

CANADA / JUDGMENT

Lam v. Law

2024 BCSC 2035

COURT

Supreme Court of British Columbia

DECIDED

5 November 2024

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2024 BCSC 2035 Lam v. Law

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lam v. Law,

2024 BCSC 2035

Date: 20241105

Docket: E210500

Registry: Vancouver

Between:

Priscilla Ce-Mon Lam

Claimant

And

Francis Chi Hung Law and Francis Chi Hung Law and Angela Chiu in their Capacities as Trustees of the Law Family 2014 Trust, Francis Chi Hung Law in his Capacity as Trustee of the Law Investment Trust

Respondents

Before: The Honourable Justice MacNaughton

Oral Reasons for Judgment

Counsel for the Claimant:

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M. Gulyas

Counsel for Francis Chi Hung Law in his personal capacity and in his capacity as Trustee of the Law Family 2014 Trust and the Law Investment Trust:

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A. Dunn

Counsel for Angela Chiu in her capacity as Trustee of the Law Family 2014 Trust:

M.S. Kerwin

Place and Date of Hearing:

Vancouver, B.C.

October 28, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 5, 2024

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Introduction

[1] This family law proceeding involves the claimant, Priscilla Ce-Mon Lam, and her husband, the respondent Francis Chi Hung Law. The trustees of two trusts have been added as respondents, in their capacities as trustees, because Ms. Lam seeks remedies in this proceeding relating to the assets held by the trusts.

Application

[2] In this application, Ms. Lam seeks an interim distribution of \$460,000 under s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

The Parties

- [3] Ms. Lam and Dr. Law started living together on January 7, 2013, were married on July 25, 2020, and separated in the fall of the same year. They continued to live together in the former family home on West 37th Avenue, Vancouver, BC (the "Family Home") until May 2023, when Ms. Lam moved into a separate residence.
- [4] Dr. Law is an eye surgeon. He conducts his practice through a medical corporation, Francis C.H. Law, M.D. Inc. ("MD Inc."). Ms. Lam is a Chartered Professional Accountant. She has not earned an income in Canada since moving here in 2013. She participates in regular volunteer and charitable work.

The Proceedings to Date

- [5] A 13-day trial was scheduled to proceed on March 25, 2024, but, as no judge was available, it was adjourned and reset for 10 days to October 28, 2024.
- [6] As a result of the illness of Angela Chiu, Mr. Law's sister, who was named as party in her capacity as trustee of the Law Family 2014 Trust (the "2014 Trust"), the parties consented to adjourn this trial once again. No new trial dates have been booked.
- [7] Due to the uncertainty about the timing of Ms. Chiu's recovery, the schedules of trial counsel, and available court dates, the trial is unlikely to be rescheduled until sometime in 2026.
- [8] As a term of the adjournment, Ms. Lam seeks an interim distribution.
- [9] Ms. Lam has already received \$200,000 in interim advances of family property consisting of: \$100,000 in November 2020; \$50,000 in May 2023, when she agreed to leave the Family Home, on a without prejudice basis, to assist with expenses associated with transitioning into her new accommodation; and \$50,000 on January 2, 2024, to assist with legal fees. It is not entirely clear on the record whether these were all interim distributions under s. 89 of the FLA.
- [10] In addition, pending a final resolution, Dr. Law has paid the upfront fees and disbursement for the expert reports to be relied on at trial. Those costs have exceeded \$60,000.
- [11] Ms. Lam receives \$15,000 a month in spousal support on a without prejudice basis. The amount was subject to retroactive adjustment at the then-scheduled March 2024 trial.
- [12] The family litigation has a number of complexities. There are disputes about Dr. Law's income for spousal support purposes. Ms. Lam alleges that he has been under-reporting his income by not declaring cash income. Apparently, she has retained a forensic accountant to investigate and support her allegations. Whether Ms. Lam is correct in that regard will be decided at trial.

- [13] There is also a significant dispute about Dr. Law's interest in the 2014 Trust that holds shares in Law & Sons Enterprises Ltd. ("Law & Sons"), a company created by Dr. Law's father. Law & Sons owns two strip malls in Vancouver both purchased by Dr. Law's father. Ms. Chiu manages the strip malls and is a trustee of the 2014 Trust.
- [14] Ms. Lam will argue at trial that Dr. Law has an interest in the 2014 Trust and it is family property. In his October 25, 2024 affidavit, Dr. Law says that the 2014 Trust is entirely discretionary as to income and capital, and its only assets are shares in Law & Sons, which is managed by Ms. Chiu in return for a management fee. Dr. Law says that he has never received any income from Law & Sons or the 2014 Trust. Whether Ms. Lam will be successful in her claims regarding the 2014 Trust remains to be decided at trial.
- [15] The parties retained Kiu Ghanavizchian of Blair Mackay Mynett Valuations Inc., as a joint business valuator, to calculate the fair market value of the net assets of MD Inc., KCC 181 Holdings Ltd. ("KCC 181"), Law & Sons, and the business interests of Ms. Lam and Dr. Law, including the 2014 Trust and another trust called The Law Investment Trust ("Investment Trust").
- [16] In her submissions, Ms. Lam makes family property claims to 50 percent of:
- the family property portion of the business and trust assets approximating \$12.5 million. Much of the value is held by the companies owned by the 2014 Trust and the Investment Trust; and
 - the family property portion of the personal assets approximating \$3.1 million.
- [17] There is very little dispute about Ms. Lam's claims to share in the increase in value of Dr. Lam's personally held business interests, the assets of the Investment Trust and his personal assets, primarily consisting of the Family Home. Thus, there is very little dispute about Ms. Lam's entitlement to a compensation payment of about \$3.1 million for her share of the family property.
- [18] On December 4, 2023, Ms. Law filed an application for an interim distribution under s. 89 of the FLA. In her October 24, 2024 affidavit filed in support of this application, she explains that she did not proceed with her first application for an interim distribution as there were "potentially complex issues with liquidity" and the trial was scheduled for March 2024.

The Legal Test

- [19] Section 89 of the FLA provides:

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

- 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.

[20] As a number of cases have determined, I must consider the following issues in determining whether a s. 89 advance should be granted in this case:

- (1) whether the interim distribution sought relates to family property;
- (2) whether the interim distribution will harm Dr. Law's interests;
- (3) whether an interim distribution is necessary to fund resolution of the dispute; and
- (4) whether such an order is in the interests of justice.

[21] The leading authority from the BC Court of appeal is *Etemadi v. Maali*, 2021 BCCA 298.

[22] Certain principles can be taken from the large number of cases decided under s. 89 of the FLA.

[23] At para. 70 of *Etemadi*, Justice Butler wrote that the purpose of an interim distribution is to "promote balanced participation in dispute resolution". Other decisions have said that the purpose of a s. 89 advance is to assist an economically disadvantaged spouse's access to justice in matrimonial disputes or otherwise "level the litigation playing field": See, for example *I.F. v. R.J.R.*, 2015 BCSC 793 at para. 192.

[24] Orders under s. 89 are discretionary, and each case is very much dependent on its own facts.

[25] On the evidence here, there is no dispute that Dr. Law controls all or the majority of the parties' wealth and assets and that the litigation playing field needs to be levelled in favour of Ms. Lam. There is also no dispute that Dr. Law's interests will not be harmed by the interim distribution Ms. Lam seeks as the value of the undisputed family property in which Ms. Lam has an interest far exceeds interim distributions she has received to date and the amount of her current request.

[26] Dr. Law's primary objections to the interim distribution are that Ms. Lam's counsel has not provided a budget for the litigation and that Ms. Lam appears to be seeking an interim distribution for legal expenses already incurred. Dr. Law also suggests that some of the legal expenses already incurred were unnecessary or inadvisable. In my view, whether legal fees were unnecessary is not something I can determine on this application. Those issues remain to be determined at trial.

[27] I accept that, in some cases, the court has required a litigation budget when considering an application for a s. 89 interim advance. Depending on the facts, a budget may assist in determining the reasonableness of the request and the impact on the other spouse's interests: See, for example, *J.A.T.P. v. H.M.*, 2024 BCSC 1629 at paras. 84-86.

- [28] However, a litigation budget is not always required on an application under s. 89. The FLA and the Supreme Court Family Rules do not require a budget. Cases granting interim advances have been decided in the absence of a budget: See, for example: *Karrington v. Morrison*, 2020 BCSC 1797 at para. 139. There, Associate Judge Muir wrote that the lack of a budget was not a bar to ordering an interim distribution because the court can, from experience, accept that the progress of an action, including through an 18-day trial, could well result in legal fees and other related costs of \$300,000.
- [29] I am satisfied that a budget is not required in this case for me to exercise my discretion for two reasons.
- [30] First, as counsel for Ms. Lam explained, she is not seeking an interim distribution for future litigation costs. Rather, she seeks it for already-incurred litigation costs.
- [31] Second, it is apparent that these proceedings involve complex financial issues, requiring expert evidence and, based on my experience, a 10-day trial in which both parties are represented by senior family counsel will be an expensive endeavor.
- [32] On Dr. Law's argument that an interim distribution of property is not available for already-incurred legal expenses, I accept that there are decisions of this Court that support that submission. For example, Justice G.C. Weatherill reached that conclusion in *Chung v. Harrison*, 2018 BCSC 1258 at para. 14, and a similar conclusion was reached by Justice Gaul in *Bown v. Badior*, 2019 BCSC 2381.
- [33] However, there are cases that reach a contrary conclusion. For example, Associate Judge Muir granted an interim advance for, in part, already incurred legal expense in *Y.L. v. G.L.*, 2018 BCSC 1571 at para. 103. No firm rule should be established in that regard as it might result in harm to a party who has exhausted budgeted legal expenses and face the threat of losing ongoing representation.
- [34] The differences in the results of the cases are due to the difference in the facts in the cases and in the presider's exercise of discretion. It is not surprising that each case relied on by counsel is distinguishable on its facts.
- [35] In this case, and applying the principles set out in *Etemadi* at paras. 50-53, I am satisfied that the circumstances warrant an advance to Ms. Lam in the amount of \$460,000 to satisfy her outstanding legal fees. I conclude that it is in the interests of justice to grant the order Ms. Lam seeks.
- [36] Of particular importance to my conclusion is the last-minute adjournment of this trial resulting in a further delay of more than a year. Neither Ms. Lam nor Dr. Law are at fault for the delay, but it has had a direct impact on both of them. Ms. Lam consented to the adjournment.
- [37] The vast majority of the family wealth continues to be under Dr. Law's control. He has maintained that control throughout.

- [38] Dr. Law is paying interim, without prejudice, spousal support of \$15,000 a month. Ms. Lam's October 24, 2024 affidavit refers to her estimated monthly expenses of \$14,655, not including any payment of professional fees.
- [39] In addition, there are no concerns about Ms. Lam's ability to repay the interim distribution or that it will harm Dr. Law.
- [40] The distribution is significantly less than the amount that the parties agree Ms. Lam is entitled to, and Dr. Law will not be required to sell or encumber family property to fund the distribution. Dr. Law has sufficient funds in his MD Inc. shareholder loan account from which to access the funds. Finally, there is no suggestion that Ms. Lam used the earlier advances for a purpose other than what they were intended for.
- [41] Accordingly, I order that Dr. Law provide Ms. Lam with an interim distribution of family property, pursuant to s. 89 of the FLA in the sum of \$460,000.
- [42] On consent, Dr. Law shall have 45 days in which to provide Ms. Lam with the interim distribution.
- [43] On consent, Ms. Lam is to use the interim distribution for the purpose of paying her counsel's outstanding fees and disbursements and for any work in progress.

"MacNaughton J."

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