

CANADA / JUDGMENT

Pagliario v. Pagliaro

2026 BCSC 745

COURT

Supreme Court of British Columbia

DECIDED

21 January 2026

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2026 BCSC 745 Pagliaro v. Pagliaro

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pagliario v. Pagliaro,

2026 BCSC 745

Date: 20260121

Docket: S254886

Registry: Vancouver

Between:

Settimio Pagliaro

Plaintiff

And

Antony Pagliaro

Defendant

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

B. Hara

Counsel for Sabrina Pagliaro:

J. Aucoin

Counsel for Lindsay Kenney LLP:

F. Wu

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 21, 2026

Place and Date of Judgment:

Vancouver, B.C.

January 21, 2026

- [1] THE COURT: I issued these oral reasons for judgment during a busy chambers day, and, as such, reserved the right to, and have edited them as to grammar, background and citations to address readability and provide context as necessary, without affecting the substance or final disposition. In addition, given the commonality of surnames, rather than referring to the parties by their surnames, I am using titles, such as husband and wife to refer to the marital parties, and husband's father, as the plaintiff in this civil action. I mean no disrespect by doing so.
- [2] The application before the court today is an interesting one in that it brings into play the intersection of family law and creditor's remedies.
- [3] The application is to set aside a post judgment garnishing order obtained by the husband's father pursuant to the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 ("COE"), in respect of funds paid out by agreement that are proceeds of sale of family property under the Family Law Act, S.B.C. 2011, c. 25 ("FLA") and held in trust by his matrimonial counsel, Lindsay Kenney LLP (the "Lawfirm"), the garnishee.

Background

- [4] The husband's father commenced this action by way of notice of civil claim in respect of various debts or loans, described as being demand loans, incurred during the period of 2001 to, I believe, 2025, although there may be a typo in the date for one of the loans identified in the notice of civil claim.
- [5] Judgment was pronounced in favour of the husband's father, against the husband, on September 15, 2025, in the amount of just over \$1.2 million. There was initially a response to notice of civil claim filed; however, the judgment was obtained without any appearance or attendance by the husband, so is in effect, a default judgment.

- [6] The garnishing order was delivered to the Lawfirm on January 12, 2026, such that that is the date of attachment under the COE.
- [7] In terms of the family proceedings, the parties separated in 2022. The notice of family claim was filed in 2024. The husband and wife owned various parcels of properties, one of which, a vacation property (the "Vacation Property"), was sold with that sale closing in mid December 2025.
- [8] In the context of those family proceedings, there have been agreements reached between the husband and wife with respect to how some of those funds could to be dealt with; however, for the most part, there is a live dispute as to entitlement to those funds as family property, such that they largely remain in the parties' counsel's trust accounts, pending resolution of those disputes. Among other things, the wife is advancing a claim for unequal division.
- [9] At the time of the January 12, 2026 attachment by the garnishing order, \$851,803.61 was held by the Lawfirm in its trust account from the proceeds of sale of the Vacation Property.
- [10] Notwithstanding those ongoing issues, the husband and wife reached an agreement with a consent order being made on January 9, 2026 for each party to receive \$75,000 as an interim distribution out of those amounts held in trust as proceeds from the sale of the Vacation Property (the "Interim Distribution Order"). The Interim Distribution Order was made pursuant to s. 89 of the FLA, meaning that the funds are to be used to fund family dispute resolution, all or part of a proceeding and obtaining information and evidence in support of a family dispute resolution or application.
- [11] By letter of January 13, 2026, having received the garnishing order, the Lawfirm wrote to counsel for the wife and counsel for the husband's father to seek consent to have the interim distribution funds released in accordance with the Interim Distribution Order. The wife's counsel, in responding to this letter, took the position that, among other things, the garnishing order could not attach the funds beneficially owned by the wife, but that all the funds were restrained under s. 91 of the FLA.
- [12] By agreement, the husband's father agreed that the interim distribution of \$75,000 could be paid to the wife in accordance with the terms of the Interim Distribution Order as it was not attached by the garnishing order given she was not a judgment debtor, but did not agree that the other \$75,000 to which the husband was entitled under the Interim Distribution Order could be paid out, taking the position that it had been attached by the garnishing order.
- [13] In addition there was a separate \$20,000 amount that was held in a retainer account by the Lawfirm, which the husband's father, as judgment creditor and applicant herein, agreed was not subject to the garnishing order. As such, that \$20,000 is not relevant for the purpose of today's application.

- [14] A further factor in respect of the use of the whole of the trust funds is that the husband and wife had agreed to use some of the trust funds to complete the sale of property (the "New Property") which is subject to a pre-separation, pre-construction contract of purchase and sale, which had a scheduled completion date of January 21, 2026, for which they had already paid deposits totalling \$144,980, meaning that they required use of an estimated \$621,730 from the trust account to complete that sale. By letter on December 19, 2025, i.e. prior to any attachment by virtue of the garnishing order, the husband and wife received a letter from counsel for the developer in respect of those lands that stated:

Should you not complete the purchase of the strata lot on the completion date, that being today's date, you will be in default of your obligations under the contract. In such event, Mosaic intends to terminate the contract, retain the deposit in the amount of \$144,980, plus any interest, and pursue you for all additional damages arising from your breach of contract.

- [15] As a result of that, the husband and wife agreed that they would complete the sale in order to not (a) lose their deposit and (b) put themselves at risk of a further damages claim.

Legal Framework and Parties' Positions

- [16] The sale of the property from which the funds are proceeds was held in joint tenancy. However, by virtue of s. 81 of the FLA on the separation of the parties, each spouse was deemed to have an undivided half interest in the property. The secondary part of s. 81 is of some note for the purposes of today's application, although neither party specifically referenced it, in particular, the husband's father did not.
- [17] Specifically, in addition to having an undivided half interest in the family property, under s. 81(b) each party is "equally responsible for all family debt". Section 86 of the FLA defines family debt as "all obligations incurred during the relationship".
- [18] As noted, the notice of civil claim suggests that many of these loans, at least \$565,000 of them, by my rough math and subject to a possible typographical error in dates, appears on the face of the notice of civil claim to have been incurred during the relationship, which may trigger s. 86 in terms of if the wife is then being "equally responsible". Although, under s. 86, family debt may be incurred after separation if the debt was incurred or used for the purpose of maintaining family property, meaning more of it may also fall under that category.
- [19] Regardless, even though it is only the husband who is judgment debtor, the wife may be a debtor by operation of s. 86, insofar as the judgment debt may be a family debt. The obligation is on her to establish, at least for that portion of the debt that was incurred during the relationship, that it is not family debt on a strict reading of the FLA. Further, as noted, an issue as to unequal entitlement remains to be decided by the court in the family litigation meaning that the proportional obligations of both the husband and wife for any debt remains to be determined.

- [20] The Lawfirm, as garnishee, takes the position that the amounts held in trust by it are not debts, obligations, and liabilities as defined in s. 3 of the COE and therefore are not funds that are subject to attachment by the garnishing order.
- [21] Specifically, the definition of debts, obligation and liabilities in s. 3 of the COE, although worded with the use of double negatives making it somewhat unwieldy, does specifically include the requirement that the debt is only attachable "if claims and demands could be made available under equitable execution" against those debts.
- [22] It is the last part that is, the Lawfirm argues, the factor that prevents attachment in this case.
- [23] Quite simply, the Lawfirm argues that if the husband demanded counsel to release the funds held in trust they would not be entitled to release those funds by virtue of the statutory obligations under the FLA including s. 91, which prohibits disposition of assets, which I note was formalized by a s. 91 asset restraining order pronounced on August 20, 2024 in the matrimonial proceedings (although, was set to expire on October 1, 2024 - I am unclear on whether the matrimonial parties entered into an agreement outside of that to avoid the necessity of a further court order to extend or replace it). Regardless s. 91 of the FLA prohibits any distribution to any party absent court order or agreement of both of the parties.
- [24] Further, this issue has been made somewhat more problematic by the fact that the husband and wife have agreed amongst themselves as to use of family property, namely the use of proceeds of sale from the Vacation Property, to fund the completion of the purchase of the New Property.
- [25] Counsel for the husband's father, as judgment creditor, argues that by entering into that agreement the parties have altered their entitlement to the funds, in that by agreeing to allow them to be used for some other purpose, in this case the purchase of the New Property, they can no longer rely on the limitations created by the FLA.
- [26] The agreement did not, however, determine their respective entitlements or distribution of family property, it merely converted family property from one form to another, the stated purpose being to preserve and protect the value of that family property.
- [27] The case law relied upon by the Lawfirm includes *Canuck Truck Rentals Ltd. v. Mountain Truck Services*, (1980), 16 CPC 126 (B.C.Co.Ct) confirmed the principle that funds held by a solicitor in his trust account for two clients, only one of which was the judgment debtor, were akin to that of a bank holding money jointly to the credit of a judgment debtor and another person not concerned in the action between the judgment creditor and debtor. The court noted that it is trite law that bank accounts held jointly between a judgment debtor and third party are not subject to attachment in such circumstances, and that such trite principles should also apply with respect to funds held in trust jointly for the benefit of a judgment debtor and third party.

[28] In Canuck Truck Rentals, the counsel holding the funds in trust was the conveyance counsel who took receipt of the funds from a sale of real property that had been owned by both parties and was the counsel for both parties. The reason for such treatment was noted at para. 11 referencing the following passage from *Madonald v. Tacquah Gold Mines Co* (1884), 13 QBD 535 (CA):

Where money is due on a covenant made with two persons jointly by which it is to be paid to such two jointly, no one of those two has any right to that money without the other of them. What difference in this respect can the Judicature Acts have made, for they do not give any right which did not previously exist but only another mode of procedure. It is clear that there was no debt due to the judgment debtor under this deed of February, 1882, when this order to attach was sought for, but only a sum due to him jointly with another, and therefore not a sum capable of being attached.

[29] The court concluded as follows:

It is apparent from *Macdonald v. Tacquah Gold Mines Co.*, *supra*, that attachment by statute on debts not considered to be bank accounts such as an amount remaining due on a mortgage deed payable jointly could not be attached. How then can equity extend to a solicitor's account in these circumstances? I would venture an opinion that equity would not charge the funds in the case at bar if they were jointly held in Court.

[30] The husband's father argues that the significant difference here is that the character of the trust funds somehow was changed because the Lawfirm, as garnishee, only represents the husband, that being the judgment debtor. In other words, the Lawfirm is not, in counsel's submissions, holding the funds for both the husband/judgment debtor and another person because only the husband/judgment debtor is the Lawfirm's client.

[31] Of course, that argument disregards the legislative overlay of the FLA, namely, that those funds, being family property, are *prima facie* the property of both parties, subject to a determination of this court as to entitlement. In addition, there were trust conditions in respect of the funds pending determination of that entitlement (subject to the parties' agreement for the completion of purchase of the New Property), as well as the conditions by which the \$75,000 interim distribution payable to the husband, could be used, that the defined purpose under s. 89 of the FLA. Regardless, any use of the trust funds is not, until final order or final agreement is reached, a determination of entitlement. For example, even if an interim distribution is made under s. 89 of the FLA, and a trial results in a determination that the recipient's division of assets is less than that amount, it would have to be repaid to the other party.

- [32] I do note that some distinction may be possible in respect of the case law distinguishing funds that are jointly held given the effect of s. 86 of the FLA and result that the wife is a joint obligant for, on its face and subject to the wife establishing otherwise, any portion of it that is a family debt. However, the division in that regard is still uncertain. As noted, neither party made any arguments as to the impact of that latter part of s. 86 in this respect.
- [33] The Lawfirm also relied upon the more recent decision, *Royal Bank of Canada v. Norland Forest Products Ltd.*, 2016 BCSC 1456. Although this decision considered the issue as to ownership interests of funds held in a lawfirm's trust account, in the context of whether a court appointed receiver could take possession of them, the court considered the authority derived in the garnishing order context, confirming those principles, as accepted by the creditor seeking to have the funds paid out to the receiver, as follows:
- [27] RBC accepts that joint funds cannot be paid to garnish wages, but argues that this context is distinct from a garnishment situation. RBC states that a garnishment is an enforcement mechanism utilized by a creditor against its debtor, where the garnishment order dictates that the funds that are garnished are held to the sole benefit of the debtor. The garnishment order does not attach to funds held jointly with a non-debtor, which prevents the garnishment order from extinguishing the non-debtor's right to the funds.
- [34] I do have significant concern that spouses, albeit ones that have separated and triggered s. 81 of the FLA by which division of family property and debt is triggered could, under the guides of the FLA organize their affairs to defeat legitimate judgment creditors by virtue of agreements made between themselves. Section 86 of the FLA was likely intended to address the mischief that could be done in that respect, in that if it is a family debt, the spouse will be a co-obligant without being a judgment debtor.
- [35] However, until the division of both family property and debt occurs, either by agreement of court order, the interest which is attachable on the one hand, and the obligation as debtor on the other, remain uncrystallized, such that the issues is similar to that where there is a joint account held with a non-debtor where a garnishee could not reasonably determine the interest to determine what portion, if any, of the funds are attached by the garnishing order.
- [36] Notably, there are sufficient remedies, including fraudulent conveyance claims, if there are divisions of property done by consent between two spouses that are clearly done in a way that is not in accordance with what the law would otherwise provide and without a legal basis, with the result being that judgment creditors are defeated, that operate to effectively protect the judgment creditor. In this case, it is also notable that the New Property will be put into the names of both the husband and wife, meaning that the judgment can also be registered against the husband's interest, whatever that is at the end of the day. Further, there may be claim against the wife as obligant under s. 86 if any of this debt is apportioned to her. Although, those factors are not determinative of this issue, they add context in determining attachment under the COE, when issues as to division of property and debt under the FLA are in issue.

- [37] All of this is to say that I agree with the Lawfirm that given the intersection of the FLA and the uncertain claims to the funds held in trust that they are not subject to attachment under the COE in the same way that funds in a bank account with both parties being on a named account holder would be.
- [38] I do not accept the submissions of the husband's father that just by virtue of the transfer of funds from the conveyance counsel solicitor to one party's trust account, that the character of the funds has changed in any significant way. They remain, even absent specific undertakings, subject to s. 91 of the FLA, meaning that they cannot be disposed of without the entitlements of the parties being determined, regardless of them being in one party's trust account, rather than the other's.
- [39] If it is necessary for me to determine the issues as to whether, specifically, the \$75,000, which by agreement of the parties, was allocated for an interim distribution under s. 89 of the FLA, my analysis would stay the same. Notwithstanding that it is a distribution under the FLA, it does not determine entitlement.
- [40] In the alternative, if I were wrong in that respect, I would agree that the funds constitute a retainer, given the specific purposes for which they are required to be used under s. 89, i.e., paying of the professional fees, whether that be counsel or perhaps a mediator or something of those sorts that are the enumerated purposes in s. 89. They would not go for the husband's own use for any other purpose, other than funding the prosecution of this action in the prescribed formats. In this respect, I agree that the *Capozzi Enterprises Ltd. v. Tower Enterprises Inc.*, 1983 CanLII 631 (BCSC), and para. 10 therein apply in that respect.
- [41] The application is granted as sought in paras. 1 and 2 of the notice of application.

"Associate Judge Robertson"

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