

CANADA / JUDGMENT

Hamdi v. Ali

2024 BCSC 1753

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2024 BCSC 1753 Hamdi v. Ali

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hamdi v. Ali,

2024 BCSC 1753

Date: 20240923

Docket: E65987

Registry: New Westminster

Between:

Safa Salah Hamdi

Claimant

And

Sawsan Hussein Ali

Respondent

Before: The Honourable Justice Walkem

Reasons for Judgment

Chambers

Counsel for the Claimant:

R. Choudhry

Counsel for the Respondent:

L. Kompa

Place and Date of Trial/Hearing:

Chilliwack, B.C.

August 22, 2024

Place and Date of Judgment:

New Westminster, B.C.

September 23, 2024

Table of Contents

Background.. 3

Mr. Hamdi's NOFC.. 6

Ms. Ali's Application to Strike. 8

Law.. 9

Per Rules 11-2(1)(b) and (d): Is the claimants notice of family application unnecessary, scandalous, or vexatious? It is an abuse of process of the court?. 9

Disposition.. 16

- [1] The claimant seeks an order setting aside a final order (made by consent, and reflecting a settlement agreement made between the parties) dated January 29, 2018 (the "final order").
- [2] The final order transferred Mr. Hamdi's interest in the family home to Ms. Ali. That property transfer was made as payment of lump sum spousal support from Mr. Hamdi to Ms. Ali. Subsequently, land transfer documents were signed giving effect to that order.
- [3] The final order reflected the terms of a settlement agreement reached between the parties on the eve of a family law trial and its terms went by consent, as well as based on submissions made before Justice Gropper.
- [4] The final order was never appealed. Indeed, the time when an appeal could have been filed, is long since past.
- [5] Approximately 6 years after that final order was entered, the claimant (application-respondent) Mr. Hamdi filed a family law claim seeking to set aside that final order.
- [6] This application is brought on behalf of the respondent-applicant, Ms. Ali, for an order striking the claimant's pleadings.

Background

- [7] The parties married in Iraq in 1983. They have three grown children. The couple moved to Canada in 1999 and purchased a home at 6238 Gilley Avenue Burnaby (the "family home"). Ms. Ali and the children resided in the family home.
- [8] Mr. Hamdi, through the course of his work as a commercial airline pilot, worked in different international locations. He spent a great deal of time in Malaysia and the United Arab Emirates.
- [9] By 2006, the home was entirely paid off. The parties disagreed about how much either party contributed to the home.
- [10] The parties separated in 2014.
- [11] A trial was scheduled in the family law matter for January 29, 2018. At issue were spousal support (which Ms. Ali claimed), division of family property, and debt. The main asset of the family, in the family law matter, was the family home which was then worth approximately \$1.6 million. Whether there were other assets outside of Canada, was not clear to me. There was some reference to Ms. Ali seeking lump sum spousal support because she did not believe she could get spousal support. Counsel for Mr. Hamdi argued this meant she was not entitled to spousal support. I understood the reference (made in the transcript before the judge who made the final order) to refer to her ability to collect any spousal support award not paid in lump sum.
- [12] Both parties were under some disability in January of 2018 when the negotiations took place and final order was entered.
- [13] Mr. Hamdi travelled from overseas to attend the trial. At that time, he had been diagnosed with advanced bladder cancer, and was taking medication.
- [14] Ms. Ali had been ill and unemployed since 2013. From May 2013 onward, she received disability benefits from a private insurer. She had a designation as disabled through the Province.
- [15] In the process of addressing the family law matter, each party engaged a lawyer, and were represented in pre-trial negotiations to settle the matters. Settlement efforts were unsuccessful through counsel.
- [16] Immediately before the trial, the parties met, with two of their adult children, to discuss resolving the litigation. They also met separately. During this process, and on the eve of the trial, Mr. Hamdi dismissed his legal counsel.
- [17] The parties signed a settlement agreement in the presence of Ms. Ali's lawyer, Mr. Pippard.

[18] Mr. Pippard's evidence via affidavit was that he had urged Mr. Hamdi to get independent legal advice. Mr. Hamdi denied that this was the case, but rather that he received a letter to this effect in an envelope from Mr. Pippard that he did not read until some time later.

[19] The parties ultimately resolved their dispute as follows:

1. Mr. Hamdi agreed to transfer his share in the property to Ms. Ali - as lump sum spousal support.
2. The parties agreed to attempt to reconcile.
3. The parties signed minutes of a settlement agreement on January 27, 2018 in Mr. Pippard's office.
4. The parties went to court on January 29, 2018 before Justice Gropper where a final order by consent was made transferring Mr. Hamdi's interest in the home to Ms. Ali. The order dismissed all other relief sought, except for the divorce order, as though it had been heard on the merits. The divorce order was not addressed.

[20] The final order was made by consent and on hearing from the parties.

[21] As part of their agreement, though not reflected in the court order, the parties agreed to attempt a reconciliation. That effort was ultimately unsuccessful.

[22] Regarding the family home, the agreement between the parties, reflected in the final order, was that: each were entitled to an equal division of the family home; Ms. Ali was entitled to lump sum spousal support equivalent to Mr. Hamdi's interest in the family home; and, Mr. Hamdi would transfer to Ms. Ali his interest in the family home in fulfilment of his spousal support obligations.

[23] The transfer document was dated on January 31, 2018. A transcript of the proceedings showed a transfer document had been signed earlier, though the evidence of Mr. Pippard was that it had to be re-signed on January 31, 2018 as reflected in the transfer document.

[24] Mr. Hamdi lived a large portion of his life, including his active working life, overseas.

[25] The parties separated around August 2021.

[26] On October 19, 2022 Mr. Hamdi filed a Notice of Family Claim (NOFC) seeking orders related to family property and debt and spousal support. And, in particular, to set aside the final order in respect of spousal support and division of property or debt.

[27] A divorce, sought by Ms. Ali, was granted in October of 2022.

Mr. Hamdi's NOFC

[28] Mr. Hamdi claims that:

1. He did not have legal counsel or independent legal advice before signing the final agreement or order;
2. Ms. Ali took advantage of his vulnerability and placed undue influence on him due to his physical and mental condition (he alleges he had bladder cancer and was using medications);
3. There was a lack of financial disclosure as there were no updated financial statements or DivorceMate calculations;
4. He did not understand the nature of the agreement/final order;
5. Significant unfairness of the agreement/final order; and
6. The Agreement was unconscionable.

[29] In part, Mr. Hamdi relies upon s. 93(3) of the FLA seeking to set aside an agreement regarding property division:

s.93 (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
- (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
- (c) a spouse did not understand the nature or consequences of the agreement;
- (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.

[30] Mr. Hamdi argues that he only became aware of the transfer of the family home exclusively into Ms. Ali's name several years later when he saw a utility bill in his wife's name only, and further when he saw that a property tax bill for the property did not have a discount for his age.

[31] He says he inquired at the land title office and found that his name was not on title. He then says he had a lien placed on title in April 2021 under the Land (Spouse Protection) Act, R.S.B.C. 1996, c. 246, which allows a spouse who is not on title to put a charge on the family home. Mr. Hamdi then initiated these legal proceedings in October 2022.

[32] Mr. Hamdi argues that he only became aware of this issue in Spring and Summer of 2021 and then acted within the time limits following his awareness at that point.

[33] Ms. Ali argues that the parties entered a settlement agreement, which they then applied to have entered as a consent order. This is different from an application to file a separation agreement which occurs under Supreme Court Family Rules, B.C. Reg. 168/2009 [Rules], Rule 2-1(3), which states:

(3) Without limiting any other power the court may have to enforce an agreement filed under this rule, the court may make an order for that purpose on an application and, for that purpose, Part 10 of these Supreme Court Family Rules applies.

[34] The parties then carried out the agreement and transferred interest in the matrimonial home to Ms. Ali.

[35] These events occurred approximately 6 years ago. Ms. Ali argues the matter is settled and Mr. Hamdi's application should be struck.

Ms. Ali's Application to Strike

[36] The applicant applies to strike the claim under Rules 11-2 (1)(b) and (d), which provides the basis for striking documents in family law proceedings:

R. 11-2 (1) At any stage of a family law case, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

(b) it is unnecessary, scandalous, frivolous or vexatious,

(d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the family law case to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[37] Mr. Hamdi opposes the application to strike his pleadings, and argues that this matter should remain on the trial list where it has been scheduled in October 2024 for 10 days.

[38] Mr. Hamdi he was suffering advanced bladder cancer and taking medications which impacted his ability to enter the agreement. Ms. Ali challenges the evidence produced by Mr. Hamdi as to his medical statement including that the medical report of Dr. Raza was not filed according to the Rules and does not include information about the doctor or their expertise. The claimant also argues that there is a factual dispute about whether an attempt at reconciliation occurred.

[39] The claimant relies on *Rick v. Brandsema*, 2009 SCC 10 [Rick] for the proposition that the test in *Miglin v Miglin*, 2003 SCC 24 offers guidance for consideration of the conduct of negotiations including of division of matrimonial assets including on whether substantial flaws in the procedure of coming to the agreement can attract judicial intervention (at paras. 39, 42, 43 and 49). The claimant also points out that at para. 64 of Rick, the SCC adopted the notion that a consent order is "not a judicial determination on the merits of a case but only an agreement elevated to an order on consent" (James G. McLeod annotation to *Thomsett v*

Thomsett, 2001 BCSC 546).

- [40] The claimant argues that the agreement reached was procedurally and substantially flawed and such that they should attract judicial intervention. Mr. Hamdi suggests, in essence, that he got nothing, and so the agreement does not accord with the FLA.
- [41] At the close of submissions, I requested further written submissions from the parties about whether an order of this type (a final order, made by consent, and reflecting a settlement agreement concerning property) can be set aside - the remedy sought by Mr. Hamdi. Those submissions were made and considered here.

Law

Per Rules 11-2(1)(b) and (d): Is the claimants notice of family application unnecessary, scandalous, or vexatious? It is an abuse of process of the court?

- [42] A claim can be struck under Rule 11-2(1)(b) and (d) of the Rules if it is "unnecessary, scandalous, frivolous or vexation" or "otherwise an abuse of the process of the court."
- [43] A claim is unnecessary or vexatious if "it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources": *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 65, citing *Willow v. Chong*, 2013 BCSC 1083 [Willow].
- [44] Abuse of process, on the other hand, is a doctrine which reflects "the inherent power of the court to prevent the misuse of its procedure, in a way that would bring the administration of justice into disrepute": *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37.
- [45] Categories of abuse of process have been held to include "proceedings where the process of the court is not being fairly or honestly used; and proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression": *Clayton v Clayton*, 2024 BCSC 1359 at para. 54, citing *Chernen v Robertson*, 2014 BCSC 1358 at para. 29.
- [46] In *Willow*, this court further commented on the meaning of "abuse of process" in the context of Rule 9-5(1)(b), the equivalent provision under the Supreme Court Civil Rules, BC Reg 168/2009, noting:
- [21] Abuse of process under Rule 9-5(1)(d) or the court's inherent discretion is a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice. A claim may be struck where it is a collateral attack on an administrative decision that is subject to appeal or judicial review: [references omitted] A claim may also be struck as an abuse of process where it is an attempt to re-litigate an issue that has already been decided: *Toronto (City) v Canadian Union of Public Employees (CUPE), Local 79*, 2003 SCC

63.

[47] In the specific context of setting aside an agreement incorporated into a court order, this court emphasized in *E.J.M. v. W.V.T.*, 2003 BCSC 918 at para. 12 that:

"once an agreement is incorporated in a court order, the scope for setting aside or varying the provisions is very limited. The authorities of this court are quite clear that the effect of such an order is to render the matter *res judicata*, subject to the common law defences." (See also *Shackleton v. Shackleton*, 1999 BCCA 704 para. 12).

[48] Once final orders are entered, there is a presumption of finality, absent specific circumstances. In *Toronto (City) v. CUPE, Local 79*, 2003 SCC 63, the SCC outlined the legal principles regarding *res judicata* as follows:

15 The body of law dealing with the relitigation of issues finally decided in previous judicial proceedings is not only complex; it is also at the heart of the administration of justice. Properly understood and applied, the doctrines of *res judicata* and abuse of process govern the interplay between different judicial decision makers. These rules and principles call for a judicial balance between finality, fairness, efficiency and authority of judicial decisions. ...

[49] In *Ahmed v. Canna Clinic Medicinal Society*, 2018 BCCA 319 [Ahmed], Madam Justice Fenlon explained the purpose of the doctrine of *res judicata* at para. 9, then noted at para. 28:

[28] The doctrine of *res judicata* is not an inflexible one. The court retains a discretion not to apply cause of action estoppel in special circumstances where it would lead to injustice. In *Fournogerakis v. Barlow*, 2008 BCCA 223, Lowry J.A. said:

[16] Where it applies, *res judicata* serves as an equitable estoppel. Its purpose is to ensure justice is done, prevent abuse of process, and fulfill the societal interest of finalizing litigation. The court retains a discretion to refuse to apply the principle where in special circumstances a rigid application would frustrate its purpose: *Arnold v. National Westminster Bank Plc.*, [1991] 2 A.C. 93 (H.L.) at 109–111.

[50] There are very limited circumstances in which a court can set aside a final order, as outlined in *Pond v. Pond*, 2017 BCCA 243 at para. 2:

[2] The kinds of grounds on which any contract may be set aside - fraud, undue influence, duress, coercion - are also required for setting aside a consent order in general. As stated in *Racz v. Mission (District)* (1988), 1988 CanLII 2937 (BC CA), 22 B.C.L.R. (2d) 70 (C.A.):

A court... has inherent jurisdiction to set aside a judgment or order:

- a) which has been obtained by fraud, collusion or perjury;
- b) which constitutes an abuse of process;
- c) on the ground that fresh evidence has been discovered; or

- d) which was obtained by consent on a ground which would invalidate a compromise not contained in a judgment or order.
- [51] To summarize, the general rule is that once the parties have entered a final agreement recorded as a final order, the matter becomes *res judicata* and areas for varying or setting it aside are very limited including common law arguments related to fraud, collusion or perjury, duress, lack of disclosure, and procedural unfairness.
- [52] The claimant (application-respondent) points to jurisprudence that may allow a matter to be reopened in very limited circumstances. These matters concern situations where it is found to be inequitable or unconscionable due to the terms or circumstances of the entering of the agreement which lead to a final consent order. *P.N.(W.) v J.N.(B.)* 2002 BCSC 53 at paras. 55 and 56 outlined conditions in which it is possible to set aside a separation agreement (In that case, the agreement was registered in the New Westminster civil registry but not incorporated into a court order: see para. 58.
- [55] The test is stringent: (1) was there an "inequality in the position of the parties due to the ignorance, need or distress of the weaker, which would leave him in the power of the stronger"; and (2) is there "proof of substantial unfairness in the bargain"? (See *Klassen v. Klassen*, 2001 BCCA 445.) The burden is on the party applying to set aside the agreement with respect to both parts of the test. If that burden is met, it falls to the other party to demonstrate that the bargain was fair, just and reasonable or that no advantage was taken.
- [56] The policy of the law is to enforce agreements made by adult persons. Cases in which separation agreements have been set aside for unconscionability have involved substantial inequality of bargaining positions with the relative unsophistication or vulnerability of one party being exploited by the other party. Usually there are factors such as asymmetrical access to financial information or undervaluation of family assets ; a party who was depressed or otherwise seriously incapacitated at the time of execution of the agreement ; hastily executed agreements without the opportunity for independent legal advice ; or threats, manipulation or deception [references omitted]
- [53] In *Murray v. Harrison*, 2023 BCSC 2014, Justice Hardwick explained the difference between applying to set aside a consent order on the basis of fairness and the basis on which a consent order can be attacked at paras. 8-13, in part:
- [8] When a separation agreement is filed, its terms become enforceable as a court order pursuant to Rule 2-1(3) of the Rules (see *Chan-Henry v. Liu*, 2021 BCCA 318 at para. 7). However, while enforceable as a court order, a separation agreement is not a court order.

- [9] Provisions of agreements dealing with family property and family debt may be varied by reason that the agreement is significantly unfair pursuant to s. 93(5) of the FLA or s. 65 of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] (see *Schlenker v. Schlenker*, 72 BCLR (3d) 203, 1999 CanLII 3658 (BCSC) at para. 22. This is not the case for final orders regarding property division, which may not be changed, suspended or terminated, as set out in s. 215(2) of the FLA (formerly s. 20 of the FRA).
- [11] Agreements and orders are thus treated differently. Section 93 of the FLA applies to agreements, but not to orders (see *A.M. v. M.S.*, 2017 BCSC 2061 at para. 49 [AM]). Orders can be set aside based on the enumerated grounds in s. 93, but only on the basis of fraud, duress, undue influence, coercion or other serious grounds (see: *Pond v. Pond*, 2017 BCCA 243 at para. 2).
- [12] The finality of a consent order was explained by Justice Saunders in *Shackleton v. Shackleton*, 1999 BCCA 704 at para. 12:
- [12] A consent order is a formal expression of an agreement between the parties. Where parties intend to finally dispose of the issues between them, a consent order will operate as a final judgment: *Campbell v. Campbell* (1954), 1954 CanLII 231 (BCSC) . For the same reason that courts enforce settlement agreements, to provide certainty to parties settling disputes, consent orders are not easily altered. Subject to statutory provisions otherwise a consent order may be set aside or altered in substance only in circumstances which justify the same treatment to the underlying contract and *T.(T.L.A.) v. T.(W.W.)* (1996), 1996 CanLII 1190 (BC CA), 24 R.F.L. (4th) 51 which leaves unanswered the issue of reopening a consent order under s. 68 of the Family Relations Act.
- [13] Where parties intend to finally dispose of the issues, they have the option to consent to an order incorporating the terms of the separation agreement or simply an order dismissing the action as if heard on the merits, which would then create estoppel by record: *Dawe v. Dawe*, 2 R.F.L. (3d) 430, 1986 CanLII 1319 (BCCA) at para. 13.
- [54] In the case of *Chan-Henry v. Liu*, 2021 BCCA 318 [Chan-Henry] the Court of Appeal said:
- [48] In *Schlenker v. Schlenker* (1999), 1999 CanLII 3658 (BC SC), 72 B.C.L.R. (3d) 203 (S.C.), Preston J. noted he was concerned with "the nature of the enquiry, if any, to be made by a judge who is asked to sign an order dealing with the division of matrimonial property to which the parties have signified their consent" (at para. 1, emphasis added). In this case, that was the enquiry that ought to have been made by the Chambers Judge in 2015 if there was any question as to fairness, not the enquiry that ought to have been made by the Trial Judge in 2018.
- [49] The enquiry that ought to have been made by the Trial Judge in 2018 was of the sort considered in the following passages in *Schlenker*, describing an attack on a consent order:

[21] It is clear that a consent order is subject to the same common law attacks as a normal agreement. In *Racz v. Mission (District)* (1988), 1988 CanLII 2937 (BC CA), 22 B.C.L.R. (2d) 70 (C.A.), Hutcheon J.A. considered an application to set aside a consent order that dismissed a motor vehicle accident claim. Speaking for the court he said:

A court in addition has inherent jurisdiction to set aside a judgment or order:

- a) which has been obtained by fraud, collusion or perjury;
- b) which constitutes an abuse of process;
- c) on the ground that fresh evidence has been discovered; or
- d) which was obtained by consent on a ground which would invalidate a compromise note contained in a judgment or order.

[22] It is therefore only the general fairness considerations embodied in the Family Relations Act that are unavailable after an agreement is incorporated in an order. The normal contractually-based remedies are still available. Because those remedies remain available, the concerns about undue influence, duress, and unconscionability can be properly addressed after such an order is entered. It is only the fairness requirement that may be curtailed by cases such as *Dawe, Mitchell and T. (T.L.A.)*. As the Court of Appeal declined to deal definitively with the incorporation of agreements into court orders in *T. (T.L.A.)*, there is at present no appellate authority in this province.

[26] The court has the undoubted jurisdiction to make an order embodying the terms of an agreement between parties to litigation that brings the litigation to an end. In the context of the Family Relations Act, this judicial discretion has legislative sanction.

[27] When the courts of this province have considered the issue of the court's power to vary matrimonial agreements that have been embodied in an order of the court, they have concluded that the effect of a consent order is to render the matter *res judicata* and to remove from the court the power to vary marriage agreements extended by the provisions of Rule 65 of the Family Relations Act.

[28] The context in which this issue typically arises is in matrimonial agreements dealing with the division of family assets. The governing statutes permit the other common terms in matrimonial agreements; custody, access, and support, to be varied on application if proper grounds can be shown. If the agreement dealing with property division is embodied in a separation agreement that qualifies as a marriage agreement under s. 65 of the Family Relations Act it is reviewable by the court: if the agreement is embodied in a court order it is not.

[29] The statutory provisions and the provisions of the Supreme Court Rules that empower the court to make orders by consent confer that power in the form of a discretionary power. The doctrine of *res judicata* implies a judicial rather than an administrative act.

- [55] Mr. Hamdi relies on Chan-Henry for the proposition that consent orders "elevated to orders without judicial determination are not orders": Chan-Henry v. Liu, 2021 BCCA 318 para. 39.
- [56] An agreement may be filed under Rule 2-1(3) of the Rules, which states that "[w]ithout limiting any other power the court may have to enforce an agreement filed under this rule, the court may make an order for that purpose on an application and, for that purpose, Part 10 of these Supreme Court Family Rules applies."
- [57] That is not what was done here. Instead, the parties, sought a final order. A final court order was entered reflecting the terms of the agreement. The final order provided that "All the claims of the Claimant and the Respondent, pursuant to the Family Law Act and to the Divorce Act, except for the granting of a divorce order, will be dismissed as if there had been a trial on their merits" (NW E047832). The order challenged here was made specifically on the consideration that as though it were adjudicated on its merits.
- [58] In his additional written submissions, Mr. Hamdi characterizes his application as an application to retroactively vary spousal support per s. 167(2)(a)(b) and (c) of the FLA. However, the application itself is not to retroactively vary spousal support, it is an application to set aside a final order.
- [59] The claimant argues that though final orders are meant to provide certainty a court is not completely barred from setting aside final orders made by consent or otherwise awarding damages flowing from those orders. He relies on K.M.H. v. P.S.W., 2018 BCSC 2022, and distinguishes his case from that decision wherein the court refused to set aside the final order. Mr. Hamdi argues that:
- Both parties had counsel in K.M.H., whereas in this case Mr. Hamdi dismissed his counsel in the days before the final agreement was negotiated.
 - The final agreement was not comprehensive unlike that in K.M.H. but rather "merely implements the respondents' wishes in a one-sided agreement, and the claimant walks away with nothing". The claimant further characterizes the agreement as unconscionable and submits that it reflects a situation where "After over 30 years of marriage, the respondent received 100% of the family home, the only major asset of the family, in lieu of spousal support, while the claimant walked away with nothing."
 - Further that this result does not meet the goals of the FLA and that there is a triable issue surrounding circumstances leading to the agreement and order in January 2018.
 - The "court determined the capacity and vulnerability of the claimant" in K.M.H. though the claimant argues that this court does not have evidence before it to make that determination here.

Disposition

- [60] I grant the application to strike the pleadings under Rule 11-2(1)(d) of the Rules. Specifically, I find that the claim by Mr. Hamdi amounts to an abuse of process as an attempt to relitigate matters which have long been settled. I find that the situation here is similar to that contemplated within Willow and is an abuse of process and a collateral attempt to relitigate a matter which has been long settled, and for which a final order has been entered.
- [61] A final agreement was made to settle outstanding matters between the parties. Based upon that agreement, a final order was entered regarding disposition of property, and it was made as though the matter was litigated on its merits. The final order was implemented in the sense that Mr. Hamdi's interest in the family home was transferred in fulfilment of a lump sum spousal support that he agreed to pay to Ms. Ali.
- [62] The final order disposed of family property. It was made some over six years ago. Mr. Hamdi was in court when it was entered. He signed documents to give effect to it. It was never appealed. It was implemented. The property was transferred.
- [63] I find that to allow Mr. Hamdi's claim to proceed would be contrary to the proper administration of justice. The claim is struck out, without leave to amend.
- [64] I do not comment on entitlements, if any, that may have arisen between the parties during the reconciliation as that matter was not before me.
- [65] Ms. Ali is entitled to her costs in this matter.

"A. Walkem J."

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