

CANADA / JUDGMENT

## Mori v. Lobb

2025 BCCA 416

### COURT

British Columbia Court of Appeal

### DECIDED

5 November 2025

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2025 BCCA 416 Mori v. Lobb

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Mori v. Lobb,

2025 BCCA 416

Date: 20251105

Docket: CA50931

Between:

Elisabete Mori

Appellant

(Claimant)

And

Richard Lobb

Respondent

(Respondent)

And

Landon Lobb, Mackenzie Lobb, Hytec Water Management Ltd.,

Lobb Holdings Ltd., Hytec Water Management (Vancouver) Ltd.,

Hytec Water Management (Toronto) Ltd.,

Hytec Water Management (Toronto) Ltd. (Ontario Corporation),

MRL Holdings Ltd., Torquay Holdings Ltd.

also known as Orca West Holdings Ltd., Lobb & Sons Holdings Ltd.,

and Meridian Onecap Credit Corporation

Respondents

(Application Respondents)

Before:

The Honourable Madam Justice Fisher

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

July 28, 2025 (Mori v. Lobb, Vancouver Docket E192202).

Oral Reasons for Judgment

Counsel for the Appellant:

M.T. Dinh

L.T. McDonald

The Respondent, Richard Lobb appearing in person on his own behalf and on behalf of Hytec Water Management Ltd. and Lobb Holdings Ltd.

(via videoconference):

**R.K. Lobb**

Counsel for the Respondents, Landon Lobb, Mackenzie Lobb, Hytec Water Management (Vancouver) Ltd., Hytec Water Management (Toronto) Ltd., MRL Holdings Ltd., Torquay Holdings Ltd. also known as Orca West Holdings Ltd., and Lobb & Sons Holdings Ltd.:

L.C. Morrison

H.M. Tiessen

Place and Date of Hearing:

Vancouver, British Columbia

November 5, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 5, 2025

### Summary:

This is an application for leave to appeal an order dismissing an application to produce third-party records in a family law trial made at the conclusion of the evidence but before final argument. The trial judge was not satisfied that the third-party records had any real relevance or were necessary to the litigation or that there would be any benefit to producing them. The proposed appellant asserts that, in denying to order production, the judge erred by deciding factual issues not within the scope of the legal test she was to apply.

The application for leave to appeal is dismissed. There is no real significance to the practice because of the discretionary and fact-driven nature of the order. In dismissing the document production application, the trial judge was exercising her discretion as part of her responsibility to control the trial process. No error with respect to this exercise of discretion has been identified. The proposed appeal would hinder the progress of the action, because permitting parties to appeal these kinds of evidentiary rulings before the trial has concluded is entirely disruptive to the efficient management of a trial. It is not in the interests of justice to grant leave to appeal.

- [1] FISHER J.A.: The proposed appellant, Elisabete Mori, seeks leave to appeal an order dismissing an application to produce third-party records made by a trial judge at the conclusion of the evidence at a family law trial after the parties had closed their cases but before final argument.
- [2] The issue concerned whether the respondent, Richard Lobb, had transferred family assets to third parties at less than fair market value or continued to hold the assets directly or indirectly, and whether there was sufficient information available to a joint expert to value the assets transferred. The assets were a business and a company allegedly transferred to Ms. Lobb's sons and companies owned by them.
- [3] The trial judge was not satisfied that the third-party records had any real relevance or were necessary to the litigation, nor was she persuaded that there would be any benefit to producing them. In doing so, the judge recognized the circumstances considered by Ms. Mori to be suspicious but relied on the evidence at trial to justify her conclusion.
- [4] Ms. Mori asserts the judge erred by deciding factual issues not within the scope of the legal test she was to apply on the application before her. The respondents say the judge applied a settled test to a "late, broad request against non-parties with marginal probative value after a complete joint-expert report". They rely on the requirement to accord appellate deference to discretionary, fact-specific rulings made during a trial, as well as to interlocutory decisions in family cases.

### Background

- [5] Ms. Mori and Mr. Lobb lived together from August 2004 to July 2016. The issue in dispute at trial related to the valuation of a business owned by Mr. Lobb.

- [6] Mr. Lobb had, for many years, owned and operated a business known as Hytec Water Management that treated water in high-rise buildings. In 2015, the City of Vancouver became concerned about Hytec's treatment method and, in 2016, it suspended new permits to Hytec pending an alternative solution to the problem, which also required upgrades to existing installations. The resolution of this took some years.
- [7] Mr. Lobb's evidence was that he had unsuccessfully tried to sell Hytec before the City's suspension, after which he and his sons agreed that the sons would take over the business. The transaction was to close in August 2016, but the sale documents were not signed because Ms. Mori started the family law action and obtained an order restraining the transfer of any assets. At that time, Hytec and Mr. Lobb's holding company were also parties. On September 12, 2018, these entities were removed from the action and the restraining order against them was set aside. On October 25, 2018, the sale documents were then signed, to be effective to August 2016.
- [8] At trial, a jointly-appointed expert valued Hytec and Mr. Lobb's holding company at various dates, including August 2016, October 2018 and December 2018. There were several reports prepared, but the latest report, dated November 8, 2022, valued the Hytec business as nil for each of those dates and the holding company at a higher value in 2018 than in 2016. These valuations did not include the active operations of the Hytec business after August 2016, as that information was not available to the valuator. They did include a listing of contracts up for renewal from 2012 to 2019, and information about actual renewals and expected revenues and costs of those renewals.
- [9] The trial was originally set to commence in June 2019. It was adjourned three times, and ultimately proceeded in November 2022. During this time, Ms. Mori made several attempts to address her assertions that Mr. Lobb fraudulently transferred his assets to his sons for less than fair market value, which included:
- 1) A September 17, 2020 application to add the third parties as defendants in the family law action and to expand the scope of the joint expert's report. This concluded with an order by Justice Branch on October 19, 2020, that expanded the scope of the joint expert report without an inquiry into the financial circumstances of the third parties, and adjourned the application to add the third parties until after receipt of the expert report, and another order by Branch J. on October 25, 2021, that adjourned that application again until after judgment.
  - 2) Two applications in November 2022, shortly before the family law trial was to commence, and another at the start of the trial to adjourn the trial on the basis that the joint expert report should include a valuation of the business in the hands of the third parties. These were denied.
  - 3) An informal application during the trial to expand it to include issues involving the third parties. This was also denied.

- [10] Ms. Mori also filed another notice of civil claim alleging a fraudulent conveyance by Mr. Lobb in transferring his assets to the third parties to defeat her claims in the family law action. In that action, she unsuccessfully sought to compel the third parties to produce a list of documents and submit to examination for discovery, intended to benefit her case in the family law action.
- [11] The application for production of the third-party records was made during the trial, on September 18, 2023. It was first heard on September 29, but adjourned and finally heard and determined in June 2025, at the close of evidence at the trial. Closing submissions are scheduled to take place between December 31, 2025, and February 13, 2026.

### The judge's reasons

- [12] The judge considered the circumstances Ms. Mori contended were suspicious enough to suggest Mr. Lobb fraudulently transferred his assets to his sons for less than fair market value or whether he remained the owner of those assets. These circumstances included the backdated sale agreements, a non-arms-length transaction, and some evidence that Mr. Lobb continued to be involved in the business and the sons were not familiar with the business. She noted that Ms. Mori's views of the evidence were not accepted by Mr. Lobb.
- [13] The judge then referred to some of the evidence about the circumstances surrounding the agreement to sell Hytec in August 2016, the preparation of the necessary documents at that time and the signing of those documents in October 2018. She identified the "crux of the matter" as whether Mr. Lobb transferred a family asset to third parties at less than fair market value or continued to hold the assets directly or indirectly. She noted this issue included whether the joint expert had sufficient information to permit her to value the assets transferred.
- [14] The judge was not persuaded that the third-party records should be produced. She stated the test to be applied as "whether the documents have real relevance or are necessary to the litigation". She noted the late timing of the application -- "at the conclusion of the evidence at the trial and after the parties had closed their cases" -- and the fact that she had the benefit of the examination and cross-examination of all the witnesses. She briefly described the evidence of Mr. Lobb about this issue, of the general manager and the service manager of the former and current Hytec business about the business operations and the costs of the upgrades, of a representative of the company that had considered but decided not to purchase Hytec, and of the joint expert who said that no further information was required to value the businesses as of August 2016.
- [15] The judge recognized the circumstances Ms. Mori considered to be suspicious but noted those circumstances had been "fully plumbed in the evidence at trial". This included testimony from witnesses, not involved in the litigation, about the precarious finances of Hytec because of the City's suspension and about Mr. Lobb's sons taking over the business in August 2016. She concluded:

- [21] Having heard the evidence, I am not persuaded that third-party records sought in this application have real relevance or are necessary to this litigation. Ms. Mori is simply looking for evidence to support her suspicions. I am not persuaded that there would be any benefit to production of the third-party records.
- [16] The judge also considered affidavit evidence submitted by Ms. Mori after the application was heard, which did not alter her conclusions.

### The application for leave to appeal

- [17] On an application for leave to appeal, the applicant must satisfy the court of the following four criteria, which are all considered under the rubric of the interests of justice:
- a) Whether the point on appeal is of significance to the practice;
  - b) Whether the point on appeal is of significance to the action itself;
  - c) Whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and
  - d) Whether the appeal will unduly hinder the progress of the action.

Goldman, Sachs & Co. v. Sessions, 2000 BCCA 326 at para. 10 (Chambers); Vancouver (City) v. Zhang, 2007 BCCA 280 at para. 10 (Chambers).

- a) Significance to the practice

- [18] Ms. Mori submits the implications of the judge's decision are significant to family law proceedings generally. She says "there is some conflict" in the trial court as to whether the judge hearing an application for third-party records should make findings of fact or credibility on the ultimate issue, the decision creates uncertainty as to the timing of a valuation of family property alleged to have been fraudulently conveyed, and there appears to be little appellate guidance on the propriety, necessity or relevance of third-party document production in the context of an alleged fraudulent conveyance of family property during family law proceedings.
- [19] Mr. Lobb submits there is no systemic importance to this proposed appeal as this is a single family law case about the timing and scope of third-party disclosure late in a trial and the governing principles to such applications are settled.
- [20] The third parties echo that submission and emphasize the highly fact-specific context of this case. They also say Ms. Mori mischaracterizes the judge's decision because the judge did not make factual or credibility findings about a fraudulent conveyance or the timing of a valuation; rather she determined only that the third-party documents were not relevant or necessary based on the evidence led at trial.

[21] I agree with Mr. Lobb and the third parties that this is a highly discretionary, fact-driven decision made by a trial judge in somewhat unusual circumstances. I do not read the judge's reasons as making findings of fact or credibility as to whether there was a fraudulent conveyance or as to the timing of a valuation of family property alleged to have been fraudulently conveyed. She assessed Ms. Mori's assertions of suspicion but was not satisfied, based on the body of evidence she heard at trial, that production of third-party documents at that stage had any "real relevance" or was necessary to the litigation. In doing so, the judge applied well-settled principles to the particular circumstances before her. I see no real significance to the practice.

b) Significance to the action

[22] Ms. Mori says the assets in issue are significant to the family property to be divided in this litigation, and the proper valuation of the business after Mr. Lobb transferred it to his sons is critical to establishing whether it was fraudulently conveyed or transferred at fair market value.

[23] The third parties submit these documents are not relevant to the issue before the judge, which was the valuation of a business, nor are they relevant to whether a fraudulent transaction occurred since they post date the date of the alleged fraudulent transaction.

[24] I appreciate that Ms. Mori views this as a significant issue in the action, demonstrated by the efforts she has made throughout the litigation to obtain information from the third parties. However, I do not see this as a factor that weighs in favor of granting leave. At best it would be neutral.

c) The merits

[25] The merits threshold on a leave application is "relatively low". The question is whether the applicant identifies "an arguable case of sufficient merit to warrant scrutiny by a division of the Court": *Dehydration Research LLC v. EnWave Corporation*, 2022 BCCA 347 at para. 54 (Chambers).

[26] Ms. Mori accepts that the order in issue is a discretionary one. Despite the relatively low merits threshold, this Court is reluctant to grant leave to appeal discretionary orders, especially those made by a judge during the course of a trial. The applicant must show "an arguable case that the order is clearly wrong, a serious injustice will occur, or the discretion was exercised on a wrong principle or not exercised judicially": *Dehydration Research* at para. 55, citing *Independent Contractors and Businesses Association v. British Columbia*, 2018 BCCA 429 at paras. 35-36 (Chambers); *PacNet Services Ltd. v. British Columbia (Director of Civil Forfeiture)*, 2023 BCCA 364 at paras. 44-45 (Chambers).

[27] Ms. Mori acknowledges that the trial judge stated the correct test but submits she failed to apply it, and this constitutes an error of law. She says the judge ought to have assessed whether the documents were relevant and necessary to the question of whether there was a fraudulent conveyance, but instead improperly determined that issue in a final way, without

the benefit of argument. Even though the judge had heard all the evidence, Ms. Mori contends the judge was not in a position to ultimately decide the fraudulent conveyance issue and this put her, as a party, in an impossible position of having to prove her claim without the benefit of the documents she needed to do so.

- [28] Ms. Mori further submits there was ample evidence to support a basis for the fraudulent conveyance claim and the relevance of the third-party documents in relation to that claim.
- [29] Mr. Lobb counters this by referring to evidence that supports the basis for the judge's reasons, submitting that the reasons rest on an extensive record. He says there is no risk of injustice since Ms. Mori had full opportunity to cross-examine and to argue the application.
- [30] The third parties emphasize the discretionary nature of the judge's decision. They submit that, given the timing of the application, the judge was entitled to consider the evidence at trial, and even to take a preliminary view of it, in controlling the trial process and assessing whether the documents were relevant. They also point to proportionality as an overriding consideration, contending that a trial judge is not obliged to order production of all potentially relevant documents, particularly where doing so would require reopening the trial and delaying closing submissions.
- [31] In my view, Ms. Mori has not shown an arguable case that the trial judge erred in the exercise of her discretion in dismissing the document production application. I repeat that I do not read her reasons to suggest that she had made findings of fact or credibility in respect of the issue of the alleged fraudulent conveyance. The judge was not hearing a fraudulent conveyance action. The valuation evidence was relevant to determining the increase in value of Mr. Lobb's business and holding company from 2004 to 2016, the period of the parties' cohabitation. There was expert evidence that valued Hytec as nil in both 2016 and 2018. While there were gaps in the information about the active operations of the Hytec business after August 2016, the judge was not satisfied that reopening the trial and delaying its conclusion was warranted in light of the issues she had to decide. As the judge noted, the alleged suspicious circumstances of Mr. Lobb's transfer of Hytec had been "fully plumbed in the evidence at trial".
- [32] It is important that the judge's exercise of discretion be assessed in the context not only of the application to produce third-party records but also as part of her responsibility to control the trial process. This was a long-standing dispute and a lengthy, contentious trial. I agree with the third parties that in these circumstances, where the application is made after the evidence has been concluded, the judge was entitled to consider the body of evidence that was before her and even to take a preliminary view of it in assessing whether or not to order production. In doing so, the judge is not making findings of fact but rather is considering only whether the evidence is sufficient to justify an order that would require the trial to be reopened and cause further delay.

- [33] While I can appreciate Ms. Mori's frustration with what she perceives as a circular issue, she will have full opportunity to address her assertions fully in closing submissions.
- d) Hindrance to the progress of the action
- [34] Ms. Mori concedes the proposed appeal will hinder the parties in preparing and exchanging their closing arguments and, in effect, hinder the conclusion of the trial. She proposes that the appeal be heard on an expedited basis, and, if the appeal is allowed, that the parties have a limited opportunity to continue any examination of witnesses on the documents, if necessary.
- [35] Mr. Lobb notes the schedule set for closing submissions and submits this interlocutory appeal would derail a near-complete trial.
- [36] The third parties submit this application is premature, as it is generally not desirable for the appellate court to intervene in the midst of a trial because orders made during the trial can be raised on appeal of the final judgment. They say that steps along the way to an ultimate order are not proper matters for appeal.
- [37] In my view, this is one of the most significant factors that militates against granting leave in this case. While I accept that the judge's order constitutes a limited appeal order under R. 11 of the Court of Appeal Rules, B.C. Reg. 120/2022, it is an interlocutory order made during a trial that may or may not affect the ultimate outcome of the action. If it does, it will give rise to a ground of appeal of the final order. It is, in my view, entirely disruptive to the efficient management of a trial to permit parties to appeal these kinds of evidentiary rulings before the trial has concluded.
- [38] For all these reasons, therefore, I conclude it is not in the interests of justice to grant leave to appeal. The application is dismissed.

"The Honourable Madam Justice Fisher"

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