

CANADA / JUDGMENT

Namdarpour v. Vahman

2018 BCSC 243

COURT

Supreme Court of British Columbia

DECIDED

21 February 2018

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2018 BCSC 243 Namdarpour v. Vahman IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Namdarpour v. Vahman, 2018 BCSC 243 Date: 20180221 Docket: E152731 Registry:

Vancouver Between: Mandana Namdarpour Claimant And Mehdi Vahman also known as Mehdi

Mike Vahman Respondent Before: The Honourable Mr. Justice Myers Supplementary Reasons for Judgment Counsel for the Claimant: Mary E.B. Wood Counsel for the Respondent: Gerald J.

Lecovin, Q.C. Mark J. Lecovin Place and Date of Hearing: Vancouver, B.C. December 15, 2017

Written submissions: February 2 and 9, 2018 Place and Date of Judgment: Vancouver, B.C.

February 21, 2018

- [1] These reasons are supplemental to those of July 11, 2017, which I delivered after the trial: 2017 BCSC 1189. There are some matters it is necessary for me to consider having determined the manner in which the parties' company should be valued and the valuation date. In addition there was a matter I did not deal with, a correction to make, and the parties' seek clarification regarding spousal support duration. I. The Mahr
- [2] In my initial reasons, I did not set out a determination I made at the outset of the trial with respect to the Mahr--an Iranian marriage agreement--that the parties signed when married in Iran. The respondent requests that I do so here, which I now do.
- [3] In his counterclaim, the respondent asked for a declaration that the Mahr signed in Iran when the parties were married be declared to be invalid. At the trial, in response to my question, both counsel said they were not relying on the Mahr or seeking to enforce the agreement in Canada. Accordingly, there was no need for me to deal with it. II. Valuation of Baywatch Shares
- [4] In my reasons, I referred to a draft valuation report of Mr. McKenzie and a \$10,000 adjustment made from the draft in the final report. I did not accept the adjustment. Although part of the draft was entered as an exhibit and Mr. Vahman was cross-examined on the adjustment, in the end Ms. Namdarpour did not rely on the draft. Therefore, the numbers in the final valuation (which made a further adjustment for normalised wages of Ms. Namdarpour) are those that should be used and there is no need to deal with the validity of the \$10,000 adjustment: Low Mid High As at June 30, 2015 \$110,000 \$128,000 \$145,000 As at June 30, 2016 \$299,000 \$328,000 \$356,000

- [5] In my reasons I determined that the appropriate time for valuation of the company was the mid-point between June 30, 2015 and June 30, 2016, and that the mid-range valuation should be used. In accordance with the preceding paragraph, the proper figure (i.e., the mid-point between \$128,000 and \$328,000) is \$228,000.
- [6] There was also a typo in para. 58, which was duplicated in para. 87 of my reasons regarding the mid-point date. It should be December 31, 2015 and not December 20. III. Shareholders Loan
- [7] At para. 86 of my reasons, I dealt with Mr. Vahman shareholder's loan from Baywatch. Subsequent to my judgment, which determined that the company should be valued at December 31, 2015, Mr. Vahman provided an affidavit from the company's bookkeeper stating that the value of Mr. Vahman's shareholder loan was \$15,768.
- [8] I noted in my reasons that the loan did not affect the value of the company; however, that was not quite accurate. In fact, it reduced the valuation of Baywatch. However, the parties were in accord that the amount of the loan should be considered an asset of Mr. Vahman to be divided as a family asset and, to be clear, this is what I order. There is therefore no need to make an adjustment for the loan in the valuation of the company. IV. Support
- [9] In para. 125 of my reasons I dealt with the duration of support. The parties ask for clarification of whether the three years I ordered was from the time of separation or the date of judgment.
- [10] To clarify, the three years is three further years from the date of the judgment, which results in a total period of support of approximately five years and one month. This is less than the minimum Guideline amount of six years, the rationale for which I explained in my reasons being based on the time required for Ms. Namdarpour to obtain financial independence.
- [11] A remaining issue to deal with regarding support is the point now raised by the respondent regarding double recovery. One of the contentious issues at trial was whether the company should be valued on cash-flow basis or asset-value basis. I concluded the former. On that basis, the respondent says support ought not to be awarded because, having been given the value of half the company based on its income stream, to count Mr. Vahman's income from the company as money available for support would doubly award Ms. Namdarpour. Mr. Vahman relies, in part, on the following from *Cooke v. Cooke*, 2011 BCCA 444:
- [27] ... The appellant submits that the order for payment of spousal support was in error as it is based on income from the appellant's financial assets that follows an equal division of the parties' financial assets and duplicates the asset division. The appellant relies on *Boston*, where Major J. for the majority concluded that allowing spousal support from the husband's pension income after the pension had been divided as an asset between the parties amounted to impermissible double recovery. In my view, the *Boston* principle applies equally logically to the appellant's income from *Pacific Link* as it also follows a division of

the parties' assets intended to equalize their financial position. The trial judge recognized the application of the Boston principle but she concluded that the respondent had been economically disadvantaged by the marriage and its dissolution. The appellant had been managing both Pacific Link and Addor during the separation, and he failed to provide a proper transition to her takeover of Addor, with reduced earnings as a result. The time-limited spousal support was intended to compensate the respondent for her lost income due to her transitional disadvantage.

- [12] However, it is not every case where the division of an asset valued on a cash-flow basis and support will result in double compensation. The Supreme Court noted this in *Boston v. Boston*, 2001 SCC 43, which was a pension case. First, it recognised the difference between pension and business income: 57 Pension income is obviously different from business income or income from an investment. See T. Walker, in *The Best of Money and Family Law*, Vol. 9, No. 12, 1994, "Double Dipping: Can a Pension be Both Property and Income?" in which the author argues that pensions should not be treated as other assets subject to equalization consideration. When a pension produces income the asset is being liquidated. The same capital that was equalized is being converted into an income stream. By contrast, when a business or investment is producing income, that income can be spent without affecting the asset itself. In fact, the business or asset may continue to increase in value. The value of the business or investment can be equalized, but neither are depleted solely by producing income. [Emphasis added.]
- [13] Second, in para. 60, the Supreme Court recognised that each case was unique.
- [14] In *Cooke*, the Court of Appeal recognised that a time-limited support order did not amount to double recovery:
28. Here, although the respondent was involved in running the Tim Hortons franchises during the marriage, the appellant operated both businesses during the separation. The respondent was financially prejudiced by the fact that Addor's earnings suffered during the transition, and this was partly due to the appellant's failure to arrange for the respondent's smooth takeover of Addor. The time-limited spousal support ordered by the trial judge was intended to compensate her for those lost earnings during the period required for Addor's earnings to return to normal. In my view, it did not duplicate the asset division, which was premised on both businesses carrying on as going concerns and did not account for the financial disadvantage resulting from the appellant's management during the transition.
- [15] In the case at bar, the mid-range valuation was based on a multiplier of 1.75 (i.e., 21 months) of Baywatch's annual discretionary cash flow[1]. On Mr. Vahman's argument, Ms. Namdarpour is disentitled to support because she will be bought out for one-half of 21 months' capitalised income of Baywatch--an income-producing asset that Mr. Vahman will keep. That is not a reasonable outcome.

- [16] Mr. Vahman's counsel argued in favour of a complete disentitlement to support. Nevertheless, I have considered and rejected any adjustment: both the division of assets and support are assessments and not calculations. More to the point, I do not consider that there is double recovery: the underlined words from the above quoted passage in Boston are apt here. V. Tax on the t-4 slip
- [17] As I advised the hearing, I am not prepared to change this determination. VI. Occupational Rent
- [18] Ms. Namdarpour now raises a claim for occupational rent. This was not pleaded, no Scott Schedule was submitted by Ms. Namdarpour, and this was not argued at the trial. I am not prepared to consider it now. E.M. MYERS J.
- [1] The report defined annual discretionary cash flow as "the annual after-tax cash flow that may be distributed to its owners as a return on their investment, without impairing the company's ability to sustain its business operations."
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Prepared on 29 October 2026 · Esheria