to dividends, Mr. Greenough also deposes the following with respect to his income:
19. In addition to the \$6,882.59 per month that the claimant is receiving, Blue Seas Enterprises also pays me \$8,550.00 per month that goes into the Bruce Greenough Holdings RBC account and \$6,450.00 per month that goes into the Bruce Greenough Holdings Coast Capital account. I pay taxes on both of those amounts. Those are funds that I use to pay for my expenses and the claimant's expenses that I cover.

[Second Affidavit of Mr. Greenough filed on August 22, 2022.]

- [34] He further deposes:

20. [According to] my 2021 income tax return [m]y employment income was \$440,708.55 and my dividends were \$881,756.15. Although both the claimant and I enjoyed the income earned in 2021 all of it appears on my income tax return. As an example of our spending, I would estimate that we spent almost \$150,000 last year on improvements to the house that the claimant is living in.

[Second Affidavit of Mr. Greenough filed on August 22, 2022.]

[35] He further deposes:

21. As set out in my Financial Statement, much of the \$1,322,464.70 that is on my 2021 income tax return was not actually paid to me because of a lack of available cash. There is approximately \$420,000.00 that is outstanding. Blue Seas Enterprises is currently able to pay \$200,000.00 of that amount. I am proposing that the claimant and I receive half of it on an interim without prejudice basis and that each of us be responsible for the resulting taxes.

[Second Affidavit of Mr. Greenough filed on August 22, 2022.]

- [36] As I indicated, after signing that affidavit further funds related to that dividend were paid to Mr. Greenough. He still has another \$180,000 due to him from Blue Seas Enterprises.
- [37] On the evidence before me, I am required to make a determination of the Guideline income of the parties and then determine how the SSAG should be applied, if at all.
- [38] Clearly, Blue Seas Enterprises is a successful enterprise and whether or not it is ultimately sold is not particularly relevant to this application. Although that might be a relevant consideration at a trial.
- [39] Based on the evidence that I have outlined above, it is likely that Ms. Greenough is entitled to spousal support based on both the compensatory and non-compensatory grounds. Mr. Greenough says that the income of approximately \$1.3 million in 2021 was a one-off and that his salary is no more than \$440,000 as dividends are not always a certainty. His income will obviously become clearer once the business valuator has provided an income report.
- [40] In *I.F. v. R.J.R.*, 2015 BCSC 793, Madam Justice Ballance stated the following:
- [122] The main purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial at which time the court will be in a position to make a decision on the merits: *D.R.M. v. R.B.M.*, 2006 BCSC 1921; *Goriuk v. Turton*, 2011 BCSC 652.
- [123] Because interim orders are summary in nature and temporary, they provide a rough justice at best: *Newson v. Newson*, 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11. The "rough justice" approach underlying the temporary order implicitly recognizes that the evidence before the chambers judge on the interim application is often insufficient to permit an in-depth analysis of the wide array of factors relevant to entitlement and quantum of support: *R.C.G. v. C.L.G.*, 2010 BCSC 1596, para. 11; *Johnson v. Johnson*, [1993] B.C.J. No. 2140 [S.C.] at 16.

[124] The legal test governing interim support is not necessarily the same as the test applicable in reaching the final order: Goriuk. This is because the full picture of many of the considerations under the applicable legislation will not be known until a fulsome inquiry on the merits is embarked upon a trial.

[41] Justice Ballance further states:

[126] While the other relevant factors that inform the issue of spousal support are to be considered to the extent possible, the respective needs and means of the parties are ordinarily the central factors, if not the most prominent, on an interim application. The corollary is that considerations such as compensatory factors and the need to achieve self-sufficiency often hold less significance: R.C.J. v. C.L.G., 2010 BCSC 1596 at para. 11; Goriuk at para. 33.

[42] It is acknowledged by the parties that the husband's income is above the \$350,000 ceiling referred to in the SSAG. Our Court of Appeal said, in H.S.S. v. S.H.D., 2018 BCCA 199, that when income is well above the ceiling, the basis for departing from the SSAG should be measured, reasoned and justified.

[43] I note that dividends were paid by Blue Seas Enterprises to its shareholders as follows:

- 2017 - \$900,000;
- 2018 - \$1.12 million; and
- 2019 - \$1.4 million.

[43] In 2021, it paid approximately \$881,000 to Mr. Greenough, so presumably the same amount was paid to Mr. Buckingham. It appears that the payment of dividends historically has been a certainty.

[44] I have concluded that for the purposes of this application, Mr. Greenough's Guideline income is \$800,000. That is also an average of his income for the three years from 2019 to 2021. I accept, as submitted by Ms. Greenough, her Guideline income is \$37,897. Accordingly, the SSAG range is as follows:

- Low end - \$23,816;
- Mid-range - \$27,785; and
- High end - \$31,625.

[45] In her financial statement, Ms. Greenough calculates her monthly expenses to be \$11,500, which includes the expenses related to the family home; although, as I have already indicated, these are paid for by Mr. Greenough. However, it does not include the \$10,000 per month for the medical treatments that are proposed by the neurologist. I have kept in mind that Ms. Greenough, at this point, does not know of that amount what would be covered by the government or other health plans.

- [46] In *J.L.A. v. M.J.G.G.*, 2014 BCSC 1391, Master Taylor determined that the husband's income was \$890,000. Based on the midpoint of the Guidelines, the wife sought spousal support in the sum of \$24,000 per month. Master Taylor concluded a payment in that amount was excessive. Instead, he made an order based solely on the wife's needs and ordered \$12,000 per month. However, that case also included a payment of child support, so it may be distinguishable and in assessing her needs, Master Taylor noted that the wife lived rent free. I will be addressing the expenses related to the family home later in this judgment.
- [47] I have concluded that it is not appropriate to make an order for spousal support retroactive to the date of separation. I have taken into account that Ms. Greenough has been receiving support in some manner since separation. My order will not prejudice in any manner her right to seek retroactive support at trial.
- [48] On May 5, 2022, Master Nielsen made a mutual s. 91 order that remains in effect. I will leave it to the trial judge to determine what adjustments for division of property may be needed after taking into account the large withdrawals made by Mr. Greenough from the accounts.
- [49] After considering the principles set out by Justice Ballance regarding interim spousal support and as stated by our Court of Appeal that deviations from the SSAG in cases of incomes above the ceiling should be measured and justified, I am ordering that Mr. Greenough shall pay to Ms. Greenough spousal support in the sum of \$24,000 per month. The notice of application was filed on August 8, 2022, and the hearing took place in October 2022, so the first payment will be on October 1, 2022.
- [50] I estimate that the direct expenses related to the family home as stated by the Mr. Greenough are approximately \$5,000 per month. In view of the quantum of spousal support I have just ordered, I further order pursuant to s. 226 of the FLA that commencing on November 1, 2022, Ms. Greenough shall be solely responsible for the entire payment of the mortgage, utilities and house insurance for the family home, as they become due. I will leave it to the parties to make arrangements to transfer utilities, if that is necessary, but I make no order in that regard.
- [51] While I recognize these payments will benefit Mr. Greenough, I note that Ms. Greenough enjoys the benefit of occupying the family home and she has the ability to seek contribution from her daughter and her spouse, if needed. However, with respect to property taxes going forward, I order that those be shared equally between the parties.
- [52] Lastly, with respect to the spousal support I have just ordered, I further order that the parties are at liberty to seek a review upon the expert providing a report on Mr. Greenough's Guideline income.

(SUBMISSIONS ON COSTS)

- [53] THE COURT: I will start with respect to Blue Seas Holdings Inc. I make no order for costs against them. I order that the corporate respondent shall bear their own costs of this application.
- [54] With respect to costs as between the claimant and the respondent, I do see that on balance the claimant was likely the most successful litigant. I think it is appropriate to make an order that costs of the application be in the cause as between those two parties.

(FURTHER SUBMISSIONS)

- [55] THE COURT: I tend to agree with Ms. Gleeson. I did refer to Master Nielsen's order and indicated that there may have to be adjustments down the road, whether it is at trial or sooner, with respect to the withdrawals that were made. I am inclined to leave the matters the way they are. The parties will still have to try to sort out between them a number of matters, which perhaps could get resolved at the judicial case conference, but if there is a need to vary the s. 91 order, that will have to be addressed on another date. Thank you, counsel.

"Master Krentz"

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Prepared on 26 October 2026 · Esheria