

CANADA / JUDGMENT

Salman v. Astifan

2021 BCSC 1742

COURT

Supreme Court of British Columbia

DECIDED

3 September 2021

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2021 BCSC 1742 *Salman v. Astifan* IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: *Salman v. Astifan*, 2021 BCSC 1742 Date: 20210903 Docket: E182122 Registry: Vancouver Between: Alaa Salman Claimant And Naamat Astifan also known as Nina Naamat Astifan Respondent Before: The Honourable Mr. Justice Kirchner Reasons for Judgment on Costs Counsel for Claimant: R. Gill Counsel for Respondent: R. Fayerman Written Submissions: Vancouver, B.C. July 29, 2021 and August 18, 2021 Place and Date of Judgment: Vancouver, B.C. September 3, 2021

- [1] These reasons address the issue of costs arising from the judgment I gave in this matter on July 16, 2021, indexed as 2021 BCSC 1395 (the "Reasons"). In those Reasons, I ordered, among other things, that the former family home, which is the parties' only substantial asset from their marriage, be reapportioned in favour of the respondent Ms. Astifan.
- [2] The parties each seek an order of costs against the other. Each claims to have been substantially successful at trial and both rely on *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref'd 2002 BCCA 454.
- [3] Ms. Astifan argues that since she was successful in obtaining a reapportionment of the former family home, she should receive her costs. She also argues she was successful on other issues at trial, including the presence of family violence, Mr. Salman's child support obligation from his previous marriage not being a family debt, the sale price of the Taza Falafel House restaurant, and rental income from the family home.
- [4] Mr. Salman argues he was substantially successful, pointing to the fact that I accepted his expert's assessment of the former family home. He also argues he was successful on the issues of the parties' respective contributions to family property, including the former family home, the towing business, and the restaurant. Though not stated expressly, I infer he also relies on the fact that Ms. Astifan did not receive the full reapportionment of the former family home she was seeking.

- [5] Mr. Salman also relies on an offer to settle that he made to Ms. Astifan before trial in which he proposed an equal division of the family home based on the value assessed by his expert (which I accepted), and payment to Ms. Astifan of \$479,854.98 to buy out her half interest in the former family home. This is said to be half the assessed value of the property after deductions are made for the payment of the mortgage. It is subject to Mr. Salman securing financing.
- [6] With respect, I do not see how the offer to settle assists Mr. Salman. It proposes an equal division of the former family home but I found that Ms. Astifan was entitled to a reapportionment of that asset in her favour, albeit not to the extent she sought. Moreover, the offer to settle proposes compensation be paid to Mr. Salman for the sale of the restaurant based on his assertion that Ms. Astifan sold it for \$80,000, not for the \$40,000 that I found it actually sold for.
- [7] Ms. Astifan did not succeed on all issues. Nor did she achieve the full reapportionment of the family home she was seeking but I nevertheless find she was substantially successful on that issue. Further, while she was not successful in establishing the value of the former family home she asserted, she was successful in resisting Mr. Salman's claim that she sold the restaurant for double the amount stated in the sale agreement. Success on that issue largely cancels out Mr. Salman's success on the valuation of the family home.
- [8] On balance, while Ms. Astifan did not succeed in full in all aspects of the positions she took at trial, having regard to the analysis set out in *Fotheringham*, I find she was substantially successful overall and I award her costs at Scale B. "Kirchner, J"

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