

CANADA / JUDGMENT

Prokopenko v Chaplinskaya

2025 BCSC 520

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 520 Prokopenko v Chaplinskaya

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Prokopenko v Chaplinskaya,

2025 BCSC 520

Date: 20250321

Docket: E171025

Registry: Vancouver

Between:

Maxim Prokopenko aka Maxim Borisovich Prokopenko

Claimant

And

Maria Chaplinskaya aka Maria Anatolyevna Chaplinskaya

Respondent

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

Counsel for the Claimant:

L. Rudovica

Counsel for the Respondent:

M. Jasper

Place and Date of Hearing:

Vancouver, B.C.

January 17, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 21, 2025

OVERVIEW

- [1] This is a summary trial application brought in the context of a family law proceeding. The applicant is Maxim Prokopenko ("Mr. Prokopenko"). The respondent is Maria Chaplinskaya ("Ms. Chaplinskaya"). They are the parents of a 17 year old (the "Child").
- [2] The parties were born and married in Russia. After having emigrated to Canada, their relationship broke down. They concluded property division, parenting, and child support agreements in Russia, and were granted a divorce by a Russian court. They have been residing in Canada since then.
- [3] Five years after the Russian divorce order was issued, Mr. Prokopenko commenced a family law claim against Ms. Chaplinskaya in this court, seeking parenting and child support orders. Ms. Chaplinskaya responded and counterclaimed. In addition to parenting and child support orders of her own, Ms. Chaplinskaya seeks an order for spousal support and property division against Mr. Prokopenko. She also seeks a declaration that the Russian divorce is invalid, and wants a Canadian divorce order to be issued instead.
- [4] Mr. Prokopenko says that it is too late for Ms. Chaplinskaya to now claim spousal support or property from him. He relies on s. 198(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] which provides that such claims are time-barred two years after a divorce judgment is issued. He also says that Ms. Chaplinskaya should not be permitted to challenge the validity of the Russian divorce, as it amounts to an abuse of process.
- [5] Ms. Chaplinskaya disagrees. She says that this court ought not to recognize the Russian divorce order as it was obtained by coercion and fraud. Accordingly, she argues that s. 198(2) of the FLA is inapplicable to her property and spousal support claims.
- [6] Mr. Prokopenko now urges the court to decide the foreign divorce recognition and limitation period issues in his favour on this application for summary trial. Ms. Chaplinskaya says that their determination should await a full trial.
- [7] Having reviewed the record and heard the submissions of counsel, I am not satisfied that these issues can be decided fairly on the material before me. Mr. Prokopenko's summary trial application will be dismissed.

BACKGROUND

Factual Background

- [8] While many of the details of the factual background are disputed, there is some common ground. It is summarized here.
- [9] The parties began to live in a marriage-like relationship in 2007. The Child was born in November of that year. The parties were married on February 4, 2009.
- [10] Ms. Chaplinskaya and the Child initially lived in Moscow, Russia, for the first couple of years following the Child's birth. During much of this time, Mr. Prokopenko was living in Vancouver. Having recently obtained Canadian immigration status for himself, Mr. Prokopenko applied to have Ms. Chaplinskaya and the Child join him in Canada. The application was granted, and the family began to live together in Vancouver in the summer of 2010.
- [11] Unfortunately, the parties' relationship soon became strained and acrimonious. In the spring of 2011, Ms. Chaplinskaya left Canada with the Child and returned to Russia to live in Moscow again.
- [12] The parties then began discussing the terms under which they wanted to conclude their marriage. To that end, they met in the Russian city of Blagoveshchensk to resolve matters. Blagoveshchensk is located in the Russian Far East, and is the administrative centre of Amur Oblast. It is also where Mr. Prokopenko was born. He apparently still has family, property, and businesses in the city.
- [13] On December 30, 2011, two agreements were signed by the parties before a notary in Blagoveshchensk (the "Russian Agreements"). According to the English translations of Russian language documents tendered into evidence, one is titled "Marriage Agreement" and the other is titled "Agreement on Parental Rights of the Parent Living Separately from the Child, and on Payment of Child Support".
- [14] The Russian Agreements include parenting terms to the effect that the Child will live primarily with Ms. Chaplinskaya, a child support term whereby Mr. Prokopenko is to pay a lump sum of \$CAD 50,000 to Ms. Chaplinskaya, and a property division term in relation to a North Vancouver apartment (the "North Van Apartment") then under construction whose title is registered in Mr. Prokopenko's name. The latter provides that Mr. Prokopenko is to transfer 30% of his interest in the North Van Apartment to Ms. Chaplinskaya, and that the remaining 70% interest is to be transferred to the Child when she turns 21. The value of the 30% share is agreed to be \$CAD 200,000, and Mr. Prokopenko has promised to purchase a different similar residential property in the name of Ms. Chaplinskaya if this condition cannot be satisfied.

- [15] On January 16, 2012, a court decision was issued by a justice of the peace of the Amur region for Blagoveshchensk Court Circuit No. 9 in Russia. According to the English translation of a Russian language document tendered into evidence, the justice of the peace concluded that the parties' marriage is to be terminated, with the parties' consent. While acknowledging that its validity is now disputed, I will reference this court decision as the "Russian Divorce Order" in these reasons going forward.
- [16] There is some disagreement between the parties regarding their living arrangements once they returned to Canada. Ms. Chaplinskaya says that the parties reconciled in March 2012 until they separated for good in March 2013. Mr. Prokopenko denies any reconciliation, although he acknowledges that he temporarily allowed Ms. Chaplinskaya and the Child to live with him in another Vancouver apartment that he owned while the North Van Apartment was still being built.
- [17] That said, it is agreed that, once ready, Ms. Chaplinskaya moved into the North Van Apartment and has been living there ever since. For the first few years of its occupancy, the Child also lived there primarily. In April 2017, however, the Child took a trip with Mr. Prokopenko and, according to him, made disclosures of physical and emotional abuse by Ms. Chaplinskaya. These allegations are disputed by Ms. Chaplinskaya, who, in turn, alleges that Mr. Prokopenko alienated the Child from her. It is nevertheless agreed that, starting in April 2017, the Child has expressed a preference to reside with Mr. Prokopenko and that she has been primarily living with him ever since. While the Child will be turning 18 years old this year and has almost reached the age of majority, the parties' parenting issues remain contentious.
- [18] Finally, the parties also agree that while Mr. Prokopenko has paid to Ms. Chaplinskaya the \$50,000 he promised pursuant to the Russian Agreements, he has not transferred any of his interest in the North Van Apartment to her.

Procedural Background

The Pleadings

- [19] Mr. Prokopenko filed his notice of family claim against Ms. Chaplinskaya on April 19, 2017. The only relief sought is in relation to parenting of the Child, a name change for the Child, and child support payable by Ms. Chaplinskaya to Mr. Prokopenko.
- [20] Ms. Chaplinskaya filed her response to family claim on May 25, 2017. It indicates that she opposes almost all of the specific relief sought by Mr. Prokopenko.
- [21] On October 3, 2017, Ms. Chaplinskaya filed a counterclaim against Mr. Prokopenko. In it, she takes issue with the validity of the Russian Divorce Order, as follows:

[The parties] were purportedly divorced from each other by way of an Order of a Russian Court on January 16, 2012. However, neither party met the residency requirements of section 22(1) of the Divorce Act, Canada, at the time the Divorce Order was granted as neither party had been resident in Russia for a year immediately preceding the commencement of proceedings for the divorce.

[22] In this pleading, Ms. Chaplinskaya requests that a large number of orders be issued, including:

- (a) a declaration that the Russian Divorce Order is invalid;
- (b) a divorce under Canada's Divorce Act, RSC 1985, c 3 (2nd Supp);
- (c) parenting arrangements in respect of the Child;
- (d) mandatory counselling for the parties and the Child, including a family reunification program;
- (e) child support payable by Mr. Prokopenko to Ms. Chaplinskaya;
- (f) spousal support payable by Mr. Prokopenko to Ms. Chaplinskaya;
- (g) unequal division of family property, including the North Van Apartment and three other apartments in the Greater Vancouver area, as well as real property and businesses in Russia; and
- (h) a setting aside of the Russian Agreements pursuant to s. 93 of the FLA or, alternatively, enforcement of the Russian Agreements.

[23] On January 26, 2018, Mr. Prokopenko filed a response to counterclaim. It states that he is opposed to most of the relief sought by Ms. Chaplinskaya, with the notable exception of her claim for a divorce.

[24] Mr. Prokopenko subsequently amended his notice of family claim and response to counterclaim on October 24, 2018. His amended pleadings indicate that he is now seeking his own order relating to family property and family debt, namely, one that would provide for unequal division in accordance with the Russian Agreements. Mr. Prokopenko also now asks for the following:

- (a) a declaration recognizing the Russian Divorce Order;
- (b) a declaration that any claim brought by Ms. Chaplinskaya for a division of family property is precluded by:
 - (i) the terms of the Russian Agreements;
 - (ii) s. 198(2) of the FLA; and

(iii) the fact that the parties did not cohabit after divorce and, even if they did, the cohabitation was not for a period of time that would render them spouses under the FLA.

[25] Mr. Prokopenko also modified his response to counterclaim so as to indicate that he disagrees with all of the relief sought by Ms. Chaplinskaya. This includes her claim for a divorce under Canada's Divorce Act, which Mr. Prokopenko effectively pleads is unnecessary since the parties were already divorced pursuant to the Russian Divorce Order.

[26] Ms. Chaplinskaya's amended response to Mr. Prokopenko's amended family claim was filed on June 5, 2024. It indicates that she disagrees with all of the new relief sought by Mr. Prokopenko.

Pre-Trial Procedure

[27] The parties' family claim has now been outstanding for almost eight years. It still has yet to be tried.

[28] The pace of the proceedings was discussed in some detail in *Prokopenko v. Chaplinskaya*, 2022 BCSC 2414, a decision of Justice Sharma dated November 16, 2022 (the "Sharma Judgment"). It dismissed another summary trial application that had been brought by Mr. Prokopenko. Specifically, Mr. Prokopenko sought and was denied orders: (1) dismissing Ms. Chaplinskaya's counterclaim for want of prosecution, and (2) cancelling the certificates of pending litigation filed against properties registered in Mr. Prokopenko's name.

[29] The Sharma Judgment is of assistance for the adjudication of the present application. Notably, paras. 2-33 contain a helpful further description of the factual background and the procedural steps taken in this matter up to the summer of 2022, which I accept and adopt but will not reiterate here. It also contains an analysis of the parties' claims and whether they are suitable for determination by summary trial.

[30] In this analysis, Justice Sharma found that Mr. Prokopenko's application was largely premised on an assumption that Ms. Chaplinskaya's counterclaim was severable from Mr. Prokopenko's claim, as he is hoping to have the former dismissed while maintaining the latter. Justice Sharma found that it would be unjust to do so. This is because the outcome of both claims will depend, at least in part, on the court's assessment of whether the Russian Agreements are valid and enforceable.

[31] Justice Sharma held that her finding that the claims are not severable was sufficient to deny Mr. Prokopenko's request to have Ms. Chaplinskaya's counterclaim dismissed for want of prosecution. However, she went on to find that the applicable test for dismissal for want of prosecution had not been met in any event. In particular, Justice Sharma found that even if the delay could be considered to be inordinate, it was not inexcusable, it had not caused significant prejudice, and it would not be in the interests of justice to dismiss the counterclaim.

- [32] Justice Sharma also considered in detail the general question of whether the parties' claims can be determined by means of a summary trial. In her view, the answer is no. As her observations are also germane to the present summary trial application, I set out a portion of them here:
- [82] [Mr. Prokopenko] submits the threshold issue is suitability because he has brought an application for a summary trial under R. 11-3(15). It is not entirely clear to me that was absolutely necessary, but that is how the application was framed. As noted, the court can grant relief in summary form, but only if it is satisfied that it would be both just to do so and the court could find the facts necessary to decide the matter.
- [83] I find neither condition is met for several reasons. First, the matter is complex because of the divorce and agreements being signed in Russia.
- [84] Second, I do not find there is urgency with regard to the property issues, despite the fact that it has been ongoing for some time. [Mr. Prokopenko's] evidence about his wishes to buy a property, with respect, do not rise to the level of making the resolution of the CPL and property issues urgent. Moreover, if it was truly urgent, I presume he would have taken every step to maintain the trial date that he had set down.
- [85] Third, as noted above, I find the two agreements should be considered together with the validity of the Russian divorce. [Ms. Chaplinskaya] says [Mr. Prokopenko's] failure to fulfil one aspect of the agreement (i.e., the payment of \$200,000 or a residence in lieu of), an allegation which seems to be undisputed, is inextricably tied to the validity of the Russian divorce. Her position is that she would not have agreed to the divorce if she believed she was not getting what they had agreed to. I make no finding on whether that is true, but it is a reasonable position to take and cannot be resolved on affidavit evidence in a short chambers application.
- [86] Fourth, I also note that this issue of how to properly consider the agreements and the validity of the Russian divorce, along with the issues in the pleadings, in turn raise the issue of both the legal impact of the Russian divorce and the agreements. This is a complex matter that ought not to be decided on the basis of a short chambers application.
- [87] Finally, the main reason I cannot find the facts necessary to decide the issues and why it would be unjust to do so is because I find the credibility of the parties is clearly at issue. Again, this is a complex matter that ought not to be decided on the basis of a short chambers application.
- [33] Accordingly, Mr. Prokopenko's 2022 summary trial application was dismissed in its entirety.
- [34] Justice Sharma also ordered the parties to attend a Case Planning Conference ("CPC"), with the apparent hope that it might assist in moving the case forward to trial. Yet a CPC did not take place until almost two years later, on July 2, 2024. At that point, the parties had set down two different sets of trial dates in 2025. It was ultimately decided that a 10-day trial would commence on January 27, 2025. However, this did not happen as Ms. Chaplinskaya

sought and obtained an adjournment of the trial before Associate Judge Robinson on January 16, 2025. The trial has yet to be rescheduled.

The Present Application

[35] On November 29, 2024, Mr. Prokopenko filed the present application for summary trial. While he seeks six substantive orders, the first three can be considered together. I therefore summarize the relief being sought as follows:

(1), (2), and (3): orders that Ms. Chaplinskaya's property and spousal support claims are struck and dismissed by operation of s. 198(2) of the FLA and the Russian Divorce Order;

(4): an order that Ms. Chaplinskaya's claim for a declaration that the Russian Divorce Order is invalid be struck as an abuse of process, or, in the alternative, a declaration that the Russian Divorce Order is recognized as valid;

(5): in the alternative, if the court adjourns the relief sought at (1) to (4) to trial, that these issues be severed from the main action; and

(6): an order for a Views of the Child Report pursuant to s. 211 of the FLA.

[36] I note parenthetically that the present notice of application is almost identical to an earlier one that Mr. Prokopenko filed on July 18, 2019, almost six years ago. As was noted in the Sharma Judgment at paras. 31 and 32, that application was never heard, for reasons that are unclear. Furthermore, there is no indication that a response to that application was ever filed.

[37] Ms. Chaplinskaya did, however, file a response to the present application on December 16, 2024. It indicates that Ms. Chaplinskaya is opposed to it on the basis that the matters raised are unsuitable for summary trial.

[38] The hearing of Mr. Prokopenko's application came before me in chambers in Vancouver on January 17, 2025. This was the day after the parties' 10-day trial slated to commence on January 27, 2025 had been adjourned sine die. As a result, counsel for the parties focused their submissions mainly on the issues of s. 198(2) of the FLA and the validity of the Russian Divorce Order. Mr. Prokopenko's application for a Views of the Child Report was not discussed, and it will not be decided here. At the conclusion of the hearing, I took the matter under reserve in order to fully review the parties' submissions and the application record.

ISSUE

[39] As has been noted, Mr. Prokopenko only seeks dismissal of Ms. Chaplinskaya's property, spousal support, and Russian Divorce Order invalidity claims. He accepts that the parties' parenting and child support claims ought to proceed to trial in any event.

[40] Accordingly, the issue before the court is whether, on a summary trial application, partial judgment can be granted in favour of Mr. Prokopenko in the manner he is seeking. Adjudication of this issue will require consideration of the following two questions:

1. Should the Russian Divorce Order be recognized as valid?
2. Does s. 198(2) of the FLA apply to time-bar any of Ms. Chaplinskaya's counterclaims?

[41] I will conduct this analysis after first setting out general legal principles that apply to summary trial applications, recognition of foreign divorces, and limitation periods asserted under the FLA.

LEGAL FRAMEWORK

Summary Trials

[42] Rule 11-3(15) of the Supreme Court Family Rules, B.C. Reg. 169/2009 (which is identical to Rule 9-7(15) of the Supreme Court Civil Rules, B.C. Reg. 168/2009), provides that:

(15) On the hearing of a summary trial application, the court may

- (a) grant judgment in favour of any party, either on an issue or generally, unless
- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
- (ii) the court is of the opinion that it would be unjust to decide the issues on the application,

[43] The principles for determining whether a matter can be adjudicated by means of a summary trial application are well established. Of particular relevance to this specific application is our Court of Appeal's decision in *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83. It considered the question of when it would be appropriate to deal with discrete issues on a summary trial when the applicant is not seeking to have all of the parties' claims decided. Writing for the Court of Appeal, Justice Groberman cited with approval a list of factors to be considered, while discouraging a checklist approach to the question:

[27] In *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485, the court considered a large number of authorities (most of which emanated from the British Columbia Supreme Court) on when it is appropriate to hive off an issue in litigation for summary trial. It distilled from the cases a list of factors to be considered:

[110] In summary, the authorities in BC, including *Hryniak*, make clear that the factors the court must consider on applications to determine by summary trial only part of the issues in the lawsuit are:

- a) whether the court can find the facts necessary to decide the issues of fact or law;

- b) whether it would be unjust to decide the issues by way of summary trial, considering amongst other things:
 - i. the implications of determining only some of the issues in the litigation, which requires consideration of such things as:
 - (1) the potential for duplication or inconsistent findings, which relates to whether the issues are intertwined with issues remaining for trial;
 - (2) the potential for multiple appeals; and
 - (3) the novelty of the issues to be determined;
 - ii. the amount involved;
 - iii. the complexity of the matter;
 - iv. its urgency;
 - v. any prejudice likely to arise by reason of delay; and
 - vi. the cost of a conventional trial in relation to the amount involved.

[28] This list is a good indication of the factors that are typically of concern when a court is asked to deal with a single issue on a summary trial. I would not, however, suggest that all of these factors will be relevant in every case, and I would discourage a checklist approach to the question.

[44] Justice Groberman also noted that it is not always necessary for the Court to be satisfied that the test for severance of trial proceedings under Rule 22-5 of the Supreme Court Civil Rules (Rule 21-3 of the Supreme Court Family Rules) has been met in order to find an issue suitable for summary determination under the summary trial rule. Often, the two situations will present quite different contexts, both in terms of the efficiency of trial management, and the allocation of judicial and litigant resources: Ferrer at paras. 29-38.

Recognition of Foreign Divorces

[45] The statutory framework for determining whether to recognize a divorce granted by a foreign court is set out at s. 22 of the Divorce Act. It provides:

22(1) A divorce granted, on or after the coming into force of this Act, by a competent authority shall be recognized for the purpose of determining the marital status in Canada of any person, if either former spouse was habitually resident in the country or subdivision of the competent authority for at least one year immediately preceding the commencement of proceedings for the divorce.

22(2) A divorce granted after July 1, 1968 by a competent authority, on the basis of the domicile of the wife in the country or subdivision of the competent authority, determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for the purpose of determining the marital status in Canada of any person.

22(3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.

[46] At first blush, the first two subsections of this provision appear to set out condition precedents for the recognition of foreign divorces. However, by operation of s. 22(3), common law principles for recognizing foreign judgments remain applicable as well. This means that the simple fact that neither spouse was habitually resident in the foreign jurisdiction for at least one year before the start of divorce proceedings is not necessarily a bar to recognizing a divorce judgment from that jurisdiction: *Salfinger v. Salfinger*, 2012 BCSC 1874 at paras. 19-22 and 30; and *Wilson v. Kovalev*, 2016 ONSC 163 at para. 9.

[47] Turning to the common law, the basic conditions for recognizing a foreign divorce are set out in *Sangi v. Sangi*, 2011 BCSC 523 at para. 199, as follows:

[199] When considering the validity of a foreign divorce, the court need ensure only that certain basic conditions are met. As set out in Nicolas Rafferty et al., eds., *Private International Law in Common Law Canada*, 2nd ed. (Toronto: Emond Montgomery Publications Ltd., 2003) at 922:

In order for a foreign divorce to be recognized in Canada, it must fulfill certain basic conditions beyond simply meeting the requirement of appropriate jurisdiction of the rendering court: the decree must be a final order requiring no further steps to dissolve the marriage conclusively, it must not have been obtained by collusion or fraud, and the proceedings must have conformed to Canadian rules of natural justice--failure to notify the other party will usually prevent recognition. If all of these conditions are met, the Canadian court will not inquire into the grounds on which the foreign court granted the divorce or otherwise look at the merits of the case.

[48] It was also noted by the Ontario Superior Court in *Wilson* at para. 10 that there are presumptions in favour of the validity of foreign divorce decrees. Accordingly, the onus is on the party that challenges the foreign divorce to adduce evidence of its invalidity.

[49] In *Pitre v. Nguyen*, 2007 BCSC 1161 at para. 15, it was observed that recognition of foreign divorces can only be refused in limited circumstances. A non-exhaustive list of them was conveniently set out in *Wilson* at para. 10, followed by an enumeration of bases upon which foreign divorces may be recognized:

[10] ... The grounds upon which the court will decline to recognize a foreign divorce are very limited, and include the following:

1. The Respondent did not receive notice of the Divorce Application;

2. The foreign divorce is contrary to Canadian public policy;
3. The foreign court or other authority that granted the divorce ("the granting authority") did not have the jurisdiction to do so under the law of the foreign country;
4. Where there is evidence of fraud going to the jurisdiction of the granting authority; or
5. There was a denial of natural justice by the granting authority in making the divorce order.

[11] By contrast, there are numerous bases upon which Ontario courts will recognize a divorce obtained in a foreign country, including the following:

1. The parties were domiciled in the foreign country that granted the divorce ("the granting country") when the divorce proceedings were commenced;
2. Either party was domiciled in the granting country when the divorce order was made;
3. The divorce, wherever granted, would be recognized by the law of the country where the parties were domiciled when the divorce order was made;
4. The jurisdictional rule of the granting country corresponds to the Canadian jurisdictional rule in divorce proceedings;
5. Where either party had a real and substantial connection with the granting country; and
6. Where the foreign divorce would be recognized in another foreign jurisdiction with which either party has a real and substantial connection.

[50] There are several examples of cases in which this court has grappled with the issue of whether a foreign divorce should be recognized in the face of allegations of invalidity. In addition to *Salfinger*, *Sangi*, and *Pitre* mentioned above, there is also *Cao v. Chen*, 2020 BCSC 735 and *Marzara v. Marzara*, 2011 BCSC 408.

[51] Jurisprudence from Ontario is also instructive: *Vyzaemskaya v. Safin*, 2024 ONCA 156; *aff'g* 2022 ONSC 7311; *Sonia v. Ratan*, 2022 ONSC 6340; *Abraham v. Gallo*, 2022 ONSC 1136; *Al Sabki v. Al Jajeh*, 2019 ONSC 6394; *Ali v. Ibrahim*, 2019 ONSC 300; *Wilson*, *supra*, and *Martinez v. Basail*, 2010 ONSC 2038.

[52] In most of these decisions, the impugned foreign divorce was recognized as being valid. However, there are also several in which the foreign divorce order was not given effect (*Marzara*, *Vyzaemskaya*, and *Al Sabki*). It is apparent from a review of the reasons for judgment that each case was decided contextually and the outcome was highly dependent on the actual evidence presented.

Limitation Periods in Family Law Proceedings

[53] Section 198 of the FLA provides that while most family law claims brought pursuant to that legislation are not subject to a limitation period, there are exceptions. The most significant is the two-year limitation period that applies to property division and spousal support claims. The entire section reads as follows:

198 (1) Subject to this Act, a proceeding under this Act may be started at any time.

198 (2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, no later than 2 years after,

- (a) in the case of spouses who were married, the date
 - (i) a judgment granting a divorce of the spouses is made, or
 - (ii) an order is made declaring the marriage of the spouses to be a nullity, or
- (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.

198 (3) Despite subsection (2), a spouse may make an application for an order to set aside or replace with an order made under Part 5, 6 or 7, as applicable, all or part of an agreement respecting property or spousal support no later than 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.

198 (4) The time limits set out in subsection (2) do not apply to a review under section 168 [review of spousal support] or 169 [review of spousal support if pension benefits].

198 (5) The running of the time limits set out in subsection (2) is suspended during any period in which persons are engaged in

- (a) family dispute resolution with a family dispute resolution professional, or
- (b) a prescribed process.

[54] In other words, s. 198(2) of the FLA prohibits a person who is already divorced from bringing a claim against their ex-spouse for (1) division of property or family debt or (2) spousal support, unless the claim is commenced within two years of the date of their divorce judgment. There is no provision for extending this period, even on discoverability grounds.

[55] That said, section 198(3) of the FLA sets out a separate and specific limitation period for applications to set aside or vary agreements respecting property or spousal support. Such applications can be brought within two years of the date on which the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application, regardless of whether and when a divorce order was issued.

- [56] Finally, s. 198(5) of the FLA suspends the running of the s. 198(2) time limit while a family dispute resolution or other prescribed process is in progress.

ANALYSIS

- [57] Mr. Prokopenko's summary trial application raises two fundamental questions.
- [58] The first is whether the Russian Divorce Order ought to be recognized as being valid by the court. The second is whether Ms. Chaplinskaya's property and spousal support claims are time-barred by operation of s. 198(2) of the FLA because they were commenced over two years after the Russian Divorce Order was issued.
- [59] In order for Mr. Prokopenko to succeed on this application, both of these questions must be answered in the affirmative. If they are not, another question arises, namely, whether the Russian Divorce Order recognition and s. 198(2) FLA limitation period issues should be severed from the other aspects of the parties' claims and counterclaims.
- [60] I will address these questions sequentially, as necessary.

Should the Russian Divorce Order be recognized?

- [61] Mr. Prokopenko argues that the Russian Divorce Order ought to be recognized as valid by this court, for both procedural and substantive reasons. Ms. Chaplinskaya disputes these assertions.

Procedural Question

- [62] Procedurally, Mr. Prokopenko argues that Ms. Chaplinskaya made an admission in her response to family claim that the parties were divorced in Russia on January 16, 2012. As a result, he says that she cannot plead in her counterclaim that the Russian Divorce Order is invalid, as this is an impermissible inconsistent pleading. He says that the decisions of our court of appeal in *First Majestic Silver Corp. v. Davila Santos*, 2012 BCCA 5 [First Majestic]; and *Pepper's Produce Ltd. v. Medallion Realty Ltd.*, 2012 BCCA 247 [Pepper's] support his position.
- [63] I do not agree.
- [64] It is true that First Majestic and Pepper's say that the doctrine of abuse of process can be invoked to prevent a party from pursuing inconsistent rights in different actions. It may also be used to prevent a party from deliberately arguing diametrically inconsistent facts in various actions, thus knowingly advancing irreconcilable positions which are not articulated as alternative claims. However, no mischief of this sort has been perpetrated by Ms. Chaplinskaya in the case at bar.
- [65] In particular, Ms. Chaplinskaya has not asserted in her pleadings that she is entitled to assert rights or obtain remedies based upon the Russian Divorce Order while at the same time denying its validity. To the contrary, her property and spousal support claims are not

founded upon the terms of the Russian Divorce Order in any way. Furthermore, I do not agree that Ms. Chaplinskaya's factual acknowledgment in her response to family claim that the parties were divorced in Russia on January 16, 2012 and that their Russian divorce certificate was issued on February 21, 2012 somehow precludes Ms. Chaplinskaya from advancing a legal position that the Russian Divorce Order ought not to be recognized by this court.

[66] In sum, Mr. Prokopenko's procedural objection is unfounded and is rejected.

Substantive Question

[67] I turn now to Mr. Prokopenko's substantive position. He says that the Russian Divorce Order should be recognized by this court as it meets all of the necessary legal preconditions.

[68] In support of his position, Mr. Prokopenko has tendered four of his own affidavits, in which he deposes to the following:

- (a) both parties have connections with Russia in that they were both born and raised in Russia, continue to have family in Russia, and hold Russian passports;
- (b) Ms. Chaplinskaya was the claimant in the Russian divorce application, a proceeding in which both parties were involved and provided their consent;
- (c) the parties attended together at the Civic Acts Registration Bureau building in Blagoveshchensk, and Ms. Chaplinskaya applied for the divorce;
- (d) while the parties did not attend court together in Blagoveshchensk when the Russian Divorce Order was granted, Ms. Chaplinskaya had signed a power of attorney to a mutual friend who attended court on her behalf; and
- (e) neither party appealed the Russian Divorce Order.

[69] In addition, Mr. Prokopenko tendered an affidavit from the Russian notary who drafted and notarized the Russian Agreements with the parties in Blagoveshchensk, as well as an affidavit from a Russian attorney at law who practices law in Blagoveshchensk.

[70] In his affidavit, the notary deposes to his observations and opinion to the effect that both parties knowingly and voluntarily entered into the Russian Agreements in December 2011, and that neither acted under duress, threats, or unlawful coercion.

[71] As for the attorney at law, his affidavit contains what is described as an "expert report" on the divorce process in Russia, both generally and as followed by the parties. The attorney at law opines that the Russian Divorce Order was valid at the time it was made on January 16, 2012, and that it remains binding today.

[72] Ms. Chaplinskaya submits that the Russian Divorce Order should not be recognized as valid, as it was issued in circumstances tainted by coercion and fraud. In particular, she alleges that she did not willingly and actively participate in the divorce proceedings before the

Russian court in Blagoveshchensk. She specifically denies the propriety of her representation in that court by means of a power of attorney, which she says was granted under duress to a person she did not know. In her submission, this flawed process resulted in the Russian Divorce Order being issued based on false information. In her affidavit of September 30, 2022, Ms. Chaplinskaya deposes:

25. The order of divorce was obtained in Blagoveshchensk, Russia, on January 16, 2012. I was represented by [Mr. Prokopenko's] company director Litus Yevgeniy Alexandrovich by way of a Power of Attorney, that I had to sign under life threat. I met Litus Yevgeniy Alexandrovich only once. He was hired just before our divorce. He did not know our situation nor he ever asked me about it. The information he presented on my behalf to the Russian Court was incorrect. We resided together until June 2011 not until May 2009. We did not terminate our relationships in 2009, we just started to live together after immigration in 2010. The Russian court made decision based on a false information. ...
- [73] Ms. Chaplinskaya also deposes that, in addition to the power of attorney, she signed the Russian Agreements in December 2011 without any legal counsel and under threats made to her life by Mr. Prokopenko.
- [74] Having reviewed all of the affidavits filed by the parties, none of which were subject to cross-examination, I conclude that I am unable to find the facts necessary to decide whether the Russian Divorce Order should be recognized by the court. In particular, I find that there are serious issues regarding whether Ms. Chaplinskaya's participation in the Russian divorce proceedings was in accordance with the principles of natural justice and Canadian public policy concerns, especially given her allegations of duress, coercion, and fraud. A simple comparison of the parties' affidavits reveals that there are significant issues of credibility which will require a trial in order to be resolved. I am also of the view that it would be unjust to decide whether to recognize the Russian Divorce Order on a summary trial application, given its complexity and importance to the parties.
- [75] In so concluding, I agree generally with the observations made in the Sharma Judgment under the heading "Suitability for Determination by Summary Trial". Simply put, this is indeed a complex matter that ought not to be decided on the basis of a short chambers application.
- [76] I am also fortified in my conclusion by an interlocutory decision rendered by Justice Steele of the Ontario Superior Court further to a motion to set aside a Russian divorce order in *Vyazemskaya v. Safin*, 2021 ONSC 8627 [the "Vyazemskaya Motion Decision"]. This is the matter that was ultimately determined further to a trial in *Vyazemskaya v. Safin*, 2022 ONSC 7311; aff'd 2024 ONCA 156 (mentioned above at para. 51 of these reasons). At para. 28 of the *Vyazemskaya Motion Decision*, Justice Steele found that she was not comfortable determining the motion solely on the basis of a written record, and that a trial involving oral evidence and cross-examinations was required so that the court could make the necessary findings of credibility. I feel the same way about the present application before me.

[77] In sum, as I am unable to find the facts necessary and am of the view that it would be unjust to do so, I decline to determine on this application whether the Russian Divorce Order should be recognized by the court for the purposes of the parties' claims and counterclaims. This issue will need to be determined at trial.

Does s. 198(2) of the FLA time bar Ms. Chaplinskaya's counterclaims?

[78] In light of my conclusion set out in the preceding paragraph, it follows that I cannot determine whether s. 198(2) of the FLA applies to preclude Ms. Chaplinskaya from pursuing her property and spousal support claims against Mr. Prokopenko. This issue will also have to be determined at trial.

Should a severance order be issued?

[79] Finally, I turn to Mr. Prokopenko's request that the foreign divorce recognition and limitation period issues be severed and determined separately from the balance of the parties' claims and counterclaims. This request was made in the alternative should the court decline to decide these issues in this summary trial. As I have so declined, I will now consider the severance request.

[80] The only basis for a severance order set out in Mr. Prokopenko's notice of application is his bald allegation that such an order would "save significant trial time". However, I was not directed to any evidence in the application record that might substantiate this assertion. Furthermore, counsel for Mr. Prokopenko did not explain why it would be better to have a separate trial to decide just the Russian Divorce Order recognition and the s. 198(2) FLA issues. Indeed, the request for a severance order was not pressed at all by counsel for Mr. Prokopenko in her oral submissions before me in chambers.

[81] Accordingly, I am not persuaded that it is in the interests of justice to sever and bifurcate this proceeding. To the contrary, it seems that it would be preferable to have all issues considered at a single trial, especially given the potential overlap between those surrounding the validity of the Russian Divorce Order and the Russian Agreements, as noted in the Sharma Judgment.

[82] In sum, I will not exercise my discretion to issue a severance order in this case.

DISPOSITION

[83] The summary trial relief sought at paragraphs 1 to 5 of Mr. Prokopenko's notice of application filed November 29, 2024 is dismissed.

[84] Mr. Prokopenko's application for an order requiring the preparation of a Views of the Child Report (paragraph 6 of the notice) is adjourned generally.

[85] The costs of this application are in the cause.

"Brongers J."

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