

CANADA / JUDGMENT

Karrington v. Morrisonn

2023 BCSC 577

COURT

Supreme Court of British Columbia

DECIDED

13 April 2023

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2023 BCSC 577 Karrington v. Morrisonn

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Karrington v. Morrisonn,

2023 BCSC 577

Date: 20230413

Docket: E170577

Registry: Vancouver

Between:

Ashleigh Karrington

Claimant

And

Jonn Morrisonn also known as John Morrison, World Financiers Ltd., North Atlantic Arts Imports Ltd., 1239 Odlum Holdings Ltd., Shaone Morrisonn, Juhli Rycroft, Caashia Karrington

Respondents

Before: The Honourable Justice E. McDonald

Reasons for Judgment on Applications

For Interim Distribution

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Place and Date of Hearing:

Vancouver, B.C.

October 24, 2022 and January 11, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 13, 2023

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Introduction

- [1] For ease of reference and due to many of the parties having the same or similar surnames, I will refer to the various individuals involved in this family law proceeding by first name. However, in doing so, I mean no disrespect.
- [2] The claimant, Ashleigh Karrington ("Ashleigh"), and the respondent, Jonn Morrisonn ("Jonn"), each apply for an interim distribution of family property pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] to fund the litigation. There is presently a 19-day trial date set for August 8, 2023.
- [3] Ashleigh already received an interim distribution of \$250,000 pursuant to an order made in late 2020. By way of a consent order the parties' each received a further \$100,000 distribution.
- [4] Each party alleges that they have exhausted the funds available for prosecution or defending against this claim and they seek a further interim distribution.

Background

- [5] In early 2017, Ashleigh commenced this family law proceeding and she last amended her notice of family claim on February 5, 2020 (the "Claim"). Ashleigh alleges that various properties, companies and assets held, or previously held, by Jonn are family property.
- [6] Certain interlocutory orders were made earlier in this proceeding including, for example, the order of Master Muir made November 23, 2020, providing that property located at 539 East 7th Avenue, Vancouver, British Columbia (the "Property") be sold and the net sale proceeds held in trust. Master Muir also ordered that \$250,000 from the net sale proceeds be paid as an interim distribution to Ashleigh to fund this litigation.
- [7] As of October 2022, there was approximately sale proceeds of \$1,200,412 held in trust by Ashleigh's counsel. On March 7, 2023, I directed that unpaid spousal support in the amount of \$250,268, and ongoing monthly spousal support of \$6,586 each month, be paid from the funds held in trust to Ashleigh. This leaves approximately \$910,000 of sale proceeds available for interim distribution [$\$1,200,412 - \$250,268 = \$950,144 - \$39,516 = \$910,628$ (\$39,516 equals six months' spousal support to August 2023 trial date)].
- [8] An earlier trial date was adjourned by consent, including because Jonn raised issues concerning whether he had become a mentally incompetent person due to dementia. The parties agreed to a further interim distribution from the sale proceeds of \$100,000 each for Ashleigh and Jonn and on August 22, 2022, they filed a consent order in respect of same.
- [9] The parties consented to the appointment of an interim litigation guardian for Jonn. Recently, I made an order appointing the interim litigation guardian, Cole Williams, as Jonn's ongoing litigation guardian.

- [10] Many standard pre-trial steps have either not taken place or their completion has been delayed for a variety of reasons. I recently heard and decided on a number of interlocutory applications related to examination for discovery and document production which will hopefully assist the parties with completing the standard pre-trial steps.
- [11] On October 24, 2022, I heard Ashleigh's application filed October 11, 2022 seeking, among other things, \$250,000 to be applied to her legal fees and disbursements in accordance with s. 89 of the FLA. On March 7, 2023, I delivered oral reasons for judgment in respect of the certain other relief sought in Ashleigh's October 11, 2022 application. However, I held under reserve my reasons for judgment in respect of her request for a further interim distribution until such time as I heard Jonn's December 16, 2022 cross-application for a further interim distribution.
- [12] Jonn's December 16, 2022 cross-application seeks a \$450,000 litigation advance from the sale proceeds of the Property that are being held in trust with Ashleigh's counsel. Jonn consents to Ashleigh's application for interim distribution as long he is also granted an interim distribution.
- [13] On January 11, 2023 Jonn's December 16, 2022 cross-application came on for hearing before me but it was ultimately adjourned, by consent. On March 7, 2023, I directed the parties to file written submissions in respect of Jonn's December 16, 2022 application. On March 23 and 31, 2023, the parties' filed their respective written submissions.

Legal Framework

- [14] Under Part 5 of the FLA dealing with property division, s. 89 provides the court with discretion to make orders for interim distribution of property in the following circumstance:

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.

- [15] Recently in *Etemadi v. Maali*, 2021 BCCA 298 [Etemadi], at paras. 50-53, our Court of Appeal summarized the principles applicable to applications under s. 89 seeking an interim distribution:

- a) the chambers judge must first determine if the applicant is economically disadvantaged in advancing the family law proceeding and if so, an order that "levels the playing field" may be appropriate because it attempts to achieve balance between the parties;

- b) the chambers judge must then embark on a preliminary assessment of whether the applicant can demonstrate that it would not be harmful to distribute property and whether it is necessary to do so for a purpose stated in s. 89;
 - c) in recognizing the extraordinary nature of the order, the chambers judge must carefully consider the amount of the interim distribution to ensure that it does not exceed what is necessary under s. 89; and
 - d) the chambers judge must always consider whether it is in the interests of justice to make the order.
- [16] The court must examine each issue raised by the applicant regarding necessity and potential harm, contextually, and with a view to upholding the statutory objectives: Etemadi at para. 51.

Analysis

- [17] I will now consider whether to grant an interim distribution pursuant to s. 89 in light of the applicable legal principles.

Are the applicants economically disadvantaged?

- [18] The first step is to determine if the applicants are economically disadvantaged in dealing with the family law proceeding. The authorities establish that a s. 89 order strives to establish or maintain some equality between the parties to the family litigation as to their ability to pursue their claims or dispute resolution.
- [19] Ashleigh's annual income is approximately \$36,500 which comes from a modest pension entitlement and government entitlements such as, OAP and CPP. In light of my recent order for payment of a lump sum of outstanding spousal support and ongoing spousal support to come from the sale proceeds, her income is now obviously significantly higher now.
- [20] In her affidavit #9 made October 11, 2022, Ashleigh explains that she has long since used up the last \$100,00 advance from the sale proceeds that the parties' agreed to in March 2021.
- [21] Ashleigh's evidence is that as of October 2022, she owes in excess of \$165,000 to her counsel for unpaid legal fees and disbursements.
- [22] Ashleigh argues that there are ample family assets to accommodate her request for another interim distribution and such an order would not be harmful to either Jonn or Shaone Morrison's ("Shaone") interests. Shaone takes no position in respect of Ashleigh's October 11, 2022 application.
- [23] As has been determined by courts in earlier applications, I also have no difficulty deciding based on the evidence before me that Ashleigh is economically disadvantaged in advancing the family law proceeding. I further find that an order granting her \$250,000 interim distribution to fund ongoing litigation would level the playing field.

- [24] Jonn provides evidence regarding his position that he is economically disadvantaged in advancing his position in this family law proceeding. For example, there is evidence that by August 2022, Jonn had exhausted the \$100,000 litigation advance that the parties agreed to in 2021. There are out of pocket expenses owing to, for example, Dr. Passmore that Jonn has not paid. Jonn currently owes his counsel approximately \$67,000.
- [25] According to Jonn's August 24, 2020, financial statement, his annual income is \$16,868. Cole states in his affidavit #4 made August 18, 2022, that Jonn has little income and few expenses and Shaone pays Jonn's credit card bill each month.
- [26] Jonn submits that he is "real estate rich, but cash poor" and that both he and Ashleigh require further litigation advances to continue the proceedings. Jonn submits that if he does not receive a litigation advance, he will be without legal counsel in circumstances where the Claim is complex and where he has required an interim litigation guardian due to declines in cognitive health.
- [27] Ashleigh submits that Jonn has not provided evidence to demonstrate that the interim distribution he seeks is necessary. Ashleigh is concerned that Jonn has extensive assets and income that he has failed to disclose. The grounds for Ashleigh's suspicions about Jonn's assets and income are discussed by the court in various reasons, for example, related to the interim spousal support award.
- [28] According to Jonn, Ashleigh has already received interim distributions from the funds held in trust totalling \$359,685.31. He says that it is only fair that since his monthly income is far less than Ashleigh's, and where there are ample assets, that he receives \$450,000 as a litigation advance.
- [29] I am aware that the quantum of Jonn's income and assets are hotly contested issues in this family law proceeding. As stated in Etemadi at para. 51, in conducting a preliminary assessment of the merits, I am not to attempt to resolve such key disputes.
- [30] In the case before me, there are conflicting views about the reality of Jonn's income. He reports an annual total income of less than \$17,000 for each of the 2017, 2018 and 2019 taxation years. However, Ashleigh believes that Jonn's income is much higher. In 2019, the court imputed an annual income of \$300,000 to him for purposes of calculating interim spousal support.
- [31] In considering all of the circumstances, while I appreciate that Ashleigh has many concerns about the true state of Jonn's income and assets, I am satisfied on the evidence before me that Jonn, like Ashleigh, faces an economic disadvantage in relation to advancing his position in the litigation and an interim distribution would level the playing field for Jonn just as it would for Ashleigh.

- [32] I have reached this conclusion including because of the evidence that Jonn reports annual income of less than \$17,000, he has exhausted the \$100,000 litigation advance from 2021, and, he currently owes substantial amounts for unpaid legal disbursements and fees.
- [33] I was not taken to any authority suggesting an inherent conflict with concluding that Ashleigh and Jonn have each established an economic disadvantage that could be ameliorated by an interim distribution under s. 89. In other words, I see no reason why one party's ability to establish an economic disadvantage automatically disentitles the other party from doing the same.

Have the applicants demonstrated that it would not be harmful to distribute property?

- [34] Having found an economic disadvantage, the next step is to conduct a preliminary assessment of whether the applicants can demonstrate that it would not be harmful to distribute property and whether it is necessary to do so for a purpose stated in s. 89.
- [35] Jonn does not submit that an interim distribution of property would be harmful to his or Ashleigh's interests. Jonn says that there are two other real properties having significant values and he points out that in her application, Ashleigh acknowledges the existence of ample assets. Indeed, Ashleigh submits that her request for an interim distribution would not be harmful to Jonn due to ample assets.
- [36] However, Ashleigh submits that providing an interim distribution of \$450,000 to Jonn would "erode the only asset she has available" in circumstances where Jonn has been found to have delayed the proceeding and where he has failed to produce documents, including those related to his income. Ashleigh also submits that allowing the interim distribution requested by Jonn would deplete the only available funds and jeopardize her ability to seek a further interim distribution and eliminate funds needed to fund her ongoing monthly spousal support.
- [37] Neither party suggests that the other party will have significant difficulties at trial establishing that the Property sale proceeds are family property.
- [38] I disagree with Ashleigh's concern that an interim distribution to Jonn would exhaust the only asset available to her. Ashleigh asserts an interest in numerous properties, including the property where she resides and she refers to the ampleness of assets in her own application. As for her concern related to ongoing spousal support, if the trial proceeds in August 2023, the sale proceeds in trust are more than sufficient to cover the next six months of spousal support.
- [39] Therefore, I do not conclude that interim distribution would be harmful to the interests of either spouse.

Are the interim distributions necessary for purpose listed in s. 89?

- [40] Each party submits that without the interim distribution they cannot fund the proceeding which is scheduled for trial in August 2023. In fact, each party provides evidence of substantial amounts currently owing for legal fees and disbursements.
- [41] This proceeding is somewhat complex and the parties have a trial date set within six months. There are numerous parties and the Claim asserts an interest in assets held not only by Jonn, but also by various respondents, including corporations. Jonn has become a mentally incompetent person. His cognitive decline adds yet another layer of complexity to this proceeding including because Ashleigh wishes to examine him discovery despite his diagnosis of dementia.
- [42] I am satisfied that each applicant has demonstrated that the litigation advance sought is necessary for a purpose stated in s. 89.

Is the amount sought appropriate?

- [43] Jonn seeks a litigation advance of \$450,000. There is evidence as to his outstanding legal fees and disbursements to date and according to Ms. Pillay, a paralegal at Jonn's counsel's office, in her affidavit #9, the cost to prepare for and complete the trial will be approximately \$432,000. Previously, the parties agreed to an interim distribution to Jonn of \$100,000 which, as I mentioned, is now exhausted.
- [44] Ashleigh has had previous interim distributions totalling approximately \$359,685.31, which are now exhausted. I note that some of the previous interim distributions were apparently required to maintain the former matrimonial home, which arguably benefits both parties.
- [45] There is evidence that Ashleigh is also currently indebted for unpaid legal fees and disbursements related to this proceeding. As mentioned, she seeks an additional \$250,000 at this point to fund her legal expenses in this proceeding.
- [46] Ashleigh's evidence is that the estimated legal fees and disbursements required to prosecute the Claim from October 11, 2022 to the completion of trial is in the range of \$607,000 to \$650,000. Despite that, she currently seeks only a further \$250,000 interim distribution.
- [47] In my view, \$250,000 is an appropriate amount of interim distribution for each applicant at this stage based on the information, including the budgets and estimates provided. Following the discovery stage, the parties may decide to seek further interim distributions. At this juncture, and based on the evidence, I do not agree that an additional \$450,000 interim distribution is appropriate in the circumstances.
- [48] Given the issues with document disclosure and Ashleigh's successful application for leave to examine Jonn, I conclude the parties will be better placed in the coming months to provide accurate, updated, evidence of the cost of continuing or completing the proceeding should further interim distributions be requested.

Are interim distributions in the interests of justice?

- [49] Jonn does not dispute that it would be in the interests of justice to make an interim distribution to Ashleigh.
- [50] Ashleigh submits that due to Jonn's history of non-disclosure and delay in this proceeding, it is not in the interests of justice to make an interim distribution to him. There have been delays attributable to Jonn discussed in numerous of the court's reasons on interim applications issued in this proceeding.
- [51] However, I recently found that Jonn has become a mentally incompetent person and I appointed Mr. Cole Williams as his litigation guardian. In my view, some recognition ought to be given to the complexity and delay associated with Jonn's cognitive decline.
- [52] Considering the particular circumstances of this case, which I have already discussed, I conclude that it is consistent with the interests of justice to make an order for interim distribution of \$250,000 to each of Ashleigh and Jonn.

Conclusion

- [53] Ashleigh Karringten and Jonn Morrisonn are each entitled to \$250,000 interim distribution from the funds held in trust by Dentons Canada LLP, as a litigation advance to each of them for their legal fees and disbursements pursuant to s. 89 of the FLA.
- [54] The parties shall bear their own costs on the applications.

"E. McDonald J."

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