

CANADA / JUDGMENT

Khomutskaya v. Sidorov

2020 BCSC 1024

COURT

Supreme Court of British Columbia

DECIDED

9 July 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1024 Khomutskaya v. Sidorov

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Khomutskaya v. Sidorov,

2020 BCSC 1024

Date: 20200709

Docket: E59728

Registry: New Westminster

Between:

Tatiana Alexandrovna Khomutskaya also known as

Tatiana Alexandrovna Grishanova

Claimant

And

Sergey Emilievich Sidorov

Respondent

Before: Master Caldwell

Reasons for Judgment

In Chambers

Counsel for the Claimant:

M. Shergill

The Respondent, appearing in person:

S.E. Sidorov

Place and Dates of Hearing:

New Westminster, B.C.

June 9 and June 23, 2020

Place and Date of Judgment:

New Westminster, B.C.

July 9, 2020

- [1] This application began back in May as an application for various protection orders and spousal support, brought on a without notice basis. I declined to grant the orders sought on a without notice basis and required service of the materials on the respondent. The application was amended to include a claim for exclusive occupancy and the materials were served on the respondent who then sought and obtained legal advice at least as regards preparation for the application. When the matter came on for hearing on June 23 the matter was heard by telephone, only proceeded on the matter of exclusive occupancy and saw the respondent representing himself, albeit assisted by his daughter who has greater command of the English language.
- [2] The parties married in Russia in December of 1999. Each had children from previous relationships who are now in their 30s - the claimant, a son, the respondent, a daughter. The family unit moved from Russia to BC in or about 2005 and after renting property, purchasing property and experiencing various financial difficulties which resulted in their declaring bankruptcy in 2010, they settled in a strata unit in Surrey in 2012. That unit is registered in the name of the claimant's son Anton, but the beneficial ownership is clearly one of the main issues in this litigation.
- [3] The parties reside, along with Anton, in the Surrey townhouse. It is a three level unit with two or three bedrooms depending on whose evidence is preferred, and two bathrooms - both on the top floor. The third, disputed, bedroom is on the ground level, has a separate entrance and appears to take up a portion of the garage area. This area has, for the past few months, been occupied by the claimant's brother who has been visiting from Russia, but has now returned to that country. It is unclear whether or not he will be returning and if so when.

- [4] The claimant alleges that the respondent was at least verbally abusive towards her during the relationship and that he was verbally, emotionally and physically abusive to her son Anton. She says basically that he was a poor and abusive step-father. She says that as a result of this treatment the parties separated in January of 2019 and have lived separately in the townhouse ever since. Anton, in his affidavit confirms what his mother says.
- [5] The respondent says that none of this is true, that he was a supportive step-father, involved with Anton as well as his daughter and that they had a good relationship. He says that the parties did not separate in early 2019, but in fact enjoyed what he refers to as a "romantic vacation" in Mexico in February of that year and he exhibits photographs of that vacation to his affidavit. He also points to various renovations which he says were done to the townhouse with his financial assistance during the last year and to the fact that on or about April 23 the claimant purchased and gave him a birthday present at a family celebration; Anton confirms that the gift was a watch.
- [6] On the basis of the material before me, it is not possible to conclude that, prior to April 26, the parties continued cohabitation was a practical impossibility.
- [7] The incident which appears to have led to this application occurred on the evening of April 26. The parties were home in the townhouse. Anton was home in the townhouse. The claimant's brother was, and had been for some time, living at the townhouse and was also present. The respondent was drinking alcohol, although the amount is disputed.
- [8] The claimant, supported by Anton, alleges that the respondent became loud and aggressive, barged into the master bedroom where she was at the time, and demanded to engage in conversation. When she left the room to avoid the respondent, he followed her and began kicking the door of the room to which she retreated. Anton became involved, asking the respondent to leave, but found himself physically attacked by the respondent whereupon Anton took the respondent to the floor and pinned him down while things settled down. Once the respondent was released, it is alleged that he again went on the attack and was this time subdued by the claimant's brother while Anton called for the police.
- [9] The respondent alleges that he went upstairs to use the bathroom and was accosted and insulted by the claimant, Anton and the claimant's brother over the fact that he was not working. The respondent denies assaulting anyone and alleges that in fact he was the victim of pushing, punching and strangling on the part of the claimant's brother. He says that he sought medical help with his injuries the following day.
- [10] The police did attend and the respondent agreed to spend the night with his daughter, at least in part to sober up. No charges appear to have arisen from the incident and the respondent returned to the townhouse the following day at which time he presented the other occupants with a letter asking that he simply be left alone. He says that since the incident he has stopped drinking alcohol and basically minds his own business; the claimant alleges otherwise and says that the respondent plays music and the TV at high volume and has continued to be loud and aggressive.

- [11] Based on the allegations alone, it is difficult to reach a reasoned conclusion as to exactly what happened on April 26, however, the respondent's affidavit exhibits several clear colour photographs of bruises and abrasions which, he says, resulted from the incident. They include a photo of abrasions and bruising to his neck which would seem consistent with the actions allegedly undertaken by the claimant's brother - who coincidentally has now returned to Russia.
- [12] Anton, in his second affidavit, exhibits poor quality black and white pictures of a torn shirt and what he refers to as his swollen knee. It is impossible to see any bruising or swelling of the knee from the picture, however, the other picture does show a clearly torn sleeveless type undershirt.
- [13] On May 1 the respondent herein commenced action in the Vancouver registry of the Supreme Court seeking division of assets and debts and naming both the claimant herein and Anton as respondents; it appears that that Notice of Family Claim has never been served on either respondent. This action was filed by the claimant in mid May along with the original without notice application; that application was adjourned and all materials have now been served on the respondent.
- [14] The test for exclusive occupancy of the home was clearly described in the case of *Rinta v. Rinta* (1980) BCLR 287, and has remained essentially the same since that time: first, is continued cohabitation a practical impossibility and second, is the applicant the preferred occupant on a balance of convenience.
- [15] The claimant submits that the provisions of the Family Law Act have, at least to some degree, modified that test such that once a court finds family violence to be present, that finding may well have an impact on the first aspect of the test and lead to a finding that continued cohabitation is a practical impossibility. I do not disagree with that submission, however, it still rests on a requirement that the court find the presence of family violence. In the present case, there is common evidence regarding alcohol use by the respondent and arguing, however, the evidence of family violence as defined in the Act is equivocal at best. The photographic evidence presented may in fact support the respondent's contention that he was the victim of family violence at the hands of Anton and his uncle rather than the perpetrator as alleged in the claimant's materials.
- [16] Continued cohabitation may well be uncomfortable for these parties, but I do not find it to be a practical impossibility as required by the first stage of the test, sufficient to order exclusive occupancy of the whole townhouse to one or other of the parties. The respondent will have exclusive occupancy of the bottom floor bedroom and adjacent garage. He will enter and leave by way of the separate entrance associated with that space. He will have access to the secondary (non-ensuite) bathroom as reasonably required. He will be responsible for maintaining his own foodstuffs in his space, but will have access to the kitchen cooking facilities three times per day for up to 30 minutes each for food preparation and clean-up. It is a condition of his use of the common bathroom and kitchen facilities that

he clean up after his use of same such that he leaves those rooms as he found them. The claimant will have the exclusive use of the rest of the townhouse, save as provided above. Both parties are ordered to avoid contact with each other wherever possible within the confines of the above order. There will be liberty to apply by either party and I am prepared to remain seized of applications in that regard.

[17] The respondent has been largely successful in this application, but not entirely so; costs will be to the respondent in the cause for two half day hearings.

"Master Caldwell"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/10/2020BCSC1024.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/khomutskaya-v-sidorov-2020>

Prepared on 25 October 2026 · Esheria