

CANADA / JUDGMENT

Liu v. Peng

2021 BCSC 1006

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1006 Liu v. Peng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liu v. Peng,

2021 BCSC 1006

Date: 20210526

Docket: E192675

Registry: Vancouver

Between:

ZE HONG LIU

Claimant

And

XIN JIAN PENG

Respondent

Before: Master Bilawich

Reasons for Judgment

Counsel for Claimant, by teleconference:

J. Ling

Counsel for Respondent, by teleconference:

J. Cao

Place and Date of Hearing:

Vancouver, B.C.

January 29, 2021 and

March 3, 2021

Place and Date of Judgment:

Vancouver, B.C.

May 26, 2021

[1] The claimant applies for the following relief:

1. Pursuant to the Judicial Case Conference (JCC) Order made November 5, 2020, the respondent pay directly to the child of the marriage Yu Peng, child support of \$645 for Christmas Break 2020;
2. Pursuant to the JCC Order, the respondent pay directly to Yu Peng special expenses for January to May 2021 in the amount of US\$11,288.60;
3. Pursuant to s. 7(1) of the Federal Child Support Guidelines (the "Guidelines") the respondent pay to the claimant retroactive special expenses for Yu Peng in the amount of US\$19,994.50 for the period February 2020 to December 2020;
4. Pursuant to 212(1) of the Family Law Act ("FLA"), the respondent provide disclosure to the claimant as set out in a list of document requests made in a letter dated October 14, 2020;
5. Pursuant to section 213(2)(d) of the FLA, the respondent pay the claimant a fine of \$1,000;
6. Pursuant to s. 230 of the FLA, the respondent pay to the claimant a fine of \$1,000 for failure to comply with the JCC Order;
7. Costs forthwith and in any event of the cause.

Background

- [2] The claimant is 57 years of age. The respondent is 66 years of age. They were married on July 25, 1995. The claimant says they separated on September 30, 2019. The respondent says they have been living separate and apart since December 12, 2013. They have one child, Yu Hong Tian Peng ("Yu"), born December 12, 1995. He is an adult but the parties continue to support him while he is attending university in the state of Washington. The respondent has an older adult child from a previous marriage who was also living at the family residence.

Litigation History

- [3] On October 5, 2019, the claimant filed her Notice of Family Claim.

- [4] On October 4, 2019, an order was pronounced restraining the respondent from directly or indirectly transferring, selling, converting or disposing of family or any property pending the final determination of this action or the claimant's written consent.
- [5] On October 17, 2019, an order was made restraining the respondent from directly or indirectly communicating with or contacting the claimant, except through legal counsel. That expired on October 16, 2020.
- [6] On October 25, 2019, there was an order made granting the claimant exclusive occupancy of the family home.
- [7] On November 19, 2019, the respondent filed a Response to Family Claim and Counterclaim.
- [8] On July 8, 2020, the claimant filed her F8 financial statement and delivered her List of Documents to the respondent.
- [9] A JCC was scheduled for August 11, 2020, but was adjourned because the respondent had not yet filed his F8 financial statement.
- [10] On September 9, 2020, the claimant served a Notice of Application returnable September 23, 2020 to compel the respondent provide his F8 and list of documents and a requisition relieving her from the JCC requirement.
- [11] On September 15, 2020, the respondent delivered his F8 financial statement and list of documents.
- [12] On October 14, 2020, the claimant made a written demand for additional documents in the form of a list of specific requests. The respondent has not fulfilled her requests.
- [13] On November 5, 2020 the parties attended a JCC with Mr. Justice Crossin presiding and consented to an order, including:
 - 1. The parties agree to share equally any section 7 special or extraordinary expenses that the Child [Yu Peng] incurs while attending university at Washington State University, United States, which includes the tuition fees, food and lodging, and medical and dental expenses. The parties will pay to the Child in the following manner:
 - a. On or before the 1st day of the period of January to May (the "January-May Period") the parties will pay to the Child their contribution of the Child's tuition fees, food and lodging, in accordance with the budget provided by the Child prior to each January-May Period.
 - b. On or before the 1st day of the period of September to December (the "September-December Period"), the parties will pay to the Child their contribution of the Child's tuition fees, food and lodging, in accordance with the budget provided by the Child prior to each September-December Period.
 - c. If there are medical and dental expenses incurred by the Child, the parties will pay to the Child their contribution upon a receipt being produced to the parties.

2. The respondent will pay child support directly to the Child in the amount of \$645 per month for the following period, to be paid at the beginning of each break:
 - a. Christmas break 2020;
 - b. Easter break 2021;
 - c. Christmas break 2021;
 - d. Easter break 2022.
3. The respondent will pay child support directly to the Child in the amount of \$500 per month for June, July and August 2021, to be paid on the first of every month.
4. On or before November 20, 2020, the respondent is to provide the expense that he has incurred in supporting the Child in university since September 2019 to the claimant's counsel.
5. The Judicial Case Conference is completed, and the parties are released from the JCC program. Both parties are at liberty to schedule a future Judicial Case Conference as they see fit.

Child Support

- [14] The JCC Order addresses child support for the period from and after November 5, 2020. The claimant applies to enforce the order in respect of the outstanding Christmas Break 2020 payment (\$645) as well as January-May 2021 special expenses, totalling US\$11,288.60.
- [15] The claimant also applies for retroactive child support in the form of reimbursement of what she says is the respondent's 50% share of the amount she paid for Yu's post secondary expenses during the 2020 without a matching contribution. Her evidence is that in late 2019 the parties exchanged offers through counsel which included proposals concerning sharing Yu's post-secondary expenses. She says the parties agreed to share the expenses equally and she acted on this. She has tendered evidence showing she made the following payments to Yu during 2020:
1. January 10, 2020 US\$11,000
 2. February 20, 2020 US\$3,500
 3. May 14, 2020 US\$7,000
 4. August 11, 2020 US\$15,000
 5. September 10, 2020 US\$15,000
 6. Total US\$51,500

- [16] The claimant notes that the parties later consented the JCC Order providing for equal sharing of Yu's post-secondary education-related expenses. She says she raised the issue of 2020 special expenses during the JCC, but this ended up not being addressed in the JCC Order. As a result of post-JCC financial disclosure, she learned that the respondent made just two payments to Yu, namely:
1. September 6, 2019 US\$511.00
 2. January 31, 2020 US\$11,001.82
- [17] The claimant explains her rationale and calculation of the amount sought in her affidavit #8 sworn January 14, 2021 that:
20. As the Respondent and I have agreed on sharing equally Yu Peng's special expenses, I have instructed my lawyer to write to the Respondent's lawyer to pay me half of the 2020 Special Expenses and to offset it against 50% of USD511, which is USD255.50. The total amount the Respondent has to pay me for the retroactive special expenses is USD19,994.50. On December 3, 2020, the Respondent's lawyer has informed my lawyer that Mr. Peng is not agreeable to pay me the retroactive special expenses.
- [18] The claimant's calculation does not include the off-setting January 2020 payments that she and the respondent made to Yu, and only includes the her solo payments between February and September 2020. The respondent's 50% share of that comes to US\$19,994.50.
- [19] On November 20, 2020, the claimant sent a budget prepared by Yu for his January-May 2021 expenses to study full time at Washington State University. The budget contemplated that each parent would contribute US\$11,288.60.
- [20] With regard to Christmas Break 2020, Yu returned to Vancouver on November 22, 2020 and stayed with the claimant. He did not receive the \$645 payment due from the respondent. On December 24, 2020, he returned to Washington State University. The claimant asked Yu if he had received the respondent's US\$11,288.60 share of January-May 2021 special expenses and was told he had not.
- [21] The respondent does not take issue with the amounts claimed as special expenses for Yu's post-secondary education. His position is that Yu is or should be holding investment funds which belong beneficially to the respondent and that he instructed Yu to take the respondent's share of special expenses out of those funds.
- [22] The respondent's evidence changes somewhat from affidavit to affidavit. He initially said that in September 2017 and January 2018 he advanced US\$147,000 to Yu Peng. Of this, US\$27,000 was a gift to his son and the balance of US\$120,000 was for his son to use to purchase Bitcoin for the respondent's benefit. When the funds were advanced, he says the price of Bitcoin was approximately US\$6,000. He asked Yu Peng to provide transaction records but did not receive any.

[23] In response to the claimant's post-JCC demand for 2020 retroactive child support reimbursement, on November 24, 2020, counsel for the respondent replied as follows:

Mr. Peng did not agree to pay 'retroactive support'. Please see from the records that Mr. Peng has already paid the child US\$120,000 for him to manage as an asset. Please advise your client and the Child to use this fund and deduct Mr. Peng's portion from this US\$120,000 until this principal and profits from it to be used up. Mr. Peng will make payments for his 50% portion.

[24] On November 25, 2020, counsel for the respondent elaborated as follows:

The funds in the amount of US\$120,000 was for the Child to learn investment and the Child can use the profits from the investment can be used for his tuition and living expenses. Please have the child, through your client provide the transaction records of this funds.

Mr. Peng trusts the profits are sufficient to cover his portion of child support for at least four years.

[25] On January 5, 2021, counsel for the respondent wrote to counsel for the claimant, stating:

Please have Yu use the money in the US\$120,000 and deduct such money from the US\$120,000. The value of this account should be more than four times of US\$120,000.

[26] The respondent also says he was not aware Yu had returned to Vancouver during Christmas Break 2020, as he did not see Yu during that period.

[27] I requested a supplemental affidavit from Yu providing additional information about the US\$120,000 advance and Bitcoin investment issue. Yu swore an affidavit on February 15, 2021 stating:

- a. In the fall of 2017, while he was at Washington State University (WSU) studying Philosophy Pre-law, his father called him to ask about investing in Bitcoin and using this as an opportunity to teach him about investment.
- b. On October 5, 2017, the respondent transferred US\$15,000 to him to invest in Bitcoin. He invested these funds through a website called BitConnect, under his own name. He subsequently learned this was a fraudulent website and that the entire investment had been lost.
- c. During Christmas 2017, he and his father discussed a Bitcoin investment further. The respondent decided to proceed with a US\$100,000 investment and indicated this was an opportunity for Yu to learn about investment.
- d. The respondent did not mention anything about using the investment funds or profits to pay Yu's education expenses. At the time, the respondent had regularly been sending Yu money for tuition fees and living expenses while he was studying at WSU.

- e. On March 15, 2018, the respondent transferred US\$120,000 to Yu. He told Yu to use US\$100,000 for a Bitcoin investment. On March 19, 2018, Yu transferred that amount for a Bitcoin investment using a website at www.gemini.com. Yu transferred US\$19,850 into his own account for his school and living expenses.
 - f. The price of Bitcoin subsequently dropped significantly.
 - g. At some later date, Yu's best friend from high school, Weilun Hao, contacted Yu regarding his business plan for a car import and export business and asked if Yu was interested in investing. He told Yu that in exchange for a 3 month investment, Yu would receive 3% interest in return. Yu trusted Mr. Hao and was aware the Bitcoin investment had provided no return and had little activity. He decided to withdraw the Bitcoin investment temporarily, with a view to putting the funds back into Bitcoin after Mr. Hao returned the investment with interest. He considered this to be a way for the investment to make some money.
 - h. On March 5, 2019, he withdrew the Bitcoin investment, receiving US\$32,688.18. He does not expressly state how much he advanced to Mr. Hao.
 - i. After three months, he attempted to contact Mr. Hao but could not reach him. He was eventually able to speak to Mr. Hao in the summer of 2020. Mr. Hao promised to return the investment, but thus far has failed to do so.
 - j. The respondent stopped transferring funds to him for university and living expenses after January 2020. Thereafter, he had to ask his mother to do so.
- [28] The claimant also provided a supplemental affidavit indicating that in March 2018, she overheard the respondent discussing with Yu an investment of US\$100,000 in Bitcoin. The respondent later asked her to sign a form authorizing withdrawal of funds from their joint BMO Nesbitt investment account so this could be transferred to the Child for the investment. Her financial advisor informed her that the risk of a Bitcoin investment was high and that knowing the Respondent had decided on a Bitcoin investment, she signed the withdrawal form.
- [29] The respondent also filed a supplemental affidavit stating:
- a. He advanced the US\$120,000 to Yu to invest in Bitcoin, not as a gift.
 - b. When he asked Yu to open a Bitcoin account for his investment, Yu told him that he had purchased at a price of US\$7,000 per coin. [This is different than the respondent's earlier evidence that when he advanced the funds to Yu, the price of Bitcoin was US\$6,000 per coin].
 - c. In October 2019, the claimant obtained a restraining order and he could not withdraw money from his bank accounts. During winter vacation in November 2019, when Yu was in Vancouver, he told Yu to use the money in the Bitcoin account to pay his tuition and living expenses.

- d. At paragraph 6, "At the JCC held November 5, 2020, Mr. Justice Crossin asked me to pay support for Yu Hong Jian Peng, I agreed. I have been doing so and of course is willing to do so."
 - e. At paragraph 7, "At the JCC, I advise the court that I had paid tuition and living expenses for Yu Hong Jian Peng. Mr. Justice Crossin asked me when I made the payments and how much, I said I did not remember but I have documents for such payments. The court asked me and I agreed to provide those documents for support payments."
 - f. On November 20, 2020, the respondent provided the claimant with documents to support his payments to Yu.
 - g. At paragraph 9, "At the JCC neither the claimant's lawyer nor the court asked me the method of payments, I had no chance to explain. I thought that it would suffice to provide documents for the support payments."
 - h. He says the Bitcoin advances he made to Yu included US\$12,000 on September [29], 2017 to help him familiarize himself with Bitcoin transactions, US\$15,000 in October [5], 2017 for further learning and on January 6, 2018, he advanced US\$120,000 for Yu to invest in Bitcoin for the respondent.
- [30] There is an account statement attached to Yu's affidavit of February 15, 2021 which indicates the US\$120,000 was deposited into a joint account of the respondent and Yu on March 15, 2018 rather than January 6, 2018.
- [31] The respondent objected to the claimant's suggestion that the funds he advanced to Yu for the Bitcoin investment came from a joint investment account of the claimant and respondent. The claimant took the position that the funds advanced came out of an account that is a family asset rather than a separate account of the respondent.
- [32] The claimant argues that in late 2019 the parties agreed to share Yu's special expenses equally. This is confirmed by the fact both of them made matching US\$11,000 payments in January 2020. The respondent unilaterally stopped making payments thereafter. She relies on *K.K.S. v. J.S.S.*, 2019 BCSC 136 at paragraphs 98-100, which sets out that the principles for making retroactive child support orders also apply to retroactive orders for s. 7 expenses. She also refers to the leading case concerning retroactive child support, *D.B.S. v. S.R.G.*, 2006 SCC 37, which sets out the following factors:
- a. Whether the recipient parent has a reasonable excuse for seeking child support earlier;
 - b. The conduct of the payor parent;
 - c. The circumstances of the child; and
 - d. Whether a retroactive award will occasion hardship on the payor.

- [33] The respondent does not dispute that he agreed to pay 50% of Yu's university and living expenses, rather he argues his obligation was satisfied by or should be set-off against the Bitcoin investment funds Yu is holding for him.
- [34] I have some concern that the respondent does not appear to have mentioned during the JCC that he had authorized Yu to use the Bitcoin investment to satisfy past and future special expenses obligations. Also, the early January 2021 emails from counsel for the respondent appeared to introduce the idea of setting-off child support obligations against the Bitcoin investment at that time and did not mention that respondent had previously directed Yu to do so. Yu meanwhile says the respondent never authorized him to use the Bitcoin investment funds to pay his schooling and living expenses.
- [35] I am also troubled by the fact that Yu admits to having cashed out what remained of the Bitcoin investment to invest in his friend's business venture, without seeking the respondent's authorization to do so. When his friend failed to repay the funds, he appears to have done little or nothing to press for repayment of the funds. It is also frankly concerning that Yu did not produce statements showing the transfer of net Bitcoin proceeds to his friend, the business plan his friend showed him or any correspondence between himself and the friend requesting updates and repayment.
- [36] The state of the evidence before me regarding the 2020 retroactive special expense claim is also a concern. The January-May 2021 claim is based on a budget prepared by Yu Peng, which provides some breakdown of his expenses, as contemplated by the JCC Order. The evidence tendered in support of the 2020 retroactive special expense claim consists of a list of advances the claimant paid to Yu during 2020, with no breakdown and no evidence regarding his actual expenses to support it. Given that this is a claim for historical special expenses, some detail and supporting documentation should be available.
- [37] The claimant refers to *Jamieson v. Loureiro*, 2010 BCCA 52 and its discussion of whether equitable set-off is available in relation to child support. The court concluded that set-off was not available on the facts of that case, at paragraphs 54-60:

54 In my opinion, the question of whether set-off is available against child support must begin with the acknowledgment that child support is the right of the child. The principles were recently stated, in the context of retroactive child support, in *D.B.S. v. S.R.G.*, 2006 SCC 37, [2006] 2 S.C.R. 231:

36 It is trite to declare that the mere fact of parentage places great responsibility upon parents. Upon the birth of a child, parents are immediately placed in the roles of guardians and providers. As La Forest J. wrote in *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, at p. 62, it is "[f]or obvious reasons [that] society has imposed upon parents the obligation to care for, protect and rear their children."

...

38 The contemporary approach to child support was delineated by Kelly J.A. in *Paras v. Paras*, [1971] 1 O.R. 130. In that case, the Ontario Court of Appeal established a set of core principles that has been endorsed by this Court in the past and continues to apply to the child support regime today: see *Richardson v. Richardson*, [1987] 1 S.C.R. 857; *Willick v. Willick*, [1994] 3 S.C.R. 670. These core principles animate the support obligations that parents have towards their children. They include: child support is the right of the child; the right to support survives the breakdown of a child's parents' marriage; child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together; and finally, the specific amounts of child support owed will vary based upon the income of the payor parent.

55 In the case at bar, the chambers judge found that Ms. Jamieson has no assets or employment income. Mr. Loureiro disputes that finding on the basis that there was no basis to support it. However, there was evidence that in 2006 Ms. Jamieson's net income for income tax purposes was \$9,440. We were provided, without objection, a copy of her financial statement sworn 16 August 2007, in which Ms. Jamieson recorded income of \$4,440 from social assistance, child support of \$9,240 and child tax benefits of \$9,357.72.

56 The chambers judge heard seven days of evidence and argument as to the variation of support. In my opinion, it was open to him to conclude that Ms. Jamieson had very limited financial means. The corollary of that finding is that there is limited money available to provide for the three children of the marriage. This raises the obvious issue: should equity intervene to protect Mr. Loureiro from the demand for payment of past and future child support? In my view, it should not, for three reasons.

57 First, I am unable to conceive of a case in which set-off would be allowed against future child support, and consider that it would be a very rare case in which one would consider set-off against arrears of child support. The support is for the benefit of the child and should not be lost because the person to whom the support is paid may owe, in another capacity, amounts to the payor. There is simply an insufficient connection and an absence of manifest injustice in requiring the payor to pay the full amount of support.

58 Second, it is plain that the limited financial resources of Ms. Jamieson means that, without the child support owed and owing by Mr. Loureiro, the children will suffer a diminished lifestyle, contrary to the principle enunciated in *D.B.S.*

59 Third, the costs award was made against Ms. Jamieson because she was the unsuccessful litigant in Mr. Loureiro's motion to reduce child and spousal support. In my opinion, Mr. Loureiro's cross-claim for costs is insufficiently connected to his legal and moral obligations to pay child support. Rather, his claim can be simply seen as the expected result of successful litigation.

60 In my opinion, the cross-claims in respect of costs and child support lack the necessary nexus to give rise to equitable set-off. The children's right to child support is, in my view, completely separate from the costs awarded, notwithstanding that the costs related to an application to vary child support. Further, the appellant's arguments that Ms. Jamieson stands in a position of

trustee of the funds is, in my opinion, unhelpful and inapt. The analogy merely seeks to saddle the children with the litigation strategy of Ms. Jamieson, which I consider irrelevant to the analysis.

- [38] The facts of the present case differ significantly from those in Jamieson. In this case, the child for whom support payments are being sought or ordered is 25 years old and attends a post-second institution. He was also entrusted with investing and appears to have mis-managed the respondent's Bitcoin investment, which is the source of the respondent's claim for satisfaction of his support obligation or equitable set-off thereof.
- [39] Given the conflicting evidence presented here from the claimant, the respondent and Yu Peng and the significant gaps in the available evidence, I am not in a position to decide the claimant's child support issues and the respondent's defences in an interim application. These issues will have to be addressed at trial, where the presiding judge will have the benefit of viva voce testimony and be in a position to make the necessary findings, including concerning credibility.

Disclosure

- [40] The claimant alleges that the respondent was in a relationship with another woman during their marriage, which she says he has admitted had been ongoing for about 20 years.
- [41] The claimant has produced records which indicate that the other woman landed in Vancouver with her son on September 21, 2014 and noted on an immigration document that her residential address was going to be in Winnipeg, MB. On October 10, 2014, the other woman purchased a property in Burnaby. The purchase price was \$582,000 and a mortgage in the principal amount of \$378,300 was registered on title. Much later the respondent later arranged for a supplementary card to be issued in her name, attached to one of his Mastercard accounts.
- [42] It is not entirely clear why the claimant highlights this issue in her application, as there is no allegation of adultery included in the Notice of Family Claim. A divorce is sought based on the parties living separate and apart. There is also no express allegation that the respondent used family assets to help purchase the other woman's Burnaby property.
- [43] The respondent delivered a list of documents on September 15, 2020. On October 14, 2020, the claimant wrote demanding additional documents, including:
1. Respondent's Bank of Montreal account no. *483 (E1) and *273 (E2)
 - a. Monthly account statements for the period July 2014 to present. [claimant wants monthly statement format rather than CSV format]
 2. Respondent's Bank of Montreal Mastercard no. ***3499 (I4)

- a. Monthly statements for the period from June 2013 to September 2020. [List of documents indicates the period August 1, 2017 to September 1, 2020 but only CSV format statement from June 6, 2020 to July 15, 2020 was provided]
 3. Respondent's Bank of Montreal Nesbitt Burns Inc.
 - a. Transaction statements from June 2013 to present.
 4. Respondent's Royal Bank of Canada statements (F1)
 - a. Statements from June 2013 to August 2017.
 - b. Supporting documentation for a September 18, 2017 TD loan payment of \$1,205.02.
 - c. Cheque image and name of payee for cheque #57 dated March 29, 2018 in the sum of \$12,278.
 - d. Document prepared by or witnessed by Notary Wendy Shrum relating to May 24, 2018 payment to her in the sum of \$150.
 - e. Cheque image and name of payee for cheque #61 dated March 14, 2019 in the sum of \$3,383.
 - f. Cheque image and name of payee for cheque #64 dated November 26, 2019 in the sum of \$4,000.
 5. Respondent's World Elite Mastercard no. ***3868
 - a. Statements from January 2019 to present.
 6. [address redacted], Burnaby
 - a. The claimant believes the respondent purchased this property in the other woman's name in October 2014 and demands production of conveyancing documents including mortgage documents with Bank of Montreal and mortgage statements.
- [44] The respondent has not complied with these requests.
- [45] The respondent has sworn an affidavit stating that he has been friends with the other woman for 20 years but he denies she is his mistress. He also states that he has provided all of his financial statements and that these show the claimant's allegation that he bought a property for the other woman is not true. The source documents on which this conclusion is based are not included in the affidavit material before me. Upon perusal of the document descriptions and dates, it does not appear that the respondent has produced bank statements back to October 2014, which is when the contentious property was purchased.

[46] The respondent says he has provided all of his financial documents since 2017 and attaches a copy of his List of Documents. His list does identify documents from various accounts which date back to July or August 2017. He concludes his affidavit sworn January 25, 2021 with the assertion that "I will provide to the claimant the requested documents that I have or I can obtain."

[47] The claimant's application for disclosure refers to section 212 of the Family Law Act.

Orders respecting disclosure

212 (1) A court may at any stage of a proceeding make an order to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules.

(2) If an order is made under subsection (1), the court may order a party to pay, to the other party or to another person, all or part of the expenses reasonably and necessarily incurred in complying with the order.

(3) A person must not disclose information obtained under an order made under this section except

(a) as necessary to resolve a family law dispute, and

(b) in accordance with the order.

[48] The claimant refers to Rule 5-1(11), which addresses when a party must file and serve documents, but this relates to her argument that the respondent failed to file his F8 financial statement and appropriate attachments in a timely manner and this warrants imposition of a fine. He did file an F8 financial statement on September 15, 2020. I do not understand this application to relate to documents omitted from his F8, but rather to be an application for an amended list of documents.

[49] Discovery and inspection of documents is governed by Rule 9-1 of the Supreme Court Family Rules (SCFR). In the notice of application, the claimant only refers to sub-rule (1).

[50] Rule 9-1(1) provides that, unless all parties consent or the court otherwise orders, each party to a family case must prepare a list of documents that lists all documents that are or have been in that party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and all other documents to which the party intends to refer at trial.

[51] Rule 9-1(7) allows a party who has received a list of documents and who believes it omits documents or a class of documents that should have been disclosed under subrule (1) may, by written demand, require the party who prepared the list to amend it, serve the amended list and make originals of the newly listed documents available for inspection and copying.

- [52] Rule 9-1(8) allows a party who has received a list of documents who believes it should include documents and classes of documents that are within the listing party's possession, power or control and which related to any or all matters in question in the family law case and which are additional to the documents or classes of documents required under subrule (1) may, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that includes the reason why such additional documents or classes of documents should be disclosed, may require the party who prepared the list to amend it, serve the amended list and make the originals of the newly listed documents available for inspection and copying.
- [53] The claimant's October 4, 2021 letter seeking further documents indicates the demand it made pursuant to both subrule (7) and (8). A demand under subrule (8) requires the demanding party to set out the reason why such additional documents or classes of documents should be disclosed. That aspect is lacking for some of the classes of documents demanded. An applicant seeking disclosure under subrule (8) also must provide some evidence of the existence and potential relevance of the additional documents. See for example *More Marine Ltd. v. Shearwater Marine Ltd.*, 2011 BCSC 166 at paragraph 8. Such evidence can be obtained in a number of ways, with examination for discovery being a likely source of such evidence.
- [54] Rule 9-1(9) provides that a party who receives a demand under subrule (7) or (8) must, within 35 days after receipt, either comply with the demand in relation to all of the demanded documents, comply in relation to those the party is prepared to list and indicate in relation the balance why a supplementary list is not being prepared and served and why those documents are not being made available.
- [55] In the present case, it appears the respondent did not provide a formal written response explaining why the supplementary list of documents is not being prepared.
- [56] One notable feature of this dispute is the wide disparity in the parties' positions regarding the date of separation. The claimant's position is that the parties separated on September 30, 2019. The respondent's position is that they have been living separate and apart since December 12, 2013, albeit they both continued to live in the family home until 2019.
- [57] The respondent's list of documents generally includes information dating from July or August 2017 to August or September 2020. That would be reasonable subrule (7) production based on the claimant's alleged separation date of September 30, 2019, however, not so based on the respondent's own alleged December 12, 2013 separation date.
- [58] The bulk of the claimant's demands for additional documents extend back to June 2013, which is just a couple of months prior to the respondent's alleged separation date.
- [59] In the circumstances, I agree that under subrule (7) the respondent should produce statements for the following accounts:

1. Respondent's Bank of Montreal account no. *483 (E1) and *273 (E2)
 - a. Monthly account statements for the period July 2014 to September 2019.
 2. Respondent's Bank of Montreal Mastercard no. ***3499 (I4)
 - a. Monthly statements for the period from June 2013 to September 2019.
 3. Respondent's Bank of Montreal Nesbitt Burns Inc.
 - a. Transaction statements from June 2013 to September 2019.
 4. Respondent's Royal Bank of Canada statements (F1)
 - a. Statements from June 2013 to August 2017.
 5. Respondent's World Elite Mastercard no. ***3868
 - a. Statements from January 2019 to September 2019.
- [60] With respect to the more detailed request which fall under the respondent's Royal Bank of Canada requests (#4 b.-f. from the summary above), the claimant has not tendered evidence which persuades me that these exist and why they are potentially relevant. I dismiss those specific requests.
- [61] With respect to the request for documents relating to the purchase of the other woman's Burnaby property, the claimant's justification for this request is she believes the respondent purchased that property in the other woman's name in October 2014. She does not state what she bases her belief on, so this is simply a bare allegation at this point. The respondent has tendered sworn evidence denying the claimant's theory and there is no evidence from the claimant to the contrary. It is also not apparent why this relates to a matter in issue based on the current pleadings. The list of properties in Schedule 4 of the Notice of Family Claim in which the claimant claims an interest does not include the Burnaby property. It is not apparent on the material filed for this application that the documents sought are in the respondent's possession, power or control and how they might be relevant. In the circumstances, I am not persuaded that these documents are potentially relevant to a matter in issue. This request is dismissed.

Fine

- [62] The claimant seeks imposition of fines based on the respondent's failure to produce his F8 financial statement and list of documents in a timely manner and based on his failure to comply with the JCC Order.
- [63] In view of the divided success on this application and the fact that the respondent had delivered an F8 financial statement and a list of documents well before this application was filed, I am not inclined to order the respondent to pay a fine or penalty. This application is dismissed.

Conclusion

[64] The claimant's applications regarding child support in paragraphs 1, 2 and 3 of the Notice of Application filed January 18, 2021 are dismissed. These issues are not appropriate for determination by interim application on affidavit evidence and will have to be addressed at trial.

[65] The respondent is ordered to prepare and deliver an amended list of documents which lists the following categories of documents:

1. Respondent's Bank of Montreal account no. *483 (E1) and *273 (E2)
 - a. Monthly account statements for the period July 2014 to September 2019.
2. Respondent's Bank of Montreal Mastercard no. ***3499 (I4)
 - a. Monthly statements for the period from June 2013 to September 2019.
3. Respondent's Bank of Montreal Nesbitt Burns Inc.
 - a. Transaction statements from June 2013 to September 2019.
4. Respondent's Royal Bank of Canada statements (F1)
 - a. Statements from June 2013 to August 2017.
5. Respondent's World Elite Mastercard no. ***3868
 - a. Statements from January 2019 to September 2019.

[66] The balance of the document requests and the application for an order that the respondent pay fines are dismissed.

[67] Costs of this application are in the cause.

"Master Bilawich"

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