

CANADA / JUDGMENT

Maryoush v. Ibrahim

2020 BCSC 599

COURT

Supreme Court of British Columbia

DECIDED

20 April 2020

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2020 BCSC 599 Maryoush v. Ibrahim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Maryoush v. Ibrahim,

2020 BCSC 599

Date: 20200420

Docket: E181717

Registry: Vancouver

Between:

Marwa Amir Maryoush

Claimant

And

Khdor Ibrahim, also known as Khodre Ibrahim, also known as Khadar Ibrahim,

Also known as Khodor Ibrahim, also known as Kodor Ibrahim, also known as Kador Ibrahim,
also known as Hidir Ibrahim,

Highrise Pro Holdings Inc., Spider Holding Ltd., Spider Solutions Ltd.,

Fevzi Taha Cetinkaya, Van Pro Solutions Ltd., and

Extreme Power Wash Ltd.

Respondents

And

Lloyd's Sky Contractors Inc., also known as Van Pacific Solutions Ltd.

and Kador Contracting Group Ltd.

Respondents by Counterclaim

Before: Master Muir

Reasons for Judgment

Counsel for the Claimant:

L.R. Nambiar

The Respondent, Khdor Ibrahim, appearing in person:

K. Ibrahim

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

March 6, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 20, 2020

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introduction

- [1] By way of a notice of application filed February 24, 2020, the claimant seeks the following orders against the respondent, Khdor Ibrahim, who apparently has several different iterations of his name ("Mr. Ibrahim"):
- a. that he be fined for non-compliance with various court orders,
 - b. for an order that a property in North Vancouver, BC in Mr. Ibrahim's name (the "Deep Cove Property") be sold, with the claimant having conduct of the sale and the sale proceeds to be paid to her for the following:
 - i) arrears in child support;
 - ii) court ordered costs and fine payable to her pursuant to an order of Justice Groves made December 5, 2019 (the "December 5, 2019 Order");
 - iii) for use by her in this family proceeding;
 - iv) for future non-payment of support; and
 - v) for any fines awarded by me arising from this hearing.
 - c. Special costs or, alternatively, costs of this application payable by him to the claimant.

Background

- [2] A very lengthy evidentiary and procedural background must be canvassed in order to properly comprehend the issues and the interests of justice on this application.
- [3] The claimant was born in 1989 and Mr. Ibrahim was born in 1970.
- [4] Mr. Ibrahim entered Canada as an illegal immigrant on August 27, 2000.
- [5] The claimant immigrated to Canada in 2002 with her parents and three brothers.
- [6] The Immigration and Refugee Board of Canada denied Mr. Ibrahim's refugee status in reasons dated June 18, 2003: Re Khdor Ibrahim, RPD file # VA1-00584.
- [7] The claimant says that Mr. Ibrahim tried to delay deportation by various applications for pre-removal risk assessments and permanent residence based on marriages of convenience and spousal relationships. These included:
- a marriage-of-convenience to Kevin Kang in 2005;
 - an attempted sponsorship by Sohaila Sayed in 2010; and
 - a further marriage-of-convenience to Yan Xia Liu in 2011.
- [8] The claimant alleges that she and Mr. Ibrahim met in 2009 through her brother, Hisham Maryoush, who was Mr. Ibrahim's business partner. She was 19 at the time.

- [9] Spider Holding Ltd. ("Spider Holding") was Mr. Ibrahim's company and was involved in commercial window washing, power washing, and painting for large high-rise and other buildings. Mr. Ibrahim obtained the shares in Spider Holding on November 22, 2006.
- [10] In 2009, Mr. Ibrahim incorporated Highrise Pro Holdings Inc. ("Highrise"). In the same year, Highrise purchased what became the parties' family residence located at East Hastings Street, Vancouver, BC (the "Family Residence").
- [11] The claimant graduated with a diploma in Community Health Care in 2010 and was employed by Nurse Next Door on a full-time basis.
- [12] On January 10, 2012, Mr. Ibrahim transferred all of Highrise's shares to his sister, Cihan Malla. The claimant says Ms. Malla is a housewife who resides in the Lebanese Republic and that she has had nothing to do with this company. The claimant asserts that this transfer was a sham and that Mr. Ibrahim retained beneficial ownership of Highrise.
- [13] Curiously, the notice of change of directors from that date shows the mailing address for Ms. Malla to be in Scotland. Mr. Ibrahim does have a sister who resides in Scotland, Ms. Emina Centika, but it appears that Ms. Malla resides in Lebanon.
- [14] The claimant says she and Mr. Ibrahim have been in an intimate relationship since December 2012. Mr. Ibrahim denies this, and says that he was married to Ms. Liu until 2014 and the claimant was married (pursuant to a religious ceremony) to another man.
- [15] In May 2013, the claimant says that Mr. Ibrahim convinced her to quit her job with Nurse Next Door and begin working for Spider Holding. Mr. Ibrahim denies this, and says that the claimant was hired by Zaki Ibrahim (relationship unknown) as a cleaner, against Mr. Ibrahim's wishes.
- [16] It appears that Mr. Ibrahim was deported from Canada to Turkey on July 7, 2013. The claimant says that he told her that he had to leave Canada as his work permit had expired.
- [17] The claimant says that she operated Spider Holding in Mr. Ibrahim's absence.
- [18] The claimant says the parties continued their relationship, with the claimant travelling to Turkey to see Mr. Ibrahim on several occasions. On one such occasion, on August 24, 2013, she alleges they were married in a religious ceremony. This is denied by Mr. Ibrahim.
- [19] The claimant retained an immigration consultant in late 2013 to try to sponsor Mr. Ibrahim for immigration to Canada as her spouse.
- [20] The parties were legally married on March 3, 2014 in Istanbul, Turkey.
- [21] The claimant moved into the Family Residence in July 2014.
- [22] In August 2016, Mr. Ibrahim was able to come to Canada based on the claimant's sponsorship. They resided together in the Family Residence.

- [23] The relationship deteriorated almost immediately, and the parties briefly separated on March 3, 2017.
- [24] In April 2017, the claimant says that Mr. Ibrahim demanded she no longer work for Spider Holding. She says that Mr. Ibrahim transferred 50% of Extreme Power Wash Ltd. ("Extreme"), a subsidiary company of Spider Holding, to her and 50% to her other brother, Muthana Maryoush, after transferring all of the cash assets of approximately \$110,000 from Extreme to his personal account.
- [25] The claimant then says Mr. Ibrahim removed her from all accounts for Spider Holding and expected her to support herself from Extreme.
- [26] In November 2017, the claimant says that she and Mr. Ibrahim were looking to buy a piece of property. The claimant says she located a warehouse/industrial strata on Honeyman Street in Delta, BC (the "Honeyman Property"). The parties decided to buy the property.
- [27] The claimant says she had completed a large project through Extreme (the "Parq Project") and that she had made a profit of \$115,000. She and Mr. Ibrahim agreed that money would be used to purchase the Honeyman Property along with funds from Spider Holding.
- [28] When the Honeyman Property was purchased, however, it was put into Highrise's name. The claimant asserts it is family property.
- [29] Mr. Ibrahim denies that the Honeyman Property is family property. He says that he could not qualify for financing when it came to buying the Honeyman Property. As a result, he went to his family and they decided to buy it. He says that he then repaid some money owing to his sister and she used that money to buy the Honeyman Property.
- [30] There is one child of the marriage, born December 1, 2017.
- [31] The parties finally separated on May 30, 2018.
- [32] The claimant now says she believes that her relationship with Mr. Ibrahim and marriage to him was another one of convenience for him so that he could immigrate to Canada.
- [33] Mr. Ibrahim responds in his affidavit sworn February 27, 2020 that he would not have had to do that, as he was married to Ms. Liu in 2011 and could have used that as the basis for an application for immigration. In fact, it appears that he tried to use that relationship as a basis for staying in Canada prior to his deportation but the application was rejected.
- [34] Mr. Ibrahim transferred all of the shares of Spider Holding to the claimant's brother, Hisham Maryoush, on July 11, 2018, apparently for no consideration. The claimant alleges that this transfer was a sham, done in order to frustrate her claim.

- [35] There is documentation that suggests that, on July 16, 2018, Mr. Ibrahim used an account of Spider Holding at the Vancouver Bullion and Currency Exchange ("VBCE FX") to exchange CDN \$195,000 for US funds. The claimant alleges this money came from Spider Holding and that Mr. Ibrahim transferred the funds to himself in Turkey. Mr. Ibrahim denies this money came from Spider Holding and says the money belonged to his sister, Ms. Centika.
- [36] At the same time, the claimant says Mr. Ibrahim listed the Family Residence for sale for \$3.5 million and a sailboat for sale for \$69,000.
- [37] The claimant says that the above steps, taken after separation, were attempts by Mr. Ibrahim to divest himself of family assets. As a result, on August 27, 2018, she obtained an order restraining disposition of family assets pursuant s. 91 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] (the "August 27, 2018 Order").
- [38] The August 27, 2018 Order contained other terms, including requiring:
- a) production of all of Mr. Ibrahim's personal bank account statements from August 1, 2015 to date;
 - b) particulars of all assets that he holds or has disposed of from February 2015, whether inside or outside of Canada; and
 - c) production of Spider Holding and Highrise's monthly bank account statements from August 1, 2015 to date.
- [39] In September 2018, the claimant alleges that Mr. Ibrahim incorporated Spider Solutions Ltd. ("Spider Solutions") in the name of his 22-year-old nephew, Fevzi Taha Cetinkaya, but that Mr. Ibrahim was the beneficial owner, and that Mr. Ibrahim proceeded to convert and conduct Spider Holding's business through Spider Solutions.
- [40] Mr. Ibrahim denies this. He alleges that evidence of this is fabricated. He says that any contracts done by Spider Solutions were negotiated for that company.
- [41] On April 2, 2019, the claimant made an application for:
- a) Mr. Ibrahim to file an updated Form F8 Financial Statement;
 - b) Mr. Ibrahim to be found in contempt and jailed or fined for failure to comply with the August 27, 2018 Order;
 - c) production of documents directly from financial institutions for Mr. Ibrahim's accounts;
 - d) Mr. Ronald Tidball, a business valuator, to be the court-appointed expert to determine Mr. Ibrahim's guideline income; and
 - e) the Family Residence, the Honeyman Property, and the Deep Cove Property to be appraised by Cunningham & Rivard Appraisals Ltd.

- [42] In response to the April 2, 2019 application, Mr. Ibrahim, in an affidavit sworn May 28, 2019, denied that he had care and control of Highrise after the sale to his sister, Ms. Malla, in 2012. He also deposed that he had provided all his bank account statements in the updated lists of documents dated February 28, 2019 and May 7, 2019. He says he has provided all of the documents of Spider Holding which he has in his possession, and then deposed:
11. I have already provided documents related to Spider Holdings Ltd. and Highrise. I could only provide the documents in my possession for the time I have care and control of the businesses. Spider Holdings was transferred to the Claimant's brother on June 1, 2018. My nephew is the director of Spider Solutions and Highrise was sold in 2012. I no longer own or operate the said corporations and do not have access to the documents requested.
- [43] In addition, Mr. Ibrahim deposed that the reason his first Form F8 Financial Statement did not disclose all his assets was because his first lawyer, Azool Jaffer-Jeraj, did not include them in the affidavit even though he was told of them. Mr. Jaffer-Jeraj denied this in a later affidavit.
- [44] On May 7, 2019, Highrise commenced a legal action against Mr. Ibrahim, the claimant, Spider Holding, Van Pro Solutions Ltd. ("Van Pro"), and Extreme, for, amongst other things, more than \$250,000 in unpaid rent for the Family Residence (the "Highrise Claim").
- [45] On June 11, 2019, the claimant herein filed a response to the Highrise Claim, alleging that the share transfer was a sham and that Mr. Ibrahim remained Highrise's directing mind and beneficial owner. The claimant points out that Mr. Ibrahim had his young nephew, Mr. Cetinkaya, appointed a director of Highrise and that Highrise holds assets that she says are family assets.
- [46] On the same day, June 11, 2019, Mr. Ibrahim filed a response to the Highrise Claim, which acknowledges rent was payable, but says it was the responsibility of the other defendants to the Highrise Claim.
- [47] Mr. Justice Crossin heard the claimant's April 2, 2019 application and made an order on June 27, 2019 (the "June 27, 2019 Order") adjourning the claimant's applications for a fine against Mr. Ibrahim and for him to be found in contempt. However, pursuant to the June 27, 2019 Order, Mr. Ibrahim was to file an updated Form F8 Financial Statement showing his worldwide assets and income. Further, Mr. Ibrahim was to apply for and produce six years of bank statements for every bank account that he had held within or outside of Canada during that period, and any other relevant third-party financial documents. Justice Crossin also ordered that all the respondents were to seek and provide relevant documents from stated financial institutions and that Mr. Tidball and Cunningham & Rivard Appraisals Ltd. were to be court-appointed experts.
- [48] In or around July 2019, Mr. Ibrahim incorporated Kador Contracting Group Ltd.

- [49] On August 12, 2019, on the application of Spider Holding, Van Pro, and Extreme, Mr. Justice Kent made an order requiring Mr. Ibrahim to return a shotblaster to Extreme and a trailer to Spider Holding. The balance of that application was adjourned.
- [50] On August 23, 2019, on the "without notice" application of Spider Holding, Van Pro, and Extreme, Madam Justice Winteringham made an asset freezing order (a Mareva injunction) against Mr. Ibrahim, Highrise, Spider Solutions, Mr. Ibrahim's nephew, Mr. Cetinkaya, Lloyd's Sky Contractors Inc., also known as Van Pacific Solutions Ltd., and Kador Contracting Group, on the basis of an allegation that \$92,000 had been diverted from Spider Holding to Spider Solutions.
- [51] The balance of the application, which included seeking orders for production of records of the other respondents and respondents by counterclaim directly from financial institutions, was adjourned generally.
- [52] On August 30, 2019, on the application of the claimant herein, Master Elwood ordered that this action and the Highrise Claim be tried together.
- [53] In his affidavit of September 11, 2019, Mr. Ibrahim provides evidence that contradicts both his affidavit of May 28, 2019 and the Form F8 Financial Statements he had sworn. He deposed:
7. Since Spider Holding was transferred to Hisham "on paper", I have continued to be a beneficial owner and an employee of Spider Holding.
 8. Spider Holding is the main company that brings in the work and subcontracts for Van Pro Solutions Ltd. ("Van Pro") and Extreme Power Wash Ltd. ("Extreme"), Spider Solutions Ltd. (Spider Solutions) and Spider Holding.
 9. Hisham and I agreed that "on paper" we would transfer Spider Holding into Hisham's name. That is why I did not receive any money or consideration at the time of the transfer to Hisham. the idea was we would continue to operate Spider Holding, and run all the businesses as usual, but that Spider Holding would always be my company. I therefore have a beneficial interest in Spider Holding.
 10. In my Financial Statements, I did not include Spider Holding as a business asset as the business was Hisham's "on paper" pursuant to our agreement. After having thorough discussion with my counsel, it is clear that I have a beneficial interest in Spider Holding, Extreme and Van Pro and that my interest should be included in my Financial Statement. I have instructed my counsel to add and update my Financial Statement to reflect this.
 11. Pursuant to my third affidavit sworn on May 29, 2019, I have reread paragraph 11. This statement only pertains to Highrise Pro Holding Ltd. ("Highrise"). I can see how the wording is misleading but I am using this opportunity to clarify that I do not have an interest in Highrise, however I do have an interest in Spider Holding.

- [54] The claimant applied to settle the June 27, 2019 Order on September 13, 2019. That was adjourned to September 23, 2019 and the order was entered that day. The balance of the August 23, 2019 application of Spider Holding, Van Pro, and Extreme was heard on September 23, 2019 by Crossin J.
- [55] On September 23, 2019, Crossin J. made two orders (the "September 23, 2019 Orders"). The first required certain financial institutions directly to produce documents of Mr. Ibrahim's accounts to his counsel. The second required the financial institutions to produce documents of Highrise, Spider Solutions, and Mr. Cetinkaya to their counsel.
- [56] In an application by Spider Holding, Van Pro, and Extreme filed October 16, 2019, those parties sought, amongst other things:
- a) that Mr. Ibrahim's amended counterclaim be struck as having been filed without consent or order;
 - b) an order that Mr. Ibrahim had waived privilege in certain respects due to the contents of his May 28, 2019 affidavit;
 - c) special costs or a fine be levied against him; and
 - d) an order that Mr. Ibrahim file a new Form F8 Financial Statement.
- [57] Mr. Ibrahim brought an application to add certain respondents to the family proceeding. In his affidavit in support, he again asserts his ownership of Spider Holding and deposed:
19. Hisham is now going against what this agreement was with [me] by alleging that Spider Holding is his company and does not belong to me.
- [58] By order of October 31, 2019, Madam Justice W.A. Baker ordered that Mr. Ibrahim's amended counterclaim be struck (the "October 31, 2019 Order"). She also ordered that Mr. Ibrahim was to request and provide all of his credit card statements from January 1, 2013 to present, that Mr. Ibrahim was to provide Mr. Tidball with any documents requested by him that Mr. Ibrahim was able to access and obtain, and that Mr. Ibrahim was to provide yet another updated Form F8 Financial Statement.
- [59] The balance of the application was adjourned to December 5, 2019, as was Mr. Ibrahim's application to add various parties as respondents to the family action.
- [60] Pursuant to the December 5, 2019 Order, Groves J. ordered Mr. Ibrahim to produce an affidavit by January 10, 2020 with very specific requirements for further document production. In addition, Groves J. ordered Mr. Ibrahim to file a sixth Form F8 Financial Statement, a new list of documents with an affidavit confirming it, and that he pay a fine to the applicants, Spider Holding, Van Pro, and Extreme, of \$1,500 by December 31, 2019.

- [61] In the application before me, Mr. Ibrahim said he had been unable to comply with the December 5, 2019 Order as he had to go to Turkey on December 13, 2019 to look after his ailing mother and his lawyer refused to act for him given his inability to pay her fees.
- [62] On February 28, 2020, Spider Holding, Van Pro, and Extreme brought another application against Mr. Ibrahim.
- [63] In that application, the applicants sought, amongst other things, a fine of \$5,000 against Mr. Ibrahim for failing to comply with the October 31, 2019 and December 5, 2019 Orders, that he pay \$20,000 as security for compliance, and that he be found in contempt of both of these orders.
- [64] That application was heard by Groves J. on March 5, 2020. His Lordship ordered that Mr. Ibrahim had a last chance to comply with the October 31, 2019 and December 5, 2019 Orders by April 9, 2020, failing which, the applicants could apply for an order that Mr. Ibrahim's pleadings be struck (the "March 5, 2020 Order").

Analysis

Fines

- [65] The claimant seeks an order that Mr. Ibrahim pay fines, as follows:
1. Pursuant to section 213 of the Family Law Act, Respondent Ibrahim be fined 5000 for each of the following non-compliances of Court Orders:
 - a) Multiple failures to pay child support and section 7 expenses pursuant to the Order made on December 10, 2018 ("JCC Order");
 - b) Failure to provide financial disclosure and cooperate with the financial expert appointed by the Court pursuant to the Order made on June 27, 2019 ("1st Crossin Order1");
 - c) Failure to provide financial disclosure further to the Order made on September 23, 2020 ("2nd Crossin Order");
 - d) Failure to comply with multiple orders made on December 5, 2019 ("Groves Order") by:
 - i) providing answers to questions contemplated by the Order,
 - ii) failing to file a sixth financial statement with all attachments no later than January 10, 2020,
 - iii) failing to serve a list of documents by January 10, 2020.

[66] Section 213 of the FLA provides:

Enforcing orders respecting disclosure

213 (1) This section applies if a person

- (a) fails to comply with

- (i) an order for disclosure made under section 212 [orders respecting disclosure], or
 - (ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,
- within the time or in the manner required by the order or Rules, or
- (b) provides information that is incomplete, false or misleading.
- (2) In the circumstances set out in subsection (1), the court may do one or more of the following:
- (a) make an order under section 212;
 - (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;
 - (c) require a party to give security in any form that the court directs;
 - (d) make an order requiring the person described in subsection (1) to pay
 - (i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or
 - (iii) a fine not exceeding \$5 000;
 - (e) make any other order the court considers appropriate.

Child support

[67] There is no provision in s. 213 of the FLA for ordering a fine for non-payment of child support. Hence, the application in para. 1(a) of the claimant's February 24, 2020 notice of application is dismissed.

The June 27, 2019 Order

[68] The next order sought by the claimant is for a fine for Mr. Ibrahim failing to make the disclosure required by the June 27, 2019 Order.

[69] There is no question that the Form F8 Financial Statement filed by Mr. Ibrahim in response to the June 27, 2019 Order was inadequate.

- [70] As to the document production ordered, it does not appear that Mr. Ibrahim has served an updated list of documents since the third list dated May 7, 2019. The evidence of the claimant shows there are significant issues with his document production. I am satisfied that he is in breach of the June 27, 2019 Order for production of documents.
- [71] The claimant sought in her April 2, 2019 notice of application, amongst other things, a fine for Mr. Ibrahim's failure to comply with the August 27, 2018 Order. That part of the application was adjourned in the June 27, 2019 Order.
- [72] Thus, despite the fact that the respondent is in breach of two court orders obtained by the claimant, the respondent has not been penalized for those breaches.
- [73] I conclude that the actions of the respondent in failing to provide proper financial disclosure as required by the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] and by the orders obtained by the claimant, are worthy of censure. As noted by the court in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.):
- [9] Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done. Non-disclosure also has a tendency to deprive children of proper support.
- [74] As a result, in accordance with s. 213(2)(d)(ii) of the FLA, Mr. Ibrahim shall forthwith pay \$2,000 to the benefit of the claimant, by payment of that amount to her counsel in trust within 30 days from the date of these reasons.

The September 23, 2019 Orders

- [75] The claimant then seeks a fine for Mr. Ibrahim's failure to comply with the two September 23, 2019 Orders. However, these two Orders were directed at the financial institutions themselves. There was no order made on that date that directed Mr. Ibrahim to do anything, and hence, although one would presume that he would have an obligation to list and disclose any documents obtained from the financial institutions, he is not in breach of the Orders themselves. I have no idea what, if anything was produced by the financial institutions in response to the September 23, 2019 Orders and, hence, am not in a position to conclude anything in that regard. This application is denied.

The December 5, 2019 Order

- [76] The claimant also seeks a fine for Mr. Ibrahim's failure to comply with the December 5, 2019 Order. That failure, and the failure to comply with the October 31, 2019 Order, however, were the subject of the March 5, 2020 Order. Although the March 5, 2020 Order was granted on the application of Spider Holding, Van Pro, and Extreme, I do not consider it appropriate for

there to be parallel proceedings to punish Mr. Ibrahim for his failures to comply with the October 31, 2019 and December 5, 2019 Orders. Those matters are properly dealt with at one time, by one presider.

[77] In my view, the proper resolution would be for this matter to be dealt with by Groves J. when the application of Spider Holding, Van Pro, and Extreme is ultimately brought for any failure to comply with the March 5, 2020 Order.

[78] Thus, para. 1(d) of the claimant's February 24, 2020 notice of application is adjourned to be heard by Groves J. in conjunction with any applications flowing from the March 5, 2020 Order. Should there be no such applications, there is liberty to apply.

Sale of Property

[79] The claimant seeks an order that the Deep Cove Property owned by Mr. Ibrahim be sold:

2. Pursuant to section 88 and 89 of the Family Law Act, orders that:

- a) the real property (vacant land) located in the Municipality of North Vancouver legally known as Lot L Blocks 23 and 24 District Lot 2048 Plan 6035 PID 004-144-104 ("Property") registered in the name of the Respondent Ibrahim be listed for sale and sold forthwith (Copy of title search enclosed).
- b) the Claimant have sole conduct of the sale of the Property.
- c) the sale proceeds from the sale of the Property be distributed as follows:
 - i) arrears in child support payable to the Claimant;
 - ii) court ordered costs pursuant to the Order made on December 5, 2020;
 - iii) court ordered fine pursuant to the Order made on December 5, 2020;
 - iv) to the Claimant for the payments for arrears and future legal fees and which will stand to her credit in a final distribution of family property; and
 - v) any court ordered fines or costs pursuant to this order.

[80] Section 15-8 of the SCFR provides for the sale of property:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

[81] The considerations for the court on an application under this rule were set out by Master Bouck in *G.J.U. v. J.L.U.*, 2017 BCSC 1352, as follows:

- [57] Factors to consider in the exercise of the court's discretion under this rule include whether the sale will promote early settlement, whether the sale will defeat a spouse's claim for reapportionment, whether the sale is inevitable or whether a spouse might be able to retain the property on a division of assets. An interim sale will be considered expedient if it is advantageous to both parties: *N.N.N. v. D.E.B.*, 2016 BCSC 1778 at para. 21.
- [82] Mr. Ibrahim says in his Form F8 Financial Statement that the Deep Cove Property is a bare land parcel he purchased in 2011, prior to the parties' relationship. Hence, he asserts that the Deep Cove Property is excluded property.
- [83] The state of title certificate, however, shows the Deep Cove Property was purchased in April 2012.
- [84] The claimant, in her notice of family claim, says that the parties began to live together in a marriage-like relationship in February 2012. It is not clear from her affidavit material where she asserts they were residing at the time. She did not move into the Family Residence until after the parties were married on March 3, 2014.
- [85] Mr. Ibrahim denies that the parties were in any relationship in 2012. The sense of his affidavit is that such relationship did not begin until 2014.
- [86] Family property is defined in the FLA, and that definition deals with excluded property as follows:

85 (1) The following is excluded from family property:

- a) property acquired by a spouse before the relationship between the spouses began;

- [87] Thus, on Mr. Ibrahim's evidence, the Deep Cove Property is not family property and is not subject to an order for sale under s. 15-8 of the SCFR.
- [88] Assuming that it is family property, whether it is appropriate to order that sale will depend on my conclusion as to an interim distribution of family assets.

Interim Distribution of Family Assets

- [89] The relevant sections of the FLA are:

88 A spouse may make an application to the Supreme Court under this Division at any time before a final agreement or final order is made in relation to a family law dispute respecting property division.

Orders for interim distribution of property

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.
- [90] As a master, I have no inherent jurisdiction, and any order for distribution of family property must be founded in a rule or statute. I have jurisdiction under the FLA to make orders for interim distribution of property, but only for the limited reasons set out in s. 89 of the FLA.
- [91] I did point this out to counsel for the claimant at the hearing of this matter, but she was unable to assist me on why I would have jurisdiction to make the orders for the purposes sought in the claimant's notice of application, other than for legal fees as set out in para. 2(c) (iv) of the application.
- [92] The first consideration is whether an interim distribution to the claimant of the proceeds of a sale of the Deep Cove Property might be harmful to the interests of Mr. Ibrahim.
- [93] It will be obvious from a review of the convoluted positions and evidence as to the ownership of what is alleged to be family property in this case, that there is no way I could conclude that a sale of this property would not be harmful to Mr. Ibrahim's interests.
- [94] The ownership of virtually all of the other alleged family property is subject to dispute by one or more persons. Which way the court might ultimately decide those issues is not for me to determine now.
- [95] As noted by Master Bouck in G.J.U.:
- [27] First, the court is in no position to make findings of credibility based on the affidavit material presented, despite the ardent submissions made by J.'s counsel that I do so. The parties disagree on many salient facts that impact the orders being sought. As a rule, it will be left up to the trial judge to determine which party's version of events is true and accurate.
- [96] Firstly, the Deep Cove Property might be held to be excluded property and therefore not available for an interim distribution under the rule. Secondly, even if it is family property, to sell it and advance the proceeds to the claimant, in circumstances where the claimant declares herself impecunious and where it could possibly be the only property found to be family property, could potentially completely deprive Mr. Ibrahim of his interest.
- [97] Thus, regardless of how compelling the claimant's need might be, I cannot make the order sought.
- [98] The applications for the sale of the Deep Cove Property and an interim distribution of the proceeds to the claimant are dismissed.

Costs

- [99] Given the mixed success on this application, I will order the parties to bear their own costs.

"Master Muir"

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