

CANADA / JUDGMENT

Liu v. Meng

2020 BCSC 910

COURT

Supreme Court of British Columbia

DECIDED

18 June 2020

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2020 BCSC 910 Liu v. Meng IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Liu v. Meng, 2020 BCSC 910 Date: 20200618 Docket: E183222 Registry: Vancouver Between: Hong Mike Liu Claimant And Ying Meng Respondent Before: The Honourable Mr. Justice A. Ross Reasons for Judgment Counsel for the Claimant: C. Collver Written Submissions Received from the Claimant: June 12, 2020 Place and Date of Judgment: Vancouver, B.C. June 18, 2020

- [1] In this family litigation, the claimant says that the respondent has failed to comply with a prior order of the court. That order required the respondent to execute certain transfer documents relating to a condominium in Vancouver. He seeks an order nominating his counsel to endorse the documents required to transfer the respondent's ownership interest in that property.
- [2] For the reasons set out below, I nominate the district registrar to execute the necessary documents.
- [3] The parties began living together in 2001. They married in Richmond, BC in 2004. They separated in 2012 when the respondent took the couple's two sons to China. She has not returned to Canada.
- [4] The claimant filed the original notice of family claim on November 29, 2018, and the amended notice of family claim on January 10, 2019.
- [5] The respondent was served personally with the pleadings on February 13, 2019. She did not file a response.
- [6] The parties jointly own a strata unit located at 1703 - 5189 Gaston Street in Vancouver, BC (the "Apartment"). After the respondent moved to China, the claimant continued to pay all the expenses for the Apartment.
- [7] The family claim came before this Court on September 10, 2019, whereupon Iyer J. awarded the claimant 100% interest in the Apartment.

- [8] Justice Iyer ordered that the respondent execute such documents as are required to divest herself of her share of the Apartment and that, should the respondent fail to do so, "the Court will execute such documents on her behalf on application by the Claimant."
- [9] The claimant sent a copy of the final order and a "Form A Transfer" document to the respondent in China on November 15, 2019. The claimant's affidavit appends a response from the respondent indicating that she would not sign the documents.
- [10] The claimant sent the documents again on February 22, 2020. He followed up with text messages by phone on February 26 and 28. The respondent acknowledged receipt of the documents and said she would "send it back to [him] as soon as possible". The claimant has not received the documents.
- [11] As a result, the claimant seeks this relief from the court. The Law
- [12] Section 38 of the Law and Equity Act, R.S.B.C. 1996, c. 253 [Act] provides as follows:
Execution of instruments by order of court 38 (1) If any person neglects or refuses to comply with a judgment or order directing the person to execute any conveyance, contract or document or to endorse any negotiable instrument, the court may, on terms and conditions as may be just, order that the deed, conveyance, contract, assignment or other document must be executed or that the negotiable instrument must be endorsed by a person the court may nominate for that purpose.
- (2) If an order is made under subsection (1), the conveyance, contract, document or instrument executed or endorsed operates and is for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.
- [13] The claimant relies on this section and submits authority, seeking an order nominating an alternate person to execute transfer documents.
- [14] In *R.K.G.S. v. A.M.S.*, 2004 BCSC 542, Lamperson J. applied s. 38 and nominated the district registrar to execute whatever documents were needed to complete the transfers.
- [15] In *Idle-O Apartments Inc. v. Charlyn Investments Ltd.*, 2017 BCSC 1461, Watchuk J. made an order pursuant to s. 38 nominating the district registrar to execute a lease on behalf of the non-compliant plaintiff. Justice Watchuk noted that the district registrar is often nominated for this purpose (para. 50).
- [16] The claimant's counsel seeks an order nominating herself, in her capacity as the claimant's solicitor, to be the nominee under s. 38. She notes that she obtained such an order in *Wong v. Li*, 2018 BCSC 745, from Adair J. on October 19, 2018, nominating her to sign transfer documents on behalf of the uncooperative respondent.

- [17] While that may be so, the common practice is to nominate the district registrar. I note that the order of Iyer J. was that if the respondent failed to execute the documents, then "the Court will execute such documents on her behalf on application by the Claimant." I consider the claimant's application to constitute a variation of Iyer J.'s existing order. However, there is no change of circumstances indicating a need for such variation.
- [18] As a result, in keeping with the order of Iyer J., pursuant to s. 38 of the Act, I nominate the district registrar to execute any and all documents required to effect the transfer of the Apartment to the sole ownership of the claimant.
- [19] The claimant will have the costs of this application. "A. Ross J."

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