

CANADA / JUDGMENT

Martselos v. Kylo

2025 BCSC 1617

COURT

Supreme Court of British Columbia

DECIDED

21 August 2025

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2025 BCSC 1617 Martselos v. Kylo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Martselos v. Kylo,

2025 BCSC 1617

Date: 20250821

Docket: E18096

Registry: Salmon Arm

Between:

Gerrasimos Gerry Martselos

Claimant

And

Sarah Gwyneth Kylo

Respondent

Before: The Honourable Justice B. Smith

Reasons for Judgment

The Claimant, appearing in person:

G.G. Martselos

Counsel for the Respondent:

K.E. Walman

Place and Date of Hearing:

Salmon Arm, B.C.

August 12, 2025

Place and Date of Judgment:

Salmon Arm, B.C.

August 21, 2025

Introduction

- [1] This matter involves a family law dispute. The applicant, Ms. Kylo (respondent in the action), is represented by counsel. The respondent, Mr. Martselos (claimant in the action) is a self-represented litigant.
- [2] The applicant applies for orders that: this matter proceed by way of summary trial; the claims in the respondent's notice of family claim be dismissed; a charge on residential property be cancelled; and costs.
- [3] For the reasons that follow, the application is allowed.

Factual Background

- [4] The parties began cohabitating sometime in 2014 - the applicant says November and the respondent says July. As will be seen, nothing turns on the determination of that fact in issue.
- [5] The parties never married. They have two children of the marriage - one born in March 2015, the other in September 2019.
- [6] On or about October 31, 2014, the applicant became the sole owner of residential property located at 1230 Green Road South in Sicamous, B.C. (the "Property"), having purchased it from her grandparents with the financial assistance of her parents. The applicant says she acquired ownership of the Property before the parties started cohabiting, the respondent says it was after. Again, nothing turns on the determination of that fact in issue.
- [7] The parties separated in September 2017.
- [8] During the parties' relationship, they lived together at the Property. When the parties separated, the respondent left the Property.
- [9] In early November 2017, the parties started negotiations to try and reach a comprehensive settlement agreement. During the negotiations, the applicant was represented by counsel. The respondent was acting on his own behalf.

- [10] On July 3, 2018, after efforts to reach agreement on the terms of a draft separation agreement had failed, counsel for the applicant informed the respondent by email that: their negotiations had not been fruitful so far; she did not have instructions from the applicant to continue negotiations or to make any further settlement offers; and the applicant would review and consider any settlement offers the respondent wished to make.
- [11] According to the applicant, the negotiations permanently ended on or about July 3, 2018. She says that since then the parties have not engaged in any discussions, negotiations, or alternative dispute resolutions concerning family property and family debt, including with respect to the Property.
- [12] According to the respondent, the negotiations continued for some time after July 3, 2018.
- [13] On March 21, 2018, the respondent placed a charge on the Property, pursuant to the Land (Spouse Protection) Act, R.S.B.C. 1996, c. 246 [LSPA].
- [14] On September 17, 2024, the respondent filed a notice of family claim. The relief sought was exclusively related to property division.
- [15] On October 23, 2024, the applicant filed a response to family claim and counterclaim seeking orders that: the charge on the Property be removed; the claims in the notice of family claim be dismissed; and costs. The respondent has not filed a response to the counterclaim.

Applicant's Position

- [16] The applicant's position is that the respondent's claims in the notice of family claim should be dismissed on the basis that they are statute-barred by operation of s. 198(2)(b) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Consequently, the applicant says the charge against the Property should be cancelled as the respondent has no interest in the Property for the charge to protect.

Respondent's Position

- [17] The respondent's position is that the claims in the notice of family claim should be allowed to proceed in the interests of justice, pursuant to Rules 22(1), 22(4), and 15(8) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules], and the court's inherent jurisdiction. The respondent asserts that the applicant has perjured herself in her affidavits and that to grant her application would be a miscarriage of justice.

Discussion

The matter is appropriate for summary trial

[18] The matter is suitable for summary trial by operation of Rule 11-3(15), because the application turns on whether the respondent's claims in the notice of family claim are statute-barred, and the facts necessary to determine that question are either undisputed, or can be determined from the whole of the evidence before me on the application.

The respondent's claims are statute-barred

[19] The respondent's claims for property division are statute-barred by operation of s. 198(2)(b) of the FLA.

[20] In the case of spouses who were living in a marriage-like relationship, as is the case here, s. 198(2)(b) of the FLA prohibits either of them from starting a proceeding under Part 5 (Property Division) of the FLA more than two years after the date of separation.

[21] I find that the date of separation is September 10, 2017, based on the respondent's affidavit in support of his application for a charge on the Property, in which he deposes that he resided at the Property between November 1, 2014 and September 10, 2017.

[22] Absent a suspension of, or exception to, the operation of s. 198(2)(b) of the FLA, the respondent was prohibited from starting a proceeding under Part 5 (Property Division) after September 10, 2019.

[23] There are two suspension periods which I must consider in this case. The first concerns the temporary suspension of mandatory limitation periods for commencing a family action, proceeding, or claim during the COVID-19 pandemic (the "Pandemic Suspension"). The second concerns suspension during any period in which the parties are engaged in family dispute resolution (the "Dispute Resolution Suspension").

[24] The Pandemic Suspension period was from March 26, 2020 to March 25, 2021: pursuant to items 3, 7 and 27 of the COVID-19 Related Measures Act, S.B.C. 2020, c. 8, since repealed, the operation of all mandatory limitation periods for commencing a family action, proceeding, claim or appeal in all courts in British Columbia were suspended on March 26, 2020; and pursuant to Order in Council 655/2020, the temporary suspension of mandatory limitation periods for commencing a family action, proceeding, claim, or appeal ended on March 25, 2021.

[25] Section 198(5) of the FLA suspends the running of the limitation period during any period in which the parties in a family law proceeding are engaged in family dispute resolution with a family dispute professional or a prescribed process. Negotiations between counsel and self-represented litigants can be considered "dispute resolution" for the purpose of suspending the operation of the limitation period in s. 198(2)(b) of the FLA: Welliver v. Hees, 2016 BCSC 1837.

[26] The applicant says the negotiations concerning property division ended on July 3, 2018 - 21 months before the start of the Pandemic Suspension period. The Pandemic Suspension period ended on March 25, 2021. Accordingly, the applicant says the respondent's claims for property division became time-barred three months later - on June 25, 2021.

[27] The respondent says that the negotiations concerning property division did not end on July 3, 2018. When pressed for details concerning the factual basis for his assertion in this regard, he made vague references to having met with the applicant's parents and claimed that he was being unlawfully denied parenting time with his children. The evidence about the end date of negotiations concerning property division is contrary to the respondent's assertions. At paragraph 7 of the respondent's affidavit #2, he deposes:

I agree with Ms. Kylo's claim [16] that she would not negotiate whatsoever since 2018, as I attempted many times to resume negotiations outside of court and Ms. Kylo refused, often withholding visitation of my children as a consequence for these attempts to divide assets

[28] Notably, the respondent italicized the word "agree", from which I infer he meant to emphasize his agreement with the applicant's claim that "she would not negotiate whatsoever since 2018 for these attempts to divide assets".

[29] Essentially, the respondent complains that he wanted to continue to negotiate, but the applicant did not. That is not a negotiation. The comments of Justice MacNaughton, as she then was, in *Cao v. Wu*, 2021 BCSC 785 at paras. 18-19 are apt:

[18] It is also the case that s. 198(5) only suspends the operation of the time limits for the period in which persons are engaged in a family dispute resolution. That language, being plural, requires that both persons be engaged in dispute resolution. It is not sufficient if one of the spouses is trying to resolve the dispute while the other is not. As Justice Butler explained at para. 36 of *Welliver*, the engagement of both parties is required.

[19] Justice Butler reasoned at para. 44 of *Welliver* that "if all that was required to extend the limitation was the retention of counsel by one party and an attempt to start settlement discussions, there would, in many cases, be an ongoing suspension of the running of time." Section 198(5) cannot be interpreted to lead to that result. Such an interpretation would undermine the intention of encouraging resolution of family disputes out of court.

[30] I find that the negotiations concerning property division ended on July 3, 2018.

[31] Next, the respondent argues his agreement with the applicant is evidence that he was engaged in a "prescribed process". The comments of MacNaughton, J. in *Cao* at para. 22 are again apt:

- [22] The FLA was amended effective March 25, 2019, to add the prescribed process wording in subsection 198(5)(b). The only prescribed processes for the purposes of s. 198(5)(b) are set out in s. 21.5 of the Family Law Act Regulation, B.C. Reg. 347/2012. They are the early resolution requirements described in ss. 5(a), (c)-(e) of appendix B of the Provincial Court (Family) Rules, B.C. Reg. 417/98.
- [32] The parties did not engage in these prescribed early resolution processes. Accordingly, I find the parties were not engaged in a "prescribed process".
- [33] I turn now to the respondent's arguments concerning my jurisdiction to allow his claims for property division to proceed.
- [34] Concerning the respondent's submission that the Rules authorize waiver or modification of the limitation period, I find that his reliance on Rule 22-1(2) and Rule 15-8 is misplaced. Rule 22-1(2) deals with time limits set by the Rules. It has no application in this context, because the limitation period is found in s. 198(2)(b) of the FLA, not the Rules. Rule 15-8 deals with orders for sale. It has no application in this context, because the limitations issue has nothing to do with orders for sale.
- [35] Concerning the respondent's submission that I can and should exercise the court's inherent jurisdiction in order to allow his claims to proceed, I find that to do so would in these circumstances be an improper exercise of the doctrine of inherent jurisdiction. The operation of the doctrine of inherent jurisdiction is not unlimited: *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at para. 22 [CLA]. Inherent jurisdiction must be exercised without contravening any statutory provision: CLA at para. 23. Essentially, the applicant is asking the court to exercise its inherent jurisdiction for the purpose of preventing the lawful operation of s. 198 of the FLA. I decline to do so.
- [36] For the foregoing reasons, I find, based on the evidence before me, and the applicant's calculation of time, that the respondent's claims for property division became statute-barred on approximately June 25, 2021.

The charge on the Property should be cancelled

- [37] The charge on the Property should be cancelled by operation of s. 249 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA].
- [38] Section 249 of the LTA grants the court authority to order a charge against property to be cancelled on payment into court of a specified amount of money by the person claiming relief.
- [39] I have found that the respondent's claim is statute-barred. Accordingly, the respondent has no interest in the Property for the charge against the property to protect. The sole effect of the charge is to impede the applicant's ability to deal with the Property.

- [40] I am satisfied that the applicant has met the requirements of s. 249 of the LTA. The charge against the Property will be cancelled.
- [41] Concerning the posting of security, in *Dozzi v. Hogg*, 2021 BCSC 633, Justice Punnett found that an ex-spouse's claim for an interest in property was statute-barred and determined, also in the context of a LSPA charge, that the charge should be cancelled without any security being posted. In my view, that is the appropriate outcome in this case.

Conclusion and Orders

- [42] The respondent brought a claim for property division under Part 5 of the FLA more than three years after the expiry of the limitation period, six years after negotiations concerning property division ended, and seven years after separation.
- [43] Pursuant to Rule 11-3 of the Rules, the application to proceed by summary trial is granted.
- [44] Upon receipt of a certified copy of my order, the Registrar of the Kamloops Land Title Office will cancel LSPA charge having Registration Number: LB561519 on title to the property located at 1230 Green Road South, Sicamous, British Columbia, and legally described as:

Parcel Identifier: 002-259-613

Legal Description:

LOT A SECTION 31 TOWNSHIP 21 RANGE 7 WEST OF THE 6TH MERIDIAN

KAMLOOPS DIVISION YALE DISTRICT PLAN 22295

- [45] The claims in the notice of family claim are dismissed.
- [46] The requirement of the respondent's signature on my order arising from the application is dispensed with.
- [47] The applicant has been entirely successful and is entitled to her costs at Scale B.

"B. Smith J."

B. SMITH J.

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