

CANADA / JUDGMENT

Levi v. Levi

2020 BCSC 1786

COURT

Supreme Court of British Columbia

DECIDED

31 August 2020

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2020 BCSC 1786 Levi v. Levi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Levi v. Levi,

2020 BCSC 1786

Date: 20200831

Docket: E89746

Registry: Nanaimo

Between:

Adi Karin Levi

Claimant

And:

Itzahq Levi

Respondent

Before: The Honourable Mr. Justice Gaul

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

A. Mattila

via telephone

Counsel for Respondent:

M. Warsh

via telephone

Place and Date of Hearing:

Nanaimo, B.C.

August 31, 2020

Place and Date of Judgment:

Nanaimo, B.C.

August 31, 2020

- [1] THE COURT: I am providing these reasons now because the two principal issue in dispute, the sale of the family home on Gabriola Island and the parties' children's schooling are important ones that need to be addressed promptly.
- [2] By application filed 14 August 2020, the claimant Mrs. Levi seeks to vary a consent order the parties obtained on 9 July 2020. That order provides:
1. By consent, the Claimant has until July 31, 2020 to secure financing to purchase the Respondents' interest in the family residence and provide evidence to the Respondent confirming same.
 2. By consent, if Mrs. Levi cannot secure financing by July 31, 2020, then:
 - a. the family home be sole forthwith;
 - b. the Respondent will have sole conduct of sale; and
 - c. the children will be enrolled in an attend Willow B. Elementary school in Langley, British Columbia, until further order of this court or written agreement between the parties.
- [3] The latter portion of paragraphs 2(c) of the consent order clearly indicates that it is open to the parties to reach an agreement with respect to where the children attend school.
- [4] Mrs. Levi says the intention of the consent order was to allow her the opportunity to buy Mr. Levi's share of the Gabriola property; however, she says that because of the wording of the order she is unable to do so.
- [5] Dates are important in this matter so I am going to recount some of them now.
- [6] The parties attended a judicial case conference on 9 June of this year. At this JCC, Mr. and Mrs. Levi agreed to obtain an appraisal of the value of their family home on Gabriola Island. I understand that following the JCC, Mr. Levi arranged to have the appraisal done on 2 July.

- [7] Before the 2 July appraisal of the Gabriola property was conducted, counsel for Mrs. Levi by letter dated 12 June 2020, advised counsel for Mr. Levi of the following:
- a) that Mrs. Levi had spoken with "her private mortgage broker";
 - b) that the broker required "a clear written legal document signed by Mr. Levi outlining that Mr. Levi is relinquishing any right to the family property through any future divorce proceedings in exchange for an agreed upon monetary amount"; and
 - c) that "two arm's length appraisals" of the property would be required: one obtained by Mrs. Levi and her mortgage broker and one by Mr. Levi and his financial institution.
- [8] I note parenthetically that Mrs. Levi's counsel's letter also includes the firm assertion that Mrs. Levi will interpret Mr. Levi's failure to obtain an arm's length appraisal of the Gabriola home as a deliberate effort on his part to obstruct the sale of the property.
- [9] On 2 July 2020 the appraisal, that had Mr. Levi had earlier arranged, was conducted. The appraiser attended at the parties' Gabriola Island property and did the work necessary to prepare a report on the property's value.
- [10] On 9 July 2020 the parties attended before Master Dick in chambers and the consent order that is before me today was made. It is a comprehensive order in the sense it has multiple terms touching upon the sale of the family home on Gabriola Island, a parenting regime for the parties' children and issues relating to the parties' family finances.
- [11] On 10 July, that is the day after the consent order was made, the parties received the appraisal report for their Gabriola Island home. The appraiser set the value of the property as of 2 July 2020 at \$725,000.
- [12] Five days later, on 15 July, the consent order the parties reached on 9 July was entered with the court.
- [13] Mrs. Levi says that upon the consent order being entered, she and her business partner set out to obtain financing for the purchase of Mr. Levi's interest in the Gabriola property. This conflicts with what Mrs. Levi's lawyer had indicated in his letter of 12 June that indicated Mrs. Levi had already spoken with her private mortgage broker about obtaining financing to buy Mr. Levi's interest.
- [14] I accept and find as a fact, that Mrs. Levi had been making efforts to obtain financing well in advance of 15 July 2020.
- [15] Mrs. Levi further asserts that on 20 July her business partner received an email from a potential lender, Mr. Jason Richardson, which identified the information he required in order to process their request for the financing they needed for the Gabriola property. That information included a notarized separation agreement between Mr. Levi and Mrs. Levi, indicating the amount that she needed to pay for all of his financial interest in the property. This was nothing new to either Mrs. Levi or Mr. Levi, as it had previously been referenced in

Mrs. Levi's lawyer's 12 June letter to Mr. Levi's lawyer.

[16] Three days later, on 23 July 2020, Mrs. Levi's counsel wrote to counsel for Mr. Levi requesting a variation to the 9 July consent order. In his letter, Mrs. Levi's counsel notes:

My client has reached out to a potential lender and has been informed that the order as drafted is not sufficient for their purposes. The lender my client intends to utilize has noted that they require a "Separation Agreement notarized stating the amount the ex needs to be compensated to release all financial interest in the property." I will confirm with the lender, but I would also assume that an order filed in the courts outlining same would likewise be sufficient.

[17] Although not mentioned by name, I am satisfied that the "potential lender" referenced in Mrs. Levi's counsel's letter was Mr. Richardson.

[18] In his correspondence, counsel for Mrs. Levi suggested that the consent order be varied so that the order indicate:

- a) Mrs. Levi would buy Mr. Levi's interest in the Gabriola property for a one-time payment of \$99,137.19; and
- b) Mrs. Levi would have 30 days from the date of the filing of the amended consent order to secure the financing necessary to purchase Mr. Levi's interest in the property.

[19] It cannot be argued that Mrs. Levi was surprised by what Mr. Richardson indicated to her and her business partner, particularly the requirement that she and Mr. Levi have a legal separation agreement in place that clearly delineated the amount she had to pay Mr. Levi for his share of the Gabriola property. Clearly Mrs. Levi was aware as of 12 June or thereabout that such an agreement was a precondition to her obtaining the financing she was seeking.

[20] Between 23 July and mid-August 2020, the parties and their counsel engaged in settlement discussions with the aim of finding a solution to the problem Mrs. Levi was having obtaining the financing she need to purchased Mr. Levi's interest in the Gabriola property.

[21] Notwithstanding the discussions, time was pressing and the consent order deadline of 31 July 2020 had passed without Mrs. Levi complying with the term of the order relating to the Gabriola property. As such, Mr. Levi needed to take active steps to ensure that the parties' children were registered in a school in the Lower Mainland, and that he had obtained suitable accommodations there.

[22] The discussions between the parties failed to come to any positive result. In fact, the acrimony between the parties only increased. Mr. Levi offered a two-week extension to the deadline for Mrs. Levi to purchase his share in the Gabriola property. Apparently that was not acceptable to Mrs. Levi and she made a counteroffer. I do not understand how an additional two weeks would have been insufficient given that Mrs. Levi knew as of at least mid-June what was required for her to obtain the necessary financing.

- [23] Given that the parties were unable to reach a resolution, on 14 August 2020, counsel for Mrs. Levi filed the application that is now before me.
- [24] I have reviewed all of the materials that have been filed and have considered the submissions of counsel. In my opinion, this is not a case involving a simple or common mistake on the part of one or both of the parties. They had counsel advising them and I am satisfied they entered into the consent order fully informed of their rights and obligation under the order. If I am wrong and a mistake was made, it was squarely Mrs. Levi's and I do not see it as justifiable foundation to rework the agreement and consent order that the parties had reached.
- [25] Mr. Levi has, understandably in my view, taken the necessary and appropriate steps to relocate and settle with the children in the metro Vancouver region. In my opinion, it would be prejudicial and unfair to him and, most importantly, it would be unfair to the children and contrary to their best interests to change the situation as it currently stands. Mr. Levi and the children are now living in Langley, in the Lower Mainland. He has obtained a home that is suitable for their needs. He has the children registered in the local school and their classes start next week. Children need the stability of knowing where they will be living and where they will be going to school. The children in the present case are living in Langley and they will be going to school in that community. They know this. In my view, to allow the variation of the consent order that Mrs. Levi seeks would, I say respectfully, significantly upset the applecart by requiring the children to return to Gabriola Island. This disruption to their lives is not in their best interests.
- [26] Before concluding my reasons I should note that, even if I were to grant the relief Mrs. Levi seeks, there is no evidence before me that she will or is likely to get the financing that she needs. All that I have is the assertion from Mrs. Levi at paragraph 21 of her first affidavit that she and her partner had "set out to obtain financing to buy out the Respondent's interest in the Family Property" and that Mr. Richardson had provided them with "a list of materials that we would need to secure financing". The email from Mr. Richardson certainly does indicate the information he requires from Mrs. Levi; however, the note is silent when it comes to anything about the likelihood of Mrs. Levi getting the financing that she seeks.
- [27] In summary, I do not see this situation as one arising from a mutual or common mistake committed by both parties. The parties were aware of what they were agreeing to when they reached the consent order that was made on 9 July.
- [28] In my view, Mr. Levi has taken the appropriate steps that he was entitled to take pursuant to the order. This includes relocating to the Lower Mainland with the children. To unwind those steps would be prejudicial to his interest. It would also, most importantly, be upsetting to the children's lives, and that in my respectful view, would not be in their best interests.
- [29] For all of those reasons, Mrs. Levi's application is denied.
- [30] Mr. Mattila, you are counsel for the applicant. Anything further?

[31] MR. MATTILA: No, My Lord, nothing further.

[32] THE COURT: Mr. Warsh?

[33] MR. WARSH: Yes, we would like costs.

[34] THE COURT: I will hear you.

[SUBMISSIONS MADE ON COSTS BY COUNSEL]

[35] THE COURT: Thank you. I am with Mr. Mattila on this issue. The balance that the parties are trying to reach would be disrupted unnecessarily were I to order Mrs. Levi to pay Mr. Levi's costs of this application.

[36] I accept that Mrs. Levi is of limited financial means. I do not know much about her business opportunities beyond the fact that a Bed and Breakfast venture may be in her future.

[37] Although the successful party is generally entitled to their costs, the court has the discretion to decline an award of costs. I find this to be such a case. The parties need to find a new means of dealing with each other. In my opinion, awarding costs against Mrs. Levi will unnecessarily exacerbate the tension and animosity between the parties and that in my view is in nobody's best interest, especially the parties' children.

[38] My order today will result in consequences for Mrs. Levi. I do not know whether that means her relocating her home or whether it means having to reach some sort of an agreement with Mr. Levi to have the children shuttle back and forth between the Lower Mainland and Gabriola Island. That is something that mature adults, like Mr. and Mrs. Levi, should be able to resolve.

[39] So, I have taken into account the fact that Mrs. Levi has not been successful in obtaining the relief she has sought and that Mr. Levi has been the successful party. However, in balancing all of the factors involved in this case, I find that ordering Mrs. Levi to pay Mr. Levi's costs of this application would be disruptive to the family and financial balance that I am trying to reach for these parties. Consequently, I am exercising my discretion and ordering that the parties bear their own costs of this application.

"G.R.J. Gaul J."

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