

CANADA / JUDGMENT

J.M.B. v. B.J.B.

2020 BCSC 775

COURT

Supreme Court of British Columbia

DECIDED

22 May 2020

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2020 BCSC 775 J.M.B. v. B.J.B. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.M.B. v. B.J.B., 2020 BCSC 775 Date: 20200522 Docket: E180931 Registry: Vancouver Between: J.M.B. also known as M.B. Claimant And B.J.B., and B.B. and G.B., in their capacities as trustees of the B. Family Trust Respondents Before: Master Harper Reasons for Judgment Counsel for the Claimant: P. Daykin, Q.C. Counsel for the Respondent, B.J.B.: A. Laing Counsel for the Respondents, B.B. and G.B., in their capacities as trustees of the B. Family Trust: H.H. Low, Q.C. Written Submissions filed: May 12, 2020 Place and Date of Judgment: Vancouver, B.C. May 22, 2020

introduction

- [1] These reasons address procedural issues. The claimant wife (the "wife") brought an application for orders for the production of documents pertaining to a family trust (the "trust") and for the appointment of a business valuator to value the interest of the respondent husband (the "husband") in the trust. The husband's father, the Respondent B.B. (the "father"), is the sole remaining trustee. The father and the husband oppose the application.
- [2] The application proceeded before me on January 8, 2020, but submissions did not conclude because of insufficient time. The application was scheduled to continue on May 15, 2020. However, the court's normal operations have been curtailed due to the COVID-19 health crisis and the May 15, 2020 hearing has been adjourned.
- [3] The father filed a notice of application on February 26, 2020 seeking an adjournment of the wife's application based on his stated intention to wind up the trust and distribute the trust property. Before the hearing commenced on January 8, 2020, the father had also filed an application seeking a dismissal of the action against him as trustee on the basis that the husband had no interest in the trust as it was a discretionary trust. That application has not yet been heard.

- [4] The procedural issue to resolve is how the wife's application should proceed in light of the father's assertion that he intends to wind up the trust. At my request, counsel filed brief written submissions.
- [5] The wife seeks a direction that she be permitted to amend her notice of family claim to add new parties and new claims, but, in my view, that is a separate matter and any application for amendments or to add new parties should proceed in the usual way. No order or direction is required in this regard; the wife may make her application as and when she sees fit.
- [6] In my view, the new alleged facts require a new notice of application to be filed on behalf of the wife because her application should be determined on the facts as they exist at the time the application is heard. Accordingly, a continuation of the current application before me is undesirable.
- [7] I note that a trial has been scheduled to commence April 12, 2021. Counsel for the father says that the trust wind-up will occur by December 2020. Although the wife and the father agree that the wife's application and the father's application for dismissal of the claim against him should be heard at the same time, in my view, the wife's application should not be constrained if a date for the hearing of both applications at the same time cannot be obtained in time to preserve the existing trial date.
- [8] I have determined that the most practical and efficient way forward is to make the following directions:
- a) the wife's application is deemed to be withdrawn;
 - b) the wife is at liberty to file a new notice of application and may file further affidavits in the usual way;
 - c) the filing fee for the wife's new notice of application is waived;
 - d) the wife's new application may proceed before the father's application for dismissal of the claim against him unless the parties agree that both applications can be conveniently heard at the same time;
 - e) I am not seized of any further applications in this proceeding;
 - f) all directions I have made are subject to the court's COVID-19 notices. "Master Harper"

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Prepared on 26 October 2026 · Esheria