

CANADA / JUDGMENT

Karrington v. Morrisonn

2020 BCSC 1797

COURT

Supreme Court of British Columbia

DECIDED

23 November 2020

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2020 BCSC 1797 Karrington v. Morrisonn

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Karrington v. Morrisonn,

2020 BCSC 1797

Date: 20201123

Docket: E170577

Registry: Vancouver

Between:

Ashleigh Karrington

Claimant

And

Jonn Morrisonn also known as John Morrisonn, World Financiers Ltd.,

North Atlantic Arts Imports Ltd., 1239 Odlum Holdings Ltd.,

Shaone Morrisonn, Juhli Rycroft, Caashia Karrington

Respondents

Before: Master Muir

Reasons for Judgment

Counsel for the Claimant, appearing by teleconference:

P. Sheppard

Counsel for the Respondents, appearing by teleconference:

G.K. Thomas

Place and Date of Hearing:

Vancouver, B.C.

October 13, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 23, 2020

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I. introduction

- [1] There are two applications before me, one by the claimant and one by the respondent, Jonn Morrison ("Mr. Morrison"). The claimant and Mr. Morrison were common law spouses.
- [2] To summarize, the claimant seeks to have monies freed up by appointment of her as a receiver of rents and for sale of family property to satisfy the existing interim spousal support award and for an interim distribution to allow her to pursue her legal action. On the other hand, Mr. Morrison seeks leave to amend his response to family claim and counterclaim to withdraw his admission that the parties separated in 2016. He also seeks to have the interim spousal support award overturned and seeks to have the family home sold rather than the properties proposed by the claimant.

II. THE APPLICATIONS

A. The Claimant's Application

- [3] The first application was by the claimant, directed at Mr. Morrison for the following relief (in part):
1. An order pursuant to section 29 of the Family Maintenance Enforcement Act that the Claimant appointed receiver and manager, without security, over the property legally described as:

005-921-635

Lot 18 Block 101 Plan VAP442 District Lot 264A Land District 36 & PL 1771

and, civically known as 539 East 7th Avenue, Vancouver, BC, VST 1N8 (the "East 7th Property").

2. An order pursuant to Rule 15-8 of the Supreme Court Family Rules and/or section 97 of the Family Law Act that the East 7th Property may be sold by the Claimant, who shall have sole conduct of sale of the East 7th Property.
3. An order that the proceeds of sale of the East 7th Property be held in trust with Owen Bird Law Corporation as follows:
 - a) That \$300,000 of the net proceeds of sale of the East 7th Property be used as an interim distribution of family property to the Claimant for legal fees in accordance with section 89 of the Family Law Act; and,
 - b) That the remaining net proceeds of sale of the East 7th Property to be used as security for the payment of any arrears of spousal support and ongoing spousal support to the Claimant until further court order and that such funds may be used to pay monthly spousal support to the Claimant in the event that monthly payments are not made by the Respondent.
7. Special costs, or in the alternative, costs in any event of the cause.
- [4] At the hearing before me, counsel for Mr. Morrisonn took the position that paras. 4 to 6 of the orders sought in the claimant's notice of application, which were regarding a property at 900 West 8th Avenue (the "900 West 8th property"), could not proceed as that property is in the name of a holding company, 900 West 8th Avenue Holdings Ltd. ("900 West 8th Holdings"). That company was not served or named as an application respondent and is not a party to these proceedings.
- [5] I will deal at some length with the evidence around the 900 West 8th property later in these reasons, however, at the hearing, it was agreed that paras. 4 to 6 of the orders sought in the claimant's notice of application were to be adjourned generally.
- [6] Mr. Morrisonn also objected to some of the orders sought in the claimant's notice of application on the basis that they affected the interests of respondents who were not respondents to these applications, particularly his son, Shaone Morrisonn ("Shaone").
- [7] Counsel for Mr. Morrisonn advised me at the hearing of this application that he represents Shaone. Shaone did provide an affidavit in support of Mr. Morrisonn's position on these applications. There is no question that Shaone had notice of these applications. I am satisfied that his interests were amply protected by the submissions made by Mr. Morrisonn.

B. Mr. Morrisonn's Application

- [8] Mr. Morrisonn made a cross application for the following orders:

1. An Order that the Court grant leave to the Respondent, Jonn Morrisonn, to amend his Response to Family Claim and Counter-Claim to plead the proper date of separation;
2. An Order that the Order of Master Dick made on July 31, 2019 be set aside and or vacated, or at least suspended until reviewed at trial;
3. An Order that any and all arrears of spousal support that have arisen since the making of the said Order be nullified and or cancelled or significantly reduced;
4. Further to paragraph 2 or in the alternative, an Order that all issues set out in the Claimant's Notice of Application dated May 17, 2019 and in the Claimant's current Notice of Application be adjourned to trial;
5. An Order that the property municipally known as 3806-West 24th, Vancouver be listed for sale with both parties having joint conduct of sale;
6. An Order that the court direct the parties to attend on a mediation;
7. An Order that the court appoint a Case Management Judge for the file.

III. Background

A. The Parties

- [9] The claimant is a retired flight attendant. She is currently 66 years old. In her affidavit sworn July 28, 2020, she deposed that her total income was \$36,500.
- [10] Mr. Morrisonn is currently 71 years old. He asserts that he is in poor health and that although he was once a successful businessman, those efforts ceased to bear fruit in or about 2000. He says his income is now limited to Old Age Security ("OAS") and Canada Pension Plan ("CPP").
- [11] The parties give quite different evidence about their relationship. They do not agree on when it commenced or when it ended. They did, however, have a child of the relationship, the respondent, Caashia Karringten, born October 24, 1992 ("Caashia").
- [12] The claimant says that she and Caashia moved into Mr. Morrisonn's house at 3806 West 24th Street, Vancouver, BC (the "family home") in 1994. Mr. Morrisonn says it was 1996 when they moved in, although in his response to family claim, counterclaim, and even in the proposed amendments to those pleadings, he says the relationship began in 1994.
- [13] Mr. Morrisonn has three children from a prior relationship. Two are respondents in this action, Juhli Rycroft ("Ms. Rycroft") and Shaone. The claimant alleges essentially that Mr. Morrisonn has used family funds to purchase properties and put them in Ms. Rycroft, Shaone, and Caashia's names in order to defeat her claim to family assets.
- [14] Note that I mean no disrespect by referencing Caashia and Shaone by their first names, it is simply to avoid confusion with their parents' names.

B. The Parties' Evidence Regarding Their Relationship

- [15] The evidence as to the parties' relationship is, as is common in family matters, completely at odds. Both parties accuse the other of being difficult to live with and are hoarders, amongst other things. Both deny those allegations.
- [16] The parties' evidence is also at odds about the parenting of Shaone and Caashia.
- [17] It seems clear, however, that Shaone spent as little time as possible with the claimant and set about pursuing his hockey ambitions in his early age.
- [18] Caashia resided in the family home until about 2009 (or 2010 according to the respondent), which is when she commenced university studies at Duke University in North Carolina. She later returned to BC to study at the University of British Columbia to facilitate her membership on the Canadian Women's Field Hockey Team.
- [19] The claimant asserts that her relationship with Mr. Morrisonn was a traditional one, where she took care of the family and home and he was the breadwinner. The claimant was on disability and did not work.
- [20] The claimant says that the parties separated on or about September 17, 2016, after a dispute over repairs to the roof of the family home that resulted in the respondent having her ejected from his office at 1941-1943 West 4th Avenue, Vancouver, BC (the "West 4th Avenue property"). Mr. Morrisonn says that dispute did occur, but that it was on September 14, 2016 and they were already separated at the time.

C. The Family Action

- [21] The claimant began this family law action by filing a notice of family claim on March 3, 2017.
- [22] She obtained a without notice asset-restraining order and protection order on March 8, 2017. After some apparent difficulty serving Mr. Morrisonn, Master Tokarek granted an alternative service order on April 6, 2017.
- [23] On May 4, 2017, responses to the notice of family claim were filed by Mr. Morrisonn, Ms. Rycroft, and Shaone, all by their counsel, F. Ean Maxwell, Q.C.
- [24] Mr. Morrisonn, in his response to family claim filed May 4, 2017, agrees with the 2016 date of separation. In his counterclaim filed the same date, he specifies the date of separation as September 17, 2016. However, in his affidavit #1 sworn August 24, 2020, he asserts that the date of separation was in 2011. In his affidavit #2 sworn September 15, 2020, he asserts that the separation occurred in 2012. In both cases, he asserts that the separation occurred when he moved out of the family home and began to reside full-time in the West 4th Avenue property.

- [25] Mr. Morrisonn seeks leave in his application to amend his response to family claim and counterclaim to withdraw the judicial admission that the separation date was September 17, 2016. He says he wants to plead what he asserts is the correct term of the relationship. In the draft amended response to family claim and counterclaim provided, the date of separation is pled as 2011.
- [26] Mr. Maxwell filed a notice of withdrawal of lawyer/solicitor for Mr. Morrisonn dated June 4, 2019.
- [27] On July 31, 2019, at a hearing that Mr. Morrisonn did not attend, despite notice, Master Dick made the following orders (in part):
1. The Respondent shall file and deliver his Form 8 Financial Statement with all required documents attached to the Claimant within 30 days of this Order.
 2. The Respondent shall deliver his list of documents to the Claimant within 30 days of this Order.
 3. Within 30 days of this Order the Parties shall secure a date for a Judicial Case Conference.
 4. The Claimant may serve proceedings on the Respondent at his physical address for delivery, being 1943 West 4th Avenue, Vancouver, British Columbia, V6J 1M7, and at the Respondent's email address, being jonn.morrisonn@wf-ltd.net.
 5. The Parties' incomes are determined as follows, on an interim and without prejudice basis:
 - a) the Respondent's annual income is imputed to be \$300,000; and
 - b) the Claimant's annual income is \$60,000.
 6. Commencing August 1, 2019, and on the first day of each month thereafter until further order of this Court, the Respondent shall pay interim spousal support to the Claimant in the amount of \$6,586 per month.
 7. The Respondent may apply to vary paragraph 6 of this order after production of his list of documents and financial statement.
 9. Costs to the Claimant of this application in any event of the cause.
- [28] I note that despite the clear terms of Master Dick's order requiring a list of documents and Form F8 financial statement to be produced within 30 days of her order, Mr. Morrisonn's Form F8 financial statement was not filed until August 24, 2020.
- [29] There was a judicial case conference in this matter on September 23, 2019. The claimant says that Mr. Morrisonn attended late, with no explanation. The order made at the judicial case conference indicates that Ms. Hopman attended for Mr. Maxwell and was granted leave to serve a notice of withdrawal as lawyer/solicitor.
- [30] It appears that Mr. Thomas was retained on October 4, 2019.

- [31] Mr. Thomas was aware of Master Dick's July 31, 2019 order by at least October 10, 2019 and was sent a demand letter regarding Mr. Morrison's documents, his financial statement, and payment of spousal support on November 6, 2019. Mr. Thomas asked for and received copies of all of the claimant's listed documents by November 18, 2019.
- [32] To date, Mr. Morrison has made no payments of spousal support to the claimant. Arrears based on Master Dick's order are \$105,376 as of November 1, 2020.

IV. Application to Withdraw Judicial Admission

- [33] The application of Mr. Morrison to amend the response to family claim and counterclaim to plead a separation date of 2011 is one with very significant consequences for the claimant.
- [34] If the application advanced by Mr. Morrison was allowed and the separation date alleged was established, it would result in the claims advanced by the claimant being statute barred.
- [35] That is because of the limitation in s. 198 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], which provides:

Time limits

198 (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, the date
 - (i) a judgment granting a divorce of the spouses is made, or
 - (ii) an order is made declaring the marriage of the spouses to be a nullity, or
 - (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.

[36] Such a dispute about the date of separation would also impact the ability of the claimant to succeed in her interim applications. There would be no certainty as to the claimant's entitlement to any distribution of family assets or to spousal support and, in those circumstances, it is unlikely that the interim orders sought would be granted and likely Master Dick's order regarding spousal support could not stand.

[37] Mr. Morrison did not take issue with the characterization of his pleading of the separation date of September 17, 2016 as a judicial admission. Had he done so, however, given the positive assertion in his counterclaim regarding the separation date and the lack of any evidence that this assertion was made inadvertently, I have no doubt that the plea was a judicial admission.

[38] Rule 9-6(5) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] provides:

Withdrawal of admission

- (5) A party is not entitled to withdraw
 - (a) an admission made in response to a notice to admit,
 - (b) a deemed admission under subrule (2), or
 - (c) an admission made in a pleading, petition or response to petition
- except by consent or with leave of the court.

A. The Sidhu v. Hothi factors

[39] Both parties relied on the decision of the Court of Appeal in *Sidhu v. Hothi*, 2014 BCCA 510 as setting out the proper principles to apply on an application to withdraw a judicial admission. There, the Court of Appeal held at para. 11:

[11]

1. That the test is whether there is a triable issue which, in the interests of justice, should be determined on the merits and not disposed of by an admission of fact.

[40] At para. 25 of *Sidhu*, our Court of Appeal concluded that the factors to be considered in determining the interests of justice include:

- (a) whether the admission was made inadvertently, hastily, or without knowledge of the facts;
- (b) whether the "fact" admitted was or was not within the knowledge of the party making the admission;
- (c) where the admission is one of fact, whether it is or may be untrue;
- (d) whether and to what extent the withdrawal of the admission would prejudice a party; and

- (e) whether there has been delay in the application to withdraw the admission and any reason offered for such delay.
- [41] I will deal with the evidence regarding each of the Sidhu factors.
- (a) Whether the admission made inadvertently, hastily, or without knowledge of the facts
- [42] Given the significance of the impact that the withdrawal of the admission would have, I would have expected to see evidence from Mr. Morrison that dealt with how the admission came to be made in the first place.
- [43] This is particularly the case given that he was represented by experienced, senior counsel at the time.
- [44] Other than some general evidence about his health and poor vision, Mr. Morrison provides no direct evidence about how the separation date of September 17, 2016 came to be pleaded by him.
- [45] He does not suggest the admission was inadvertent or made hastily.
- (b) Whether the fact was within Mr. Morrison's knowledge
- [46] Clearly, Mr. Morrison had firsthand knowledge of the facts and he had able and senior counsel advising him.
- (c) To the extent it is an admission of fact, is it untrue
- [47] As to whether the admission is, or may be, untrue, Mr. Morrison says he left the family home in 2011 or 2012, depending on which of his affidavits is referenced, with the intention of separating and the parties were separated from that date forward.
- [48] He does not say that he told the claimant of his intention to separate. There are no documents evidencing such an intention.
- [49] Once Mr. Morrison challenged the claimant's stated date of separation, which I must emphasize was not until August 24, 2020, the claimant brought significant evidence of their ongoing spousal relationship through 2016.
- [50] I have considered the analysis in *Coupar v. Roh*, 2014 BCSC 1392, which notes:
- [67] Although the FLA makes clear that parties may be separated despite continuing to live in the same residence, the inverse is not specifically stated. Can parties remain in a marriage-like relationship while living, for an extended period of time, under different roofs?
- [68] The answer, in my view, is yes.

[69] In *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264, [1986] 1 R.F.L. (3d) 448 (C.A.), Justice Lambert stated the following test for determining whether a couple cohabited as man and wife thus invoking the spousal support obligations of the Family Relations Act, R.S.B.C. 1996, c.128 as follows:

In deciding whether a couple lived together as husband and wife, I would be guided by the scheme and intention of the Act itself. The purpose of the legislative scheme is to impose on an unmarried couple the same obligations under s. 57 as are voluntarily undertaken by a married couple. So I would ask whether the unmarried couple's relationship was like the relationship of the married couple in that the unmarried couple have shown that they have voluntarily embraced the permanent support obligations of s. 57. If each partner had been asked, at any time during the relevant period of more than two years, whether, if their partner were to be suddenly disabled for life, would they consider themselves committed to life-long financial and moral support of that partner, and the answer of both of them would have been "Yes", then they are living together as husband and wife. If the answer would have been "No", then they may be living together, but not as husband and wife.

Of course, in the particular circumstances of any case, the answer to that question may prove elusive. If that is so, then other, more objective indicators may show the way. Did the couple refer to themselves, when talking to their friends, as husband and wife, or as spouses, or in some equivalent way that recognized a long-term commitment? Did they share the legal rights to their living accommodation? Did they share their property? Did they share their finances and their bank accounts? Did they share their vacations? In short, did they share their lives? And, perhaps most important of all, did one of them surrender financial independence and become economically dependent on the other, in accordance with a mutual arrangement.

All those questions, and no doubt others, may properly be considered as tending to show whether a couple who have lived together for more than two years have done so with the permanent mutual support commitment that, in the relevant sense of the Family Relations legislation, constitutes living together as husband and wife.

[51] The claimant's evidence is that the parties' relationship was not intimate after about 2009, due to Mr. Morrisonn's health issues. She said it was not unusual for him to be away for lengthy periods on business and that after 2015, he frequently overnights at his office in the West 4th Avenue property, saying that he had to make calls to China in the early morning hours and did not like to drive in the dark. Her evidence is also that he said they would be moving abroad together and that he had to work around the clock to wrap things up.

[52] She says he came home virtually daily, constantly called her, and continued to return to the family home to sleep occasionally and for dinners and she would try to make dishes that she knew he enjoyed. This is all disputed by Mr. Morrisonn.

[53] Some of the specific evidence the claimant refers to includes:

- a) A letter dated March 18, 2012 from Mr. Morrisonn to the VP Director of Athletics at Duke University in which he references the claimant as his wife;
 - b) Evidence that the claimant, Mr. Morrisonn, and Caashia all travelled to Beijing together in October 2014, where Mr. Morrisonn introduced the claimant to business associates and others as his wife;
 - c) A birthday card to Caashia from 2014 signed by both parties;
 - d) Evidence of various trips taken by the claimant and Caashia, including to Barcelona, Paris, Greece, Bulgaria, Italy, Thailand, Hong Kong, Sri Lanka and the Maldives between 2013 and 2015, all paid for by Mr. Morrisonn;
 - e) The claimant and Caashia were both directors of Mr. Morrisonn's company, Triton Fine Arts Ltd., having been appointed at least as recently as November 20, 2015;
 - f) Mr. Morrisonn remained on the claimant's extended benefits and made many claims, the last of which was September 14, 2016;
 - g) Mr. Morrisonn continued to pay the expenses for the family home;
 - h) Mr. Morrisonn sent various emails to the claimant into 2016 and beyond about retiring overseas;
 - i) On August 5, 2016, the claimant received notice that her employment with Air Canada would be terminated and forwarded it to Mr. Morrisonn, who replied, "Ok, This looks bad. Let me know? It will all work out! Love You!";
 - j) After the altercation in September 2016, the claimant told Mr. Morrisonn that she was separating from him. He did not, at that time or any time since, tell her that to his mind they had been separated since 2011 or 2012;
 - k) The claimant says she asked Mr. Morrisonn in January 2017 if he wanted to separate and he told her he did not; and
 - l) The claimant terminated Mr. Morrisonn's common law status for the purpose of her extended benefits with her employer on January 4, 2017, effective September 17, 2016.
- [54] Mr. Morrisonn's response to this evidence in his second affidavit is a very general denial and amounts essentially to a reiteration of his position, but changing the date of separation from 2011 to 2012. He does not deny the evidence set out in para. 53 above.
- (d) Whether and to what extent withdrawal of the admission would prejudice the claimant
- [55] The claimant will be prejudiced by the withdrawal of the admission, as, assuming the separation date is held to be in 2011 or 2012, her claims will be time barred.

- [56] Mr. Morrisonn argues that the claimant will be in no different position now than she would have been had the admission not been made--that is, if the response and counterclaim had pleaded a separation in 2011 or 2012. The claimant would still have been in jeopardy of her claims being time barred.
- [57] The claimant argues, and I agree, that Mr. Morrisonn's failure to plead a 2011 separation date from the outset has barred her from advancing a claim in unjust enrichment that would have been available to her when the response and counterclaim were filed. The claimant argues that by s. 30(3) of the Limitation Act, S.B.C. 2012, c. 13, the old Limitation Act, R.S.B.C. 1996, c. 266 would have applied to a trust claim arising in 2011 or 2012, giving a limitation of six years. Thus, she would have been within time to advance an unjust enrichment claim in 2017.
- [58] Of course, there is presumed prejudice from the passage of time. Evidence may be more difficult to obtain, memories fade, documents are lost or destroyed, witnesses become more difficult to locate. In particular, the claimant says that evidence of her spousal relationship with Mr. Morrisonn has been lost over the intervening years.
- [59] Here, there is the additional prejudice in that presently there is an 18-day trial scheduled for March 2021. The claimant says the time estimate was based on the anticipated difficulty of proving Mr. Morrisonn's real assets, business interests, and financial dealings. No time was allotted for the evidence that would be required to address the date of separation. As a result, it is entirely likely that the trial time will not be sufficient and those dates will be lost. Obtaining new dates will take the parties into mid-2022 at the earliest.
- [60] The claimant argues there is an additional consideration here. If Mr. Morrisonn had told the claimant in 2011 or 2012 that he considered them separated, the claimant could have taken appropriate financial and legal advice. By continuing on, including taking trips, paying the claimant's expenses, and referring to her as his wife, he arguably led the claimant to believe they were still a couple. Combined with the admission and the delay in addressing it, the claimant says Mr. Morrisonn waived or is estopped from claiming an earlier separation date or a limitation defence.
- (e) Whether there has been any delay in the application to withdraw the admission and the reason for the delay
- [61] There has been unexplained delay in bringing this application.
- [62] The admission was made May 4, 2017. More than three years have passed. Orders were made and the trial was scheduled based on the pleadings.
- [63] Mr. Morrisonn seems to attribute his delay to his belief that the parties would resolve this amicably. He has taken no steps to that end in the more than three years that have passed, however. No other reason for the delay is advanced.

[64] I do not accept that there was any legitimate reason for the delay other than Mr. Morrison's failure to attend to this litigation. His failure to do so is amply evidenced by the fact that despite being in breach of Master Dick's July 31, 2019 order, his affidavit #1 and his Form F8 financial statement were not sworn until August 24, 2020.

B. Conclusion

[65] In considering the factors set out above, I have concluded that all of them weigh against Mr. Morrison. It is not in the interests of justice to allow Mr. Morrison to withdraw his admission that the parties separated on September 17, 2016. Thus, the application in para. 1 of Mr. Morrison's notice of application dated September 8, 2020 is dismissed.

V. Evidence reGARDING Financial issues

[66] The majority of the rest of the issues rely to some extent on the evidence regarding Mr. Morrison's assets and income.

A. Mr. Morrison's Income

[67] Although Mr. Morrison's evidence is that his business dropped off in or around 2000, his declared income has always been relatively minimal.

[68] Attached to Mr. Morrison's affidavit #1 is a letter from Canada Revenue Agency with his tax assessments for 1988 to 2018, and information on his income back to 1980. This evidence shows his income was declared to be:

Year

Declared Income

Year

Declared Income

1980

\$18,880.00

2001

\$4,219.00

1981

\$95,853.00

2002

\$7,434.00

1982

\$23,244.00

2003

\$4,816.00

1983

\$5,894.00

2004

\$4,970.00

1984

\$14,019.00

2005

\$5,055.00

1985

\$6,945.00

2006

\$5,171.00

1986

\$17,402.00

2007

\$5,300.00

1987

\$15,599.00

2008

\$8,885.00

1988

\$21,059.00

2009

\$9,373.00

1989

\$18,457.00

2010

\$9,042.00

1990

\$40,198.00

2011

\$8,636.00

1991

\$40,371.00

2012

\$9,294.20

1992 to 1994

Unfiled

2013

\$9,398.48

1995

\$12,147.00

2014

\$9,496.00

1996

\$14,444.00

2015

\$16,336.90

1997

\$12,996.00

2016

\$25,015.57

1998

\$9,140.00

2017

\$18,803.38

1999

\$8,969.00

2018

\$16,272.16

2000

\$9,350.00.

2019

\$16,667.76

[69] The claimant has limited evidence of Mr. Morrisonn's continued business activities or income since the 1990s. There are indications, however, that all is not as Mr. Morrisonn would have it appear.

[70] Mr. Morrisonn does not dispute that he paid for the extensive trips in 2013 to 2015 discussed above. He does not say how he managed to do so. Looking at Mr. Morrisonn's 2013 to 2015 income tax returns, however, it is difficult to see how he could have done so.

[71] In 2013, his declared income was \$5,898 from CPP benefits and \$3,500 in net business income. His gross business income is also declared to be \$3,500.

[72] In 2014, Mr. Morrisonn's declared income was \$5,996 from CPP benefits and \$3,500 in net business income, with gross business income also declared to be \$3,500.

[73] In 2015, his declared income was \$6,786 from OAS, \$8,278 from CPP, and \$3,500 in net and gross business income.

[74] It is difficult to imagine how Mr. Morrisonn's income could be as limited as is set out in this evidence, given the evidence as to his expenditures.

B. Corporate Interests

[75] The claimant raises significant issues regarding the extent of Mr. Morrisonn's true financial holdings.

- [76] In the affidavit provided by the claimant for the application before Master Dick, there was considerable documentary evidence from the 1990s of Mr. Morrison's financial dealings, largely through World Financiers Ltd., in millions and sometimes tens of millions of dollars. The claimant explains that she found these documents amongst documents discarded behind the West 4th Avenue property.
- [77] Mr. Morrison has not produced any financial documentation on this application. He says he has none.
- [78] Mr. Morrison's evidence is, from his affidavit sworn August 24, 2020:
38. I have no legal or beneficial interest in, nor history with any of the Respondent Corporations except North Atlantic Arts Ltd. and World Financiers Ltd.
- [79] He then goes on to say, without any explanation for the documents presented by the claimant, that World Financiers Ltd. has no value and no assets and he never ran any business revenue or expenses through it. He says it never did a successful deal and as a result, never had income. Without addressing the evidence advanced by the claimant, however, this bald assertion has no value.
- [80] As to North Atlantic Arts Ltd., he deposed that this is solely a holding company and its only property is the West 4th Avenue property. His evidence continued:
48. I did not use North Atlantic Arts in my business endeavours. I own all of the shares of NAA, but my daughter, Juhli, is the sole director and my understanding is that she has been the sole director as of August 27, 1998. North Atlantic leased the commercial property to a commercial tenant. In about 2000 - 2001 I transferred the North Atlantic Arts lease to Shaone and since then he has attended to the collection of rent and the payment of expenses through his own property management company. As noted, he took over the lease as of the year 2000-2001. In light of the above North Atlantic has not earned any income for about 20 years.
- [81] Yet, there is evidence that, even into 2019, Mr. Morrison was sending emails to the claimant about retiring overseas and about significant investment opportunities, including one multi-million dollar property purchase that he said he could not take advantage of due to the certificates of pending litigation the claimant had filed.

C. Properties

(a) East 7th Avenue and West 4th Avenue Properties

- [82] Mr. Morrison gives additional evidence about the East 7th Avenue and West 4th Avenue properties:
63. Since about the mid 1990's my income went down. After Shaone was drafted and began to earn good income as a hockey player I began to seek and obtain loans from Shaone to help with my business expenses and my personal expenses, and especially the costs of

maintaining the three real properties. Shaone took over paying the property expenses of all three properties. I continued to pay the monthly consumptive expenses for the 24th Avenue Home. Shaone began to help me with property management issues regarding the commercial property [the 4th Avenue property] even before he was drafted. He assisted me without compensation in his early 20's. Because I never regained my income earning ability, and due to the fact that he took over paying all of the property expense for all three properties, I transferred the commercial lease associated with the noted real property to him and his property management company. I did so as a way to secure the then current and future loans that he paid on my behalf with respect to the properties. For the same reason, I transferred the right to collect rent from the property on East 7th Avenue to Shaone and his property management company.

64. Accordingly, I have not received any rental income from either the commercial property or the East 7th Avenue property since about the year 2000 - 2001.

[83] I note the references to Shaone's property management company are contradicted in Mr. Morrison's affidavit #2, where he states:

43. In response to paragraph 43 of the Claimant's affidavit, I have an agreement with my son that I assign the leases and expense to my son for years as stated on his taxes. I no longer have money or health to tend to these issues and my son has taken them over. Since I have borrowed money from Shaone he has all of the leases between himself and the various tenants. Shaone has never used a property management company.

[Emphasis added.]

[84] It is curious that, although Mr. Morrison declares rental income in his tax filings up to and including 1991 and says that the rental income was assigned to Shaone after 2000, there is no rental income declared by Mr. Morrison after 1991.

[85] Although not mentioned in his affidavit #1, Mr. Morrison asserts in his affidavit #2 that Shaone has a right of first refusal to purchase the East 7th Avenue and West 4th Avenue properties at an agreed upon price. There is no document in support and no such right is registered on either title.

(b) 1239 Odium Street and 900 West 8th Avenue

[86] The claimant brings evidence of other properties that she submits were purchased by Mr. Morrison.

[87] The first property is owned by the respondent, 1239 Odium Holdings Ltd. ("Odium Holdings"), which was incorporated on September 24, 2015. Odium Holdings' sole director and officer is Caashia. Odium Holdings' registered and records office is care of the respondent, World Financiers Ltd. with an address at 1943 West 4th Avenue (I note this is the same address as the West 4th Avenue property). In 2015, Odium Holdings purchased property at 1239 Odium Street (the "Odium property") and that property now has a value of

\$6,749,600.

- [88] Mr. Morrisonn claims to have no interest in the Odlum property. He alleges that the property is owned by Shaone.
- [89] The claimant attaches a letter from Caashia where she resigned her positions as sole director and officer of Odlum Holdings on February 9, 2017. The letter is addressed to both Shaone and Mr. Morrisonn, and she actually resigns from three specific companies, namely, Odlum Holdings, Adanac Holdings Ltd., and North Atlantic Arts Ltd., as well as any other companies that Shaone and Mr. Morrisonn have put her name on without her knowledge. She says she resigns, amongst other things, because she has no information about the companies.
- [90] The other property that the claimant raises questions about is the 900 West 8th property. As noted above, this property is owned by 900 West 8th Holdings. This company was incorporated on September 29, 2016 with Mr. Morrisonn and Caashia as directors and the registered and records office is the West 4th Avenue property.
- [91] Caashia was the original shareholder in 900 West 8th Holdings.
- [92] 900 West 8th Holdings purchased the 900 West 8th property in December 2016. The claimant brings hearsay from Caashia that she made no financial contribution to this property and that Mr. Morrisonn later pressured her to transfer her shares in 900 West 8th Holdings to Shaone. An unsigned application for share transfer dated 2019 is attached to the claimant's affidavit directing a transfer of shares from Caashia to Shaone.
- [93] Mr. Morrisonn's evidence with respect to the 900 West 8th property is:
41. In response to paragraph 41 of the Claimant's Affidavit, Shaone owns this company and it is held in a bare trust.
 42. In response to paragraph 42 of the Claimant's Affidavit, this property was not in the original Affidavit, however, it was purchased with Shaone's money earned from playing Ice hockey in Europe. Shaone is responsible for the mortgage and the mortgage was obtained based on his earnings and collateral.
- [94] In Mr. Morrisonn's notice of application, but not in his evidence, he asserts:
59. Shaone normally resides in Europe and during his career he sought advice from a KPMG, a large accounting firm, as to ways to set up a real estate investment that would act as a vehicle to allow him and other like minded investors, mainly people living outside of Canada, to invest. Such a vehicle was established to allow the investors to buy into some but not all of the real estate if they did not like a particular real estate. As the Respondent understood the semantics, this included a Bare Trust Agreement, which required a trustworthy Canadian resident. The Respondent agreed to be a director just to meet residency requirements. His sister agreed to be a director as well. Even the claimant seems to agree that Caashia has no interest in the company or the real estate.

- [95] As to the registered and records office for these properties being the West 4th Avenue property, Mr. Morrisonn deposed:
39. In response to paragraph 39 of the Claimant's Affidavit, I am the registered agent for tax purposes for my son, in his absence while he is overseas in Russia and now Croatia. My son, Shaone, uses my office for a registered records office. All of Shaone's mail goes to my office at 1943 West 4th Avenue, Vancouver, BC.
- [96] Thus, although Mr. Morrisonn says that Shaone looks after his business and properties, it appears that Mr. Morrisonn looks after Shaone's business and properties while he is playing hockey abroad for the majority of the year.

D. Shaone's Evidence

- [97] Shaone in his affidavit says that he owns the following properties in Vancouver: 1968 West 3rd Avenue, 958 West 8th Avenue, 308 East 5th Avenue, and 2568 Napier Street. He asserts that he purchased these properties with his own resources.
- [98] Shaone makes no mention of the Odlum property or the 900 West 8th property. He gives no evidence about a "bare trust".
- [99] The purchase of 308 East 5th Avenue property is curious. Shaone apparently purchased the two parcels that comprise this property in July and September 2003 respectively. Its assessed value in 2019 was close to \$19 million.
- [100] In July and September 2003, Shaone was only 20 years old. He had started playing professional hockey in the 2002-2003 season. His salary that year and the next was \$565,000. Prior to 2002, he had no significant income. There is no evidence that he had any other property at the time.
- [101] All Shaone says is he purchased these properties from his own resources. We do not know how much he paid, how much the mortgage was, or how he qualified.
- [102] Curiously, Shaone does not mention anything about receiving the rents from and managing Mr. Morrisonn's properties on West 4th Avenue and East 7th Avenue since 2000. Nor does he corroborate Mr. Morrisonn's evidence that Mr. Morrisonn owes him money or that Shaone has a right of first refusal to purchase the properties on East 7th Avenue and West 4th Avenue.

E. Mr. Morrisonn's Form F8 Financial Statement

- [103] Mr. Morrisonn swears that his income is \$16,868, primarily from OAS and CPP. He discloses the East 7th Avenue property, the family home, and the two corporations, North Atlantic Arts Ltd., which owns the West 4th Avenue property, and World Financiers Ltd., with zero value.
- [104] He swears that he has no secured or unsecured debt.

VI. Spousal support

- [105] In her July 31, 2019 order, Master Dick granted leave for Mr. Morrisonn to apply to vary or set aside her spousal support award after he filed his Form F8 financial statement.
- [106] On the face of the limited income declared in Mr. Morrisonn's Form F8 financial statement and his historical income tax information, it would be appropriate to set aside the spousal support award.
- [107] I do not accept, however, that Mr. Morrisonn's income and assets are as stated in his Form F8 financial statement. There are simply too many unanswered questions to accept the bald statements as to Mr. Morrisonn's alleged impecuniosity.
- [108] Mr. Morrisonn gives no explanation for the very large deals that documents indicate he was involved in in the 1990s or what happened to the money. He alleges that his income has been minimal since 2000, but there is little difference in his declared income before or after 2000. Also, there is no explanation of how he has afforded the expenses he has undertaken since 2000 without any debt being declared in his Form F8 financial statement. He claims elsewhere in his evidence to be indebted to Shaone, but Shaone does not confirm that. In addition, there are curious dealings with the real properties that raise the question of whether and how much Mr. Morrisonn has contributed to those properties and whether he has a beneficial interest in them.
- [109] The onus is on Mr. Morrisonn to show that there is no substance to the evidence upon which Master Dick based her order.
- [110] The evidence he brings does not do so. The evidence as a whole raises such questions and suspicions that I have no reason to disagree with the conclusion reached by Master Dick that an income of \$300,000 should be imputed to Mr. Morrisonn.
- [111] I note that there is a trial approaching, and the trial judge will be in a much better position to consider the totality of the evidence and come to necessary conclusions about credibility.
- [112] In addition, there are sufficient family assets here that, should the spousal support award be overturned, there are assets available to allow a reapportionment and repayment of support.
- [113] As a result, Mr. Morrisonn's application to vary the interim spousal support order of Master Dick is dismissed, as is his application to cancel or reduce arrears.

VII. Appointment of a Receiver

- [114] The claimant asserts that she is in great financial need, that the family home is desperately in need of repairs that she cannot afford, and that she has already incurred legal expenses of \$40,000 that she has been unable to pay.

- [115] The claimant asks me to appoint her as receiver over the East 7th Avenue property. She submits that doing so would permit her to use the rents to support herself and pay for the repairs necessary to the family home.
- [116] The claimant relies on s. 29 of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127, however, she brings no authorities decided under that section that would provide guidance as to its application.
- [117] Mr. Morrisonn opposes the appointment of a receiver. He submits that even if a receiver was appropriate in the circumstances, which he disputes, it would not be appropriate to appoint a party (the claimant in this case) as a receiver as, amongst other things, receivers are in a fiduciary position to the parties.
- [118] General authorities regarding the appointment of a receiver relied upon by Mr. Morrisonn, including *Warren v. Warren*, 2008 BCSC 731 at paras. 16 to 21, indicate that special circumstances must be shown for resorting to the appointment of a receiver. There is a balancing of convenience required as well.
- [119] Here, where there are issues of the rents perhaps having been assigned to Shaone, and where there are other avenues available to the claimant, I am not satisfied that the appointment of a receiver is appropriate.

VIII. Sale of East 7th avenue Property

- [120] Rule 15-8(1) of the SCFR provides:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.
- [121] The claimant also relied upon s. 97 of the FLA. That, however, is a section primarily dealing with the final division of property or debt and is not within the jurisdiction of a Master.
- [122] The relevant law was not in dispute. Both counsel relied upon the decision in *K.J.M. v. P.D.A.*, 2011 BCSC 1729. The court there held:
- [13] Rule 15-8 permits the Court to order that matrimonial property be sold where it appears that it is necessary or expedient to do so. As the Court of Appeal said in *Reilly v. Reilly*, [1992] B.C.J. No. 2561, an order for sale can be made on an interim basis.
- [14] The parties agreed about the principles to be considered and applied by the court when dealing with such an application. They have been set out in a number of cases and include, in summary:

- a) If a sale is not necessary then, viewed objectively, it should be advantageous to both parties: Reilly at para. 35;
- b) Any doubt about the justice of an order for sale should be resolved in favour of the status quo recognizing that the status quo for one spouse may perpetuate an injustice for the other: Bodo v. Bodo, [1990] B.C.J. No. 346 (S.C.) and Reilly at para. 35;
- c) Where children are involved, the court should consider their need for stability and easy access to their school and friends, especially in the period immediately following separation. However, stability for the children may be balanced by other factors which affect their best interests including maintaining a relationship with an access parent: Bodo, at p. 12, Dean v. Dean, 2008 BCSC 1176 at para. 14, and L. v. L., 2002 BCSC 871 at para. 33;
- d) The availability and affordability of alternative accommodation for each party and their dependents: Bodo at p. 12;
- e) The emotional condition of each party especially the party who has primary parenting responsibility: Bodo at p. 12;
- f) External economic factors such as a declining market or the wasting of the asset: Bodo at p. 12;
- g) The capacity of the parties to maintain the asset: Bodo at p. 12; and
- h) The inability of one party to buy out the others interest and the inevitability of the ultimate sale of the property: Lede v. Lede, [1994] B.C.J. No. 1655 (S.C.) at paras. 15-16, Dean v. Dean, 2008 BCSC 1176 at para. 12.

[123] I note that Mr. Morrison does not appear to dispute that a sale of family property is necessary or expedient here. He disputes that the East 7th Avenue property should be sold and in his application, he seeks a sale of the family home.

[124] The assessed values of the three properties that are clearly family assets are:

- The family home: \$2,445,000;
- East 7th Avenue property: \$1,815,000;
- West 4th Avenue property: \$3,827,500;

[125] The claimant currently lives in the family home. Although it appears to be in very bad repair, her preference is to retain that property and have the family assets apportioned by assigning the family home to her and paying her compensation for her share of the value of the other family property. She has resided in the family home since 1994 and if it was sold, she would be forced to relocate, likely in advance of receiving any distribution of family property to which she might be entitled. Her position strikes me as reasonable.

- [126] Mr. Morrisonn resides in the West 4th Avenue property and apparently intends to continue to do so.
- [127] Accordingly, the only property that is available for sale is the East 7th Avenue property.
- [128] Taking Mr. Morrisonn's evidence at its face value for this purpose, he deposes that he cannot afford to maintain the East 7th Avenue property or the family home. Whether that is true or whether that is how he has chosen to proceed is largely irrelevant.
- [129] As a result, Mr. Morrisonn says he has assigned the income from family assets to Shaone. That may well be a solution for maintaining the East 7th Avenue and West 4th Avenue properties, but it has not resulted in any assistance to the claimant in repairing the family home.
- [130] The evidence is compelling that there are significant dangerous conditions in the family home that require urgent attention. That seems to be accepted by Mr. Morrisonn.
- [131] I find that the sale of the East 7th Avenue property is both necessary and expedient, that is, to the benefit of both parties, and I agree it should be sold.
- [132] It seems unlikely to me that Mr. Morrisonn will readily engage in that process. I conclude that the claimant should have conduct of that sale and the parties should have liberty to apply should any issues arise.
- [133] The net proceeds of the sale, after the usual fees, judgements, and commission are paid, are to be held in trust with the claimant's lawyer.

IX. Interim Distribution

- [134] The claimant submits that once the East 7th Avenue property is sold, there should be an interim distribution from the net proceeds of the sale made to her pursuant to s. 89 of the FLA to allow her to pursue her claims in this action.

- [135] Section 89 of the FLA provides as follows:

89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution,
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

- [136] In *I.F. v. R.J.R.*, 2015 BCSC 793, Justice Ballance discussed interim distributions:

- [192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets. Application of s. 89 calls for a purposive interpretation, where the need of the applicant spouse to receive an interim distribution and the potential entailing harm to the other spouse are evaluated contextually with an eye on the larger objectives endorsed by the FLA.
- [193] In my opinion, the plain meaning of the phrase "harmful to the interests of the spouse" in s. 89 contemplates actual or potential economic harm, and is likely broad in its scope. Determination of the presence of harm requires the court to reasonably anticipate and then assess the consequences that may flow from the interim order being sought. That approach, in turn, invites a highly individualized component to the inquiry. For example, would the distribution being sought in the particular case require a sale of property or of the encumbering of assets; what income tax ramifications might be triggered and what other transactional costs would arise? The concept of harm under s. 89 would also encompass economic implications such as whether the distribution would adversely impact the other spouse's lifestyle or effectively undermine or prejudice his or her argument for reapportionment.
- [137] The claimant's evidence is that she is already about \$40,000 in debt to her counsel. She is facing an 18-day trial in March 2021, and anticipates applications will be required to answer the many questions about Mr. Morrison's financial picture.
- [138] She submits that she will require an interim distribution of \$300,000 in order to achieve that.
- [139] Although no actual budget for legal expenditures has been provided, that is not a bar to ordering an interim distribution. The court can, from experience, accept that the progress of this action through an 18-day trial and one or more pre-trial applications, examinations for discovery, retainer of experts and so forth, could well result in legal fees and other related costs of \$300,000.
- [140] I have concluded, however, that in the absence of a budget, I will order an interim distribution of \$250,000 to the claimant to be used to fund this proceeding.
- [141] There is no question in my mind that a distribution of \$250,000 will not be harmful to the interests of Mr. Morrison. There are ample family assets to accommodate such an order.

X. security for spousal support

- [142] The claimant also sought an order that the remaining net proceeds of sale of the East 7th Avenue property be used as security for the payment of ongoing and any arrears of spousal support and that spousal support be paid from that fund if it was not forthcoming from Mr. Morrison.

[143] Counsel cited no authority for such an order. I doubt that I, as a Master, have jurisdiction to make such an order. Certainly, my jurisdiction under s. 89 of the FLA is not that broad. I do expect that a judge would have such jurisdiction, so that application will be adjourned generally.

XI. Additional Orders Sought by Mr. Morrisonn

[144] Mr. Morrisonn asks me to order a mediation and appoint a case management judge--points that were not argued on the hearing of these applications. An order is not required for a mediation, and I am not satisfied that a case management judge is required here, so this application is dismissed.

XII. Conclusion

[145] Mr. Morrisonn's application is dismissed in its entirety.

[146] The claimant's application to be appointed a receiver over the East 7th Avenue property is dismissed.

[147] The claimant's application for an order that the East 7th Avenue property be sold with her having sole conduct of sale is allowed, with liberty for the parties to apply if issues arise.

[148] The net proceeds of sale of the East 7th Avenue property are to be held in trust by claimant's counsel.

[149] From the net proceeds of sale of the East 7th Avenue property, the claimant is to have an interim distribution of \$250,000 to fund this litigation.

[150] The claimant's application that the net proceeds be used for payment to her of unpaid spousal support is adjourned generally. The balance of the orders sought in the claimant's notice of application, other than costs, are adjourned generally.

XIII. Costs

[151] As the claimant has been substantially successful on both her application and Mr. Morrisonn's application, she will have her costs for preparation for both applications. As well, as both applications were heard together over a full day, the claimant will have costs for one hearing day, all in the cause.

"Master Muir"

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