

CANADA / JUDGMENT

J.K.P. v. L.S.B.

2025 BCSC 2017

COURT

Supreme Court of British Columbia

DECIDED

16 October 2025

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2025 BCSC 2017 J.K.P. v. L.S.B. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.K.P. v. L.S.B., 2025 BCSC 2017 Date: 20251016 Docket: E66865 Registry: New Westminster Between: J.K.P. Claimant And L.S.B. Respondent

- and - Docket: S253573 Registry: New Westminster Between: J.K.P. Plaintiff And L.S.B. Defendant
- and - Docket: H230678 Registry: Vancouver Between: S.S.P. and Mountain Investment Corp. Petitioners And L.S.B., J.K.P., John and Jane Doe Respondents Before: The Honourable Mr. Justice Milman Reasons for Judgment Re Costs Counsel for the Claimant in NW E66865 and the Plaintiff in NW S253573: J.S. Malik R. Diocee Counsel for Respondent in E66865 and the Defendant in NW S253573: P. Ghai S. Grover, Articled Student Counsel for the Petitioner, S.S.P., in VA H230678: R.S. Atwal, appearing June 16, 2025 only Counsel for the Respondent, L.S.B., in VA H230678: K.S. Atwal, appearing June 16, 2025 only Place and Dates of Trial: New Westminster, B.C. June 16-20, 23-27 and July 2, 2025 Dates of Written Submissions Re Costs Received: September 4-5 and October 3, 2025 Place and Date of Judgment: New Westminster, B.C. October 16, 2025 I. Introduction

[1] In my decision of August 5, 2025, now indexed as 2025 BCSC 1494, I granted judgment in three proceedings arising from the breakdown of the marriage between J.K.P. and L.S.B., namely:

- a) an appeal by L.S.B. from a decision of an associate judge granting S.S.P. (J.K.P.'s brother) an order absolute of foreclosure in respect of L.S.B.'s half interest in the former family home;
- b) a family law claim brought by J.K.P. against L.S.B.; and
- c) a civil claim brought by J.K.P. against L.S.B.

[2] The background facts are extensively set out in my earlier decision, and I will not repeat them here. In the result, my order:

- a) allowed L.S.B.'s appeal, set aside the order absolute and, in its place, resolved the foreclosure action with finality by extending the redemption period so that the mortgage charging L.S.B.'s half interest in the former family home could be redeemed through the division of assets in the family law action;
 - b) granted, in part, the relief sought by J.K.P. in the family law action; and
 - c) awarded J.K.P. general and punitive damages in the civil action and directed that those damages be paid through the division of assets in the family law action (I also made a separate award of \$779.75 in favour of the Minister of Health under the Health Care Costs Recovery Act, S.B.C. 2008, c. 27).
- [3] In the final paragraph of my decision, I stated that I was making no order as to costs at that time but gave the parties leave to seek costs, if they wished to do so, by way of written submissions. I have since received the following written submissions from the parties:
- a) a submission from L.S.B. dated September 4, 2025, seeking special costs, or alternatively, elevated costs at Scale C, against J.K.P. and S.S.P. (presumably in relation to the foreclosure appeal only, although this is not expressly stated);
 - b) a submission from J.K.P. dated September 5, 2025, seeking:
 - i. costs at Scale B in relation to the two actions; and ii. an order that the parties bear their own costs in relation to the foreclosure appeal; and
 - c) a submission from J.K.P. dated October 3, 2025, in reply to L.S.B.'s costs submission.
- [4] The following is my supplemental decision on costs. II. Summary of the Parties' Arguments on Costs A. L.S.B.
- [5] L.S.B. seeks an award of special costs on the basis that J.K.P. and S.S.P. engaged in reprehensible conduct, both before and during the litigation, by:
- a) colluding with one another to seek an order absolute for an improper purpose, namely, to secure a windfall at L.S.B.'s expense;
 - b) abusing the court's process by those means;
 - c) engaging in sharp practice against a self-represented litigant at the hearing before the associate judge by:
 - i. failing to disclose to the associate judge:
 - (1) that S.S.P. was J.K.P.'s brother (although L.S.B. acknowledges that J.K.P. disclosed this fact in her affidavit, he argues that S.S.P. should have done the same in his); and
 - (2) the value of L.S.B.'s equity interest in the former family home; and ii. in the case of J.K.P., falsely averring that she was unaware of the mortgage, despite later testifying in the joint trial of the two actions that she accompanied L.S.B. to the bank when he obtained it.

- [6] In support of that submission, L.S.B. cites *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.); *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352; and *1055249 B.C. Ltd. v. Grace Mtn. Land Company, Ltd.*, 2023 BCSC 2339. B. J.K.P.
- [7] In relation to the foreclosure appeal, J.K.P. denies that there was any misconduct that would justify an award of special costs. Further, she argues that the parties should bear their own costs on the appeal, despite L.S.B.'s success. She says that in providing for the redemption of the mortgage through the division of assets in the family law action, my order failed to account for additional interest that had accrued on the debt as of September 5, 2025. She says she is willing to forego that additional interest if no costs are awarded on the appeal, making that a better result for L.S.B. insofar as the interest owing exceeds the value of any costs award that might be made.
- [8] In relation to the two actions, J.K.P. argues that she is entitled to her costs at Scale B because she was substantially successful in both proceedings, citing *D.R. v. E.P.R.*, 2016 BCSC 550; *D.J.D. v. M.L.D.*, 2017 BCSC 1417; *Fotheringham v. Fotheringham*, 2001 BCSC 1321; and *Harras v. Lhotka*, 2016 BCCA 246. III. Discussion A. The Foreclosure Appeal
- [9] As J.K.P. argues, an award of special costs must be based on the party's conduct during the litigation, rather than conduct occurring prior to its commencement: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177. In any event, I am not persuaded that J.K.P. and S.S.P. "colluded" to seek an order absolute for an improper purpose. Rather, I accept that J.K.P. asked S.S.P., and S.S.P. agreed, to purchase the mortgage debt because J.K.P. was worried that the original lender might foreclose and seek a sale of the family home, where J.K.P. and her daughters were then residing. Although I ultimately found that S.S.P. should not be permitted to retain the resulting windfall, it does not follow that it was an abuse of the court's process for him to seek the maximum relief to which he was entitled under the mortgage.
- [10] Nor am I persuaded that the associate judge was improperly misled during the hearing of the application for the order absolute.
- [11] The associate judge was informed that S.S.P. is J.K.P.'s brother. That information did not have to be repeated in both of their affidavits.
- [12] S.S.P.'s counsel argued at the hearing before the associate judge and on appeal that, with no realistic prospect of a sale of L.S.B.'s half interest to a third-party purchaser, a redemption was unlikely. The problem I found with that submission was not that it was false or misleading per se, but rather that it missed the point. The success of the appeal turned on my finding that a redemption could occur through the division of assets in the family law action, a prospect the associate judge never properly considered. However, the associate judge was told that the trial of the family law action was scheduled to begin in the near future (indeed, he alluded to that fact in his reasons for judgment). In my earlier decision, I noted that evidence of the value of the parties' equity in the former family home was before the associate judge by way of an exhibit to S.S.P.'s supporting affidavit, but, unfortunately,

that evidence was not referred to by any of the parties during oral argument. Although I accept that it should have been, especially with L.S.B. self-represented at the hearing, this was not an ex parte hearing, with the attendant duty on the part of the applicant to make full and frank disclosure of the case for both sides.

- [13] Finally, I disagree that J.K.P. swore falsely in her affidavit that she was unaware that L.S.B. had mortgaged his half interest in the former family home. The evidence at trial was that she learned of the mortgage only when an agent of the lender came to the family home to appraise it. She then asked L.S.B. not to proceed with the mortgage, but he did so anyway. She acknowledged that she may have taken him to the bank to withdraw funds once the loan proceeds were already deposited in his bank account.
- [14] Overall, I see no basis for an award of special costs in this case.
- [15] On the other hand, I am also not persuaded that L.S.B. should receive no costs at all, despite having succeeded on the appeal. J.K.P. argues that any entitlement he may have to such costs should be offset by S.S.P.'s claim for additional interest accrued on the mortgage debt, for which no provision was made in my trial decision. I disagree. The effect of increasing the amount of the indebtedness to S.S.P. on the mortgage would have been an additional credit in favour of J.K.P. in the division of assets. Had such a credit been given to her, then the award of punitive damages would have been reduced commensurately because I assessed her punitive damages at an amount sufficient to allow her to retain the duplex for herself, and no more.
- [16] In the result, I have concluded that L.S.B. is entitled to his costs on the appeal and on the application to the associate judge for the order absolute, at Scale B. I see no reason for those costs to be assessed at Scale C, and indeed, none was put forward. B. The Two Actions
- [17] I agree with J.K.P. that she is entitled to her costs of the two actions, on the basis that she was substantially successful in both. L.S.B. has not argued otherwise. IV. Summary and Conclusion
- [18] In summary, I am making the following orders as to costs (both at Scale B):
- a) L.S.B. is awarded costs against S.S.P. and J.K.P. in respect of the application for the order absolute and the associated appeal; and
 - b) J.K.P. is awarded costs against L.S.B. in respect of the two actions. "Milman J."

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