

CANADA / JUDGMENT

Grewal v. Grewal

2022 BCSC 1221

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Supreme Court of British Columbia

DECIDED

19 July 2022

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2022 BCSC 1221 Grewal v. Grewal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grewal v. Grewal,

2022 BCSC 1221

Date: 20220719

Docket: E45527

Registry: New Westminster

Between:

Hardev Singh Grewal

Claimant

And

Sukhwant Kaur Grewal

Respondent

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

The Claimant:

No attendance

Counsel for the Respondent:

M. Shergill

Place and Dates of Trial:

New Westminster, B.C.

June 6-8, 2022

Place and Date of Judgment:

New Westminster, B.C.

July 19, 2022

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I. Introduction

- [1] By way of a summary trial, the respondent, Ms. Grewal, seeks orders determining family property and family debt, and ancillary orders.
- [2] The claimant, Mr. Grewal, did not file an application response to the respondent's summary trial application, and did not attend the hearing.

II. Background

A. General Background

- [3] The parties were married on September 30, 1990. As I will explain in further detail, they separated on December 31, 2013. They have two children; a daughter, Satvir, born in 1991, and a son, Sarbir, born in 1993. Sarbir was a child of the marriage within the meaning of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) when the claimant commenced these proceedings on December 20, 2013. Neither child is a child of the marriage at this time.
- [4] The parties remain married; no divorce order has been made.
- [5] The parties resided in a family home located on 113B Street, Delta (the "Delta Residence"). They purchased the home in 2004. Initially the claimant's parents had a 50% interest in the property, and the parties owned the other 50% as joint tenants. The claimant's father passed away, leaving his mother with a 50% interest in the property. In June 2013, several months before the separation, the three owners of the property transferred a one half interest to the respondent and Satvir as joint tenants, and the other half interest to Sarbir.
- [6] The parties take different positions as to the purpose or intent of this transaction.
- [7] Upon separation, the claimant and his mother resided in a basement suite in the home. They vacated the home in July 2014 in accordance with a consent order of the court made at a Judicial Case Conference on June 6, 2014. The respondent continues to reside in the Delta Residence.
- [8] The respondent claims that the following properties are family property to be divided:
1. Enfield, Saskatchewan farm lands (the "Saskatchewan Property"), which the claimant purchased in March 2014;
 2. A rural property located on St. Elmo Road, in Hope, BC, (the "Hope Property"), purchased by the claimant on May 27, 2016;
 3. four properties located in three villages in Punjab, India (the "India Properties").
- [9] The respondent contends that the claimant acquired the India Properties during the relationship, using family funds, and therefore these are family property subject to division based upon s. 84(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. She contends that the Saskatchewan Property and the Hope Property were purchased with money that was family property at the time of separation, and are therefore family property, based upon s. 84(1)(b) of the FLA.
- [10] The respondent contends that her 25% share of the Delta Residence is not family property, or if it is, it should be allocated to her alone, by way of unequal division pursuant to s. 95 of the FLA.

- [11] The respondent's claims to the Saskatchewan Property, the Hope Property, and the India Properties are set out in her Amended Counterclaim filed March 23, 2021. The claimant did not file an Amended Response to this counterclaim, therefore he did not specifically answer these claims in his pleadings.
- [12] Affidavits of the claimant filed in these proceedings on October 22, 2021 and January 5, 2022 in response to a previous application for summary trial brought by the respondent contend that:
1. the Saskatchewan Property was purchased after separation, using a loan of \$50,000 provided by his mother;
 2. the India Properties were "ancestral properties" that he "inherited before my marriage" and are excluded under the FLA;
 3. the 2013 house transfer to the respondent and the children was in "full and final settlement for the property matters, in India and in Canada"; and
 4. the court should not order sale of the Saskatchewan and Hope properties.
- [13] The claimant's affidavits provide no information as to the acquisition of the Hope Property.
- [14] The respondent works as a caretaker for the Surrey School Board, and is also a labour worker for a packaging company. As child or spousal support are not in issue, she provided no current income information.
- [15] In breach of court orders made January 11, 2022 and March 10, 2022, the claimant did not provide a current form F8 financial statement. In a form F8 financial statement dated May 26, 2014, he indicated that he was self-employed as a taxi driver, and earned income of \$17,012. In his recent affidavits he describes his occupation as "taxi operator". He disclosed his 2019 and 2020 tax returns. In 2019 he earned net business income (which I presume to be income from the taxi driving business) of \$18,854. He also earned gross farming income of \$5,000, which on a net basis resulted in a loss of \$121. The income relates to corn farming of the Hope Property.

B. History the Proceedings

- [16] The respondent contends that I should make inferences adverse to the claimant, and attribute property interests, relying in part upon deliberate non-disclosure of property by the claimant. To answer these contentions, it is necessary to review the history of the proceedings. The history of the proceedings is also relevant to the issue of whether this matter is suitable for determination by way of summary trial.
- [17] There is some ambiguity about the separation date. The claimant's Notice of Family Claim filed with the court on December 20, 2013 stated that the parties had lived separate and apart since December 4, 2012. The respondent filed a Response to Family Claim January 15, 2014. She was unrepresented. She stated that the claimant had asked for a divorce in

December 2013, but he wanted to continue to cohabit. Her Counterclaim filed March 4, 2014 states that the date of separation was December 31, 2013. The claimant's Response to Counterclaim filed May 29, 2014 alleges that the date of separation was December 31, 2012. However in his recent affidavits, the claimant seems to accept the respondent's assertion about the date of separation. He states that the parties separated December 31, 2013. However these affidavits do not indicate that there is an issue or controversy about the date.

- [18] The precise date of separation is not especially material in this case. The current sworn evidence from both parties is that the date of separation was December 31, 2013; therefore, I accept that date as the date of separation for the purposes of these reasons.
- [19] The parties attended a Judicial Case Conference conducted by Justice Loo on June 6, 2014. They consented to an order that the claimant and his mother would vacate the basement suite of the former matrimonial home on 113B Street, Delta, by no later than July 31, 2014, and the claimant would pay rent of \$500 per month for June and July.
- [20] It is apparent that the proceedings languished for many years. The reasons for this are not material. The respondent says that over the years she filed several notices of intention to proceed, but had difficulty serving the claimant with court documents as he was often in India.
- [21] The respondent filed an application on September 13, 2021 for retroactive payment by the claimant of child support and s. 7 expenses (tuition fees) for Sarbir for the period December 2014 to June 2018. The application also sought division of property and debt, and ancillary orders.
- [22] The application came on for hearing on September 29, 2021 before Justice Brongers, who adjourned the hearing to October 13, 2021 at the claimant's request in order to allow him time to retain counsel. On October 13, 2021, the hearing of the respondent's application was further adjourned to October 27, 2021 by Justice Blok at the request of the claimant's new counsel, Rohita Pannu. Blok J. ordered that the claimant provide application response materials by October 20, and that the October 27 hearing was peremptory on the claimant.
- [23] The claimant filed an application response and an affidavit on October 22, 2021. As noted, he contended that the Saskatchewan Property was purchased with a loan of \$50,000 from his mother and that the India Properties were excluded under the FLA. He made no mention of the Hope Property. The affidavit lacks detail regarding any of the properties in issue.
- [24] The matter came on for hearing before Justice Caldwell on October 27, 2021. The claimant consented to payment of \$13,349.89 in retroactive child support and section 7 expenses. Justice Caldwell adjourned the remaining portions of the application, having to do with division of property and debt. According to the respondent and Ms. Hundal, an articling student for the respondent's counsel, Justice Caldwell suggested that the respondent needed further evidence about the properties, that she ought to make an application for disclosure of documents, and that she ought to examine the claimant for discovery.

- [25] The claimant failed to attend his examination for discovery scheduled for November 18, 2021. In a subsequent affidavit, he stated that he was unable to attend as he was attending to his Hope Property, which was flooded.
- [26] The respondent brought an application for disclosure of documents, filed with the court December 3, 2021. She sought credit card and bank statements, and documents relating to the Saskatchewan Property, the Hope Property, and the India Properties. The disclosure application was adjourned on December 16, 2021, by Justice Armstrong, at the request of the claimant. Justice Armstrong ordered that the claimant was to file and deliver response materials to the application by January 4, and that the new date for hearing of the application, January 7, 2022, was peremptory on the claimant.
- [27] The application was heard by Justice Edelmann on January 7 and January 11, 2022. Justice Edelmann ordered production of various documents, including an updated form F8 financial statement from the claimant, bank statements and credit card statements, contracts of purchase and sale and loan documents with respect to the properties, and other documents.
- [28] On December 29, 2021, the respondent obtained a notice of trial for a four-day trial to commence May 24, 2022. The trial date was subsequently changed to commence June 6, 2022.
- [29] On March 10, 2022, the parties attended, via counsel, a trial management conference conducted by Master Robertson. Master Robertson ordered that the respondent would be at liberty to set down a summary trial hearing for April 27, 2022. She also ordered that the claimant attend an examination for discovery on April 21, and that he provide disclosure pursuant to the order of Edelmann J. of January 11, 2022, by March 25. She also ordered that the parties exchange updated lists of documents and F8 financial statements by May 23.
- [30] The respondent filed a new summary trial application on April 7, 2022. This is the application that I heard on June 6-8, 2022.
- [31] The claimant was examined for discovery on April 21, 2022. The claimant was represented by Ms. Pannu at the examination.
- [32] The respondent's summary trial application came on for hearing before me on April 27, 2022. The claimant had not filed an application response or any affidavit material in response to the application. The claimant and counsel for the claimant did not attend. A few minutes after the hearing began, a lawyer, Mr. T. Arora, entered the courtroom and advised me that counsel for the claimant would not be attending as she was ill with Covid-19. He advised the Court that he had received a phone call from her that morning, requesting that he attend court to advise the Court of this. Mr. Arora had no instructions to seek an adjournment. Counsel for the respondent advised me that she had had no prior indication that Ms. Pannu was ill.

[33] After hearing submissions from counsel for the respondent, I ordered that:

1. the respondent's summary trial application filed April 7, 2022 be adjourned to June 6, 2022, the date set for trial, and the hearing date be peremptory on the claimant;
2. the claimant file and serve his application response materials by no later than April 29; and
3. the claimant pay costs in the amount of \$1,500 within 14 days.

[34] In breach of the Supreme Court Family Rules, B.C. Reg. 169/2009 [the Rules] and my order of April 27, 2022, the claimant did not file an application response and did not pay the costs. He also failed to file an updated Form F8 financial statement as required by the Rules and the orders of Edelmann J. and Master Robertson.

[35] The claimant substantially failed to comply with Edelmann J.'s order for disclosure of documents.

[36] On May 30, 2022, through counsel, the claimant applied for an order granting short leave to bring an application to adjourn, on medical grounds, the trial scheduled for June 6, 2022. The claimant wished to present an application to seek an adjournment of three to six months. Justice Matthews rejected the short leave application. It is apparent that Matthews J. saw no merit in the application for short leave. I infer this is because she saw no merit in the proposed application itself. I do not have the benefit of her reasons for dismissing the application, but I have reviewed the application materials that were before Matthews J. They suggest that the claimant was merely seeking to delay the proceedings. In his affidavit in support of the application the claimant stated that he suffered a severe headache and stroke on May 9, 2022, and was hospitalized at Surrey Memorial Hospital. He provided copies of hospital records as well as a doctor's note. However the records did not support his contention that he had suffered a stroke. The records indicate that he attended the hospital on May 9, 2022 complaining of a headache and chest pain. He was discharged after a few hours with a recommendation to take pain medication as needed. His doctor's note makes no mention of a stroke. It says the claimant has struggled with tension headaches and he was advised to avoid stress including stressful legal matters for some months.

[37] The matter came on for hearing before me on June 6, as scheduled. Without prior notice to counsel for the respondent, Mr. P. Sahota, a member of the bar, attended as an agent for the claimant's counsel, Ms. Pannu. Mr. Sahota informed me that he had no instructions to represent the claimant. However he attended at the request of Ms. Pannu to convey her request for an adjournment of the hearing. She was out of the country in India, as she had unexpectedly been required to travel to India to be with her injured father. The respondent opposed the adjournment. I refused the adjournment request, for reasons delivered orally. On all of the evidence, not just what I have recited here, there was in my view a clear pattern of unjustified delay, as well as non-compliance with court rules and court orders. As the claimant had not filed an application response, it was at least doubtful whether he had standing at all: *British Columbia (Director of Civil Forfeiture) v. Crowley*, 2013 BCCA 89, at

para. 72; Rule 10-6(8).

III. Legal Principles

- [38] The statutory provisions applicable to the division of family property and family debt are set out in Part 5 of the FLA (sections 81-109), and do not need to be repeated here.
- [39] The claimant has failed to comply with the disclosure requirements under the Rules and with court orders for disclosure. As I will explain in further detail, I am satisfied that the claimant has deliberately failed to disclose assets.
- [40] The legal principles applicable where a party fails to disclose assets and dissipates family assets after separation were summarized by Justice Fleming in *Chang v. Xia*, 2015 BCSC 1994 at paras. 47-50, as follows:
- [47] Where a spouse fails to disclose financial assets and dissipates family assets after separation, the court may impute assets to the spouse and/or reapportion family assets or debt pursuant to s. 95(2) of the FLA if the court finds it would be significantly unfair to order an equal division, or the common law.
- [48] In *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), the court referred to the non-disclosure of assets in family cases as the cancer of matrimonial property litigation. The court determined it was not sufficient to respond to such conduct with an award of costs or by dealing only with the known assets. Instead, the court divided the parties' family assets on the basis that the husband's undisclosed assets had an imputed equal value to the disclosed assets. The court then vested all the known assets in the name of the wife.
- [49] In *Laxton v. Coglon*, 2008 BCSC 42, the court clarified that where the non-disclosing party has not satisfied the court that full disclosure has been made, the court may infer the value of the undisclosed assets is at least equal to the value of the disclosed assets. The inference operates to ensure equal division between the parties. The court in *Laxton* also observed that the principle in *Cunha* applies only where there is a strong evidentiary basis for the proposition that one of the parties to the litigation has hidden assets.
- [50] More recently, in *Wu v. Sun*, 2011 BCCA 239, the Court of Appeal made a similar point. It affirmed that strong measures are justified in discouraging non-disclosure, but cautioned that there must be some evidence of the value of the undisclosed assets before the inference is appropriate, although that evidence may be sparse.
- [41] In *Singh v. Singh*, 2020 BCCA 21 [Singh], the Court of Appeal discussed its previous decision in *Wu v. Sun*, 2011 BCCA 239, referred to above. In *Singh*, the appellant Mr. Singh argued as follows:
- [123] Mr. Singh submits that the judge failed to explain in detail his rationale for making the award. He says that to the extent the award is based on undisclosed unspecified assets, as was the case in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), the judge erred in law

because there was a wholly insufficient evidentiary basis to reach the conclusion that he owned other undisclosed properties in India: relying on *Wu v. Sun*, 2011 BCCA 239. In other words, Mr. Singh says drawing adverse inferences against him is not a substitute for evidence about specific assets: *Wu* at para. 41 citing *M.P.P. v. C.M.P.*, 2005 BCSC 1014.

[42] In this respect, Garson J.A. (with whom D. Smith and Fisher JJ. A. concurred) stated:

[143] The judge made findings on the evidence as noted above that provide an evidentiary basis for his conclusion that Mr. Singh had additional undisclosed assets in India. In my view the judge's reasons, taken as a whole, paint a picture of an untrustworthy party, whose property disclosure could not be relied upon at all. There is sufficient evidence of the fluidity of his affairs between Canada and India, the nature of his real estate dealings in India, and his dishonest lack of disclosure, for the judge to have reached the conclusion, founded on Mr. Singh's own evidence, that there existed additional undisclosed and unidentified assets in India.

[144] In my view, the judge did not "make something out of nothing" as was the case in *Wu*. Here, there was a reasonably based finding that there were additional undisclosed and unknown assets. This is an exceptional case. Usually such an award would need to be based on evidence tied to a specific asset but where, as here, the party has been found to be completely unreliable and his own evidence leads to a reasonable inference that he is hiding assets, a judge may be justified in making a restrained and conservative order such as was done here. I note that the s. 95 award is based only in part on the unspecified assets. I also note that, unlike in *Wu*, the judge did not ascribe any specific value to the undisclosed assets. Rather, he simply considered the strong likelihood of their existence in fashioning a fair division of assets. I would not disturb the award on this basis.

[43] Rule 5-1(28) sets out enforcement powers of the court if a party fails to comply with a requirement under Rule 5-1 to file or serve a Form F8 financial statement, or any applicable income document, or fails to comply with an order under the rule to provide particulars. In such circumstances, the court may, among other things, draw an adverse inference against the party or attribute income to that party in an amount the court considers appropriate: Rule 5-1(28)(f)-(g). The critical importance of disclosure in family litigation has repeatedly been emphasized by the courts: *Freeman v. Freeman*, 2008 BCSC 857, at para. 25.

IV. Suitability for Summary Trial Determination

[44] As the claimant did not file a response to the application, or attend the hearing, this issue was not contested. Given the claimant's failure to provide disclosure, or to comply with the requirements of the rules of court and court orders, and his lack of participation in the proceedings generally, there would be very little utility in a conventional trial. In any event, I am satisfied that I am able to find the facts necessary to decide the issues of fact or law, and that it would not be unjust to decide the issues on the application, in accordance with the requirements of Rule 11-3(15).

V. Analysis - Property and Debt

A. Family Property

1. Delta Residence

- [45] In June 2013, the parties and the claimant's mother, Gurcharan Grewal, transferred title to the Delta Residence to the respondent and the parties' two children. The result was that the respondent and the parties' daughter Satvir owned 50% as joint tenants, and the parties' son Sarbir owned the other 50%.
- [46] The stated market value at the time of the transaction was \$418,000, which was the amount of the BC assessment at that time. The current assessed value is \$1,106,100.
- [47] There is minimal information available to me as to the intentions of the parties with respect to this transaction. According to the respondent's affidavit evidence, the parties "resolved our respective interest in the family home" at that time. By this I infer that she means the claimant gave up his interest in the Delta residence. In her recent financial statements, she contends that the home is not family property.
- [48] The respondent adds that she solely paid the down payment of \$30,000 when the home was purchased in 2004, and that the claimant and his parents did not contribute financially to the maintenance or improvement of the home. She says that the claimant did not make mortgage payments, or pay for other household expenses, except for occasional lump sum payments of a few hundred dollars. She states that he kept his own funds separately, and had savings in accounts at the Khalsa Credit Union.
- [49] The claimant states that he and his parents contributed equally to the down payment for the home, that he made the mortgage payments, and that he always "handed over" his paycheques and all of his money to pay his share of household expenses.
- [50] In effect, it seems that the respondent is alleging that there was an agreement to divide family property (the 50% interest that the parties owned) just prior to separation, which survived the separation. She contends the agreement related only to that property. She accepts that she should be solely responsible for the mortgage debt.
- [51] In the claimant's 2014 financial statement, the claimant stated that he transferred a one-quarter interest in the property to their daughter in June 2013 pursuant to the respondent's request. No further details were provided. His 2013 Notice of Family Claim did not include a claim to any property. A claim to an interest in the property is included in the claimant's Amended Notice of Family Claim filed July 29, 2021. He states that he is applying for a certificate of pending litigation with respect to the Delta Residence.
- [52] The claimant's October 20, 2021 affidavit states that the transfer from him and from his mother of their interests in the property was in "full and final settlement for the property matters, in India and in Canada".

- [53] At the time of separation, \$118,783 was owing on the mortgage on the family home. The respondent has continued to reside in the home, with the children, since then. She has paid the principal amount owing on the mortgage down to \$95,000 over the years.
- [54] The claimant's claim to an interest in the home is not consistent with his position that in 2013 he agreed to give up his interest in the home in exchange for the respondent waiving claims to other properties in India and Canada. I note that the claimant and his mother transferred their interests to the children, not the respondent. At the time, he owned no properties in Canada (at least, he disclosed none, and the respondent has not discovered any).
- [55] I do not accept that the respondent agreed to give up any claims to the India property or other family property (such as money held by the claimant), as the claimant appears to contend. There is really nothing to support that contention. However, it is clear that the claimant gave up his interest in the family home in favour of his daughter. It also appears that the respondent agreed to be solely responsible for the mortgage and other housing expenses. She remained in the home and paid the mortgage. The claimant and his mother continued to reside in the basement suite until mid 2014. In the JCC order of June 14, 2014, the claimant agreed to pay rent of \$500 per month for June and July 2014 to the respondent. This suggests that he recognized at that time that the respondent owned the home and that he did not.
- [56] I conclude that the respondent agreed to give up his interest in the home in 2013, in favour of his daughter, and he also agreed that the respondent should retain her own share. By necessary implication this meant that he would not make a claim against the respondent's share. The respondent agreed to be responsible for the mortgage. Although the agreement preceded the formal separation by a few months, I infer that it must have been made in contemplation of separation.
- [57] Thus, there was an agreement between the parties to divide the property and debt, or to exclude family property and debt, enforceable under s. 92 of the FLA.
- [58] Therefore, the claimant's 25% interest in the family home is not family property, and the mortgage is not family debt.
- [59] In the alternative, if there was no agreement within the meaning of s. 92, I would allocate the respondent's 25% interest in the home and the entirety of the mortgage to her, as unequal division under s. 95(1). Two specific factors merit consideration.
- [60] First, as set out in s. 95(2)(b): "the terms of any agreement between the spouses, other than an agreement described in section 93(1)" may be considered for the purposes of unequal division of property or debt. (Section 93(1) deals with formal written agreements respecting division of property and debt). In my view it would be significantly unfair to ignore the agreement the parties made in June 2013, and apparently relied upon for the many years since.

[61] Second, I take into account the claimant's failure to disclose assets and to disclose documents. This is a factor that may be considered under s. 95(2)(i) ("any other factor that may lead to significant unfairness"). Section 95(2)(i) deals with factors concerning the economic characteristics of a spousal relationship, which includes the existence of undisclosed assets: Singh at para. 140.

2. Saskatchewan Property

[62] The respondent alleges that at the time of separation, the claimant had savings in an account at the Khalsa Credit Union in the amount of \$180,000, which he never disclosed. Beyond the respondent's own evidence, there is an evidentiary basis for the existence of separate, undisclosed accounts at the Khalsa Credit Union. The claimant's May 26, 2014 financial statement lists no accounts or investments with Khalsa Credit Union. He lists \$1,000 with Coast Capital Savings Credit Union, only.

[63] However:

1. documents show that the claimant received interest income from 2011-2013 from savings held at Khalsa Credit Union;
2. in answer to the respondent's affidavit saying that the claimant did not pay household expenses or mortgage payments, the claimant's responding affidavit attaches a Khalsa Credit Union "official cheque" (akin to a bank draft, I infer) payable to RBC Royal Bank in the amount of \$13,237, dated July 16, 2012, and copies of four personal cheques drawn on the Khalsa Credit Union, ranging from \$500 to \$1,000, payable to the respondent, dated in 2007 and 2009. The personal cheques are drawn on an account held by the claimant and Sher Singh Grewal;
3. The respondent located a deposit slip showing a deposit to a Khalsa Credit Union account in January 2003 in the amount of \$12,800. The respondent says this last item represented family money that the claimant used to buy land in India.

[64] According to Saskatchewan land title documents, the claimant purchased the Saskatchewan Property March 25, 2014 for \$75,000. The Saskatchewan Property is not listed on the claimant's May 29, 2014 financial statement. Its appraised value as of July 27, 2021 is \$173,000.

[65] Thus, the claimant failed to disclose whatever monies he held at Khalsa Credit Union, and the Saskatchewan Property, in his 2014 financial statement. He also did not disclose the four India Properties.

[66] I accept that the claimant had \$180,000 in savings at the time the parties separated as the respondent asserts, despite the lack of documentation for that precise figure. Attribution is justified due to the claimant's failure to disclose and to comply with orders.

- [67] The Edelmann J. order of January 11, 2022 required the claimant to produce contracts of purchase and sale and documents relating to the source of funds for the purchase of this Saskatchewan Property. The claimant, through counsel, states that he could not find the documents relating to the purchase of the property.
- [68] As noted, the claimant asserts that he borrowed \$50,000 from his mother to buy the farm. The claimant does not say where the rest of the purchase money came from. He produced a January 2015 statutory declaration from his mother in which she states that she gifted \$50,000 to him. No documents such as bank records corroborate this. Whether a gift or a loan, I place no weight on this evidence. The mother's statutory declaration is hearsay, and there is no evidence upon which I could conclude that it is nonetheless reliable. It is at odds with the claimant's own evidence. The claimant's mother would have a natural bias in favour of her son.
- [69] The purchase occurred very soon after the separation. I am satisfied that the claimant did in fact have separate undisclosed savings. It is also clear that the claimant has not disclosed property and has failed or refused to disclose relevant documents. Therefore adverse inferences and attributions of property must be made in order to reach a fair division of property and debt.
- [70] In all the circumstances, I conclude that the claimant purchased the Saskatchewan Property with money that was family property at the time of separation. Accordingly, the Saskatchewan Property is family property pursuant to s. 84(1)(b)(i) of the FLA.

3. The India Properties

- [71] The respondent's amended counterclaim filed March 23, 2021 specified four properties located in India that were alleged to be family property. As noted, the claimant did not file an amended response to the amended counterclaim.
- [72] The respondent's affidavit of September 8, 2021 provided evidence about the four properties, including specifics identifying them, and providing evidence of current market values, which were estimated at a total of \$424,740. The claimant's responding affidavit filed October 22, 2021 states that the four properties are excluded under the FLA. The claimant added "I inherited all of the above said ancestral properties before my marriage." This statement seems unlikely to be literally true, since the claimant's parents were both alive during the marriage. His mother is still alive.
- [73] Thus, the claimant admits owning the properties. The properties were not disclosed on the claimant's May 26, 2014 financial statement, the only financial statement he ever provided.

[74] The claimant did not disclose information about the properties as required by the Edelmann J. order. By letter dated February 7, 2022, his counsel stated that the claimant had requested documents relating to the India Properties, but due to Covid-19 and elections in India, the documents were not available yet. No documents have since been provided. Therefore, the claimant failed to disclose the India Properties, and failed to provide documents relating to them, as ordered by the court.

[75] The respondent has obtained appraisal evidence relating to the properties. A description of the properties and their most current appraised values, converted into Canadian dollars at current exchange rates, is as follows:

Location:

Purchased In:

Value at Present Date:

Village Dudhal, Tehsil Malaud Distt. Ludhiana, Punjab, India (area of property: 26 B-19 B-14, 5.58 acres

In or around 2002-2003

\$208,989.76

Village Jassowal Distt. Ludhiana, Punjab, India -1 Acre 1 Kanai 5 Marle

Unknown

\$157,337.24

Village Jassowal Distt. Ludhiana, Punjab India - 16 Marle (residential)

1992

\$45,117.73

Village Natt, Tehsil Sahnewal District, Ludhiana, Punjab, India - 1520 square feet residential

2012

\$48,075.41

Total value of the India Properties:

\$459,520.14

[76] The respondent testified that the properties were acquired, to the best of her knowledge, at the times indicated in the above-noted table.

[77] The respondent has provided documents showing transfers totalling \$79,226.88, during the relationship, during the years 2001 through 2004, which she contends are evidence of monies the claimant sent to India to purchase land there. She located six receipts. She

contends he used monies that he held in the Royal Bank and the Khalsa Credit Union to make the transfers, and to purchase the properties. I accept her evidence that during the marriage the claimant purchased lands in India, and that he used family money to do so. He kept his money separately, and relied on the respondent to pay most of the family's bills.

[78] The respondent also asserts reasonably that the claimant would have received income from leasing the properties in India, which could have been used to purchase other property.

[79] I find that the claimant owned (and still owns) the India Properties listed above, prior to separation. These properties are, therefore, family property within the meaning of s. 84(1) (a).

[80] Pursuant to s. 85(1), property acquired by a spouse before the relationship between the spouses began, and inheritances, are excluded property. However, pursuant to s. 85(2), the burden of proof is on the spouse claiming that property is excluded, to demonstrate that the property is excluded. The claimant has not satisfied this burden.

[81] In summary, I accept that the India Properties are family property.

4. Hope Property

[82] The claimant owns rural acreage located on St. Elmo Road in Hope, BC. It consists of 2.63 acres of land, and a 51-year-old mobile home of 480 square feet. The respondent had the property appraised effective August 11, 2021. The appraised value at that time was \$470,000.

[83] The claimant purchased the property May 27, 2016, for a price of \$245,000.

[84] The claimant did not disclose the property on a financial statement since he has not provided one since 2014, despite the court orders and his obligations under the Rules. He did not provide details of mortgage documents or source of purchase funds documents, contrary to the order of Edelmann J. on January 11, 2022. His affidavits provide no information about the acquisition of the Hope Property.

[85] Information provided through his legal counsel on March 25, 2022 states that the tenant of the mobile home lives there rent-free and has refused to provide access. The appraiser was unable to obtain access to the interior of the mobile home, and had to assume its characteristics from an exterior inspection only. The appraiser gave an opinion that the value was \$470,000 as at August 11, 2021. That opinion was roughly consistent with the BC assessment value of \$498,700. However, the subsequently issued 2022 assessment as of July 1, 2021 is \$860,800.

[86] As in the case of the Saskatchewan Property, the respondent contends that the claimant used funds from the Khalsa Credit Union savings account that he maintained during the relationship in order to purchase the Hope Property.

- [87] The claimant was examined for discovery April 21, 2022. He testified that of the \$245,000 purchase price, he took a mortgage for \$120,000 or \$125,000. The rest of the money he borrowed from "friends". He had no records. He did not identify the lenders. He said that the loans were of \$5,000 or \$10,000 from various persons. He provided no documents as to the mortgage of \$120,000 or \$125,000. He said he paid it off in 2021.
- [88] If the claimant sourced the entire \$75,000 used to purchase the Saskatchewan Property in 2014 with money from his Khalsa Credit Union savings of \$180,000, then he had \$105,000 left over and available to him for other purposes.
- [89] I reject the claimant's evidence that he borrowed money from friends to make up the difference between the approximately \$125,000 that he obtained by way of a mortgage and the purchase price of \$245,000. In view of his failure to disclose, I infer that he used other money that he had saved during the relationship, prior to separation.
- [90] On this basis, I infer that approximately one-half of the purchase of the Hope Property was sourced with family property or the proceeds thereof. Therefore, 50% of the Hope Property is family property for purposes of the FLA.

B. Canada Pension Plan

- [91] The respondent contends that parties' Canada Pension Plan unadjusted pensionable earnings should not be equalized under s. 55, 55.1, and 55.2 of the Canada Pension Plan, R.S.C. 1985, c. C-8 ("CPP").
- [92] In the absence of a valid agreement between the spouses under FLA s. 127(2) providing that unadjusted pensionable earnings under the CPP will not be divided, credit splitting is mandatory and automatic for divorces and annulments occurring on or after January 1987: *Runchey v. Canada (Attorney General)*, 2013 FCA 16 (CanLII), at para. 46; CPP ss. 55.1(1)(a) and 55.2(3); *R.B.R.S. v L.R.T.M.*, 2019 BCSC 1142, at para. 55.
- [93] Where, as in this case, no divorce order has been made, it is open to the spouses to apply for CPP division after a period of separation exceeding one year: CPP s. 55.1(1)(b)(i).
- [94] The court has no jurisdiction to make an order that is contrary to the provisions of the CPP: *Pavlicevic v. Pavlicevic*, [1998] B.C.J. No. 579, 37 R.F.L. (4th) 107 (BCSC), at para. 18.
- [95] As there is in this case no agreement to preclude the application of the provisions of the CPP governing division of the unadjusted pensionable earnings of the parties, I have no jurisdiction to make the order sought.
- [96] In any event, I have no evidence as to the possible effect of the order sought in the circumstances of this case, and therefore there is no evidentiary basis for any order taking the parties' CPP credits into account.

C. Family Debt

[97] At the time of separation, not including the mortgage, the family debt consisted of personal debt, totaling \$10,045. Most of this amount was a line of credit on which \$7,704 was owing. \$1,113 was owed to Home Depot, \$769 to Costco, and \$284 on a Royal Bank credit card. The personal debt in the amount of \$10,045 is to be divided equally.

VI. Conclusions and Orders

[98] As the values of the Hope Property and the Saskatchewan Property is uncertain, these properties must be sold in order to pay the respondent for her interest in them, and in order to satisfy her claim to the India Properties.

[99] I agree with the respondent that she should have sole conduct of sale of the properties, in view of the claimant's lack of cooperation and efforts to delay the proceedings. The claimant is ordered to provide access to the properties and to cooperate as required in the sale process. The sales will be subject to court approval.

[100] In summary:

1. The claimant has no interest in the Delta Residence.
2. The claimant's CPL filed against the Delta Residence is to be cancelled.
3. The claimant retains exclusive title to the properties in India.
4. The claimant is required to compensate the respondent for one-half of the value of the four properties in India. This amount is \$229,760.07.
5. The claimant must pay the respondent \$5,022.50 for the claimant's share of the family debt.
6. Therefore the claimant will pay the respondent a total of \$234,782.57.
7. The Saskatchewan Property is family property and is divided equally between the parties.
8. The Hope Property is family property, and the respondent has a 25% interest in it.
9. The Saskatchewan Property and the Hope Property are to be sold. The respondent will have sole conduct of the sales. The net proceeds after payment of selling expenses are to be divided in accordance with these reasons, except that the claimant will pay \$234,782.567 to the respondent, as noted above, from his share of the proceeds.
10. Each party is solely responsible for any debts or financial obligations not referred to in this order.
11. All other claims in the proceeding are dismissed.

[101] The respondent is entitled to costs of the proceedings, to be assessed. For greater certainty, the costs payable by the claimant included the respondent's expenses incurred in obtaining property appraisal evidence.

[102] The respondent is at liberty to apply for further orders or directions that may be required.

"Verhoeven J."

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Prepared on 28 October 2026 · Esheria