

CANADA / JUDGMENT

Hunter v. Hunter

2024 BCSC 1241

COURT

Supreme Court of British Columbia

DECIDED

10 July 2024

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2024 BCSC 1241 Hunter v. Hunter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hunter v. Hunter,

2024 BCSC 1241

Date: 20240710

Docket: E232968

Registry: Vancouver

Between:

Cathryn Eileen Hunter also known as Cathryn Eileen Bowden

Claimant

And

William Lawrence Hunter, 8620300 Canada Inc., and

Danelle Sinclair also known as Candace Danelle Sinclair

Respondents

Before: Associate Judge Muir

Reasons for Judgment

Counsel for the Claimant:

Maureen L.A. Lundell, K.C.

Counsel for the Respondent, William Lawrence Hunter:

Paul Daykin, K.C.

S. Snape

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

June 26, 2024

Place and Date of Judgment:

Vancouver, B.C.

July 10, 2024

Introduction

- [1] The claimant, Cathryn Eileen Hunter ("Ms. Hunter"), and the individual respondent, William Lawrence Hunter ("Dr. Hunter"), are spouses who are now separated. To distinguish them from the other respondents, 8620300 Canada Inc. ("8620300") and Danelle Sinclair (together, the "other respondents"), I will refer to Ms. Hunter and Dr. Hunter as the "spouses" when they are being referred to together.
- [2] By her notice of application filed June 13, 2024, the claimant seeks the following orders:
1. Pursuant to section 91 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] restraining orders that the respondent, William Hunter, be restrained from disposing of, encumbering, transferring, selling, converting or exchanging into another form, or in any similar manner dealing with the following assets alleged to be family property:
 - (a) all shares in which the respondent, William Hunter, has an interest including, 308,282 Common Shares without par value (Formerly Known as Class A Common Voting) of Canary Medical Inc. ("Canary") in the name of William Hunter pending final determination of this action, without the consent in writing of the claimant, or further order of this Court;
 - (b) the amount of 25,000 of the total 308,282 Canary shares restrained herein, are held as security for the claimant's claim against half of the 50,000 Common Shares without par value (formerly known as Class A Common Voting) of Canary presently owned by the respondent, 8620300 Canada Inc. ("8620300") until there is a final determination of the issues between the claimant and the Respondents, 8620300 and Danelle Sinclair, unless there is a written agreement between all parties or further order of this Court;
 - (c) funds held in the amount of not less than \$7,000,000 pending final determination of this action, without the consent in writing of the claimant, or further order of this Court; and

- (d) all registered financial accounts in the name of the respondent, William Hunter, including, but not limited to, the Canaccord Registered Retirement Savings Plan account no. 357-C7AS-1 and the Canaccord Tax Free Savings Account no. (CAD) 357-C7AV-1 without the consent in writing of the claimant or further order of this Court.
- 2. Pursuant to s. 91 of the FLA, the respondent, William Hunter, be further hereby restrained and enjoined from doing any action or taking any step, without limiting the generality of the foregoing, including voting, which has or may have the effect of depreciating or dissipating the value of Canary, the shares of Canary, or any asset in the name of either William Hunter or any other, party, which asset is the subject of this proceeding and may be family property, unless there is a written agreement between all parties, or further order of this Court;
- 3. Any party may apply on seven-days notice to the Court for directions or to vary the terms of this Order;
- 4. Costs; and
- 5. Such further and other relief that this honourable court may order.
- [3] The orders sought in paras. 1(a) and (b) of Part 1 of the claimant's notice of application were consented to by Dr. Hunter. The balance of the application was opposed by him.
- [4] The other respondents, as defined earlier in these reasons, did not appear on this application. I gather there is an application to have the claim as against them struck, which will be heard in September. The other respondents did, however, file a response in which they oppose the orders sought in paras. 1(b), 4 and 5 of the notice of application.
- [5] For the reasons set out below, orders sought in the claimant's notice of application are granted as follows:
 - a) Paragraphs 1(a) and (b) are granted as sought.
 - b) Paragraph 1(c) is allowed to the extent of \$5 million, which is to be held in a designated account selected by Dr. Hunter. That account is to be subject to the restraining order sought. The claimant is to be advised of the account details forthwith.
 - c) The claimant is restrained from disposing of, encumbering, transferring, selling, converting or exchanging into another form, or in any similar manner dealing with the property located at 3445 West 15th Avenue, Vancouver, B.C. until agreement or further order of this court.
 - d) Paragraph 1(d) is granted, as to the indicated registered RRSP and tax-free savings accounts only.
 - e) Paragraph 2 is dismissed.
 - f) Paragraph 3 is granted as follows: Any party may apply to the Court, on seven days' notice to the other parties, for directions or for an order to set aside or vary the terms of this order.

- g) The spouses are restrained from disposing of, encumbering, transferring, selling, converting or exchanging into another form, or in any similar manner dealing with all shares they have in Adherium Ltd., absent agreement or further order of this court.
- h) The parties will bear their own costs of this application.

Background

- [6] The spouses were married on June 17, 2000 and separated on May 28, 2022.
- [7] The spouses have two adult children, both of whom are attending universities in Ontario. They reside in Ontario during the school year and with both parents when in Vancouver during school breaks.
- [8] The spouses resided together at 1450 Blanca Street, Vancouver, B.C. (the "Blanca Property") after they completed its construction in or about 2002.
- [9] On September 15, 2022, the spouses sold the Blanca Property for \$43,500,000 and divided the net proceeds equally between them.
- [10] It is alleged that the Blanca Property had increased in value by more than \$30,000,000 from their initial investment in the land and construction.
- [11] After separation, Ms. Hunter purchased 3445 West 15th Avenue in Vancouver (the "15th Avenue property"), which has a 2024 BC Assessment value of \$4,587,000.
- [12] Dr. Hunter appears not to have purchased property in BC since separation.
- [13] The parties also divided their art collection, which apparently has significant value.
- [14] In 1992, Dr. Hunter had incorporated a company known as Angiotech Pharmaceuticals Inc. ("Angiotech"). He says that at some point prior to the spouses' marriage, his Angiotech interest was worth approximately \$100,000,000. Dr. Hunter has a significant excluded property claim that he says stems from his interest in Angiotech.
- [15] For her part, Ms. Hunter claims an unequal division of family property based on the factors set out in s. 95(2) of the FLA.
- [16] On May 1, 2012, Dr. Hunter incorporated Canary Medical Inc. ("Canary"). Canary is a medical device corporation. Dr. Hunter is Canary's president and chief executive officer.
- [17] Dr. Hunter and 8620300 were the initial shareholders of Canary. On May 1, 2012, Canary allotted:
 - a) 250,000 Class A Voting shares to Dr. Hunter, and
 - b) 50,000 Class A Voting shares to 8620300.

- [18] Dr. Hunter's evidence is that the value of Canary is highly speculative and will depend on its success. As at December 31, 2023, the common shares of Canary had a value of approximately \$55 USD per share. Ms. Hunter provides several bases on which she estimates the share value. As Canary is a private corporation at present, the shares are said to be illiquid.
- [19] Dr. Hunter deposes that he is sharing 50% of his present income from Canary, after deduction of the children's expenses, with Ms. Hunter as undesignated support.
- [20] The spouses also held some shares in Adherium Ltd., which the claimant says have been moved from the spouses' joint investment account. Dr. Hunter consents to an order that disposition of his Adherium shares be restrained, provided the order is mutual.
- [21] Both spouses have produced their respective Form F8 financial statements. However, Dr. Hunter has yet to produce a significant amount of financial information sought by the claimant. At the Judicial Case Conference held April 15, 2024, the spouses consented to an order that updated lists of documents be provided to each other by July 15, 2024, which are to include all documents that support the excluded property claims.
- [22] According to the spouses filed Form F8 financial statements:
- a) Ms. Hunter has assets of approximately \$19,906,521, including the 15th Avenue property, and
 - b) Dr. Hunter has assets of approximately \$21,174.833.
- [23] These do not include any value for the Canary shares.

Legal Basis

- [24] The application is based on s. 91 of the FLA, which provides:

Temporary orders respecting protection of property

91 (1) On application by a spouse, the Supreme Court must make an order restraining the other spouse from disposing of any property at issue under this Part or Part 6 [Pension Division] until or unless the other spouse establishes that a claim made under this Part or Part 6 will not be defeated or adversely affected by the disposal of the property.

(2) The Supreme Court may make one or more of the following orders:

- (a) for the possession, delivery, safekeeping and preservation of property;
- (b) for the purpose of protecting the applicant's interest in property from being defeated or adversely affected,
- (i) prohibiting the other spouse from disposing of, transferring, converting, or exchanging into another form, property in which the applicant may have an interest, or

(ii)vesting all or a portion of property in, or in trust for, the applicant.

[]

[25] The spouses agree that the onus is on Dr. Hunter to show that Ms. Hunter's claim will not be adversely affected by disposal of the subject property.

Position of the Parties

Ms. Hunter

[26] Ms. Hunter's application was largely directed to the Canary shares, as they are far and away the most significant family asset that has not been the subject of some division.

[27] She also relied, however, on submissions regarding securing spousal support and child support.

[28] In that regard, Ms. Hunter argues that although Dr. Hunter is sharing his income from Canary to a certain extent, that the amount being paid to her is significantly less than what she would be entitled to under the Spousal Support Advisory Guidelines and the Federal Child Support Guidelines, SOR/97-175, based on Dr. Hunter's historic income of more than \$1 million per annum.

[29] Ms. Hunter says that the income being shared with her does not include any share of the anticipated bonus that Dr. Hunter will receive (and has historically received) of more that \$600,000 per annum.

[30] She argues that there must be some security recognized for this shortfall.

[31] Ms. Hunter noted that Dr. Hunter and Ms. Sinclair both depose that Dr. Hunter has no legal or beneficial interest in the shares of Canary held by 8620300. Yet, in the Canary Management Information Circular, dated June 8, 2023, exhibited on this application, Dr. Hunter is set out as having 358,282 common shares in Canary, 50,000 of which are noted to be "held indirectly in the name of 8620300 Canada Inc., a private company controlled by William Hunter".

[32] There was other evidence that Dr. Hunter has some sort of interest in 8620300 and the Canary shares held by 8620300. However, I do not need to go into it for the purposes of this application.

[33] Ms. Hunter also noted that Dr. Hunter has significant stock options in Canary that remain unexercised and for which she should be secured.

[34] She notes too that he has RRSPs and TFSAs, and she believes that there were significant brokerage accounts at the time of separation for which details have not been produced.

[35] Ms. Hunter argued that in order that her claim to an unequal distribution of assets not be prejudiced, it was essential that all of Dr. Hunter's Canary shares and registered assets be restrained and that, in addition, there be a sum of \$7,000,000 set aside and restrained for security for her other claims.

Dr. Hunter

[36] As noted, Dr. Hunter has consented to the orders sought in paras. 1(a) and (b) of the claimant's notice of application.

[37] He argues, however, that the other orders sought are not warranted.

[38] Dr. Hunter argues the orders sought in paras. 1(c) and (d) are unnecessary. He says that the property in issue, other than the Canary shares, has been divided. He notes his significant excluded property claim but says that regardless of his success on that claim, the best the claimant could expect would be to receive one-half of the Canary shares and, thus, restraining the disposition of those shares is all that is necessary to ensure that no claim of Ms. Hunter's is adversely affected.

[39] As to any restraint on his ability to manage Canary as he sees fit, Dr. Hunter deposes that he is working to make Canary a success and will do everything he can to increase the share value for all shareholders. I note that the issued capital of Canary now includes 1,239,544 in common shares.

[40] In order to succeed, Dr. Hunter says he must be free to cause Canary to borrow money and raise working capital. Those actions may have the result of diluting the interest of the common shareholders, but Dr. Hunter argues that to ensure the success of Canary, its ability to raise capital must be unfettered. He thus opposes the order sought in para. 2 of the notice of application.

[41] Dr. Hunter also notes that his claim of excluded property could well result in Ms. Hunter having received more than that to which she was entitled. He argues that there should be some security for the potential that she will be required to repay some of the monies already divided.

Analysis and Conclusions

[42] The argument regarding the Canary shares for the orders sought in paras. 1(a) and (b) of Part 1 of the notice of application is largely moot, as Dr. Hunter consented to these orders.

[43] Given the evidence in the recent Canary Management Information Circular, there is a concern that Dr. Hunter has an interest in the Canary shares held by 8620300. The objection raised by the other respondents is largely irrelevant as they did not appear on the application, the order sought has no or limited impact on them and, in any event, in September, they will have the opportunity to advance their position that the action against them has no merit.

- [44] The orders sought in paras. 1(a) and (b) of Part 1 of the notice of application are therefore granted as sought.
- [45] I do not agree with Ms. Hunter's position that I must consider security for her spousal and child support claims. In my view, security for such claims is not within the ambit of s. 91 of the FLA, which specifically refers to protecting claims "under this Part or Part 6". Those parts of the FLA have nothing to do with spousal or child support.
- [46] Dr. Hunter's position regarding paras. 1(c) and (d) appears to be predicated on the presumption that all of his other financial assets, absent the Canary shares, have devolved from the monies shared after the sale of the Blanca Property.
- [47] That, however, has not been established as there is no evidence of the value of the spouses' financial holdings as at the date of separation. I would expect, as was urged by Ms. Hunter, that there may have been financial assets of some significance held at that time. In addition, I expect the registered assets must have accrued over time and could not have devolved solely from the proceeds of sale of the Blanca Property.
- [48] On the assumption, therefore, that Dr. Hunter's exclusion claim is not successful and Ms. Hunter's claim to an unequal division of assets is successful, there is a risk that his dissipation of these other assets may negatively impact her claim.
- [49] In all of the circumstances, I have concluded that a sum of \$5,000,000 being secured by Dr. Hunter, balanced by a restraint of Ms. Hunter on the sale or encumbrance of the 15th Avenue property, is appropriate. The \$5,000,000, which is to be secured by Dr. Hunter, is to be held in a designated account selected by him. That account will be subject to the restraining order sought. Ms. Hunter is to be advised of the account details forthwith.
- [50] Dr. Hunter will also be restrained regarding the specific accounts set out in para. 1(d) of Part 1 of the claimant's notice of application.
- [51] As to the order sought in para. 2 of Part 1 of the notice of application, I am of the view that such an order could be significantly prejudicial to Canary and its shareholders, of whom Dr. Hunter is only a minority. I am satisfied that Dr. Hunter is interested in seeing to the success of Canary and that the success of Canary will be at least partially dependent on its ability to raise capital. Ms. Hunter's claim to the Canary shares is more likely to be adversely affected by the order sought. Hence, the application in para. 2 is dismissed.
- [52] Given the questions regarding the shares in Adherium, the spouses are restrained from disposing of, encumbering, transferring, selling, converting or exchanging into another form, or in any similar manner dealing with all shares they have in Adherium Ltd., absent agreement or further order.
- [53] The order sought in para. 3 in Part 1 of the notice of application is a bit garbled and is allowed as follows:

Any party may apply to the Court, on seven days' notice to the other parties, for directions or for an order to set aside or vary the terms of this order.

Costs

[54] Given the divided success and the consent of Dr. Hunter to some of the orders granted, the parties shall bear their own costs of this application.

"Muir A.J."

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Prepared on 29 October 2026 · Esheria