

CANADA / JUDGMENT

Lunsted v. Lunsted

2024 BCSC 1618

COURT

Supreme Court of British Columbia

DECIDED

23 July 2024

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

2024 BCSC 1618 Lunsted v. Lunsted

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lunsted v. Lunsted,

2024 BCSC 1618

Date: 20240723

Docket: E52691

Registry: New Westminster

Between:

Cory Tyrone Tyson Lunsted

Plaintiff

And

Tracy Mae Lunsted also known as Tracey Mae Murrell

Respondent

Before: The Honourable Justice Bantourakis

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

K. Gill

A. Plan

Appearing on her own behalf:

T. Lunsted

Place and Date of Trial/Hearing:

New Westminster, B.C.

July 8-11, 2024

Place and Date of Judgment:

New Westminster, B.C.

July 23, 2024

INTRODUCTION

- [1] The parties lived in a spousal relationship for at least 17 years and married in 2007. They separated in 2014. The claimant, Mr. Lunsted, started this family law claim in 2017 asking only for an order for divorce. The respondent, Ms. Lunsted, counterclaimed seeking orders relating to property and spousal support, among other things.
- [2] Mr. Lunsted has now brought this summary trial application asking that the counterclaim for property and spousal support be dismissed. He says that some of the respondent's claims are time-barred, that the property and spousal support claims are unfounded, and in any event that the parties signed written agreements disposing of these issues. He says that Ms. Lunsted's request that those agreements be set aside should be dismissed.
- [3] Ms. Lunsted takes a different view. She says that the issues the claimant is raising are not suitable for disposition by way of summary trial. On the merits, she maintains that her property and spousal support claims are well-founded and says the agreements Mr. Lunsted relies on are not valid or enforceable.
- [4] The threshold question on this application is whether the issues are suitable for disposition by way of summary trial. If they are, the questions are whether any aspect of the claims in issue is time-barred and whether the agreements are valid and ought to be enforced.
- [5] I should say at the outset that the underlying proceedings also involve highly contested claims regarding parenting and support of the parties' children, who are now 16 and 14 years old. However, the parenting and child support issues are not before me on this summary trial application, and the parties agree that any findings I make will have no impact on that other aspect of the proceedings.

BACKGROUND

- [6] The parties began living together in a marriage-like relationship in 1996 or 1997. They married on May 15, 2007 and separated in 2014. As noted above, they have two children. The claimant is currently 53 years old and the respondent is 49.
- [7] The parties agree that Ms. Lunsted initiated their separation and that she was primarily responsible for handling the family's finances during the course of the marriage, including receiving Mr. Lunsted's paycheques and attending to the family's bills and other expenses. Mr. Lunsted was and continues to be employed as a real estate agent. Ms. Lunsted works as an insurance broker.

The Separation Agreement

- [8] On October 29, 2014, the parties signed a Separation Agreement. They disagree about the circumstances leading up to its signing. Mr. Lunsted says it is a document they worked on together over the course of time with the intention of fully resolving the issues attendant upon their separation.
- [9] Ms. Lunsted, conversely, says the separation agreement was sprung on her late in the evening on October 29, 2014, and that she only signed it because Mr. Lunsted told her he needed it to obtain financing for the purchase of a townhouse he was planning to move into once the sale of the family home had closed. She says he told her the Separation Agreement was not worth the paper it was printed on.
- [10] The Separation Agreement provides for a variety of matters including shared parenting and child support. It states that both parties are aware that they are entitled to obtain independent legal advice but that each decided not to. It states that neither party is entitled to spousal support and that any future such claims are waived.
- [11] Regarding the family home, which appears to have been the parties' only substantial asset, the Separation Agreement provides for equal division of the net proceeds from the sale of that home after payment of expenses such as real estate commissions and the mortgage, as well as the payment of all debt then existing in either or both parties' names. That is, the agreement appears to provide for equal division of both the family home and family debt.
- [12] The parties agree that they went to the bank together after signing the Separation Agreement. At that time, they used the family home sale proceeds to pay off all their debts. Mr. Lunsted then took his half of the net sale proceeds as he needed it for the townhouse purchase which was set to complete on November 4, 2014. A few weeks later, Ms. Lunsted transferred her half of those net sale proceeds from the joint account in which they had remained into an account that was in her name only.

- [13] By mid-November 2014, the parties had separated and made a clean break in terms of the equal division of family debt and the remaining proceeds of sale of the family home and were no longer operating out of joint accounts.
- [14] After the parties moved out of the family home, they appear to have remained on good terms. Ms. Lunsted did not move into her own home immediately. Instead, she stayed in Mr. Lunsted's townhouse with him and the children and also stayed with Mr. Lunsted's mother, though the parties disagree on how often or how long she did that.
- [15] The parties agree, however, that they had definitively separated before the move into the townhouse and though they were under the same roof for a time, they continued to live separate and apart.

The Berg Property and Agreement

- [16] In early 2015, Mr. Lunsted placed an offer to purchase a vacant lot upon which he planned to build a home (the "Berg Property"). It was agreed that the parties would each invest in that property and, on this application, they agreed Ms. Lunsted ultimately invested \$68,500 in the Berg Property. That amount consisted of \$38,500 toward the down-payment and \$30,000 toward the loan payment and land preparation for the vacant lot. Title was registered in both of their names as tenants in common with the claimant holding an undivided 65-percent interest and the respondent holding an undivided 35-percent interest.
- [17] Ms. Lunsted drafted a document setting out how the parties would divide financial responsibility for the Berg Property. Mr. Lunsted says it was a partnership agreement between them. Ms. Lunsted says it was merely a document she drafted for her own purposes so she could figure out what her expenses would be. Regardless, that document contemplated that the parties would share relevant costs proportionate to their shares in the property; that is, 35-percent to Ms. Lunsted and 65-percent to Mr. Lunsted.
- [18] By at least April of 2016, Ms. Lunsted had decided she no longer wished to continue with the Berg Property project. The parties agree that she received a return of the \$68,500 she had invested and that she signed a Form A Land Transfer transferring her share of the title to the Berg Property to Mr. Lunsted. She then used those funds to purchase a mobile home, which she still owns today.
- [19] Mr. Lunsted relies on an agreement he says the parties signed on June 24, 2016, which provides that he is to pay off and discharge the loan on the Berg Property and pay to Ms. Lunsted \$68,500, in exchange for which she is to transfer to him her 35-percent interest in the Berg Property. I will refer to that as the Berg Property Agreement.
- [20] The agreement also stated that the parties each waive any claims they may have to each other's property. Ms. Lunsted questions the legitimacy of that document. She notes that it is only a photocopy, though she acknowledges it bears her signature. She says she does not remember signing such a document and would not have.

Proceedings to Date

- [21] On March 1, 2017, having re-partnered, Mr. Lunsted filed his Notice of Family Claim seeking only an order for divorce. Ms. Lunsted counterclaimed on April 18, 2017, asking to have the Separation Agreement set aside, an order for spousal support, and seeking equal division of family property. The property claim was not particularized beyond this. By this point, it is apparent that the parties were no longer on the amicable terms they had apparently been in the immediate aftermath of their separation.
- [22] On February 19, 2018, Ms. Lunsted filed an amended counterclaim without the assistance of counsel. This time she sought unequal division of family property under the Family Law Act, S.B.C. 2011, c. 25 (the "FLA"), on the basis that she should have received a greater amount upon division of the proceeds of sale of the family home. She also advanced, for the first time, property claims under the heading "Other Property Claims" in Schedule 4 to the Amended Counterclaim. Specifically, she claimed one-half the net proceeds of sale of the townhouse and an order for compensation instead of an interest in the Berg Property. Those claims were maintained in the Second Amended Counterclaim she filed on February 28, 2023, in which she pleads additionally that she signed the Berg Property transfer under duress, without the benefit of legal advice and received less than fair market value.
- [23] Since at least 2020, the conduct of this litigation has been highly contentious with multiple applications and court appearances relating to parenting issues and child support. There have been mutual allegations of wrongdoing and even abuse vis-à-vis the children. The children reside primarily with Mr. Lunsted. A s. 211 report has been completed and there is a separate application regarding parenting that is currently before another justice of this Court.
- [24] Both parties have changed counsel throughout the proceedings. Ms. Lunsted has been represented by counsel at times but not always. Though she was self-represented on this application, she advised that she had had some limited pro bono assistance from a lawyer in formulating the legal basis portion of her response.
- [25] This family proceeding was commenced over seven years ago and has yet to be tried. Both parties have conducted examinations for discovery and there has been document and financial disclosure, though Ms. Lunsted maintains that Mr. Lunsted has not been sufficiently forthcoming in that regard. Previous trial dates in this matter were set for 2022 and 2023 but did not proceed. There is currently a 10-day trial set for July of 2025.
- [26] The property and spousal support claims now in issue before me have effectively been languishing for years as the parties have been mired in many contentious parenting applications. They were, however, able to obtain an order for divorce on March 31, 2022.

The Summary Trial Application

- [27] On February 4, 2024, Mr. Lunsted filed this summary trial application seeking dismissal of Ms. Lunsted's property and spousal support claims, enforcement of the Settlement Agreement, and enforcement of the Berg Property Agreement.
- [28] The application was initially set for three days in March of 2024. At that hearing, Ms. Lunsted sought an adjournment and Mr. Lunsted consented, but additional days were scheduled to allow for the possibility that cross-examination might be required on affidavits. Ms. Lunsted was also given leave to file additional material in response to the application, which she ultimately did.
- [29] The summary trial application next came on for hearing in May of this year but was unable to be heard. The matter finally came before me in July of 2024. During the hearing, cross-examination pursuant to Rule 11-3(12) of the Supreme Court Family Rules was allowed on aspects of the parties' affidavits that were in direct conflict, notably with regard to the property claims.

ANALYSIS

Suitability for Summary Trial

- [30] The summary trial procedure can be an important tool in achieving the objectives of proportionality and efficiency which are codified in Rule 1-3 of the Supreme Court Family Rules: *Hudema v. Moore*, 2021 BCSC 587, at para. 58.
- [31] Where the issues are suitable for determination in this manner, access to justice may be promoted while preserving the court's truth-seeking function: *Hryniak v. Mauldin*, 2014 SCC 7, at paras. 33-43.
- [32] If the court can find the necessary facts, it must grant judgment unless it would be unjust to do so. When a summary trial application is brought, it is the obligation of the parties to take every reasonable step to adduce the evidence they believe is necessary: *Harrison v. British Columbia (Children and Family Development)*, 2010 BCCA 220, at paras. 40-41.
- [33] The existence of disputed facts is not a basis in itself for a court to decline to grant summary judgment. The court may be able to make the necessary factual findings on the basis of the evidentiary record as a whole despite conflicts in the affidavits: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at 216; see also *MacMillan v. Kaiser Equipment Ltd.*, 2004 BCCA 270, at para. 22.
- [34] Rule 11-3(12) also allows the court to order that an affiant attend for cross-examination, and, as described above, that occurred here.

- [35] The factors that are relevant in determining whether a matter is suitable for resolution on a summary trial are by now well-known. They include the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, the cost of the litigation and the time for the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: *Gichuru v. Pallai*, 2013 BCCA 60, at paras. 30-31.
- [36] Here, several of these factors militate in favour of the summary trial process. Among others, the amount involved, the course of proceedings to date, and the cost of the litigation all militate in favour of a summary disposition.
- [37] On the other hand, the length of this particular summary trial, which was set for five days, and included cross-examination on affidavits, in my view militated against the summary trial procedure. A conventional trial on the property and spousal support issues would likely not have been much longer, if at all, and there is already a 10-day trial already scheduled for July of 2025.
- [38] However, weighing against that concern is the urgency of the matter. The evidence establishes, and I accept, that Mr. Lunsted has undertaken significant debt to finance this litigation and that his ability to service that debt is currently comprised by the property claims and the Berg Property Claim in particular.
- [39] Indeed, I would add here that the record strongly suggests that both parties can ill-afford this litigation. Ms. Lunsted, who initially had counsel, is now self-represented, as happens all too frequently in family claims. The claimant, for his part, seems to have the assistance of counsel only by virtue of having taken on significant debt. They remain at loggerheads.
- [40] Considering and applying the above principles in respect of this summary trial application, I have concluded that Mr. Lunsted's application to dismiss Ms. Lunsted's spousal support claim is not suitable for disposition on this summary trial application. As I will explain, however, I have reached a different conclusion regarding his application to dismiss her property claims.
- [41] The application to dismiss Ms. Lunsted's spousal support claim turns on the enforceability of the Separation Agreement. Regarding that agreement, the parties' submissions focussed to a significant extent on the circumstances surrounding its execution and formation at stage one of the *Miglin v. Miglin*, 2003 SCC 24 analysis: see *Miglin*, at paras. 81-83.

- [42] However, that is but one aspect of the Miglin analysis; that is, the answer to whether the formation of the Separation Agreement was procedurally fair does not dispose of the issue. The court must still go on to consider the substance of the agreement and whether it was in substantial compliance with the objectives of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The court looks at the agreement as a whole and will intervene only when the agreement significantly departs from the general objectives of the Divorce Act.
- [43] As explained by our Court of Appeal in *Nicholl v. Nicholl*, 2020 BCCA 173:
- [38] . . . at stage two of the Miglin analysis, a court can interfere after it assesses the extent to which enforcing the agreement still reflects the original intentions of the parties and the extent to which the agreement remains in substantial compliance with the Divorce Act objectives.
- [44] On the whole, I find the evidence adduced by both parties on the summary trial application insufficient to the task of assessing whether the Separation Agreement is in substantial compliance with the objectives of the Divorce Act at either stage of the Miglin analysis. For example, there are aspects of the record that suggest there are compensatory grounds for spousal support here, including the respondent's maternity leaves and apparent part-time work schedule for years following the children's birth. However, the evidence does not, in my view, allow for a proper assessment of that claim or its strength or weakness.
- [45] The appropriate range under the Spousal Support Advisory Guidelines is at least partially dependent on the strength of the respondent's claim for compensatory spousal support. Further, I understand child support during the relevant periods to still be in issue and that may affect the analysis, as well.
- [46] To further illustrate, on the current evidentiary record, I am not in a position to properly assess whether the DivorceMate calculations Mr. Lunsted provided at the hearing of this matter offer a proper basis, as he suggests, for understanding how much Ms. Lunsted may have given up in the way of spousal support when she signed the Settlement Agreement: see *S.E. v. J.E.*, 2013 BCCA 540, at para. 47.
- [47] Leaving that concern aside, Mr. Lunsted effectively invited me to conduct my analysis of what might or might not have been payable under the Spousal Support Advisory Guidelines without reference to certain years, including notably the year the Separation Agreement was signed and years during which he believes Ms. Lunsted's income was artificially low. The record is also insufficient to assess that latter claim.
- [48] Because the Notice of Application focuses to a significant extent on the circumstances of the Separation Agreement's execution and the DivorceMate calculations were only provided at the hearing of the application, I find it unsurprising that the self-represented respondent's evidence does not fill these gaps either.

- [49] This was a relationship of long duration that easily satisfies the description of a joint endeavour and close economic union: Nicholl, at para. 58. There is also some suggestion that the respondent may have suffered ill health affecting her ability to work in recent years, though that is disputed. The analysis of whether the agreement substantially complies with the objectives of the Divorce Act may take on added complexity in all of these circumstances but the parties have not equipped the Court to undertake that analysis.
- [50] This is not a case where a party with notice of the issues has simply failed to put its best foot forward, but rather one where I have concluded that it would not be fair or just to rule on the enforceability of the Separation Agreement or any aspect of the respondent's claim for spousal support. I see some parallels between the situation this Court finds itself in on this front and the situations discussed in S.E. and Nicholl, where important aspects of the Miglin analysis were not addressed: see S.E., at paras. 33-34, 41-42, 47, 52 and Nicholl, at paras. 48-50, 57-58.
- [51] However, that does not dispose of the matter altogether because Mr. Lunsted's application for dismissal of Ms. Lunsted's property claims does not necessarily depend on the enforceability of the Separation Agreement. In fact, I have concluded that the record is sufficient for me to determine the property claims particularized in Schedule 4 of the Second Amended Counterclaim without reference to that agreement.
- [52] The question then becomes whether I ought to do so when I have already found that the spousal support issue cannot fairly be resolved at this summary trial. In these circumstances, other factors become relevant, including the possibility of duplication or inconsistent findings, the potential for multiple appeals, and additional concerns regarding litigating in slices; Ferrer v. 589557 B.C. Ltd., 2020 BCCA 83, at para. 27, citing Greater Vancouver Water District v. Bilfinger Berger AG, 2015 BCSC 485, at para. 110.
- [53] There may, however, be situations where discrete issues can properly be decided on a summary trial application: Ferrer, at para. 33 and onward.
- [54] Deciding on Mr. Lunsted's application to dismiss Ms. Lunsted's property claims would substantially advance this litigation and narrow the issues for trial. I have already mentioned that there is urgency to this aspect of the claim and that the parties can already ill-afford this litigation. I am also of the view that the property issues are discrete. They can be determined without making findings that would affect a future assessment of the Separation Agreement and without concern as to inconsistent findings.
- [55] The family property and debt issues arising from the Separation Agreement turn on the application of the limitation period in s. 198 of the FLA and from an analytical perspective division of property issues should generally be determined before spousal support issues, in any event; see e.g., Tedham v. Tedham, 2005 BCCA 502, at paras. 67-69. Further, the remaining property claims arise from post-separation property dealings that are distinct from the parenting, child and spousal support issues that will remain to be determined.

[56] In light of all this and the principles governing suitability for summary trial more generally, I have concluded that I can fairly and justly decide Mr. Lunsted's application for dismissal of Ms. Lunsted's property claims by way of summary trial and that I should in fact do so.

[57] I begin with Ms. Lunsted's claim regarding the family home at the time of separation. I will then move on to her post-separation claims to the townhouse and Berg Property.

Ms. Lunsted's Claim Regarding the Family Home

[58] Mr. Lunsted says that Ms. Lunsted's counterclaim seeking unequal division of family property and debt, which centers on the division of the proceeds of sale of the family home, is statute-barred. The net proceeds of that home were divided equally between the parties after payment of all debt as provided for in the Separation Agreement.

[59] Ms. Lunsted now seeks an unequal division in her favour. In order to achieve that, she must first succeed in having the relevant provisions of the Separation Agreement set aside.

[60] Division of family assets and debt is a matter regulated by provincial legislation, in this case, the FLA. Parties can decide to divide their assets between themselves by way of separation agreement or alternatively can seek the assistance of the court. In cases like this one where the parties have entered into an agreement dividing their assets, the agreement can be challenged in court: *Halliday v. Halliday*, 2015 BCCA 82, at para. 33.

[61] However, s. 198(3) of the FLA sets a limitation period for such claims. It provides that an application for an order to set aside all or part of an agreement respecting property must be made no later than two years after the spouse first discovered or reasonably ought to have discovered the grounds for making the application.

[62] The grounds for setting aside a Separation Agreement concerning property division are in turn set out in s. 93 of the FLA. The relevant portions of that provision are:

- (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.

...

- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
- (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;
 - (c) the degree to which the spouses relied on the terms of the agreement.

[63] As Ms. Lunsted explained during the hearing of this application, she believes that those aspects of the Separation Agreement governing payment of debts and the family home should be set aside because debts were treated as family debt and paid out from the proceeds of sale of the family home that she believes ought to have been the claimant's sole responsibility. She says that she was not aware of some of those debts at the time she signed the Separation Agreement.

[64] Ms. Lunsted says there were other examples of material non-disclosure as well. For example, she says Mr. Lunsted did not properly account for the real estate commission on the home at that time and that she was left with insufficient financial information because Mr. Lunsted closed certain bank accounts earlier in 2014.

[65] Finally, Ms. Lunsted says she only signed the Settlement Agreement because she felt pressured to because she understood it was necessary for Mr. Lunsted to obtain the financing necessary for the purchase of his townhome. She says she did not believe it would be followed because of things Mr. Lunsted said to her. However, she agrees that she went to the bank with Mr. Lunsted some time before he completed his purchase of the townhome on November 4, 2014, and that she was present as the debts she now takes issue with were paid from the proceeds of sale of the family home during that visit.

[66] Ms. Lunsted also says that she knew the claimant had closed bank accounts earlier in 2014 and as a result, by the fall of 2014, felt she was paying for everything and did not have a proper understanding of his financial situation. She also agreed at the hearing of this matter that she was aware of the real estate commission issue from the outset.

[67] Finally, Ms. Lunsted also clearly knew in November of 2014 that the net proceeds from the sale of the family home had in fact been divided as contemplated in the Settlement Agreement, regardless of whether she thought the agreement would be followed when she signed it.

- [68] Thus, taking even the most generous view of Ms. Lunsted's evidence, she first discovered or reasonably ought to have discovered the grounds she advances for setting aside those aspects of the Settlement Agreement governing division of family debt and the family home by at least mid-November of 2014, if not earlier that month. However, her claim to set aside that part of the agreement was first filed on April 18, 2017, which is more than two years later.
- [69] It follows that Ms. Lunsted's claim to set aside the Separation Agreement's terms governing division of the family home and debt and seeking an unequal division in that regard is statute-barred as having been brought outside the limitation period in s. 198(3) of the FLA, and is therefore dismissed.
- [70] I wish to stress two points here. First, I have been able to decide this issue without determining contested factual points, for example, regarding the alleged negotiation leading up to the signing of the Settlement Agreement or alleged lack thereof, whether there was in fact adequate or inadequate disclosure leading up to the signing of the Settlement Agreement, what if anything the parties may have said to each other about whether the agreement was binding or not, and what purposes it would serve. Instead, I have concluded that the claim to set aside those portions of the Settlement Agreement governing the division of family property is statute-barred even on a view of the facts and evidence that is most favourable to the respondent.
- [71] Accordingly, nothing in these reasons should be taken as deciding in any way contested matters going to the procedural fairness of the Settlement Agreement whether in whole or in part.
- [72] Second, my findings under this heading do not mean that Ms. Lunsted's claim to set aside the Separation Agreement's terms regarding spousal support is statute-barred, even though s. 198(3) of the FLA refers to spousal support claims as well.
- [73] Unlike her division of property claim, Ms. Lunsted's spousal support claim is not exclusively governed by the FLA. The parties were married and Ms. Lunsted has advanced a claim for spousal support under the Divorce Act, which is federal legislation. As explained in Halliday, the Divorce Act contains no limitation provision regarding claims to spousal support under that act: Halliday, at para. 45. Accordingly, the claim to spousal support pursuant to the Divorce Act is not statute-barred.

Ms. Lunsted's Claim to One-Half the Proceeds of the Townhouse

- [74] On this summary trial application, Mr. Lunsted has sought orders not only enforcing the Settlement Agreement and the Berg Property Agreement, but also dismissing Ms. Lunsted's claims to an interest in his property more generally.

- [75] Schedule 4 of the Second Amended Counterclaim includes a claim to one-half the net proceeds of the townhouse Mr. Lunsted purchased after the parties had separated. The parties adduced evidence regarding the circumstances surrounding the acquisition of and payment for the townhouse, who lived there, and Mr. Lunsted's subsequent use of the proceeds of its sale to fund the Berg Property. There was no suggestion before me that the townhouse claim engages the Separation Agreement.
- [76] The parties agree they were separated and no longer in a spousal relationship when the townhouse was acquired and that Mr. Lunsted used only his share of the net proceeds of sale of the family home to purchase it, with Ms. Lunsted retaining her share of those proceeds. As explained above, Ms. Lunsted is out of time to challenge that division. They also agree that Ms. Lunsted did not contribute funds towards the townhouse purchase or related expenses such as the mortgage.
- [77] At the hearing of this application, Ms. Lunsted indicated she did not know what the legal basis for her claim to the townhouse was. She said the pleadings were drafted by her previous lawyer and she would have to check. She did not allege any agreement between the parties regarding the townhouse. She said she thought the claim might have been advanced because during the time she was staying in the townhouse she paid for everything for herself and the children, including all groceries and bills, and Mr. Lunsted only covered the townhouse mortgage and his own expenses. However, even if true, Ms. Lunsted's complaints regarding Mr. Lunsted's alleged non-payment of his fair share in the way of child support and expenses such as groceries post-separation do not provide a basis for an enforceable interest in land.
- [78] This matter has already twice been scheduled for trial, once in 2022 and once in 2023. The latter trial was adjourned at the eleventh hour. Ms. Lunsted has had legal representation at various stages of these proceedings. She has also had ample notice of this summary trial application and was given the opportunity to file additional material. She provided evidence of her financial situation and the expenses she incurred around and during the time she stayed at the townhouse. Despite this, she has been unable to articulate a basis for her claim to one-half the net proceeds of the townhouse, and I can discern nothing in the evidence adduced that provides the basis for a viable claim to an interest in that property.
- [79] I find that Ms. Lunsted's claim to the townhouse must be dismissed.

Ms. Lunsted's Claim to an Interest in the Berg Property

- [80] Mr. Lunsted also seeks the dismissal of Ms. Lunsted's counterclaim regarding the Berg Property. He does so on the basis that she relinquished any claim to it when she signed the Berg Property Agreement. Ms. Lunsted says she did not sign that agreement and it is not a binding document. The parties' dealings regarding the Berg Property post-date their separation and the end of their spousal relationship.

- [81] In her Second Amended Counterclaim, Ms. Lunsted acknowledges that she signed the Form A Property Transfer but says she did so under duress, without the benefit of legal advice, for less than fair market value and on the belief that she could continue to assert a claim against the Berg Property.
- [82] I find as a fact that the parties signed the Berg Property Agreement and that it is a binding contract effectively barring Ms. Lunsted's current claim to the Berg Property.
- [83] Ms. Lunsted acknowledges that the Berg Property Agreement bears her signature but suggests it may be a fraudulent document. On examination for discovery, she said she did not remember signing it and had not seen it before.
- [84] However, the legitimacy of the Berg Property Agreement is not only supported by Mr. Lunsted's evidence but also by the parties' conduct at that time, as well as the documentary record. It is possible that Ms. Lunsted does not remember signing the Berg Property Agreement, but I find as a fact that she did.
- [85] I accept Mr. Lunsted's evidence on the signing of the Berg Property Agreement. First, his affidavit evidence was clear and appropriately detailed in that regard and appended contemporaneous documentation consistent with his account. That documentation included a record of the parties' communications at the time and legal correspondence and documents surrounding the Berg Property transfer, which I discuss at greater length below.
- [86] Second, the parties' conflicting evidence on the Berg Property Agreement and transfer was one of the areas upon which cross-examination was allowed. Mr. Lunsted was steadfast when cross-examined and his responses were cogent and grounded in facts and circumstances borne out by the broader evidentiary record.
- [87] My conclusion that Ms. Lunsted signed the Berg Property Agreement is also consistent with her own evidence that as of at least April of 2016, she was eager to obtain a return of the funds she had invested in the Berg Property and to be removed from title and mortgage so that she could purchase her own property. The Berg Property Agreement effectively assured her of those things.
- [88] In fact, the record of email communications between the parties is consistent with Mr. Lunsted's evidence that in the lead-up to June 24, 2016, which is the date of the Berg Property Agreement, Ms. Lunsted was dealing with logistics surrounding the purchase of a mobile home and was inquiring about the return of her funds so she could secure financing for that purchase. That record also subsequently includes an email written by Mr. Lunsted dated June 23, 2016, the day before the Berg Property Agreement, with draft wording for that agreement entitling Ms. Lunsted to a return of the very funds she had been inquiring about. In a subsequent email, Ms. Lunsted makes clear she wishes to be removed from title to the Berg Property as quickly as possible. She also confirmed this during the hearing before me. That is also consistent with the Berg Property Agreement.

- [89] The pattern of communications in which Ms. Lunsted effectively requested aspects of what the Berg Property Agreement gave her is more consistent with Mr. Lunsted's account of the agreement being signed, which I have accepted, than with Ms. Lunsted's denial of it.
- [90] Further, on July 26, 2016, Ms. Lunsted signed the Form A Land Title Transfer in the presence of a lawyer transferring her 35-percent interest in the Berg Property to Mr. Lunsted. That form indicated the transfer was for one dollar and all other good and valuable consideration. She also signed a postponement agreement granting Mr. Lunsted's lender priority over any interest she might have in the property.
- [91] Those documents were then transmitted to the lender along with a letter from the lawyer who had signed the Form A Transfer stating, "We have provided Ms. Lunsted with I.L.A. regarding the transfer of property. She confirms that she is not to receive any further funds upon registration of the mortgage being registered to Mr. Lunsted on the property. She further confirms that she has received adequate compensation previously by Mr. Lunsted for the transfer of the property." Immediately below this text, Ms. Lunsted signed, stating she confirmed the above.
- [92] Ms. Lunsted effectively denies the contents of this letter, stating that she did not receive independent legal advice and was not of the view that she was receiving adequate compensation. However, her affidavit evidence on this topic is vague and she was equally unable to provide a cogent explanation when pressed on this point in cross-examination.
- [93] In the face of a body of credible evidence supporting the legitimacy of the Berg Property Agreement, I reject Ms. Lunsted's denials. In so saying, I wish to be clear that my findings in this regard should not affect any future assessment of Ms. Lunsted's credibility on the matters that remain in issue in this litigation. The issues on which I have made findings are, in my view, entirely discrete.
- [94] For the sake of completeness, I will address two additional points. First, in her pleadings, Ms. Lunsted alleges that the Form A Transfer for the Berg Property was signed under duress. The onus is on her to establish duress and the evidence on this application was simply insufficient to the task, particularly considering the findings I have made on the evidence as a whole.
- [95] Second, much of Ms. Lunsted's argument regarding the Berg Property turns on the assertion that, while she did agree to a return of her initial \$68,500 investment, she would not have agreed to relinquish any claim to further amounts, notably to any proportionate share of the increase in value of that property between the time of purchase and her removal from title just over a year later. This is not persuasive either.
- [96] First, I have already concluded that the Berg Property Agreement was a valid agreement and it is accepted that Ms. Lunsted received the \$68,500 contemplated in that agreement. It is also accepted that Mr. Lunsted paid off the loan referred to in the Berg Property Agreement and took on all financial liabilities relating to the Berg Property, absolving Ms. Lunsted of

same. As long as consideration exists, the law will not generally enter into an investigation of its adequacy: *Fuhr v. Taylor*, 2023 BCSC 173, at para. 78. There is also no indication that Ms. Lunsted would have been willing to receive less than her \$68,500 investment if the property's value had in fact decreased in the year she was on title.

- [97] Second, the record is not sufficient to conclude that there was in fact an increase in value during that period. In the absence of any demonstrated increase in value, Ms. Lunsted's argument that she would not have forgone such an increase does not assist her. There is, in fact, conflicting evidence on this point. The parties point to sources such as declared values and municipal assessments that suggest either an increase or a decrease in the property's value. However, there is no appraisal report or equivalent expert evidence before the Court.
- [98] Municipal property assessments are generally inadequate to the task of establishing market value. The fact that certain improvements may have been made in the year that the respondent was on title also does not provide an answer to the valuation question as it was presented before me.
- [99] While the rule requiring expert valuation evidence may be relaxed in family law disputes where neither side is clearly subject to any burden of proof and the court's task is simply to estimate the value of property for the purpose of dividing a family asset, that is not the situation here: *Dosanjh v. Liang*, 2015 BCCA 18, at paras. 60 - 61.
- [100] Here, Ms. Lunsted bears the burden of making out any claim she wishes to advance on the basis of an alleged increase in value in the Berg Property in the face of possibly conflicting assessments in that regard. She has not done so despite two previous trial dates and the opportunity to file additional material on this summary trial application, an application in which her claim to the Berg Property was centrally in issue.
- [101] Accordingly, I find that Ms. Lunsted's claim to the Berg Property must be dismissed.

CONCLUSION

- [102] In light of all of the above, Mr. Lunsted's application for enforcement of the Separation Agreement and dismissal of Ms. Lunsted's counterclaim for spousal support is dismissed as not suitable for disposition on this summary trial application.
- [103] However, Mr. Lunsted's application for dismissal of Ms. Lunsted's property claims, which are particularized in Schedule 4 of the Second Amended Counterclaim, is allowed. The property claims are dismissed and any encumbrances the respondent has registered against the Berg Property must be moved forthwith.
- [104] Mr. Lunsted seeks special costs of this summary trial. In my view, success has been divided. Ms. Lunsted was successful in opposing Mr. Lunsted's application for summary dismissal of the claim to set aside the Separation Agreement and for spousal support. However, Mr. Lunsted was successful in having the respondent's property claims dismissed.

[105] In the circumstances, each party should bear its own costs.

[106] CNSL K. GILL: Thank you, Justice. I just have one quick question just for my understanding if I am correct. So with respect to the Separation Agreement, if -- the spousal support, that is still an issue and otherwise the Separation Agreement has essentially not been dealt with, and so when it comes to procedural fairness or substantive fairness it is to be before a trial forum is my understanding.

[107] THE COURT: That is correct. I have made no findings whatsoever with regard to the enforceability of the Separation Agreement.

[108] CNSL K. GILL: Okay. Thank you, Justice.

[109] THE COURT: Thank you.

"Bantourakis J."

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/24/16/2024BCSC1618.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lunsted-v-lunsted-2024>

Prepared on 26 October 2026 · Esheria