

CANADA / JUDGMENT

Malika v. Malik

2025 BCSC 1977

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1977 Malika v. Malik

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Malika v. Malik,

2025 BCSC 1977

Date: 20250812

Docket: E69109

Registry: New Westminster

Between:

Olesja Malika

Claimant

And

Rana Malik

Respondent

Before: The Honourable Madam Justice Lamb

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

P. Kucharczyk

Agent for D. Klein

Counsel for the Respondent:

S. Sehdev

Place and Date of Hearing:

New Westminster, B.C.

August 7, 2025

Place and Date of Judgment:

New Westminster, B.C.

August 12, 2025

Introduction

- [1] THE COURT: In this family law action, the respondent applies for an interim order to sell the former family home, with the proceeds of sale to be used to pay the debts secured against the former family home and an interim distribution of \$30,000 to each party pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25. The balance of the proceeds of sale would be held in trust.
- [2] The claimant opposes the application to sell and the application to remove the certificate of pending litigation that she has registered against the former family home. It appears that the claimant's objection is to the sale price rather than to selling the property at all.
- [3] This application is urgent because, unlike most interim sale applications, the respondent is applying for an order that the former family home be sold pursuant to a contract of purchase and sale the respondent entered into on June 13, 2025, (the "sale contract"). The sale of the former family home is scheduled to close on August 15, 2025, with vacant possession to be provided to the purchaser on August 16, 2025.
- [4] In terms of the other relief sought by the respondent in his notice of application filed August 1, 2025, the parties (to their credit) were able to agree on the parenting order sought by the respondent. Starting August 15, 2025, both parties will have regular parenting time with the three children.

Background Facts

- [5] The parties married on November 16, 2006, and separated on July 25, 2023.
- [6] The parties purchased the former family home in the respondent's name in May 2019. Until recently, the parties continued to live in the former family home after separation with their three children and the claimant's mother. The respondent moved into newly rented premises in July of 2025.

- [7] The claimant filed a notice of family claim on January 5, 2024. The respondent filed a response to family claim and counterclaim on June 25, 2024.
- [8] The parties attended a judicial case conference on July 11, 2024.
- [9] I was advised that the parties brought cross-applications in June 2025 for exclusive possession of the former family home. I was advised that the applications were dismissed, at least in part due to the potential sale of the former family home. I was not provided with a copy of the reasons for judgment in respect of that application.
- [10] The trial in this matter is scheduled for November 23, 2026, for 10 days. The only significant family asset is the former family home.
- [11] I will outline my findings of fact related to the sale contract before turning to the legal framework that applies and my analysis of each of the issues to be decided.

The proposed sale of the property

- [12] I am satisfied the claimant was aware that the respondent had listed the former family home for sale by January of 2025 without undertaking any renovations or repairs.
- [13] According to the respondent, following the parties separation in July of 2023 and continuing until he listed the former family home for sale, the claimant "repeatedly conveyed her desire for [him] to sell the house and provide her with the proceeds enabling her to pursue her own goals". The claimant does not deny that she said this to the respondent.
- [14] In October 2024, before engaging a realtor, the respondent verbally informed the claimant that he would be listing the former family home for sale. The respondent provided her verbal consent. As a result, the respondent did not apply for an interim order to sell the former family home.
- [15] On October 30, 2024, realtor Julian Thompson did a walk-through of the former family home at the respondent's request. Mr. Thompson described the property as a "hoarder house with extreme odour due to multiple pets and unclean litter". Photos attached to the respondent's affidavit corroborate that description.
- [16] Before seeing the property Mr. Thompson had initially suggested listing the former family home for \$850,000. After seeing the property, Mr. Thompson suggested listing for \$775,000 and advised the respondent that they would sell below that figure.
- [17] On November 7, 2024, Mr. Thompson met with the claimant to discuss the option of selling the property in its current state, cleaning it up while they lived there, or moving everyone out to improve the property. Mr. Thompson discussed the option of repairing the whole house by painting, replacing carpeting and a few other little things. The claimant discussed the possibility of doing some of the repairs herself to increase the value of the property. The claimant told Mr. Thompson she was going to look into subsidized housing. Mr. Thompson explained his recommendation regarding the list price and emphasized that the current

condition of the property would drastically impact the price. He explained that there were few people willing to take on renovation projects due to the cost and those that did often wanted to make a profit in doing so.

- [18] On November 21, 2024, the claimant told Mr. Thompson that she felt it was best for everyone to move out of the former family home and have everything repaired before putting it up for sale. The claimant was not responsive to the respondent's request that she contribute to the cost of carrying out the repairs. The respondent told Mr. Thompson that he could not afford to pay for renovations in addition to the other expenses he was carrying.
- [19] On December 18, 2024, the claimant told Mr. Thompson that she spoke to her lawyer and she would not move "unless [the respondent] fixes [the former family home] and sells for the proper full value, if he decides he doesn't has means or time then he'd need to split the half of the full value from whatever means he wants to arrange and then [she would] vacate the property". Mr. Thompson passed this information along to the respondent.
- [20] In or around December 2024, the respondent entered into a multiple listing agreement with Mr. Thompson. Mr. Thompson told the claimant this was happening. Mr. Thompson provided a copy of the initial listing of the property for \$850,000 to the claimant and advised the claimant when the respondent authorized a price drop to \$799,000 on February 24, 2025. In response to the claimant's inquiry, Mr. Thompson told the claimant the outstanding mortgage balance was approximately \$510,000. The claimant responded to Mr. Thompson by text, "Oh, okay, let's see how it goes. If still not happy on lover (sic) than that to be honest as he should fix it up".
- [21] From December 2024 to June 2025, Mr. Thompson had only received verbal offers as low as \$600,000, which the respondent said were too low, so no offer was written.
- [22] In April 2025, the property was co-listed with another realtor, Eugene Knoedler. Mr. Knoedler is experienced in the Delta market.
- [23] Both realtors contacted the claimant to request viewings of the property by perspective purchasers. The claimant's cooperation with these requests was variable.
- [24] The respondent entered into the sale contract on June 13, 2025, at a sale price of \$690,000. The sale contract is the only written offer received after listing the property for six months.
- [25] On June 17, 2025, counsel for the claimant advised counsel for the respondent that the claimant "was not amenable to removing the CPL on the family home at this juncture".
- [26] The sale contract was forwarded to counsel for both parties by email on June 23, 2025, at 9:09 a.m. Later that day, counsel for the respondent emailed counsel for the claimant to advise that they would ask to release the date of July 4, 2025, for the respondent's application and canvass a date once the unconditional sale contract was in place. The buyer removed subject clauses and paid the deposit on June 26, 2025.

[27] The respondent filed his notice of application on August 1, 2025, and he received short leave to have the application for interim sale of the former family home heard on August 7, 2025. That is the application that came on for hearing before me.

Should the former family home be sold pursuant to the sale contract?

[28] For the reasons that follow, I am satisfied that the sale of the former family home is necessary. In the circumstances of this particular case, I am satisfied that it is appropriate to order the claimant to vacate the property on or before August 15, 2025, to allow the sale contract to complete.

Legal Framework

[29] This application is brought pursuant to Rule 15-8 of the Supreme Court Family Rules, which provides that the court has discretion to order a sale of property if it appears to be "necessary or expedient" and authorizes the court to make directions as to the conduct of the sale.

[30] Although many of the cases consider whether it is necessary and expedient for property to be sold, Rule 15-8 clearly provides that property may be sold when it is necessary or expedient. Rule 15-8 is disjunctive, which means that proof of necessity or proof of expedience is sufficient.

[31] The court may grant an order under Rule 15-8 in circumstances where the sale of the family home would be inevitable given the financial circumstances of the parties: *R.R.S. v. B.R.M.S.*, 2021 BCSC 1330 at paras. 29 to 30, as cited in *Raj v. Raj*, 2022 BCSC 110 at para. 122.

[32] Our Court of Appeal confirmed in *Dosanjh v. Lalli*, 2021 BCCA 204, at para. 33, that where necessity is not an issue, a court-ordered sale of property must be advantageous to both parties in order to qualify as expedient for the purposes of Rule 15-8.

[33] In *Hodgins v. Hodgins*, 2025 BCSC 799, Justice Hughes summarized some of the principles on an application for interim sale as follows:

[28] The applicant bears the onus of establishing necessity or expediency. If a sale is not necessary and the applicant relies on expediency, then the sale must be objectively advantageous to both parties: *K.J.M.* at para. 14; *Dosanjh v. Lalli*, 2021 BCCA 204 at para. 33. Whether it is "necessary or expedient" for property to be sold will depend on the circumstances of each case: *Dosanjh* at para. 33. In the family law context, relevant factors for consideration under Rule 15-8 may include, among others, the availability of alternative accommodation, the emotional condition of the spouses, external economic factors, wasting of the asset, the capacity of both parties to maintain the asset, whether the status quo should be preserved until trial, whether the sale will defeat a claim for reapportionment, and the likelihood that an order for sale will promote settlement: *Luo v. Chan*, 2025 BCSC 703 at para. 40, citing *Laflamme v. Beauparlant*, 2024 BCSC 1008, at para. 31; *Dosanjh* at para. 33.

[29] If the applicant does not establish that an interim sale is necessary or expedient, or there are any doubts regarding the justice of such an order, then the status quo should prevail: Kapoor v. Makkar, 2020 BCCA 223 at para. 22; see also Etemadi at para. 89.

[34] I will now explain why I find the sale of the former family home is necessary based on the parties' financial circumstances.

The parties' financial circumstances make a sale inevitable

[35] I am satisfied it is inevitable that the former family home will have to be sold. It is clear on the evidence that neither party has the financial resources to buy out the other party's interest in the former -- interest in the former family home. Further, the claimant does not have the financial resources to pay the mortgage on the former family home or assume the mortgage on her own. The respondent cannot afford to pay for separate accommodation for himself and the children and pay the mortgage and other expenses for the former family home.

[36] There was limited current financial information available on this application. The claimant made a F8 financial statement in January 2024 and the respondent made an F8 financial statement in May 2024. I have not been provided with updated financial statements for the purposes of this application.

[37] The parties have modest means. As mentioned, the former family home is the parties' only significant asset. The B.C. Assessment value of the property as of July 1, 2024, was \$788,000. It is significant that the property's value as of July 1, 2023, was \$803,000; that is, there was a decrease in the property's value between 2024 and 2023. As of July 30, 2025, the respondent estimated the amount owing to discharge the mortgage on the property was \$506,000. There is also a judgment for \$30,000 registered against the property. The respondent estimates the realtor's commission will be \$17,250. As a result, without accounting for legal fees for the conveyance and assuming there are no property tax liabilities outstanding, there is net equity in the former family home of approximately \$136,750. These figures may be slightly different when the sale completes as a printout from the bank indicates property taxes owing of \$6666.59 and an outstanding mortgage balance of \$503,046.84, without accounting for any penalty for early payout of the mortgage. I am satisfied that the parties would do well to receive the net amount of \$136,750 if the sale contract completes.

[38] In his May 2024 F8 financial statement, the respondent deposed he paid the monthly mortgage payment of \$3,700 for the former family home. In addition, the respondent pays strata fees of \$375 per month, property taxes of \$200 per month, and heat and electricity of \$250 a month. In short, the cost to reside in the former family home exceeds \$4,500 per month. The respondent has been paying these costs without contribution from the claimant since July 2023.

- [39] In her most recent affidavit made August 5, 2025, the claimant described her current financial circumstances as precarious. She does not have a regular stream of income, and her employment is limited to working part-time as a background actor and receptionist. She did not provide a specific income in her August 2025 affidavit.
- [40] As of January 2024, the claimant deposed that her annual income totalled \$48,942, of which \$28,000 was employment income and the balance was Canada Child Tax Benefit. Her F8 financial statement indicated that she had \$18,000 in her chequing account, but she also had a car loan and student loan, both incurred post-separation, that total \$56,000.
- [41] At the hearing of this application, the claimant's lawyer submitted the claimant might be able to secure full-time work at some point. However, there is no evidence to suggest when that might occur or what her potential income from any such hoped-for employment might be. Although the claimant apparently pursued some post-secondary training for which she incurred a student loan, and from which she apparently graduated, the claimant failed to provide any evidence on this application to suggest that she has employment prospects that would allow her to assume the mortgage and other expenses related to the former family home or that she has or will have the financial wherewithal to buy out the respondent's share of the former family home. If the claimant had sufficient income to service the costs of maintaining the family home, or had enough financial resources to buy out the respondent, or anticipated an unequal division of family property and debt that might make this a realistic possibility, I would have expected such evidence on this application.
- [42] When the parties separated, the respondent had hoped to buy out the claimant's interest in the former family home, but he realizes that this is not financially feasible for him. It is not clear how the respondent has managed to pay the monthly costs required to preserve and maintain the former family home on his annual income, which was \$52,000 as of his financial statement made in May 2024. The respondent works as an actor and Uber driver. In his third affidavit, the respondent deposed that he obtained financial assistance from his family and friends in order to continue to meet the mortgage obligations amid rising interest rates. It is not clear when and how much financial assistance the respondent obtained.
- [43] On July 15, 2025, after signing the sale contract, the respondent rented a five-bedroom house for a monthly rent of \$3,500. He simply does not have sufficient income to continue paying all expenses related to the former family home and pay rent on separate accommodation for himself and for the children when he has parenting time.
- [44] In short, it is clear that the parties do not have adequate monthly income between them to pay the cost to maintain and preserve the former family home and the rent the respondent has recently undertaken to pay. Even if the sale contract does not complete, it appears likely the respondent will stop paying the mortgage and suggests that it is likely the property will soon end up in foreclosure.

- [45] The claimant's main objection to the sale of the former family home is the list and sale price. In her view, the property should have been repaired to achieve a better sale price. However, Mr. Thompson, the realtor, estimates that the cost to repair the former family home would be in the range of \$25,000 to \$50,000 at the low end and could be even more given the uncertainties inherent in a "hoarder house". Neither the respondent nor the claimant has that kind of money to invest in renovations. There is no evidence that financing for such renovations would be available. Even if such renovations were undertaken, there is no evidence that any renovations would actually increase the value of the property to a figure that would make the renovations worthwhile when the cost of relocating or additional financing is factored in.
- [46] The claimant suggests that she is very handy and could do some of the renovations herself. However, supplies such as paint and carpeting would still be required, and there is little to no surplus family income to pay for such supplies based on the financial disclosure before the court. Further, the claimant has done nothing since December 2024 to improve the property or to propose repairs or improvements that she is prepared to undertake. I am not persuaded that she is genuinely interested in doing renovations herself after seven months of marketing the property as is.
- [47] From a financial perspective, I am satisfied the sale of the former family home is inevitable. The claimant may take issue with the timing of the sale and the sale price, but I am satisfied the property will have to be sold at some point to finalize property division in this case.
- [48] Although not necessary to the outcome of this application, I will briefly review why I find the sale of the former family home is also expedient.

The sale of the former family home is expedient

- [49] On balance, I am satisfied that the sale of the former family home is objectively advantageous to both parties.
- [50] First, there is substantial likelihood that an order for sale will promote settlement. The only significant family asset is the former family home. At best, the net sale proceeds are in the range of \$135,000. Neither party has advanced an excluded property claim. Both have claimed unequal division, though only the respondent has articulated a basis for such a claim in his counterclaim. Whether either party can establish significant unfairness, there remains the fiscal reality that at best the parties only have \$135,000 in equity in the former family home to divide between them, subject to whatever adjustments or unequal division either can prove, that is prior to taking into account the debts that both parties have reported on their financial statements, whether or not any of these debts are family debt.
- [51] Second, there is no evidence before the court that the parties cannot secure alternative accommodation. The respondent has rented other premises. The claimant did not tender evidence that she has made efforts to secure other accommodation and failed. The claimant has not tendered evidence that she anticipates that she will be left without accommodation

if the sale contract completes. I would have expected some evidence to that effect if that was the case. The claimant has known since December 2024 that the respondent had listed the property for sale. She has known since mid-June that the sale contract closed on August 15, 2025. Even though the application for interim sale was not argued until August 7, 2025, the claimant ought to have been aware that the order could be granted, and she ought to have made alternative arrangements or anticipated this potential outcome.

- [52] As I have addressed at some length, the parties do not have the capacity to maintain the asset given their financial circumstances. It is not financially feasible to preserve the status quo until trial. Counsel for the claimant mused about the possibility of the parties continuing to reside together in the former family home. However, this submission seems to ignore the fact that both parties sought exclusive occupancy, suggesting both parties hold the view that cohabitation in a three-bedroom home for more than two years post-separation is simply not sustainable. This does not surprise me.
- [53] There is a real risk of wasting of the asset if the former family home is not sold now. There is a real risk it will go into foreclosure because the respondent cannot afford to pay all expenses related to the former family home and for his new rental accommodation. Any equity in the property will be eroded by any foreclosure proceedings, not to mention the risk of litigation from the purchasers under the sale contract if it does not complete.
- [54] I am not convinced that a sale for the former family home will necessarily defeat a claim for reapportionment. However, there are no other significant family assets that could be reallocated to allow the claimant to retain ownership of the former family home after division of assets.

The former family home should be sold pursuant to the sale contract

- [55] I am satisfied the former family home should be sold pursuant to the sale contract given the financial necessity and the risk of further financial loss to the parties if the sale contract is not honoured. If the sale contract does not complete, the parties face the risk of legal action by the purchaser or the real risk of foreclosure if the respondent stops paying the mortgage because he cannot afford to do so. If there was no sale contract, I would have ordered the former family home sold on the basis of necessity and expediency within a very short timeframe.
- [56] In similar circumstances, this court has given the party residing in premises 30 days to vacate. Those are reasons of Justice Giaschi. The claimant has had more than 30 days notice since mid June that the pending sale had a closing date of August 15, 2025. The only uncertainty was whether the court would order her to vacate.
- [57] I recognize that an order made today to vacate on August 15, 2025, gives the claimant and her mother little time to organize a move. It is not entirely clear why the application to sell the former family home was not set for hearing until August 7. However, the claimant was well aware of the closing date in the sale contract. The claimant may have believed that she

could simply refuse to leave the property unless the respondent capitulated to her demand to pay her in accordance with what she believed the house could sell for if renovated. The fallibility of that belief does not justify breaching the sale contract simply because the application did not proceed sooner, something the claimant could have insisted upon.

- [58] The claimant says the order should not be granted because her mother has not been provided with any notice of this application. I find the lack of notice to the claimant's mother has no legal significance to the issues I must decide. There is no evidence that the claimant's mother has any legal right to reside in the former family home. Counsel for the claimant could not identify any legal basis for any obligation for formal notification of the claimant's mother. In particular, there is no evidence the claimant's mother had a tenancy agreement or any ownership interest in the former family home.
- [59] In the circumstances of this case, where the claimant agreed to sell the former family home and the respondent has established it is necessary to do so, I am prepared to grant the order that the former family home be sold pursuant to the sale contract without prejudicing the claimant's right to argue that the property could have netted greater sale proceeds had it been improved. I am not suggesting that the claimant's position is likely to succeed, particularly in the absence of expert evidence at this stage to show what net benefit could have been achieved or that there were funds available to finance such improvements.
- [60] I am satisfied that the CPL filed by the claimant can be removed as part of the court's authority to order an interim sale; *Y.L. v. G.L.*, 2018 BCSC 1571. Alternatively, as then Master Muir (as she then was) found at paras. 118 to 120 in *Y.L.*, I am satisfied that s. 256(1) and 257 of the Land Title Act allow me to order the CPL to be cancelled. Given my finding it is necessary to sell the property, the continued existence of the CPL on the property will create a hardship if the CPL remains on title.
- [61] I am satisfied that paying the net proceeds into the respondent's counsel's trust account is sufficient security for the claimant's interest, which is what the CPL protects. Even if she was successful on her argument that full value of the property would be the B.C. assessed value of \$788,000, after reducing for the estimated renovation costs the claimant's claim for her share of potential unearned equity would be in the range of approximately \$20,000 to \$32,000, which would be covered by the anticipated net proceeds from the sale.
- [62] The CPL is intended to protect the claimant's interest in the former family home. The CPL is not intended to give the claimant leverage to improve her bargaining position with the respondent with respect to sharing the proceeds of the sale.
- [63] The CPL shall be cancelled as set out in the relief sought in paragraph 2 of Part 1 of the notice of application filed August 1, 2025.

Should there be an order to retain a bailiff as sought at para. 4 of the notice of application?

- [64] In terms of the order sought by the respondent authorizing him to retain a bailiff if the claimant does not vacate the property on or before August 15, 2025, I am satisfied that it is appropriate to grant this order.
- [65] The cost of retaining the bailiff shall be paid from the proceeds of sale from the former family home, and any cost to retain the bailiff shall be shared equally between the parties. Both parties bear some responsibility for the lateness of this application and the inconvenience if not hardship it will cause to the claimant in terms of the short timeline for vacating the former family home.
- [66] The claimant ought to have instructed her counsel in December 2024 that she objected to the sale of the former family home if that was her position. If the respondent had been duly notified, then the respondent could have pursued an application in December 2024 or January 2025 and likely would have obtained this order for sale before listing the property for sale. An early application would have avoided any residual issue about whether the respondent ought to have undertaken repairs that he could not afford, although I have made it clear that this issue appears to have little merit based on the evidence before me.
- [67] Further, the respondent could have given the claimant notice that he intended to enter into the sale contract before he did, and the anticipated purchase price, so the claimant could have made her position clear before the respondent entered into the sale contract.
- [68] I note that the sale contract itself included a condition for the benefit of the seller that he had an opportunity to obtain legal advice on or before June 18, 2025. There is no evidence before me that he obtained such legal advice or that the claimant had notice of the sale contract within that period, which might have allowed the parties to state their positions clearly before the respondent entered into a binding sale contract. The respondent to some extent has created the financial necessity to sell by assuming a rental agreement at a rate of \$3,500 per month, which makes it impossible for him to continue to pay housing costs related to the former family home of \$4,500 per month, to say nothing of any claim for child support and spousal support that has yet to be determined.
- [69] It would have been preferable if this application had been brought promptly after the claimant did give notice to her counsel on June 16, 2025, that she would not be consenting to the removal of the CPL. Again, for reasons unknown to the court, other than to provide an opportunity for settlement and to await a binding sale contract, this application ought to have been brought in late June 2025, which would have given the claimant close to six weeks rather than less than six days to get organized.

[70] By sharing any costs of the bailiff, the parties share the financial burden of delivering vacant possession to the purchaser, which in my view is appropriate in the circumstances. This will encourage the parties to cooperate in providing vacant possession. Clearly, it would be in the best interest of the children if their mother and live-in grandmother do not become unhoused. Again, the respondent bears some responsibility in creating this hardship and must bear the financial consequences of his actions.

Should the parties receive a \$30,000 advance for legal fees?

[71] The respondent seeks \$30,000 for each party pursuant to s. 89 of the Family Law Act to fund this litigation.

[72] Section 89 allows the court to order an interim distribution of family property in limited circumstances:

89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution,
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[73] In para. 57 of McKenny v. McKenny, 2015 BCSC 1345, Justice Fitch said the following:

[57] The claimant correctly notes that the order sought by the respondent is extraordinary in nature and must be assessed carefully. The test governing interim distribution of family property has two components:

- 1) The applicant must show an advance is required to mount a challenge to the other spouse's position at trial; and
- 2) The applicant must show that the advance or payment on an interim distribution basis will not jeopardize the other spouse's position at trial.

[74] In this case, the respondent seeks a \$30,000 advance for himself and for the claimant from the anticipated proceeds from the sale of the former family home. The claimant does not oppose the order if the home is to be sold.

[75] I decline to exercise my discretion to order an interim distribution of family property as I am not satisfied that an interim distribution would not jeopardize the claimant's position at trial. Said otherwise, it may be the case that distributing \$30,000 to the parties for the payment of legal fees might prevent the claimant from recovering her full share of the net family property.

- [76] I note that both parties have listed debts on their F8 financial statements from 2024. The respondent reports a loan from his father of \$151,000 and credit card debt and a line credit totalling \$60,000. The claimant reports credit card debt of approximately \$6,000 and a CRA debt of \$5,700. It is not clear whether any or all of these debts are family debts. An interim distribution of \$30,000 to each party to spend on legal fees would be approximately 50-percent of the net sale proceeds from the sale of the family home. If the parties spent these distributions on legal fees, they might both be left with more family debt than family property.
- [77] An interim distribution would prejudice the claimant's ability to claim a greater share of the proceeds of the sale of the former family home on the basis that renovations ought to have been done prior to sale. Although this position appears to have limited merit and limited likelihood of success based on the materials before me, especially given the lack of finances to pay for renovations, an interim distribution would prejudice the claimant's position at trial should she happen to succeed.
- [78] Further, an order for an interim distribution to pay past and future legal fees might lead these parties into believing that they have adequate financial resources to continue litigating a dispute over modest family property. At best, each party may receive approximately \$50,000 after paying legal fees to date based on the respondent's outstanding legal bill from the proceeds of the sale of the former family home. Respondent's counsel suggested an interim advance is required to provide additional funds to prepare for a 10-day trial. These parties simply cannot afford to pay counsel to attend a 10-day trial, let alone prepare for such a trial.
- [79] One of the reasons for ordering this interim sale of the former family home is that it will likely promote and should promote settlement in this case now that the parties have reached an agreement on an interim parenting schedule. Settlement of this family litigation would allow the parties to pay their outstanding legal invoices without incurring significant additional legal expenses in circumstances where they simply cannot afford to do so. On settlement of the litigation and upon distribution of net proceeds of the sale of the former family home, the parties can address their outstanding legal accounts.
- [80] In dismissing this application for an interim distribution, I grant leave to either party to bring an application pursuant to s. 89 after March 1, 2026, if the parties are not able to reach a settlement.

Costs

- [81] In terms of costs of this application, for the same reasons I ordered the sharing of the costs of the bailiff should that be necessary, I am ordering the parties to bear their own costs of this application despite the respondent's apparent success.

[82] This application comes late and ought to have been pursued earlier in the absence of written consent to sell the property upon agreed-upon terms.

Summary

[83] The relief sought at paras. 1 to 3 of Part 1 of the notice of application filed August 1, 2025, is granted.

[84] The relief sought at para. 4 of Part 1 of the notice of application is granted with the added term that the parties shall equally pay the costs of any bailiff.

[85] The relief sought at paras. 5 and 7 of Part 1 of the notice of application filed August 1, 2025, is granted.

[86] The relief sought at paras. 6 and 8 of the notice of application filed August 1, 2025, is dismissed, with leave granted to either party to bring an application pursuant to s. 89 after March 1, 2026.

[87] The relief sought at paras. 9 and 10 of the notice of application filed August 1, 2025, is dismissed.

[88] With respect to the relief sought at para. 11 of Part 1 of the notice of application, the parties shall bear their own costs.

[89] Those are my reasons.

[90] CNSL S. SEHDEV: Your Honour -- Madam Justice, for the record, in paragraph 10, the parties consented to that order. Would it just --

[91] THE COURT: Oh, my apologies. Yes, which is my --

[92] CNSL S. SEHDEV: [Indiscernible/overlapping speakers]

[93] THE COURT: Yes, my -- that ought to have been, the relief sought at paras. 9 and 10 of Part 1 of this application is granted by consent.

[94] CNSL S. SEHDEV: Yes, [indiscernible/overlapping speakers].

[95] THE COURT: Thank you for -- thank you.

[96] CNSL S. SEHDEV: Thank you. We will be drafting and sending the order for your endorsement today hopefully.

[97] CNSL P. KUCHARCZYK: Thank you, Madam Justice.

[98] CNSL S. SEHDEV: Thank you, Madam Justice.

[99] THE COURT: Thank you.

"Lamb J."

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