

CANADA / JUDGMENT

Hinds v. Latham

2025 BCSC 2129

COURT

Supreme Court of British Columbia

DECIDED

29 October 2025

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2025 BCSC 2129 Hinds v. Latham

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hinds v. Latham,

2025 BCSC 2129

Date: 20251029

Docket: E232091

Registry: Vancouver

Between:

Gregory Hinds

Claimant

And

Christine Ann Latham also known as Kris Latham

Respondent

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment

Counsel for the Claimant:

G.K. Thomas

Counsel for the Respondent:

R.N. Toews

Place and Dates of Trial:

Vancouver, B.C.

April 8-10 and 16, 2025

Date of Written Submissions of the Respondent Received:

May 2, 2025

Date of Written Submissions of the Claimant Received:

May 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 29, 2025

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Introduction

- [1] The parties separated in August 2021. The claimant commenced this proceeding on August 21, 2023, seeking orders (a) setting aside a cohabitation agreement, and (b) dividing family property equally.
- [2] The respondent says that the parties separated prior to August 21, 2021, and thus the plaintiff's claim to set aside the cohabitation agreement was filed more than two years after separation and is statute-barred. The claimant says that the actual date of separation was later, but in any event, the respondent is estopped from asserting an earlier date in light of a 2022 letter stating that the separation date was August 31, 2021.
- [3] By a consent order made July 31, 2024, the trial of this matter was bifurcated so that the limitation period issue would be tried first. The trial of that issue proceeded before me in April 2025.

Facts

- [4] The parties were born in 1965 and 1967 respectively. They met in the spring of 2013 and began dating. At the time, they were aged 48 and 45. At some point in late 2013 or the first half of 2014, they began living together.
- [5] The claimant had three biological daughters from two previous relationships. He had a good relationship with his second former partner, the two biological daughters that they had together, as well as a stepdaughter. His relationship with his first former spouse was marked by longstanding and bitter litigation. At the start of his relationship with the respondent, his assets were primarily a home in Vernon which was heavily mortgaged, and some equipment. His business at the time involved working as a contractor for BC Hydro in various locations around the province, and he was in substantial arrears with the CRA. He was also in and out of arrears with respect to child support money owed to his first former spouse as his business income ebbed and flowed, and there was a BC Court of Appeal order from 2010 that concluded that his first former partner was entitled to claim spousal support (although the amount had not been quantified).
- [6] The respondent has a degree in environmental resource sciences as well as a master gardener certificate. In 1995, she purchased a rural property near Squamish and, over time, improved the home on that site. In 1998, she began a landscaping company, Latham Landscapes Limited. As her relationship with the claimant began, her assets included the rural property and the company.
- [7] In about the spring of 2014, the claimant stopped doing contract work for BC Hydro and began working for Latham Landscapes.
- [8] The claimant and the respondent became aware of a ranch property, the Cheekye Ranch, that was for sale. It was beyond the ability of either of them to finance, but the respondent was able to pull together the resources to purchase it with assistance from her father, who

was a businessman based in Ontario. The Cheekye Ranch was purchased in the respondent's name. In about the summer of 2014, the parties began living at the Cheekye Ranch. Various businesses were developed on the property, including a camping area, an events area for weddings and small festivals, and a horse rescue area.

- [9] On April 1, 2016, the parties signed a cohabitation agreement, which generally provided for separate property and limited the respondent's claim to the Cheekye Ranch. That is the agreement the claimant seeks to set aside in order to advance a claim for equal division of family property.
- [10] The claimant's financial situation did not improve during the course of his relationship with the respondent. In January 2018, after a hearing at which the claimant was self-represented, a court judgment was issued quantifying his spousal support obligation, concluding that the former spouse was entitled to retroactive support dating back many years, and fixing the amount of arrears at \$168,696. Shortly thereafter, the claimant went into bankruptcy. His debt to the CRA at the time of his bankruptcy was some \$126,000.
- [11] The original documents with respect to Cheekye Ranch described a joint venture involving Ms. Latham and a company owned by her father. In 2020, the father's company ceased to be involved. An addendum to the parties' cohabitation agreement described the Cheekye Ranch as a sole proprietorship operated by the respondent.
- [12] In May 2021, a notice of attachment was issued by the Family Maintenance Enforcement Program ("FMEP") to Latham Landscaping. It set out the arrears owing as \$215,084.90. The respondent said that she was "gobsmacked" to learn that this was the amount. A previous notice of attachment that had been sent to Latham Landscaping in 2017 showed arrears of just over \$4,000.
- [13] FMEP caused the claimant's driver's license to be withdrawn. Driving was essential to his work at the Cheekye Ranch, and the respondent wrote to FMEP advising of this and asking that his license be returned so that he could resume working.
- [14] These various financial strains did not help with the parties' relationship. It seems from the evidence that the various activities being undertaken at the Cheekye Ranch were of varying degrees of financial success, and the parties did not always see eye-to-eye on what should be undertaken and how it should be done. They were having issues with communication in the months leading up to August 2021.
- [15] In early August 2021, the claimant had plans to travel to Vernon for his youngest daughter's birthday. He had arranged for a car for his daughter as a birthday gift. At the time, he did not have a license, but insisted on driving the vehicle to Vernon. The respondent was very unhappy about this, and they had an argument just before he left.

- [16] At some point while the claimant was in Vernon, he and the respondent had a telephone call. The claimant said that he believed it took place on August 10, 2021. The claimant used the speakerphone function on his phone for this call, at a time when the father of his second former partner was present. The respondent did not realize until well into the call that they were on speakerphone, and she was embarrassed and angry about this.
- [17] The respondent said that she understood the claimant would call her back later, when he was alone, in order to talk about their relationship. She said that he did not call her back, and instead sent her a long text. She was unhappy about this and responded:

No I'm not "ok" Greg .. ive come to the realization that our relationship is over. I asked you to call me yesterday and instead you send me a lengthy reply of a conversation that should never have happened. Cancel your flight and we can talk in a couple days about how the separation can be worked out.

- [18] The timing of this text was not entirely clear. Unfortunately, both parties had changed cell phones prior to any efforts to preserve and collect documents for this action. The copy that was produced was obtained from the respondent's sister, and bore a timestamp of 10:41 a.m. on August 11, 2021. The respondent said that her recollection was that she had cut-and-pasted and sent the text to her sister the day after it was sent - meaning it would have been sent on August 10, 2021. However, she did say that she had waited for some time after the earlier telephone discussion before sending the text to the claimant. The claimant's recollection was that this text exchange was the day after the speakerphone conversation, which conversation he believed was on August 10 through reference to his daughter's birthday celebration.
- [19] The claimant's evidence was that, when he got this text, he felt that he and the respondent "needed to sit and talk". He did not believe that they were done.
- [20] The parties were also able to obtain some texts from a mutual friend, "Terry". Based on those texts, it appears that the claimant was able to catch a ride from Vernon to Abbotsford on August 14, 2021, and then returned to the Cheekye Ranch at some point between August 16 and 18, 2021, when he was able to get a ride to Horseshoe Bay and meet up there with another Cheekye Ranch staff member.
- [21] One of the credit card charges that was subsequently referenced on a document exchanged between the parties relates to a lunch at a Thai restaurant in Abbotsford. The claimant says that he took Terry for lunch while he was in Abbotsford. The note on the parties' document shows a date of August 17 for that charge, but it is not clear whether that is the date the lunch took place or the date the charge was posted to the respondent's credit card.

- [22] The claimant said that when he initially returned to the ranch, the respondent did not want to talk right away, so he gave her "a bit of a breather" before they could talk. They exchanged texts about what work at the ranch needed his attention, and he resumed doing the normal chores involved in his work at the Cheekye Ranch. The claimant said that on the first night back, he slept in the bed they normally shared, but the respondent did not join him. Thereafter, he began sleeping in a trailer on the property.
- [23] The respondent said that she did not realize that the claimant was coming home that day, and could not recall exactly what happened. She recalled the claimant being "a bit apologetic", but said that in her view she was "already done" and "it was over". Her recollection was that the claimant slept in the guest room on his first night back, and the next day he moved out to one of their trailers.
- [24] On the morning of August 20, 2021, the claimant exchanged texts with the parties' mutual friend, Terry:

Greg: Hey Terry has you day going? Been a few days now haven't updated you. kris and I are working on a separation. I'm helping on the ranch, I'm planning a move within couple maybe 3 weeks. Have lots of moving to do. I'm going g to squish what I'm taking into seacans and pak it to my friends whose shop burnt down onto his property.

Terry: That's not the best possible outcome! Sorry to hear this Greg

- [25] The parties had a number of events scheduled at the Cheekye Ranch in August and September 2021, and there was much work to be done. The claimant began preparing some of his items for a move. The respondent began advancing funds to the claimant, and at some point in August or September 2021, the respondent began recording those advances on a document, which includes the following:

Acknowledgement of Receipt - Funds

Separation of [Kris and Greg]

Greg acknowledges receipt of the below listed funds on the dates as indicated. These funds will be taken into account as advances to Greg in the settlement of matters regarding the separation of Kris and Greg.

\$3,000 ET Aug 18 2021 [initials]

\$2,500 ET Sep 3 2021 [initials]

\$3,000 ET Sep 13 2021 [initials]

\$30,000 cert cheque Sep 20 2021 [initials]

\$1,000 ET Sep 15 2021 [initials]

2,000 ET Nov 2 2021

2,000 ET Dec 12 2021

The document also referenced some minor credit card charges, for which the claimant would be responsible (including the Thai restaurant in Abbotsford).

- [26] It was common ground that the \$30,000 was used to purchase a trailer for the claimant to live in. It was also common ground that the claimant initialled this document at some point while he was still living at the Cheekye Ranch. The last two lines were not initialled because he had left before those two payments were made.
- [27] The parties made efforts in September 2021 to prepare an "Interim Agreement" with respect to their separation. The record included two typed draft agreements - both of which were prepared by the respondent, one of which was emailed to the claimant on September 13, 2021, and the second of which was a standalone document that, from its contents, appears to have been prepared on about September 20, 2021. There is also a set of handwritten notes prepared by the claimant, which may have been prepared and shared between those two dates, and set out some of his views with respect to these interim arrangements.
- [28] Each of the typed documents contemplated the claimant ceasing to live at the Cheekye Ranch. Each contemplated the parties sharing in the cost of an appraisal of the Cheekye Ranch, presumably for purposes of negotiating a final settlement. There are several references to things that will be accounted for in an eventual settlement. The documents consider the details of ongoing use of cell phones by the claimant and by his youngest daughter, and include the respondent's proposal that the claimant will be responsible for all charges after August 1, 2021. The respondent said that the proposed August 1 date with respect to cell phones reflected that she performed her accounting on a month-to-month basis, and she preferred to have financial matters dealt with as of a month-end. The claimant's recollection was that the use of August 1 for this related to the cell phone plan being month-to-month, and had nothing to do with separation date.
- [29] The claimant's handwritten notes include a comment that:
- Separation date is determined as Aug 14 1st day after I wasn't allowed back.
- [30] The claimant was unable to recall what he meant by August 14th being the day after he was not allowed back. He explained that he understood it to be significant to have an agreed separation date. He said that he just wanted there to be an agreed date. However, the respondent did not reply to this proposal, and neither of the two draft interim agreements she prepared contained any reference to separation date.
- [31] Neither party was clear as to the claimant's final departure from the Cheekye Ranch. The respondent's recollection was that the claimant used a Cheekye truck and flatbed trailer to transport his items away, and that the last such trip was on September 28 or 29, 2021. The claimant thought it was some time between September 25 and 28, 2021.

[32] The parties obtained an appraisal of the Cheekye Ranch. The appraisal was as of September 24, 2021. The respondent's evidence was that this was the date that the appraiser was able to attend and view the property, and no-one instructed him to value it as of any date other than the date of viewing.

[33] On April 7, 2022, counsel for the respondent (Mr. Toews) wrote to the claimant. The letter was headed "WITHOUT PREJUDICE". By agreement of the parties, only the first four sentences of the letter were put in evidence. The remainder of the letter (which was just over six pages long) was redacted. The first four lines state:

We confirm that we act for Kris Latham in this matter.

This letter sets out the terms on which our client is prepared to resolve all issues following your separation.

We confirm the following matters:

1. You and Ms. Latham commenced residing together on June 1, 2014 and separated in mid-August 2021, and have agreed to use August 31, 2021 as the date of separation.

[34] It was common ground that this was the first time there had been a discussion of August 31, 2021, as the date of separation. With respect to it:

- a) The claimant said that, while he was not happy with the contents of the offer, he was glad that the parties had an agreed separation date. He said that August 31 was not something he had seen before, but he was happy with it;
- b) The respondent explained that using a date at the end of a month was "a financial thing", and that it was easier from a financial record-keeping point of view to start at the beginning or end of a month; and
- c) It was common ground that there were no further letters sent dealing with the parties' date of separation prior to the letter of August 9, 2023, discussed below.

[35] The claimant wrote to Mr. Toews on April 26, 2022, rejecting the offer.

[36] On August 10, 2022, the claimant sent a text to the respondent stating:

1 year since you kicked me out of my home hope you feel good about that Kris, thank you for the last year of struggles, 8/9 years and still have no idea why?, wonderful eh, terrible to have harsh feelings, but I do, and its getting worse have a great day

[37] When asked about this text, the claimant said that he was not sure about the date in this text.

[38] On August 4, 2023, the claimant retained a lawyer, Mr. Thomas, to deal with his claims in respect of the separation. On August 9, 2023, Mr. Thomas wrote to Mr. Toews as follows:

We have been retained to act on behalf of Gregory Hinds.

We understand that you act on behalf of Christine Latham also known as Kris Latham.

Mr. Hinds has provided us with a letter that indicates that although the parties separated mid August 2021, that the parties' would use August 31, 2021 as the date of separation.

I have instructions to file a Notice of Family Claim. I likely could finalize if needed an earlier NOFC but if there is some agreement that the date of separation is August 31, 2021, then we have some additional time to do so.

It may even be wise to see if there might be some discussion about moving towards a mediated resolution and not necessarily a litigated result.

Please advise if the August 31, 2021 remains the agreed upon date of separation.

[39] This letter was faxed at 10:42 a.m. on August 9, 2023. Mr. Toews was scheduled to be on holiday from August 1 to 24, 2023. In his absence, a conveyancer at his firm stamped the document "Received" and put it in a pile of documents for Mr. Toews to review on his return from holiday. Mr. Toews did not actually see the letter until September 20, 2023, as it somehow made its way to the bottom of a stack of items left for him to review.

[40] Mr. Toews had an automatic response set up on his email stating that he was away until August 24, 2023.

[41] On August 21, 2023, the Notice of Family Claim was filed. It pleaded, among other things, that the parties had separated on August 31, 2023. It was sent to Mr. Toews on August 23, 2023.

[42] On September 29, 2023, the respondent filed a Response to Civil Claim pleading that the parties separated as of July 31, 2021, or at the latest on August 14, 2021. It raised, among other things, the limitation defence.

Issues

[43] The issue on this trial is to determine the separation date in order to resolve the limitation issue. That will involve determining both:

- a) The date on which the parties met the legal test for separation; and
- b) Whether an estoppel arises from the lawyer's letter stating that the date of separation was August 31, 2023.

[44] I note that the consent order for bifurcation of the trial also contemplated a decision as to the commencement date of the parties' relationship. I expressed concern at the start of trial that no relief was sought with respect to that question, and in effect, the parties were simply seeking an advisory opinion in order to inform settlement negotiations. I advised the parties that I would likely decline to deal with that question. I was confirmed in that approach by uncertainty in some of the evidence on commencement date, and a suggestion that there may be other documents available that would bear on that issue.

Positions of the Parties

The Claimant

- [45] The claimant says that the respondent bears the onus of proving that the claim is statute-barred: *Hennan v. Nolan*, 2024 BCSC 1383 at para. 29.
- [46] The claimant says that the text of August 10 or 11, 2021, did not constitute the termination of the relationship, as there was no action associated with it. The claimant submits that his ongoing work at the ranch until mid- to late September 2021 indicates that there was no "settled intention" to separate until that time. The claimant suggests that the instruction given to the appraiser, who produced an appraisal effective as of September 24, 2021, indicates that was the time of settlement. The claimant says this theory is supported by the fact that the parties had incomplete negotiations about an agreement as to separation between September 13 and 20, 2021.
- [47] The claimant relies on the discussion of the applicable test in *O.M. v. V.G.*, 2025 BCSC 209, including the requirements of a settled intention to separate that is both communicated to the other party and acted upon in some way. The claimant says that there is no specific evidence of an "act" in furtherance of separation until September 13, 2021, that the first few payments made to the claimant are small in nature, and that a "settled" intention is not really evident until the larger payment on September 20, 2021, the purpose of which was to allow the claimant to purchase a trailer to live in.
- [48] The claimant says that:
- a) When he returned to the ranch, he wanted to try to reconcile the relationship;
 - b) He initially continued to do much of the work at the ranch that he had always done, although he acknowledged his days were not quite as long; and
 - c) Once the writing was on the wall that the relationship was over, he sought to get agreement as to the date of separation, but the respondent did not reply to his proposal about that.
- [49] The claimant acknowledges that he floated the idea of an August 14, 2021 settlement date in the course of those negotiations, but that he never got a response from the respondent about the date of separation until the letter of April 7, 2022.
- [50] The claimant says that the respondent is estopped from asserting that the separation date was any earlier than August 31, 2021. He relies on the doctrine of promissory estoppel. He says that the letter of April 7, 2022, constitutes a clear and unequivocal assurance which was intended to affect the legal relationship between the parties, that he and his counsel relied on the statement as evidenced by Mr. Thomas' letter of August 9, 2023, and that promissory estoppel prevents the respondent from now going back on the assurance given. He says that all of this was in the context of an existing legal relationship - that is, of separating spouses who are parties to a cohabitation agreement. He relies on cases including *Maracle v.*

Travellers Indemnity Co. of Canada, 1991 CanLII 58, [1991] 2 S.C.R. 50 at 57, as more recently adopted in *Ecobase Enterprises Inc. v. Mass Enterprise Inc.*, 2017 BCCA 29 at para. 10.

- [51] In response to questions raised during the course of submissions, as to whether promissory estoppel was the most appropriate form of estoppel, the claimant also made submissions about estoppel by convention and estoppel by representation, and made reference to the legal test summarized in *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53.
- [52] With respect to estoppel by convention, which arises when there is a shared assumption of fact or law, the claimant says that the statement in the letter of April 7, 2022, gave rise to a shared assumption of fact or law that the claimant acted on.
- [53] Alternatively, the claimant says that the statement in the letter of April 7, 2022, was a representation that the claimant reasonably relied upon.
- [54] The claimant says that the portion of the April 2022 letter that was put in evidence does not contain an offer of settlement, and instead is framed as confirmation of an agreement. The respondent cannot now argue that it should be deemed to be simply a conditional part of an offer and therefore disregarded. There is nothing before the Court to found such an assertion.
- [55] The claimant also says that the payments made between August 18 and December 12, 2021, all constitute acknowledgements of the claimant's cause of action, and extend the start of the running of the limitation period. The claimant says that the acknowledgement provision in s. 24 of the Limitation Act, S.B.C. 2012, c. 13, should be applied in this case - noting that other cases have applied other provisions of the Limitation Act in claims made under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The claimant references in particular *Halan-Harris v. Blain*, 2023 BCSC 2128, at paras. 67-69, dealing with limitations governing counterclaims in FLA proceedings. He says that, in accordance with *Trombley v. Pannu*, 2016 BCCA 324, a payment can constitute confirmation of a claim and restart the limitation period under the Limitation Act, and the same should apply in an FLA proceeding.
- [56] The claimant also submits that the discoverability language in s. 198(3) also impacts this issue. As I understand the submission, it is that the claim was not "discovered" until after the last interim payment on December 12, 2021.

Respondent

- [57] The respondent says that the date of separation was August 10, 2021, based on the text the respondent says was sent that day. The respondent notes that, upon the claimant's return to the ranch, they did not share a bed again, and that it was common ground that after the first night back, he slept in a trailer. The respondent says that it is clear that she gave no indication whatsoever that she had any interest in reconciliation. The respondent accepts that the claimant did not actually move away from the ranch until late September 2021, but says that is because the parties were both business and romantic partners, and it was not

realistic to simply drop the ongoing business matters.

- [58] The respondent says that the text of August 20, 2021, is particularly telling, as the claimant said to their mutual friend Terry that "Kris and I are working on a separation", and that he was "planning a move" within a matter of weeks. The respondent says that there can be no doubt that by August 20 the legal test for separation was met, as it is clear that there was both communication and action.
- [59] The respondent also relies on various documents exchanged in pursuit of an "interim agreement" as to separation, including her draft that proposed an August 1 adjustment date for cellular phone charges, and the claimant's handwritten note about an August 14 separation date.
- [60] With respect to promissory estoppel, the respondent notes that the claimant did not file a Reply raising the estoppel issue. The respondent says that there is thus no specific pleading with respect to estoppel.
- [61] On the substantive issue, the respondent says that there was no unambiguous representation or assurance. The respondent says that the letter was not unambiguous, as it identified the actual date of settlement as "in mid-August 2021", then went on to refer to a supposed agreed date of August 31. The respondent says these are inconsistent and difficult to reconcile. The respondent says that it was common ground that there had not in fact been a prior agreement to use August 31, 2021, and that the date that was proposed was merely meant to ease the adjustment of financial matters. The respondent notes that the offer was rejected in its entirety, and that there was nothing back from the claimant confirming an agreement as to August 31 being the separation date. The respondent also says that the fact that Mr. Thomas concluded that it was necessary to write to seek clarification is another indicator that the letter was objectively unambiguous.
- [62] The respondent says that it should be inferred from the fact that this was a settlement offer that what was set out was a proposal and conditional upon agreement to the balance of the terms. The respondent says that it is not appropriate to separate out some parts of the letter as reflecting legally binding agreements or even representations. The entire document should be considered without prejudice, and when the entire offer was rejected some 19 days later, the entire document was rejected.
- [63] With respect to the argument that the claim was acknowledged as a result of the payments made, the respondent says that s. 24 of the Limitation Act is not applicable to limitation issues under the FLA. The FLA has its own limitation periods in s. 198, including specific provisions that deal with circumstances that may give rise to suspension or extension, and s. 3(2) of the Limitation Act makes clear that the Limitation Act does not apply to limitation periods established under other enactments.

- [64] Finally, the respondent says that even if acknowledgement could extend a limitation under s. 198 of the FLA, the interim payments that were made are equally consistent with carrying out the intent of the cohabitation agreement. They cannot be said to have necessarily confirmed a claim to set aside the cohabitation agreement, as they are equally consistent with that agreement.
- [65] With respect to the cases referenced by the claimant with respect to the Limitation Act applying to counterclaims under the FLA, the respondent says that this is because the FLA is silent about limitation periods for counterclaims so s. 3(2) of the Limitation Act has no application.

Legal Context

Limitations

[66] Section 198 of the FLA provides that:

- (1) Subject to this Act, a proceeding under this Act may be started at any time.
- (2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, no later than 2 years after,
 - (a) in the case of spouses who were married [not applicable]
 - (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.
- (3) Despite subsection (2), a spouse may make an application for an order to set aside or replace with an order made under Part 5, 6 or 7, as applicable, all or part of an agreement respecting property or spousal support no later than 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.
- (4) The time limits set out in subsection (2) do not apply to a review under section 168 [review of spousal support] or 169 [review of spousal support if pension benefits].
- (5) The running of the time limits set out in subsection (2) is suspended during any period in which persons are engaged in
 - (a) family dispute resolution with a family dispute resolution professional, or
 - (b) a prescribed process.

[Emphasis added.]

- [67] It was common ground that s. 198(2) applies to the claimant's claim for equal division of family property and debt, while s. 198(3) applies to the claimant's claim to set aside the cohabitation agreement. No issue was taken with respect to the form used to advance the claim with respect to the cohabitation agreement.

[68] The parties advanced various submissions with respect to provisions of the Limitation Act. Section 3 of that statute deals with "Exempted Claims", and provides:

- (1) This Act does not apply to the following:
 - (l) a claim for arrears of child support or spousal support payable under
 - (i) a judgment, or
 - (ii) an agreement filed with the court under section 148 (2) or 163 (3) of the Family Law Act;
- (2) This Act does not apply to a claim or court proceeding for which a limitation period has been established under another enactment, except to the extent provided for in the other enactment.

[69] Section 24(1) of the Limitation Act deals with the nature and impact of acknowledgements. It provides that:

- (1) If, before the expiry of either of the limitation periods that, under this Act, apply to a claim, a person acknowledges liability in respect of the claim,
 - (a) the claim must not be considered to have been discovered on any day earlier than the day on which the acknowledgement is made, and
 - (b) the act or omission on which the claim is based is deemed to have taken place on the day on which the acknowledgement is made.

[70] Section 24(6) provides that an acknowledgement, to be effective, must generally be in writing and signed either by hand or electronic signature. Section 24(7) however provides that, where a claim is for payment of a liquidated sum, a part payment of the sum may also constitute an acknowledgement.

[71] An interesting question arises whether an acknowledgement would be effective at common law if s. 24 does not apply. I note that in *Crerar & Waldkirch, The Annotated British Columbia Limitation Act* (Thomson Reuters, 2022) at p. 349, the authors comment that s. 24 is not limited to liquidated claims, and state:

This is a modification of the common law, where acknowledgement only applied with respect to debt claims.

[72] As well, the authors note in that same section that among the rationales for the extension of limitation periods through acknowledgement is:

The second rationale for acknowledgement is estoppel: it would be unfair for a would-be defendant to reassure (and buy time from) the plaintiff by admitting liability, and then raise a limitation defence when sued.

[73] Neither party relied on any sort of common law acknowledgement doctrine in this case; rather, their submissions addressed whether s. 24 of the Limitation Act would apply to a proceeding under the FLA.

Date of Separation

[74] I reviewed the law with respect to determining date of separation in O.M. at para. 239-257. The present case, like O.M., is brought under the FLA. Section 3 of the FLA deals with when a person is a spouse. Section 3(4) provides that:

- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[Emphasis added.]

[75] As I noted at para. 242 of O.M., separation is not necessarily a bilateral decision. It does not require a "meeting of the minds", or that both parties agree to separate. At para. 249 of O.M., and subject to a consideration of the party wishing to separate having a "settled intention", I adopted Justice Shergill's distillation of the applicable principles from S.A.H. v. I.B.L., 2018 BCSC 544 at para. 55:

[55] As is evident from the case authorities, the determination of the parties' date of separation is a very fact specific exercise. I have found the following questions, framed in the form of a test, useful to determining the date of separation here:

1. Did at least one spouse have the intention to separate?
2. Was the intention to separate communicated to the other spouse?
3. Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage, did one or both spouses take action that is consistent with the separation, such as:
 - a. changing how they behaved with each other in public; and
 - b. changing how they behaved with each other in private.

Estoppel

[76] Three different forms of estoppel were raised in the course of the parties' submissions.

[77] The principles governing promissory estoppel were recently and concisely summarized by the Supreme Court of Canada in *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47, [2021] 3 S.C.R. 490 [TLABC]:

[15] Promissory estoppel is an equitable defence whose elements were stated by Sopinka J. for this Court in *Maracle*, at p. 57:

The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the [promisee] must establish that, in reliance on the [promise], he acted on it or in some way changed his position. [Emphasis added.]

The equitable defence therefore requires that (1) the parties be in a legal relationship at the time of the promise or assurance; (2) the promise or assurance be intended to affect that relationship and to be acted on; and (3) the other party in fact relied on the promise or assurance. It is, as we will explain, implicit that such reliance be to the promisee's detriment.

[16] Promissory estoppel seeks to protect against the "inequity of allowing the other party to resile from his statement where it has been relied upon to the detriment of the person to whom it was directed" (*Fort Frances v. Boise Cascade Canada Ltd.*, [1983] 1 S.C.R. 171, at p. 202). In the insurance context, estoppel arises most commonly where an insurer, having initially taken steps consistent with coverage, then denies coverage because of the insured's breach of a policy term or its ineligibility for insurance in the first place. To prevent the insurer from denying coverage, the insured will attempt to show that the insurer is estopped from changing its coverage position based on its prior words or conduct.

[17] Although the nuances of the relationship between promissory estoppel and other forms of estoppel were not argued before us in this appeal, we observe that Trial Lawyers' arguments may be better framed as supporting estoppel by representation rather than promissory estoppel (see *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53, at para. 5; *Page v. Austin* (1884), 10 S.C.R. 132, at p. 164). While the latter doctrine prevents the promisor from reneging on an assurance to alter the parties' legal relationship, the former doctrine prevents a promisor from denying the truth of a prior representation (see, generally, B. MacDougall, *Estoppel* (2nd ed. 2019), at §§ 5.33 to 5.45). Given the similarities between the doctrines, however, we resolve this appeal applying only the principles of promissory estoppel upon which Trial Lawyers relies, while noting that similar reasoning would apply if the claim were grounded in estoppel by representation.

[78] As is apparent from the TLABC case, there is often significant overlap between the different forms of estoppel. In *Ryan*, the Court compared and contrasted the principles governing estoppel by convention and estoppel by representation. At para. 59, Justice Bastarache summarized the principles governing estoppel by convention as follows:

- (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of silence (impliedly).
- (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
- (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

[79] With respect to the shared assumption, Justice Bastarache explained:

- [61] The crucial requirement for estoppel by convention, which distinguishes it from the other types of estoppel, is that at the material time both parties must be of "a like mind" (*Troop v. Gibson*, [1986] 1 E.G.L.R. 1 (C.A.), at p. 5; *Hillingdon London Borough v. ARC Ltd.*, [2000] E.W.J. No. 3278 (QL) (C.A.), at para. 49). The court must determine what state of affairs the parties have accepted, and decide whether there is sufficient certainty and clarity in the terms of the convention to give rise to any enforceable equity: *Troop*, at p. 6; see also *Baird Textile Holdings Ltd. v. Marks & Spencer plc*, [2002] 1 All E.R. (Comm) 737, [2001] EWCA Civ 274, at para. 84.
- [62] While it may not be necessary that the assumption by the party raising estoppel be created or encouraged by the estopped party, it must be shared in the sense that each is aware of the assumption of the other (*John v. George*, [1995] E.W.J. No. 4375 (QL) (C.A.), at para. 37). Mutual assent is what distinguishes the estoppel by convention from other types of estoppel (*Bower*, at p. 184). The courts have described communications complying with this requirement as "crossing the line". In *The "August Leonhardt"*, at pp. 34-35, Kerr L.J. held that

[a]ll estoppels must involve some statement or conduct by the party alleged to be estopped on which the alleged representee was entitled to rely and did rely. In this sense all estoppels may be regarded as requiring some manifest representation which crosses the line between representor and representee, either by statement or conduct. It may be an express statement or it may be implied from conduct, e.g. a failure by the alleged representor to react to something said or done by the alleged representee so as to imply a manifestation of assent which leads to an estoppel by silence or acquiescence. Similarly, in cases of so-called estoppels by convention, there must be some mutually manifest conduct by the parties which is based on a common but mistaken assumption. . . .

There cannot be any estoppel unless the alleged representor has said or done something, or failed to do something, with the result that -- across the line between the parties -- his action or inaction has produced some belief or expectation in the mind of the alleged representee, so that, depending on the circumstances, it would thereafter no longer be right to allow the alleged representor to resile by challenging the belief or expectation which he has engendered. To that extent at least, therefore, the alleged representor must be open to criticism. [Emphasis added.]

See also *The "Vistafjord"*, at p. 350. Thus, it is not enough that each of the two parties acts on an assumption not communicated to the other (*The "Indian Grace"*, at p. 10). Further, the estopped party must have, at the very least, communicated to the other that he or she is indeed sharing the other party's (ex hypothesi) mistaken assumption (*John*, at para. 81; *Bower*, at p. 184).

[80] With respect to the second and third requirements, Justice Bastarache explained:

[73] Once the party seeking to establish estoppel shows that he acted on a shared assumption, he must prove detriment. For the plea to succeed, it must be unjust or unfair to allow a party to resile from the common assumption (*Wilken*, at p. 228). It is often said that the fact that there will have been a change from the presumed legal position will facilitate the establishment of detriment: "This is because there is an element of injustice inherent within the concept of the shared assumption -- one party has acted unjustly in allowing the belief or expectation to 'cross the line' and arise in the other's mind": *Wilken*, at p. 228.

[74] This final requirement of estoppel has been described as proving that it would be "unjust", "unconscionable" or "unfair" to permit a party to resile from the mutual assumption (see, e.g., *Bower*, at p. 181; *John*; *The "Indian Grace"*; *The "Vistafjord"*). However, it may be preferable to refrain from using "unconscionable", in order to avoid confusion with this last concept which has developed a special meaning in relation to inequality of bargaining power in the law of contracts (where we speak of unconscionable transactions, for instance) (see *Litwin Construction*, at p. 468).

[81] Estoppel by representation is similar, except that rather than a shared assumption, it arises from a representation. In *Ryan*, Justice Bastarache explained:

[76] Where there is no shared assumption, as in the present case, there can be no estoppel by convention, no matter how unjust the other party's conduct may appear to be. However, in some circumstances, the party seeking to establish estoppel may be able to rely on estoppel by representation, an alternative here advocated by the respondent. The added difficulty in such a case is that an estoppel by representation cannot arise from silence unless a party is under a duty to speak.

Analysis

Preliminary Matters

[82] I will begin with a few preliminary comments.

- [83] Counsel for the respondent made submissions with respect to credibility. In my view, this trial does not turn on issues of credibility. I have some concerns about the reliability of the parties' viva voce evidence with respect to identifying exactly what happened on what day over the course of the key days in August 2021. However, reliability and credibility are different concepts. I accept that both parties were doing their best to set out the sequence and provide their best estimates as to what happened when. It is unfortunate that both parties lost access to their texts, as those texts may well have provided a more reliable timeline with respect to the key events relevant to the issue of separation. In my view, however, this is a case that turns on the legal significance to be given to what happened, not on resolution of credibility issues.
- [84] Second, the respondent objected that the claimant had not specifically pleaded estoppel. Of course, there was no reason to plead estoppel in the Notice of Family Claim, as no limitation defence had been raised. However, the respondent said that the claimant should have filed a Reply to the Response to Family Claim, referencing a plea of estoppel.
- [85] I note that there is no equivalent in the Supreme Court Family Rules [SCFR] to Supreme Court Civil Rule 3-6, which authorizes the filing of a Reply. I had no submissions as to whether a Reply would even be permissible in a family law case, given the lack of any provision for it in the SCFR.
- [86] In his Trial Brief, the claimant set out his position with respect to the date of separation as follows:
- The Claimant says that the parties had discussed different dates of separation but the respondent confirmed that the parties would use August 31, 2021 as the date of separation. The Claimant commenced his Notice of Family Claim before August 31, 2023.
- [87] The respondent says that although this paragraph suggests that the claimant is relying on the respondent's confirmation of the August 31 date, it does not specifically use the word "estoppel", and that it was not until the claimant's opening at trial that it became clear that estoppel was the claimant's legal theory for relying on the August 31 date. While that may be true, I struggle to see what other legal theory this paragraph could be referring to.
- [88] There was no request to adjourn the trial. Both parties included the same redacted version of the April 7, 2022, letter in their document binders for trial. Issues surrounding the exchange of that letter and the claimant's alleged reliance on it were canvassed in the parties' viva voce evidence.
- [89] In my view, the respondent had adequate notice that estoppel was a key aspect of the claimant's position and has not been prejudiced. Had I been persuaded there was prejudice, I would have considered granting an adjournment to allow the respondent time to prepare. I was not asked for any such adjournment, and in my view, there was no actual prejudice. I did, however, grant leave for the respondent to make further submissions after completion of final submissions, and the respondent's counsel did so.

[90] In my view, this case should be decided with due consideration of the estoppel issues that were raised, and the process that has occurred with respect to that is fair to both parties.

Date of Separation

[91] Having reviewed the evidence, it is my view that the respondent sent a text to the claimant on either August 10 or 11, 2021, which included the words "ive come to the realization that our relationship is over". This was in the context of a heated argument before the claimant left for Vernon, and a heated discussion over the telephone on August 9 or 10, 2021. In my view, I do not need to conclude which of those days each of these events occurred on. It seems clear from the evidence that either on the day the text was sent or within a short time thereafter (given the lack of an immediate response from the claimant), the respondent came to a settled intention to separate. I also accept that her text is an effective communication of an intention to separate. However, the intention to separate was not acted upon for a few days thereafter.

[92] I accept the evidence that the parties had little or no communication between the time of the text I discussed in the previous paragraph and the claimant's return to the Cheekye Ranch.

[93] The evidence is not clear as to when the claimant returned to the ranch.

[94] The evidence indicates that when the claimant returned to the ranch, there was initially no discussion between the parties of anything other than business matters - particularly, things that needed to be dealt with by the claimant given that he was now back. There is no evidence that the parties had any discussion prior to bedtime that first evening, at which time they each slept in separate beds.

[95] The cases warn against placing too much emphasis on whether the parties slept together. Nor was there clear evidence of whether this lack of sleeping together occurred before or after midnight.

[96] The claimant's evidence is that it was sometime between August 16 and 18 that he returned. The respondent did not have any evidence to contradict this assertion. Nor was I provided with clear information as to whether the August 17 Visa charge for the claimant's lunch in Abbotsford was incurred or posted on August 17.

[97] There are two pieces of evidence that assist in determining a date by which there had in fact been act of the respondent in furtherance of separation:

- a) It is clear that by the time of the August 20 text to Terry, the parties had engaged in a discussion that was sufficient to allow the claimant to confirm that he and the respondent were "working on a separation" and that he was making plans to move out.
- b) The payment acknowledgement form indicated the first cash payment to the claimant occurred on August 18, 2021.

- [198] In my view, I cannot safely conclude that the claimant's return to the ranch was any earlier than August 17, 2021. In light of the lack of evidence of any non-business-related interaction between the parties on the first day back, I am reluctant to conclude that there was an action on the first day back sufficient to meet the requirement.
- [199] In my view, applying the balance of probabilities to the evidence that was tendered at trial, I conclude that the parties' date of separation was August 18, 2021.
- [100] That would place the deadline for filing of the claimant's claims on Friday, August 18, 2023. Instead, they were filed on the next business day - Monday, August 21, 2023.
- [101] I acknowledge that this is later than what appears in the claimant's mid-September handwritten note (a reference to August 14), and to what might be inferred from the claimant's August 10, 2022 text referring to it being a year since "you kicked me out". In my view, those all occurred at times the claimant was self-represented and would have had no idea of the legal test that is applied to determine separation. It would be unreasonable to rely on either of those actions given the other evidence that was before the Court which leads me to the conclusion I have come to.
- [102] The same applies to the choice of September 24, 2021, as the valuation date for the parties' appraisal. There is nothing to indicate that either party had any legal advice as to the choice of valuation date.
- [103] As well, the fact that the claimant continued to reside at the ranch until late September does not change the view I have come to. Apart from the challenges the claimant would have faced in unexpectedly having to find a new place to live, the parties had both a business and a personal relationship, and work at the ranch was central to the business relationship.

Estoppel

- [104] Generally speaking, without-prejudice correspondence aimed at settlement is privileged and may not be put before the court without consent of both parties. That said, there are many cases in which parties use correspondence for multiple purposes and the court may have to decide whether any part of a letter is properly tendered in evidence.
- [105] I was not provided with the entirety of the April 7, 2022 letter. I do not know the extent to which the statement in the unredacted portion of the letter is tied into any sort of analysis of the parties' positions or proposals for compromise. All I have been provided is the unredacted portion of the latter. That portion of the letter is, on its face, a factual confirmation that is in no way tentative.
- [106] In my view, the assertion made in the unredacted portion of the letter - specifically that there was an agreement to use August 31, 2021, as the date of separation - is sufficient to ground an estoppel.

- [107] The assertion could arguably constitute a promise / assurance (promissory estoppel), a shared assumption of fact or law (estoppel by convention), or a representation of fact (estoppel by representation). In my view, the statement in the letter is most appropriately analyzed as an assertion of a shared assumption of fact, and in particular, that the parties were to move forward on the basis that their date of separation was August 31, 2021.
- [108] The respondent argues that the claimant did not accept the offer. That may be true. But estoppel - and particularly estoppel by convention - does not require an offer and acceptance. What is required is a shared understanding as to a state of affairs. The claimant's evidence that he adopted, relied upon and acted upon that date is consistent with what actually happened.
- [109] In my view, Mr. Thomas' letter of August 9, 2023, could not have been clearer that the defendant was relying on the shared assumption that August 31, 2021, was the date of separation, and that rather than filing the Notice of Family Claim immediately, he would be taking a reasonable amount of time to prepare it. I am also of the view that it would be unjust or unfair to allow the respondent to resile from the representation, given that I have no doubt that the claimant could have filed the Notice of Family Claim one business day earlier if the claimant understood that was required.
- [110] Had Mr. Toews been in his office, I have no doubt that he would have immediately replied to Mr. Thomas - either working out on a collegial basis an agreed timeline for any claim to be filed or, if he could not get those instructions, advising of his client's position with respect whether there was an agreed date of separation. As it turns out, Mr. Toews was on holiday and no such communication occurred prior to filing of the Notice of Family Claim. In my view, it would be unfair that the consequence of this lack of response due to holidays should fall to the claimant.
- [111] In my view, the same conclusion would have arisen had I treated this as a case of promissory estoppel. The assertion made in the April 2022 letter can also be appropriately treated as promissory in nature, and the parties clearly had a pre-existing legal relationship.

Acknowledgement

- [112] Given the conclusion I have reached, I do not need to deal with whether there was an acknowledgement of the claim that had the legal effect of extending the claim. I would say, however, that I have difficulty seeing how the receipt of payments was inconsistent with the respondent's position that the cohabitation agreement should be upheld and implemented. As of the time of the payments, there would have been some money owing to the claimant even if the cohabitation agreement was not set aside.

Conclusion

[113] For the above reasons, I conclude that the respondent is estopped from asserting that the Notice of Family Claim was not filed within two years of the date of separation.

[114] Given that this is the trial of an issue only, in my view the appropriate order is for the claimant to have costs of the trial in the cause.

"Veenstra J."

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Prepared on 27 October 2026 · Esheria