
CANADA / JUDGMENT

Sangha v. Sangha

2017 BCSC 2289

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Supreme Court of British Columbia

DECIDED

12 December 2017

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2017 BCSC 2289 Sangha v. Sangha

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sangha v. Sangha ,

2017 BCSC 2289

Date: 20171212

Docket: E9598

Registry: Quesnel

Between:

Dalbir Singh Sangha

Claimant

And

Amarjit Kaur Sangha

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Claimant:

S.E. Elson

Counsel for the Respondent:

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Place and Date of Trial/Hearing:

Prince George, B.C.

October 30 - November 3, 2017

Place and Date of Judgment:

Quesnel, B.C.

December 12, 2017

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I. Introduction

- [1] This action was commenced in 1999 under the Family Relations Act, R.S.B.C. 1996, c. 128 (FRA) following the breakdown of a four-year marriage. The issues were supposed to have been resolved in 2006 when the parties agreed to orders that, among other things, granted Ms. Sangha certain limited corollary relief but otherwise dismissed her financial claims.

- [2] In 2012, Ms. Sangha obtained an order allowing her to reopen this action after it was revealed in separate litigation that Mr. Sangha had fraudulently concealed his assets from her. In particular, his most valuable assets turn out to be a minority stake in two corporations that are jointly owned with other members of his extended family. He had asserted in sworn affidavits and discovery testimony that his shares in those companies could not be divisible family assets because he had no beneficial interest in them. He relied in that regard on two trust agreements purporting to prove as much. He now acknowledges that he had lied about those things in an effort to defeat Ms. Sangha's financial claims. In fact, the agreements were shams and there were no trusts.
- [3] In light of those revelations, Ms. Sangha now seeks the following relief:
- i. compensation in lieu of a division of the family assets;
 - ii. retroactive lump sum spousal support in the amount of \$35,585; and
 - iii. special costs for almost the entire action.
- [4] Mr. Sangha opposes the relief sought on the basis that the shares in issue are not divisible family assets within the meaning of s. 58 of the FRA but rather excluded business assets under s. 59. He argues in the alternative that if they are family assets, Ms. Sangha ought to be reapportioned only a minimal interest in them under s. 65.
- [5] Mr. Sangha denies that any further spousal support is owing beyond the amounts he has already paid. To the extent that further spousal support is found to be owing, he asserts a setoff for the cost of caring for the parties' son, now of the age of majority, who has been in his charge for most of the time since the parties' separation in 1999.
- [6] Finally, Mr. Sangha argues that it would not be appropriate to award special costs for the entire action because until the revelation of the fraud, this litigation was concerned primarily with parenting issues that were unaffected by the fraud. He submits that his defence of the financial claims since the revelation of the fraud has not been deserving of rebuke.
- [7] During closing argument, an issue arose as to the application of certain provisions of the FRA, in light of its repeal in 2013. I am satisfied that I must resolve all of the issues in this case under the FRA by virtue of s. 252 of the Family Law Act, S.B.C. 2011, c. 25, which states as follows:

Transition - proceeding respecting property division

252 (1) This section applies despite the repeal of the former Act and the enactment of Part 5 [Property Division] of this Act.

- (2) Unless the spouses agree otherwise,
- (b) a proceeding respecting property division started under the former Act

must be started or continued, as applicable, under the former Act as if the former Act had not been repealed.

II. The Facts

A. Mr. Sangha's Background and Assets

- [8] Mr. Sangha was born in India in 1950. In 1964, he left India to join his father in England. While there, he worked in his father's construction company as an apprentice carpenter. In 1973, he immigrated to Canada with his first wife to join a relative of hers who lived in Quesnel, B.C. Mr. Sangha's principal home has been in Quesnel ever since, but he and his first wife separated in 1979.
- [9] Mr. Sangha's parents and siblings eventually joined him in Quesnel.
- [10] At first, Mr. Sangha applied his skills as a carpenter to building houses in Quesnel. After his brother Gurdial Singh Sangha (also known as "Gordy") joined him to be his partner in that business, they formed a company called Sangha Construction Limited. When the business faltered as a result of the 1981 recession, Mr. Sangha, Gordy, and their other brother, Kewal Singh Sangha ("Kevin"), became involved in selling construction tools, among other things, through a company called Canadian Tools. By the end of the decade, they had made enough money in those endeavours to get back into the construction business.
- [11] To that end, in 1989 they incorporated Reliance Investment Group Ltd. ("RIGL"). Mr. Sangha was allotted 25% of the shares of that company. The remainder were allotted to his father, Kharak Sangha ("Kharak"), and two brothers. Kharak transferred land to RIGL and RIGL built an apartment building on it known as the Chateau St. Laurent. RIGL also acquired a hotel in Quesnel originally called the Tower Inn Suites and Hotel ("Tower Inn") which opened in 1991. In the following year, RIGL opened a restaurant in the Tower Inn known as Begbie's.
- [12] In 1989, the Sanghas also incorporated Reliance Industrial Supplies Ltd., which Mr. Sangha used between 1995 and 1997 as a vehicle to continue his business of selling construction tools. That company became active again in 2007 under the name Reliance Supplies Ltd. I will refer to that business as "Reliance Supplies."
- [13] In 1996, RIGL put up the down-payment to purchase a high rise mixed-use residential and commercial building in Calgary, Alberta, known as Edinburgh House. Yet another company, 396964 Alberta Ltd. ("Alberta Co."), was used to complete the purchase and take title to that property. That company had originally been formed in 1989 and belonged to Baldev Singh Johal, who is married to Mr. Sangha's sister. At the time of the purchase of Edinburgh House, Mr. Johal transferred his original 100 shares in Alberta Co. to Mr. Sangha and Gordy, each taking 50 shares. According to Mr. Sangha and Mr. Johal, they later reached an agreement whereby Mr. Johal would manage the building for ten years in exchange for free accommodation and a 15% interest in the company. Pursuant to that agreement, Mr. Johal

was given back 15 shares, eight from Mr. Sangha (leaving him with 42) and seven from Gordy (leaving him with 43).

- [14] Mr. Johal took over the management of Edinburgh House from a management company known as Argon, whose contract ended at the end of August 1996. He and Mr. Sangha hired new staff for the building, including an office manager, a residence manager and cleaning staff. Despite a temporary layoff in the late summer of 1996, Mr. Johal spent most of his time working as a bus driver for the city of Calgary.
- [15] During the marriage, Mr. Sangha earned income from all three of these companies (RIGL, Reliance Supplies, and Alberta Co.), although most of his reported income came from RIGL and Alberta Co.
- [16] It appears that the businesses were operated in such a way that company expenses were not kept distinct from personal or family expenses. Apart from the active businesses they engaged in, the companies were also used as a vehicle for splitting income. Family members with lower incomes, such as Ms. Sangha, were often allocated additional income from these companies that they did not actually receive.

B. The Marriage

- [17] The parties were married in India on January 25, 1995. It was an arranged marriage. Mr. Sangha says he was urged by his parents to remarry, after the marriage to his first wife ended, and to that end, he connected with Ms. Sangha through her brother. The couple met each other for the first time on the date of their wedding.
- [18] Ms. Sangha was 32 years old when she got married. She had completed her education to grade 10 and had never worked outside the home.
- [19] Shortly after the wedding, Mr. Sangha fell ill. He returned to Canada alone in March 1995. Ms. Sangha did not join Mr. Sangha in Canada for another full year while she applied for landed immigrant status. He sponsored her immigration application and committed to support her financially, which he did during the marriage. On his sponsorship form, which he says was prepared for him by Gordy, he claimed to be earning approximately half a million dollars per year.
- [20] Ms. Sangha arrived in Canada on March 7, 1996 with little more than the clothes she was wearing and some gold jewelry. She spoke little English.
- [21] Upon their arrival, the couple stayed briefly with Gordy's daughter who was living in Vancouver. According to Mr. Sangha, he went alone from there to Calgary to oversee the closing of the purchase of Edinburgh House, which took place a few weeks later. After that, Mr. Sangha, by his account, returned to Vancouver to collect Ms. Sangha and the couple then travelled together directly to Quesnel.

- [22] His account is corroborated by Mr. Johal, who says that Mr. Sangha stayed with him for that trip and that Ms. Sangha was not with him then. Mr. Johal says he did not meet Ms. Sangha until she came to Calgary a few months later, in June or July 1996.
- [23] Ms. Sangha remembers travelling to Calgary with Mr. Sangha to be there for the purchase of Edinburgh house. According to her, they stayed on that initial trip for ten days before heading to Quesnel for two or three months.
- [24] Ms. Sangha says that when they returned to Calgary over the summer of 1996 she contributed to the renovation work at Edinburgh House by cleaning vacant suites and by cooking for Mr. Sangha and others who were working there.
- [25] Ms. Sangha testified that the couple moved back to Edinburgh House in Calgary in April 1997. In cross-examination, she agreed that the move may have occurred a bit later. In any event, she stayed there on that occasion for several months. During that stay, she gave birth to their son Himmat, who was born on July 8, 1997. Himmat was premature and had to be delivered by Caesarean section.
- [26] Mr. Sangha testified that he was selling farming equipment on the prairies in the spring of 1997. Ms. Sangha accompanied him and they stayed in Winnipeg, Manitoba until May or June. They then went to Calgary to stay at Edinburgh House. Mr. Sangha says he stayed there for approximately six weeks around the birth of Himmat, before resuming his travels.
- [27] Other members of the family, including Mr. Sangha's mother, joined them there to help with caring for Himmat while Ms. Sangha recovered from the delivery. According to Ms. Sangha, her mother-in-law was only there for a month. Mr. Sangha says his mother stayed until December when she departed with Ms. Sangha for Quesnel. Ms. Sangha says she remained in Calgary until November or December 1997, when she returned to Quesnel herself.
- [28] While in Quesnel, they lived in a house owned by one of Mr. Sangha's brothers, which also accommodated the larger extended family. Mr. Sangha was usually on the road selling tools and farming equipment. Sometimes Ms. Sangha accompanied him on those journeys, often she did not.
- [29] While she was living in Quesnel (primarily in 1998), Ms. Sangha worked in the laundry at the Tower Inn, which was just down the block from their house. She was paid approximately \$900 per month. She claims that she also worked from time to time in that capacity without being paid, although Mr. Sangha disputes this.
- [30] Ms. Sangha appears to have returned once more for a brief stay at Edinburgh House in the summer of 1998.

- [31] On January 27, 1999, Ms. Sangha left on a trip to India with Himmat, who was then just 18 months old. Mr. Sangha was supposed to accompany them but he was forced to remain behind due to an illness in the family. Mr. Sangha says he paid the airfare for Ms. Sangha, Himmat, and also for a friend of Ms. Sangha's who travelled to India with them and ended up marrying her brother.
- [32] The tickets were valid for a return flight within six months. Ms. Sangha did not book a return flight in that six-month period, however, and according to Mr. Sangha, she gradually fell out of touch. Mr. Sangha became concerned that Ms. Sangha had no intention of ever returning to Canada with Himmat. Ms. Sangha says she did not return because she was expecting Mr. Sangha to join her and Himmat in India.

C. The Litigation

- [33] Mr. Sangha commenced this action on July 6, 1999 with a view to getting Himmat back from India. On July 15, 1999, he obtained an ex parte order granting him interim sole custody and guardianship of Himmat and permitting him to travel to India to retrieve Himmat and bring him back to Canada. He eventually found Ms. Sangha and Himmat in India and managed to bring Himmat back to Canada without Ms. Sangha's knowledge by securing a temporary passport for him from the Canadian consulate.
- [34] When she learned of what had occurred, Ms. Sangha returned to Canada to defend the claim. Initially, she was living in a shelter in Quesnel, but when Mr. Sangha began paying spousal support she was able to move into an apartment. When he stopped paying, she relied on social assistance. She eventually moved to Calgary to be near Himmat, who had started at a new school there in June 2006. She has remained in Calgary since then.
- [35] Ms. Sangha has worked only intermittently in the years since the marriage ended, usually on contract as a cleaner. She has been unable to secure full-time employment and her earnings have therefore been sporadic. Her earnings in the first few years after the marriage were very modest - typically a few thousand dollars per year. Her most profitable year appears to have been 2015 when she earned \$35,942. In 2016, she earned \$10,961.
- [36] Ultimately, the court granted custody of Himmat to Mr. Sangha. Although Ms. Sangha has generally maintained contact with him, Mr. Sangha supported Himmat through his entire childhood himself and paid for all of his expenses, including his private schooling.
- [37] Although the focus of the litigation at the beginning was on the parenting issues, Ms. Sangha also brought a counterclaim seeking spousal support and a division of family assets.
- [38] In June and July 2001, while this action was underway, Mr. Sangha caused a number of agreements (the "Trust Agreements") to be prepared and fraudulently backdated in an effort to prove that his shares in RIGL and Alberta Co. had always been held in trust for Gordy.

- [39] Mr. Sangha says he participated in the preparation of those agreements at Gordy's instigation, with a view to defrauding Ms. Sangha of her claim to an interest in those shares. In his sworn affidavits and examination for discovery in this action before 2012, Mr. Sangha had relied upon the Trust Agreements to maintain that he had no beneficial interest in those shares.
- [40] On March 30, 2000, Mr. Sangha was ordered to pay interim spousal support of \$1,200 per month. Mr. Sangha fell into arrears on those payments and by September 9, 2003 those arrears totalled \$11,875. On that date, Rogers J. ordered Mr. Sangha to retire those arrears by paying an additional \$100 per month.
- [41] On June 12, 2006, the parties agreed to a consent order stipulating that all of Ms. Sangha's claims for corollary relief be dismissed on payment to her of \$8,000. That order was amended, by consent, on June 30, 2006 to reduce that sum to \$7,000 and to require Mr. Sangha to pay spousal support of \$1,000 per month for five months, whereupon his support obligation would cease. Those amounts were paid as ordered.
- [42] With those orders, this action appeared to have been resolved. But just as this action was winding down, another acrimonious dispute was heating up among Mr. Sangha, his brothers and their father over the ownership and running of the family businesses. Gordy asserted, among other things, that he was the primary contributor to the businesses and was therefore entitled to most of the shares - according to him the intended ownership structure was accurately reflected in the Trust Agreements. In 2005, he commenced proceedings against his brothers and their father seeking, among other things, clarification of the ownership structure of the businesses and oppression relief (the "Oppression Action").
- [43] In the Oppression Action, Gordy relied on, among other things, the affidavits and testimony of Mr. Sangha in this action, whereby Mr. Sangha had averred that he held his shares in RIGL and Alberta Co. in trust pursuant to the Trust Agreements and had no beneficial interest himself. In responding to Gordy's claim, Mr. Sangha admitted to forging the Trust Agreements and perjuring himself in this action. He swore an affidavit in the Oppression Action on May 15, 2007 asserting that "the trust documents were created for an improper purpose, namely to protect my shares in the two companies from possible claims by my wife."
- [44] After a trial that lasted 86 days, Allan J. delivered a lengthy and detailed judgment in the Oppression Action. Her reasons are indexed as *Sangha v. Reliance Group Investment Ltd.*, 2011 BCSC 1324. Among other things, she found as follows:
- (a) At Gordy's instigation, he and Mr. Sangha had conspired to defraud Ms. Sangha of her property claims in this action;
 - (b) The Trust Agreements were unenforceable shams prepared and executed in June 2001 and fraudulently backdated, in furtherance of that conspiracy; and

- (c) Mr. Sangha's discovery testimony in this action "that he only performed odd jobs around the [Tower Inn] hotel and was never active in management" was a lie intended to mislead Ms. Sangha - the truth was that he contributed significant "sweat equity" to RIGL.
- [45] Mr. Sangha, Kevin, and Kharak asserted in the Oppression Action that Mr. Sangha's and Gordy's registered shareholdings in Alberta Co. (i.e., 42 and 43 shares, respectively), did not reflect their true beneficial entitlement to those shares. They urged the court to find that while Mr. Johal owned his 15 shares outright, the remaining 85 shares were beneficially owned by the four Sangha defendants equally (21.25 shares each), reflecting the equal contributions that Kharak and Kevin had made through RIGL to the down-payment for the purchase of Edinburgh House.
- [46] Allan J. rejected that assertion. She held as follows (at paras. 114-120):
- [114] In my opinion, it is not open to Kharak and Kevin to blow hot and cold with respect to their ownership interest in Alberta Co. It would be inappropriate for the court to allow parties to pick and choose whose name was on a company's legal title for the purpose of shielding some of them from potential liability and then accept their submission that they were entitled to an equal share in the company on the basis of their evidence that they intended to have an equal equitable interest in the company.
- [117] I would not employ resulting trust principles to give Kharak and Kevin an interest in Edinburgh House. That would give them an equitable remedy to which they are not entitled.
- [118] Kharak and Kevin are lenders to Alberta Co. and not shareholders in that company. They made a loan of money to Alberta Co. and not an investment. Investors would have purchased shares but no shares were purchased. There is no evidence as to the terms of such a loan: when it will be repaid, how much interest will be paid, et cetera.
- [120] I reject the defendants' submission that Kharak and Kevin were beneficial shareholders' in Alberta Co. Their portion of the Reliance shareholder loan monies advanced to Alberta Co. constitutes personal loans to Alberta Co. I find that Dal and Gordy's contributions of money from their shareholders' loan accounts constituted shareholders' loans to Alberta Co. However, Kevin and Kharak declined to invest as shareholders and their monetary contributions represent investment loans from them to Alberta Co. which are repayable with interest.
- [47] Finally, Allan J. directed that her reasons for judgment be served on Ms. Sangha. By order made in this action on January 9, 2012, Allan J. declared that the earlier orders in this action as to money and property are no longer binding on Ms. Sangha in light of the findings in the Oppression Action.

- [48] As a result of the decision of Allan J. in the Oppression Action, Gordy elected to trigger his option under a shotgun buyout agreement. As a result, Mr. Sangha now holds shares in two holding companies that own his former shares in RIGL and Alberta Co. Gordy's shares in Reliance Supplies have also been redeemed such that Mr. Sangha now owns one third of its shares rather than one quarter as before.
- [49] Mr. Sangha has admitted that the current fair market value of his interest in the holding company that now owns RIGL is \$1.5 million and that the current fair market value of his interest in the holding company that now owns Alberta Co. is \$8.4 million.

III. The Issues

A. Division of Assets

- [50] Ms. Sangha claims an interest in the RIGL and Alberta Co. shares (and other unknown assets that she alleges have not been disclosed) under s. 56 of the FRA, which states as follows:

Equality of entitlement to family assets on marriage breakup

56 (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset on or after March 31, 1979 when

- (b) a declaratory judgment under section 57,

respecting the marriage is first made.

- (2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.

- [51] On November 18, 1999, Master Baker granted an order in this action under s. 57 of the FRA declaring that the parties had "no reasonable prospect of reconciliation with each other." By virtue of s. 56(1), that order triggered Ms. Sangha's entitlement to an undivided half interest in the family assets as of that date, subject to reapportionment under s. 65 and the other provisions of Part 5 of the FRA.

- [52] Ms. Sangha says the family assets subject to division consist of the following:

- (a) the RIGL shares;
- (b) the Alberta Co. shares; and
- (c) other undisclosed assets, including a pension in England and real property in India.

- [53] In addressing this aspect of her claim, I will deal first with the question of what assets are available for division under s. 56 and in particular, how many shares in Alberta Co. Mr. Sangha owned before the implementation of the shotgun agreement. Next, I will deal with the question of whether the assets in question are family assets and if so, whether there should be a reapportionment under s. 65 and if so, in what proportion. Finally, I will deal with the question of whether a compensation and charging order should be made under s.

66.

- i. How many shares of Alberta Co. does Mr. Sangha own?

[54] Mr. Sangha repeated before me the same argument that he, Kevin, and Kharak had made unsuccessfully before Allan J. - i.e., that Mr. Sangha beneficially owned only 21.25 shares in Alberta Co. and not 42. He asserted that his 42 shares are subject to a claim by Kevin and Kharak's estate for a beneficial interest reflecting their respective contributions to the down payment for Edinburgh House, such that he beneficially owns only 21.25 shares that are available for division with Ms. Sangha.

[55] A statement of Mr. Sangha's belief as to the ownership of his Alberta Co. shares was included among the passages from his examination for discovery that were read into the record as part of Ms. Sangha's case. The relevant exchange was as follows (at questions 111-112):

Q: And the reason you were able to stay at that apartment in Calgary was because you were a shareholder of the company that owned it?

A: Not really. Not really. Not only my name was there, my dad lived there, Kevin my brother, Dave my brother-in-law lived there. In reality the Calgary building was owned by all four of us.

Q: Right. But the reason you could stay there occasionally was because you were one of the owners?

A: Yeah, I was a legal owner. But if my dad went there, my younger brother Kevin went there -- he stayed there too although he was not legal owner, because we lived as a joint family. And all reality the down payment to buy Calgary building came from all four of us, but their names were never added and we were basically holding half of the shares for my father Kharak and Kevin.

[Emphasis added.]

[56] Although it has sometimes been held that a party who reads in an opponent's discovery testimony is bound by that evidence and cannot subsequently contradict it, the better view is that the court may nevertheless come to a different conclusion based on all of the other evidence adduced: *HSBC Bank Canada v. Singh*, 2017 BCSC 1893 at paras. 118-137.

[57] Mr. Sangha testified to the same effect in his examination-in-chief. He admitted in cross-examination that his argument on this point in this trial is no different than the argument that was rejected by Allan J. in the Oppression Action.

[58] Ms. Sangha argues on that basis that the question of the ownership of those shares has been finally determined as between Mr. Sangha and his brothers by the judgment of Allan J. in the Oppression Action, and cannot properly be revisited in this action. She asserts that this argument is barred by the doctrine of issue estoppel.

- [59] The test for issue estoppel is set out by the Supreme Court of Canada in *Angle v. M.N.R.*, [1975] 2 S.C.R. 248, as follows: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same or their privies.
- [60] I have no difficulty in finding the first two criteria are met. The question to be decided in the instant case, namely whether Mr. Sangha's beneficial interest in the Alberta Co. shares was any different from his registered interest, is identical to the question that was decided by Allan J. in *Sangha*. Further, the decision in *Sangha* was final.
- [61] Ms. Sangha was not a party to *Sangha* and therefore the third criterion is only met if I found that Ms. Sangha and Mr. Sangha are privies. For the purposes of issue estoppel, "another person is a 'privy' of a party to the lawsuit when there is a sufficient degree of common interest and identification between them which makes it just that the outcome should be binding over both parties": *Stallan v. Palleson*, 2015 BCSC 1463 at para. 30. That is not the case here.
- [62] I therefore turn to the doctrine of abuse of process. As stated by Hinkson C.J. in *Lamb v. Canada (Attorney General)*, 2017 BCSC 1802 at para. 81, this discretionary doctrine:
- [81] precludes re-litigation where one or more of the requirements of issue estoppel typically, privity, are not met, but where allowing the litigation would violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice: *Henry v. H.M.T.Q.*, 2015 BCSC 1798 at para. 18, and *Toronto* [2003 SCC 63], at paras. 139-42.
- [63] I am satisfied that the principles stated in *Lamb* would be violated if Mr. Sangha were allowed to maintain that his beneficial interest in the Alberta Co. shares was any different from his registered interest, as found by Allan J. I find that Mr. Sangha is barred by the doctrine of abuse of process from arguing this point.

ii. Are the shares family assets?

- [64] Sections 58-60 in Part 5 of the FRA govern whether shares are family assets subject to division.

- [65] Section 58 states as follows:

Family asset defined

58 (1) Subject to section 59, this section defines family asset for the purposes of this Act.

- (2) Property owned by one or both spouses and ordinarily used by a spouse or a minor child of either spouse for a family purpose is a family asset.
- (3) Without restricting subsection (2), the definition of family asset includes the following:
- (a) if a corporation or trust owns property that would be a family asset if owned by a spouse,

- (i) a share in the corporation, or
 - (ii) an interest in the trust
- owned by the spouse;
- (b) if property would be a family asset if owned by a spouse, property
 - (i) over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself or herself, or
 - (ii) disposed of by the spouse but over which the spouse has, either alone or with another person a power to revoke the disposition or a power to use or dispose of the property;
- (c) money of a spouse in an account with a savings institution if that account is ordinarily used for a family purpose;
 - (d) a right of a spouse under an annuity or a pension, home ownership or retirement savings plan;
 - (e) a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.
- (4) The definition of family asset applies to marriages entered into and property acquired before or after March 31, 1979.

[66] Section 59 states as follows:

Excluded business assets

59 (1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset.

- (2) In section 58(3)(e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.

[67] Ms. Sangha asserts that the shares are family assets on two grounds.

[68] First, relying on s. 58(3)(a)(i), she argues that at least two of the principal assets of those companies (i.e., the Tower Inn and Edinburgh House) would themselves be family assets had they been owned directly by Mr. Sangha because they were ordinarily used by the parties and their son for a family purpose. That ordinary family use was threefold:

- (a) a vehicle for income splitting;
- (b) a nest egg for their retirement; and

(c) a family residence.

[69] She notes that it is presumed that the property was used for a family purpose by virtue of s. 60, which states as follows:

Onus of proof

60 The onus is on the spouse opposing a claim under section 56 to prove that the property in question is not ordinarily used for a family purpose.

[70] Second, Ms. Sangha argues, relying on s. 59, that she made sufficient direct and indirect contributions to those assets to render them family assets. She refers in this regard to both direct contributions (i.e., working in the laundry, cleaning suites, and cooking for Mr. Sangha and his relatives and other workers in the businesses) and indirect contributions (i.e., caring for Himmat and management of the household).

[71] Ms. Sangha referred me to *Gillespie v. Gillespie* (1996), 24 R.F.L. (4th) 244 (B.C.C.A.), as authority for the proposition that s. 59 could be an independent ground for treating an asset as a family asset. I accept that the combination of ss. 58(3)(e) and 59(2) makes it possible for assets such as these, that are used primarily for business purposes, to be treated nevertheless as family assets if Ms. Sangha made a sufficient direct or indirect contribution to the operation of the businesses as she asserts.

[72] The term "ordinary use" in this context has been held to mean more than just "casual or occasional use" - see *Elsom v. Elsom* (1983), 49 B.C.L.R. 497 (C.A.); *Devine v. Devine*, 2012 BCCA 509. The following statement by Lambert J.A. in *Evetts v. Evetts* (1996), 85 B.C.A.C. 19, is often cited for guidance in the application of this provision:

[23] I think it would be unwise to try to establish any rules for the determination of whether a capital asset will be considered to be a family asset. However one or two guidelines are readily revealed from the cases. The fact that income from a capital asset is used occasionally for a family purpose does not of itself make the capital asset a family asset. The fact that capital from the asset is used from time to time, when required, for a family purpose may be an indication that the asset is a family asset. But the distinction between income being used for a family purpose and capital being used for a family purpose is not, in itself determinative. So the fact that only income is used for family purposes does not necessarily mean that the capital asset itself is not used for a family purpose. The use of the asset to provide financial security and protection against erosion of income or other family misadventure in the future may constitute a present ordinary use for a family purpose. The fact that the words "ordinarily used for a family purpose" are the governing words in the statute means that the use pattern must be examined in each case to determine whether, in the ordinary course, the present use commitment to meet a present or future need includes a use for a family purpose. Ordinary use for a family purpose is not inconsistent with ordinary use for other purposes. [Citations omitted.]

- [73] I find that the parties' use of Edinburgh House went beyond a mere "occasional" use in that it served as their regular place of residence whenever they were in Calgary, which was for extended periods of time.
- [74] Also, I agree with Ms. Sangha that the use of both companies as security for the couple's retirement and to split income every tax year were also ordinary family uses. Both of these uses were acknowledged by Mr. Sangha in cross-examination.
- [75] Mr. Sangha argues however that the claim for division fails primarily by virtue of s. 59(1) on the basis that whatever family use they may have been put to, their primary use was for a business purpose and Ms. Sangha did not really contribute directly or indirectly to their operation.
- [76] Mr. Sangha argues that the direct contributions asserted by Ms. Sangha were exaggerated by her and were in fact minimal. He argues that her indirect contributions were immaterial for two reasons. First, during the marriage, he himself was not working to support those businesses but rather only worked for the tool and machine supply venture, so he was not freed up by her indirect contributions to do so. Second, Mr. Sangha's mother and other members of the family cooked and looked after Himmat as well, so any indirect contribution on Ms. Sangha's part would have been minimal.
- [77] While I accept that the companies' assets were used primarily for a business purpose, I am satisfied that Ms. Sangha made sufficient direct and indirect contributions to the operation of those businesses to qualify them as family assets, as she asserts.
- [78] Ms. Sangha's direct contributions to the laundry at the Tower Inn is not seriously contested. While the evidence of the parties conflicts on many of her other alleged direct contributions, I generally accept her version of events where they conflict. Mr. Sangha is an admitted forger and perjurer. I am not prepared to rely on his evidence, particularly where it is self-serving, unless it is corroborated by other more reliable evidence.
- [79] In an effort to address this problem, Mr. Sangha called Mr. Johal and Ms. Lembke, who was the corporate bookkeeper at the material time, both of whom echoed the assertion that Ms. Sangha did not do any significant work for the businesses. They were not objective witnesses either, however. They are closely aligned with Mr. Sangha and were clearly biased in his favour. For example, they both made sweeping and categorical statements about Ms. Sangha's activities and whereabouts even when they were in no position to know what she was doing or where she was.
- [80] But I have concerns about Ms. Sangha's credibility as well. She appears to have exaggerated her working hours in the laundry, for example. It is unlikely that she regularly worked seven full days a week in the laundry as she testified. She was not consistent in her account of whether she always brought Himmat with her to work in the laundry or whether she occasionally left him at home alone or with relatives while she went to work. She was adamant that she is currently earning only about \$11,000 per year with no other source of

income but yet she pays rent of \$900 per month and has no debt. She was admittedly confused about dates.

[81] Nevertheless, I find that she did make both direct and indirect contributions to the businesses. She contributed directly through her labour in the laundry at the Tower Inn and indirectly to both businesses by her provision of child care for Himmat, her general household management, including preparing meals and doing other household chores for Mr. Sangha, his brothers and perhaps others. These efforts made it easier for Mr. Sangha to help build the businesses, which I find he did during the material time. Mr. Sangha was found by Allan J. to have contributed "sweat equity" to RIGL. He admitted in his examination for discovery, as read in, that he did maintenance work at Edinburgh House:

Q: Where did you live when you were in Calgary during that period of time?

A: Where?

Q: Yes?

A: In apartment, we had that unit there.

Q: Was it the apartment owned by the Alberta Company?

A: Yes.

Q: And did you pay rent to the Alberta company while you were living there?

A: I was doing some work there, you know. Like, sometimes they never paid me the wages. I did some maintenance there in the building, so -- and my mom was there too, I think, just before Himmat was born.

[Emphasis added.]

[82] This is not one of those potentially "rare" cases referred to by MacFarlane J.A. in Elsom, where the inference of an indirect connection between the advancement of the business and the labours of the non-owning spouse in the home has been rebutted.

[83] Although Ms. Sangha's direct and indirect contributions were not extensive, particularly in relation to Edinburgh House, they were sufficient to cross the de minimis threshold so as to justify classifying the shares in both companies as family assets. I will consider the limited extent of her direct and indirect contributions to those businesses in the context of reapportionment.

iii. Reapportionment

[84] Ms. Sangha concedes that the equal division of assets that is presumed under s. 56 would be unfair in this case. I agree. She says that the appropriate division would be a 70/30 split in Mr. Sangha's favour, but in order to account for other assets that he has still failed to disclose, the appropriate split should be 60/40.

- [85] She relies on *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), as authority for the proposition that where there has been a failure to disclose assets, the continuing existence of other undisclosed assets should be presumed.
- [86] Mr. Sangha argues that Ms. Sangha should receive a minimal allocation on the basis that any contributions she made to the operations of these businesses were minimal. He relies in this regard on *Cara-Sager v. Sager*, 2006 BCSC 1223; *Zaurrini v. Zaurrini* (1981), 22 R.F.L. (2d) 161 (BCCA); and *Boman v. Boman*, 2009 BCSC 1435.
- [87] With respect to undisclosed assets, he argues that after more than a decade of acrimonious litigation with his other family members, no stone has been left unturned and it would be unreasonable to conclude that any significant assets remain undisclosed at this stage.
- [88] On this last point, Ms. Sangha notes that there was some evidence of undisclosed additional assets, including an RRSP, a pension in England, and real property in India. The parties did not address the value of those particular assets or whether they would even qualify as family assets under the FRA. Nevertheless, I am satisfied that it is appropriate to draw the inference that because Mr. Sangha was not forthcoming about his assets in the past, there is a strong chance that he is continuing to conceal assets. I also accept, however, that it is unlikely that there is an asset of significant value to be tallied in this context. I have concluded that it will be sufficient to add 2% to the interest I am apportioning to Ms. Sangha to account for that factor.
- [89] In addition, I have considered the following factors:
- (a) The duration of the marriage (s. 65(1)(a)) - this factor weighs in Mr. Sangha's favour: the marriage was one of relatively short duration (four years - with Ms. Sangha in Canada, and therefore in a position to make direct and indirect contributions to the family assets, for only three);
 - (b) The duration of the period during which the spouses have been apart (s. 65(1)(b)) - although this is not a case where an asset has increased in value while the claimant was delinquent in bringing an action to trial, Ms. Sangha has been wrongly deprived of a remedy for at least a decade, which is a factor weighing in her favour;
 - (c) The date on which property was acquired or disposed of (s. 65(1)(c)) - the RIGL shares were acquired six years before the marriage and although the Alberta Co. shares were acquired during the marriage, the down-payment for Edinburgh House was paid by RIGL with pre-marriage funds, so this factor weighs in Mr. Sangha's favour;
 - (d) Extent to which property was acquired through inheritance or gift (s. 65(1)(d)) - this factor has no application except perhaps with respect to the real property in India;
 - (e) Needs of the spouses to become or remain economically independent and self-sufficient (s. 65(1)(e)) - this is not a case in which reapportionment must be used to encourage economic self-sufficiency, given Ms. Sangha's age and employment prospects;

- (f) Other circumstances (s. 65(1)(f)) - I accept Ms. Sangha's submission that an important factor weighing in her favour is that she came to Canada for the sake of the marriage, where she encountered what was for her a foreign language and culture and has faced difficult challenges in adjusting and becoming financially independent since the breakdown of the marriage - see *Yang v. Ren*, 2011 BCSC 869, aff'd 2012 BCCA 164; *Yang v. Zhang*, 2017 BCSC 524; *Foster v. Foster*, 2007 BCCA 83.
- [90] Finally, I have weighed the fact that most of Ms. Sangha's direct contributions went to one of RIGL's assets, and in particular to the Tower Inn. Her contributions, both direct and indirect, to Edinburgh House, and hence to Alberta Co., were relatively small and short-lived. Although I have found that they rose above the *de minimis* level, the limited extent of her contributions is a factor weighing in favour of a reapportionment in Mr. Sangha's favour.
- [91] I have concluded, having weighed all of those factors, that Ms. Sangha should be apportioned a 17% interest in the RIGL shares and a 12% interest in the Alberta Co. shares formerly owned by Mr. Sangha. This includes the 2% added to account for the missing assets.

iv. Compensation and Charging Order

- [92] Ms. Sangha seeks a compensation order rather than a declaration of title to the shares. She relies on s. 66(2)(c) of the FRA which allows the court to "order a spouse to pay compensation to the other spouse if property has been disposed of, or for the purpose of adjusting the division." I am satisfied that such an order is appropriate here.
- [93] Mr. Sangha asks for flexibility in any award I may make to allow him to avoid adverse tax consequences. He refers me to *Blackett v. Blackett* (1989), 40 B.C.L.R. (2d) 99 (C.A.), where it was held at p. 106 that "[a] compensation order ought not to force the payor to borrow to the point of crippling himself with debt."
- [94] The fact of the matter is that Ms. Sangha has been deprived of her remedy for many years by virtue of Mr. Sangha's deceit. In my view, she is entitled to receive compensation forthwith, regardless of the tax implications or other inconvenience for Mr. Sangha. I also accept, however, that Mr. Sangha may have to redeem his shares in the parent companies of RIGL and Alberta Co. in order to satisfy this judgment, and he may not be able to do so immediately. I will therefore order that Mr. Sangha pay Ms. Sangha \$150,000 forthwith, \$500,000 within six months and the balance to be paid no later than one year from the pronouncement of this judgment.
- [95] I am also satisfied that pursuant to s. 66(2)(f) of the FRA, a charge should be placed on Mr. Sangha's shares in the company that holds the shares he formerly owned in RIGL and Alberta Co. until this judgment is paid in full.

B. Retroactive Lump Sum Spousal Support

[96] Ms. Sangha notes that Mr. Sangha's reported income dropped suspiciously during the litigation and then rose again after 2003 as it concluded. On that basis, she urges me to impute an annual income of \$200,000 to him throughout this period. That figure was admittedly chosen arbitrarily. Based on that income, she calculates arrears of spousal support owing in the amount of \$35,585.

[97] Mr. Sangha's reported income in the relevant years was as follows:

1995 \$116,407.20

1996 \$142,601.34

1997 \$152,295.83

1998 \$81,227.94

1999 \$57,275.33

2002 \$36,478.25

2003 \$50,688

[98] Mr. Sangha acknowledged in cross-examination that his reported income was not necessarily an accurate reflection of the amounts he actually received. But what he was referring to in that regard was the practice of Gordy and the accountants to allocate more income to him for tax purposes than he actually received; he never acknowledged having reported less than he actually received. Moreover, I note that the dramatic downward trend of his income had already begun in 1998, before the marriage broke down. Mr. Sangha attributed the rise and fall of his income in part to Gordy's influence - Gordy took control of the companies during the years of Mr. Sangha's marriage to Ms. Sangha, relying on the purported trusts. The later revival of Mr. Sangha's income from the companies in 2003 and 2004 reflected the ouster of Gordy by his brothers that precipitated the Oppression Action. After 2006, payments from the companies to the shareholders came under the control of the court.

[99] In any event, at no time was Mr. Sangha's reported income as high as \$200,000. There is, moreover, no evidence that the family, or Mr. Sangha himself for that matter, led an opulent lifestyle during the marriage or in the years following it. He asserts that much of the family's income over the last decade has been spent on legal fees, which would not be surprising.

[100] On balance, I am not satisfied that there is a sufficient evidentiary basis to justify imputing additional income to Mr. Sangha. In particular, I have no evidence before me to support an inference that corporate earnings at the material time were artificially retained in the companies or paid out surreptitiously to him or others in order to reduce his apparent income and hence his exposure for spousal support.

[101] I find that Ms. Sangha will in any event be adequately compensated by the compensation order I have made, flowing from the division of the family assets.

C. Special Costs

[102] Ms. Sangha seeks special costs for almost the entire action. Mr. Sangha says such an award would not be appropriate. He argues that he has not misconducted himself in the most recent round of litigation since 2012. He also notes that the main focus of the litigation, at least when it began, was on the parenting issues, and that the adjudication of those issues was not directly affected by his misconduct.

[103] Even if I accepted Mr. Sangha's premise that special costs should only be awarded for those steps in the litigation directly affected by his misconduct, I note that the property and financial issues occupied the parties' attention from an early date. Had Mr. Sangha's made proper disclosure of his assets when he was supposed to, the most recent round of litigation would not have been necessary at all. In the meantime, Ms. Sangha has had to live for many years at a much lower standard than she should have.

[104] For that reason, I cannot be certain that even the parenting outcomes were entirely unaffected by Mr. Sangha's misconduct. It is possible that those outcomes would have been different if Mr. Sangha had allowed for the distribution of Ms. Sangha's share of the family's wealth when she was entitled to it.

[105] More importantly, an award of special costs is not just compensatory. It also serves an important denunciatory purpose. The court must distance itself from reprehensible conduct such as occurred here. The misconduct in this case involved more than just an attempt to conceal assets, which is bad enough. It was a conspiracy to commit fraud, including uttering several forged documents, supplemented by repeated lies under oath calculated to sustain the deceit. That misconduct was serious enough, once it occurred, to taint the entire litigation from then on.

[106] In light of the foregoing, I award Ms. Sangha special costs for all steps in this litigation taken after June 1, 2001, i.e., the month during which Mr. Sangha prepared and signed the Trust Agreements.

[107] Finally, I am also satisfied that the \$5,000 penalty under s. 92 of the FRA is appropriately added in the circumstances of this case, and I therefore make that order.

IV. Summary and Conclusions

[108] I award Ms. Sangha judgment on her counterclaim as follows:

- (a) a compensation order in the amount of \$1,263,000 (being 17% of \$1.5 million plus 12% of \$8.4 million), payable on the schedule described at para. 94 above;

- (b) a charge on Mr. Sangha's shares in the parent companies of RIGL and Alberta Co. to secure payment of this judgment until it is paid in full;
- (c) special costs for all steps taken in this action from June 1, 2001 onward; and
- (d) a \$5,000 penalty under s. 92 of the FRA.

"Milman J."

The Honourable Mr. Justice Milman

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Prepared on 27 October 2026 · Esheria