

CANADA / JUDGMENT

Maryoush v. Ibrahim

2020 BCSC 1993

COURT

Supreme Court of British Columbia

DECIDED

27 August 2020

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2020 BCSC 1993 Maryoush v. Ibrahim IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Maryoush v. Ibrahim, 2020 BCSC 1993 Date: 20200827 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 Holding 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: The Honourable Mr. Justice Groves Oral Reasons for Judgment Counsel for Claimant: L.R. Nambiar Counsel for Respondents Spider Solutions Ltd. and Fevzi Cetinkaya: J.E. Shragge Counsel for Respondents Spider Holding Ltd., Van Pro Solutions Ltd. and Extreme Power Wash Ltd.: T.S. Brayer Appearing as Agent for Respondent Highrise Pro Holdings Inc.: S.E. Ovens Place and Date of Trial/Hearing: Vancouver, B.C. August 27, 2020 Place and Date of Judgment: Vancouver, B.C. August 27, 2020

- [1] The litigation related to the application before the court has a long and tortured history. It begins with the order of Madam Justice Baker of October 31, 2019. In that order Madam Justice Baker required Mr. Ibrahim to do a number of things, most notably of which was to comply with information requests, set out in the schedule A which is attached to that order. That order was granted at a time when Mr. Ibrahim was represented by counsel.
- [2] I became involved with this file on December 5, 2019, at which time Mr. Ibrahim appeared on his own behalf. As a result of an application that day, I required Mr. Brayer on behalf of Spider Holdings, who is the applicant in this application, as well as Ms. Nambiar, who is counsel for the claimant, to provide letters by December 20, 2019 to Mr. Ibrahim related to documents that they required him to disclose. I set a mechanism for Mr. Ibrahim to reply to those requests in the letters of December 20, 2019 by January 10, 2020, and he was to provide an affidavit in which he answered those requests. Additionally, I required him to:
1. provide a sixth financial statement with all attachments by January 10;
 2. provide a list of documents by January 10;

3. pay costs; and
 4. pay a fine under the Family Law Act.
- [3] The matter came before me on March 5, 2020, at which time I was satisfied that Mr. Ibrahim had not complied with my order of December 5, 2019 or the order of Madam Justice Baker of October 31, 2019.
- [4] On March 5, 2020, I ordered as follows: Mr. Ibrahim is given a last chance to comply with the orders of this court made October 31st, 2019, and December 5th, 2019. He shall do so no later than April 9th, 2020, failing which the applicant may apply before Mr. Justice Groves for an order that Mr. Ibrahim's pleadings be struck. The application is to be reset before me in the final week of April 2020 at a date arranged with trial scheduling.
- [5] Mr. Ibrahim's approval of the order was dispensed with and there was an order for costs.
- [6] The April 20, 2020 date did not happen because of the COVID-19 pandemic, but we are here today - August 27, 2020.
- [7] Turning to the notice of application. I am granting request 1 in the order that Mr. Ibrahim be served by way of delivery to his email address, which is mespider@gmail.com. I am satisfied that he has communicated with the registry in that matter. He has communicated with counsel at that email address, and it seems to me an efficient and appropriate way in which he can be served. He has in the past purported to draw an address for delivery document with this email address. As indicated, he has regularly responded to emails sent to this address, so that order is granted.
- [8] Turning to the substance of the application, I am satisfied after hearing from Mr. Brayer that in fact Mr. Ibrahim has failed to comply with the order of October 31, 2019, December 5, 2019, and my order of March 5, 2020.
- [9] His failure to comply includes failure to provide a list of documents, failure to provide a rational or complete Form 8 financial statement in that any of the six Form 8s that he has provided have never had any of the required attachments.
- [10] He has failed to respond with an affidavit by January 20, 2020 in the form that I have set out in my order of December 5, 2019, which is quite clear. He has failed to provide an affidavit confirming his list of documents. In regards to the order of Madam Justice Baker, he has failed to comply with the request made out in schedule A attached to that order.
- [11] Mr. Tidball is a joint expert and a forensic accountant who was retained in this matter to get to the bottom of very significant disputes about ownership of property and movement of funds. Mr. Tidball has provided a list of information requests, which is the schedule A. Mr. Ibrahim has not clearly made any significant effort to comply with the spirit of the order of Madam Justice Baker by addressing many of the issues raised in the requests of Mr. Tidball.

- [12] I am summarizing the submissions made on behalf of the applicant by Mr. Brayer. We have a situation where a party to litigation has simply chosen to change his story, change his evidence, file numerous incomplete documents, and has failed to comply with basic and straightforward court orders.
- [13] Most of the court orders that I have referred to are orders which have required Mr. Ibrahim to do what every party involved in family law litigation is required to do, and that is disclose basic information. He has sworn inconsistent affidavits. He has sworn numerous financial statements, none of which are compliant with the Rules. As I have indicated, he has failed on numerous occasions to abide by court orders for disclosure.
- [14] It is very much the case that a party who has failed to comply with court orders for disclosure is often given a second chance. Mr. Ibrahim was given, as my order of March 5, 2020, indicates, a last chance to comply with the two previous orders for disclosure, and he has, I am satisfied, failed to do so.
- [15] I should add that Mr. Ibrahim was very much aware of the necessity of his attendance at this application today. He has chosen not to. He simply had to phone in to a telephone conference. He was contacted by the clerk this morning and indicated that he was not planning on attending because he had a doctor's appointment. He had earlier advised the registry that he was unwell.
- [16] At the end of the day, the evidence before me also is that Mr. Ibrahim, on one occasion, had said that he sees his doctors three times a week. Mr. Ibrahim has known about this application and this proposed date for some time. If he was unwell, it is hard to know how he could have predicted his level of unwellness several days in advance, and secondly, if he had a doctor's appointment knowing that this matter was before the court and if he goes to the doctor three times a week, he certainly could have rescheduled that appointment.
- [17] I have proceeded in his absence because I believe the pattern of behaviour of Mr. Ibrahim in this litigation is one of obfuscation, dishonesty and failure to comply by any court rules or any obligations in litigation. He is making a mockery of the Rules and of the litigation process by his conduct, and he should not be rewarded with adjournments based on allegations of being unwell or being required to attend a doctor.
- [18] In regards to alleged medical ailments, Mr. Brayer requested of Mr. Ibrahim some confirmation of that by way of a doctor's letter or something similar. This was done, no doubt, so that Mr. Brayer could consider his position and advise his client as to a position, but that request for information about his level of illness was met with the usual response of Mr. Ibrahim, which is to not provide anything requested.

- [19] I am satisfied that it is appropriate in this circumstance, based on what I have said, that the pleadings filed by Mr. Ibrahim and KCG, including the response to family claim and the response to the counterclaim be struck. I am satisfied that it is appropriate, that a default judgment be entered against Mr. Ibrahim and KCG with damages to be assessed. That is para. 2(a) of the notice of application.
- [20] In regards to 2(b), I am satisfied that it is appropriate that there be a permanent injunction in joining Mr. Ibrahim and KCG or their agents from engaging in any of the following acts:
- a) purporting to be a director, officer, employee, attorney, authorized signatory or other like person holding a like office in any of the applicants;
 - b) disparaging the applicants or directors, officers, principals, employees, owners or associates;
 - c) threatening the applicants or their directors, officers, principals, employees, owners or associates; and
 - d) contacting any clients, employees, partners, contractors or business associates of the applicant.
- [21] What has happened here is that Mr. Ibrahim has purported to be the owner of the applicant, Spider Holdings Ltd., Van Pro Solutions Ltd. and Extreme Power Wash Ltd. He has purported to direct trade creditors to send money to similarly named companies, and that has caused loss to the applicants herein. This injunction would prohibit that from happening.
- [22] Next, I am ordering that the court declares that Mr. Ibrahim has no ownership of any kind or interest whatsoever in the applicants. I am ordering that Mr. Ibrahim and KCG shall forthwith return all equipment owned by the applicants within their possession to the control of the applicants.
- [23] In regards to what is set out in paras. 2(e) and (f), the claims for punitive damages and aggravated damages, I am ordering that those are properly to be assessed at a trial of this matter, or at least at an oral hearing, rather than based on affidavit evidence. Punitive and aggravated damages are a rare matter in family law litigation, which this fundamentally is, and it does not appear to me to be appropriate to deal with those issues based on paper applications.
- [24] I am not sure about para. 2(g), and perhaps I will hear from Mr. Brayer on that more. I am not sure that that order is necessary in that it would seem to me that the amended counterclaim filed by the applicants with no response is deemed to be admitted in and of itself without a court order, and there is no response any longer. I think in regards to (g) I am adjourning that generally.

- [25] In regards to the tracing remedy sought against Mr. Ibrahim and KCG, that again is a matter that will have to be dealt with at trial.
- [26] I am satisfied that it is appropriate, however, that there be a fine under the Family Law Act for non-compliance with the order of both December 5, 2019 and March 5, 2020 and I will set that fine at \$5,000.
- [27] In light of the success and the nature of this matter, I am satisfied that this is a matter to which special costs should apply. Mr. Ibrahim's dishonest responses, inconsistent responses, saying he does not own things and then saying he does, is conduct that is worthy of rebuke in litigation. He has put every party to considerably greater expense than they need to be. He has failed to comply with court orders in what can only be described as a pattern of behaviour designed to make matters difficult and not designed to deal with litigation in a responsible and direct manner. His conduct, in my view, is reprehensible and is worthy of an order for special costs.
- [28] Now, who else has an application today?
- [29] MR. BRAYER: My Lord, before we go to Ms. Nambiar, I just wanted to confirm, paras. 3, 4 and 5, would those be three fines or one collective fine of 5,000?
- [30] THE COURT: One collective fine, yes.
- [31] MR. BRAYER: Very good.
- [32] THE COURT: Ms. Nambiar. [SUBMISSIONS BY MS. NAMBIAR RE CHILD SUPPORT]
- [33] THE COURT: These are my reasons on the issue of child support. I am satisfied, based on the evidence before me, that in 2018 Mr. Ibrahim's income was in the neighbourhood of \$375,000 a year. That is based on the affidavit evidence which counsel has informed me of -- and I take her word on it, because part of the affidavit is not in front of me -- that indicates dividend income attributed to Mr. Ibrahim from Spider Holdings Ltd. was in the range of \$375,000. Based on that, I am satisfied that it is appropriate to impute to Mr. Ibrahim income of \$375,000.
- [34] I am satisfied that it is appropriate to vary the order of Mr. Justice Grauer granted at a judicial case conference, which was an interim without prejudice order where the claimant was at liberty to make application to vary the order prior to trial without demonstrating a material change in circumstances. I am satisfied that it is appropriate to vary that order and order that as of June 1, 2018, the first date after separation, that Mr. Ibrahim's child support obligation is fixed at \$3,000 a month.
- [35] I am further prepared to make an order that as of that date as well that Mr. Ibrahim pay \$1,000 a month towards to the child's s. 7 expenses, without the requirement for Ms. Maryoush to produce receipts. I am doing this on the basis of the information before me today, and Mr. Ibrahim has chosen not to attend at this court hearing. Mr. Ibrahim will have liberty to apply to vary this order on notice to Ms. Maryoush, but only after he has agreed to

attend at a full day of an examination for discovery where questions can be raised of him in regards to his income and sources of income.

- [36] I am making the order retroactive to June 1, 2018. I am varying the order of Mr. Justice Grauer. I am taking out the provision that Ms. Maryoush is required to produce receipts to receive her \$1,000 a month in s. 7 expenses. Mr. Ibrahim is at liberty to apply only after he has submitted to a full day's examination for discovery and on notice to Ms. Maryoush.
- [37] Yes?
- [38] MS. NAMBIAR: If I may ask, My Lord, just to be on the safe side, could we add a family maintenance enforcement clause -
- [39] THE COURT: No.
- [40] MS. NAMBIAR: -- to the \$4,000 that has been ordered? Sorry?
- [41] THE COURT: What do you mean by that?
- [42] MS. NAMBIAR: An order that the Family Maintenance Enforcement Program will enforce the \$4,000.
- [43] THE COURT: Yes. I am directing that the Family Maintenance Enforcement Program amend their records to reflect this new order and that they take whatever steps necessary to enforce it.
- [44] MS. NAMBIAR: And it's \$3,000 per month in child support and \$1,000 in s. 7?
- [45] THE COURT: Yes.
- [46] MS. NAMBIAR: Thank you.
- [47] THE COURT: Now, the other counsel that was on the line, were you here on a watching brief, sir, or did you have an application?
- [48] MR. SHRAGGE: No, My Lord. It's Mr. Shragge. I am essentially on a watching brief. My clients are not directly affected by any of these applications sought.
- [49] THE COURT: Thank you. Is there anything else, counsel? Anybody?
- [50] MS. NAMBIAR: Yes, My Lord. It's Ms. Nambiar. Just the last order sought in my notice of application was the special costs.
- [51] THE COURT: Yes, you are entitled to those. I am satisfied that, again, in regards to Mr. Ibrahim's conduct in this matter, he has intentionally misled the court in a number of ways, including failing to provide, on numerous occasions, a completed financial statement despite six efforts to do so. It is clear to me that he has purposely misled the court in regards to his income and his assets and, as a result, everyone has been put to extraordinary expense to get to what is basically a very standard order - a very standard requirement that a parent pay according to their ability for the support of their child. His conduct in this matter

has been reprehensible and, in my view, an order of special costs is appropriate.

[52] MS. NAMBIAR: And to clarify, that is to be assessed by the registrar?

[53] THE COURT: Yes, that is correct.

[54] MS. NAMBIAR: Thank you.

[55] THE COURT: Thank you everyone. "J.R. Groves J." GROVES J.

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Prepared on 29 October 2026 · Esheria