

CANADA / JUDGMENT

Saran v. Brar

2024 BCSC 1248

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2024 BCSC 1248 Saran v. Brar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Saran v. Brar,

2024 BCSC 1248

Date: 20240726

Docket: E13505

Registry: Chilliwack

Between:

Navdeep Kaur Saran

Claimant

And

Gurmeet Brar

Respondent

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

Counsel for the Claimant:

M.E. Guy

Counsel for the Respondent:

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R. Sookorukoff

Place and Date Hearing:

New Westminster, B.C.

June 4, 2024

Place and Date of Judgment:

New Westminster, B.C.

July 26, 2024

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I. Introduction

- [1] This is an application brought by Kootenay Savings Credit Union ("KSCU") to be added as a party to this family law proceeding pursuant to Rule 8-2(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Family Rules]. KSCU is a judgment creditor of the respondent, Gurmeet Brar. The claimant in the family law proceeding is Ms. Saran, the former spouse of Mr. Brar. Both the claimant and the respondent oppose KSCU's application.
- [2] KSCU argues that it should be added as a party to the family law proceeding, giving it rights of disclosure, discovery and full participation at trial, so it is able to protect its interest in collecting a debt owed by Mr. Brar. At its core, KSCU contends that if it is not added as a party to the family law proceeding, its interests in collecting its debt against the respondent will be prejudiced because it fears that the claimant and respondent will put the respondent's assets beyond KSCU's reach by asking the Court to have the respondent's property declared as unequal property to which the claimant is entitled. The specific property which KSCU believes will be put beyond its reach is the former family home located on a 10-acre property of the claimant and respondent, located at 32118 Huntingdon Road, Abbotsford, BC (the "Property"). For context, the main residence of the two houses on the Property is 7,157 square feet, with five bedrooms and five and a half bathrooms.

- [3] KSCU grounds its concern about collusion on a previous finding of this Court that the claimant and respondent participated in a fraudulent conveyance to put the respondent's property beyond the reach of creditors. In the fraudulent conveyance trial, this Court made negative findings of credibility against the claimant, the respondent and the parties' adult children. Given what KSCU calls the egregious behaviour of the claimant and respondent in the fraudulent conveyance trial, it argues it should be added as a party to the family law proceeding to ensure the claimant and respondent do not repeat their attempt to wrongfully put the respondent's assets out of reach of his creditors for the benefit of the claimant or the parties' children.
- [4] The respondent and claimant oppose the application for at least four reasons. First, they say that KSCU is a stranger to the family law proceedings. It would be highly unusual to add a third party, unrelated directly to the family matters or family property issues, as a party in a family law trial.
- [5] Second, related to the first reason, is that adding KSCU as a party will add time and expense to the family law proceedings by increasing disclosure and discovery requirements, as well as the time needed for trial. This expense will be borne by the parties and is not in the interests of justice because additional time and expense increases the costs of family proceedings thus burdening the courts and parties and presenting a hurdle to access to justice.
- [6] Third, the claimant and respondent say that, in general, adding an unrelated third party who only has an interest as a creditor is counter to policy interests. They contend it has the potential to open the floodgates to permit a creditor of a party in a family law proceeding to seek party status in an attempt to protect the creditor's interests in a particular asset. The claimant and respondent assert the objective of family law proceedings is to apportion family assets and family debt fairly and in consideration of family law principles. The parties contend that to add as a party a creditor-- stranger to the spousal relationship with interests which may not align with these fundamental family law principles--is not in the interests of justice because it could influence the fair distribution of family assets between the parties based on arguments advanced by a creditor.
- [7] Finally, the claimant and respondent assert that KSCU's application should be dismissed because KSCU's interests are already protected as a result of the previous findings of this Court. These safeguards are detailed below, but include:
- a) the findings of Justice Crerar both in the fraudulent conveyance trial as well as the costs decision relating to that trial;
 - b) an order of our Court of Appeal that the trial reasons of Crerar J. from the fraudulent conveyance trial be filed in the family law proceedings; and

- c) orders of Justice Lyster that KSCU participate in the family law trial and that KSCU's application to have money paid out of court to satisfy the respondent's debt be heard at the same time as the family law trial.
- [8] The circumstances before me are unique, given this Court's previous finding that the claimant and respondent in the family law proceeding lacked credibility regarding the conveyance of the Property in an attempt to put that asset beyond KSCU's reach and that ownership of that same asset will now be an issue at the family law proceeding. However, for the reasons that follow, I am not satisfied that it is in the interests of justice to grant KSCU party status at the family law proceeding. I find this is not one of the exceptional cases where an unrelated third party should be added to a family law proceeding. In my view, allowing KSCU's participation as a party has the potential to open the door to creditors seeking party status in family law proceedings in attempts to protect and preserve assets for the creditors' benefit. I conclude that result would not be in the interests of justice.
- [9] Importantly, in the unique circumstances of this case, given the previous order of this Court that KSCU has some ability to participate in the family law trial, I accept that the concerns of KSCU will be mitigated. The judge hearing the family law trial will have sufficient information to come to a conclusion in respect of the division of the Property on its merits. Further, in these reasons, I will attempt to provide KSCU, the claimant, and the respondent with some guidance as to the nature of KSCU's participation in the family trial, subject to a contrary conclusion taken in the future by the trial judge, who must be able to conduct the trial and applications as she or he finds appropriate.

II. Background Facts

- [10] The claimant and respondent acquired the Property as joint tenants on April 19, 1989. On January 15, 2010, the parties entered into a separation agreement which gave the claimant "a license to exclusive occupation and possession" of the Property. However, the separation agreement did not transfer legal title of the Property from joint tenancy to sole ownership by the claimant.
- [11] On July 22, 2015, KSCU obtained judgment against the respondent in the amount of \$1,496,673.33 plus interest and costs (the "Judgment Debt"). The Judgment Debt arose from a commercial mortgage that was registered against a motel in Osoyoos, British Columbia, owned by the respondent. I note that the Judgment Debt was not for a mortgage registered on the Property; however, when the respondent applied for the mortgage, he listed his interest in the Property as one of his assets.
- [12] On February 14, 2017, the claimant obtained an undefended desk order divorce. As part of the desk order divorce, the Court ordered that the claimant was the sole owner of the Property, thus purporting to remove any interest in the Property from the respondent.

- [13] On November 15, 2017, the respondent transferred his half interest in the Property to the claimant and their adult daughters Jasrevan Brar (then 28 years old) and Mauveen Brar (then 30 years old) for "\$1.00 and natural love and affection." The declared market value of the Property was \$2,000,000.
- [14] On March 14, 2018, KSCU commenced a fraudulent conveyance proceeding challenging the respondent's purported transfer of the Property to the claimant. Justice Crerar heard the trial and held the transfer of the Property was a fraudulent conveyance. In reasons indexed as *Kootenay Savings Credit Union v. Brar*, 2021 BCSC 2027, Crerar J. set aside the November 15, 2017, transfer of the Property. Justice Crerar also set aside the term of the order obtained as a desk order divorce that gave the claimant sole ownership of the Property.
- [15] At a subsequent hearing in which KSCU sought special costs, Crerar J. made adverse findings regarding the credibility and conduct of Ms. Saran and Mr. Brar and their adult children. He held that respondent, claimant and adult children were at best wilfully blind to the respondent's financial distress. At worst, there was a coordinated effort both before and during trial, to fabricate facts and present evidence in a manner designed to defeat creditors and to deceive the Court.
- [16] The claimant and respondent unsuccessfully appealed Crerar J.'s decision: *Brar v. Kootenay Savings Credit Union*, 2023 BCCA 68, leave to appeal to SCC ref'd 40689 (2 November 2023). Our Court of Appeal dismissed their appeal and ordered that the reasons of the fraudulent conveyance trial must be filed in any subsequent family law proceeding between the claimant and respondent.
- [17] While the appeal was pending, Navdeep Brar, Jasrevan Brar and Mauveen Brar paid \$840,000 into Court to the credit of this action in exchange for KSCU releasing its certificate of pending litigation.
- [18] KSCU applied to have those funds released to them to satisfy the Judgment Debt. On August 9, 2023, in reasons indexed as *Kootenay Savings Credit Union v. Brar*, 2023 BCSC 1379, Lyster J. adjourned KSCU's application to have the funds paid out but ordered that the application be heard with the family law trial. Specifically, Lyster J. held:
- [18] I therefore adjourn KSCU's application. I further order, pursuant to Rule 22-5(8) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, that KSCU's application be heard together with Navdeep and Gurmeet's family law trial. It will be for the judge hearing the two matters together to determine the manner in which the two proceedings will be heard, and to make such further orders and directions as may be necessary to comply with the Court of Appeal's observations.
- [19] As is clear from Lyster J.'s decision, it would be left to the judge hearing the two matters to determine the manner in which the proceedings would be heard. I note that there was no application before Lyster J. to add KSCU as a party to the family law proceedings, and there was no specific parameters or details set on KSCU's participation other than having the two

proceedings being heard together. I further note that Lyster J. recognizes the concern of the family law proceeding being a "friendly trial" in which the Brars could potentially collude to frustrate KSCU's collection efforts. In this regard Lyster J. held:

- [15] KSCU is understandably concerned that the family law trial, assuming it should come to pass, might be a "friendly trial", given the conduct of the defendants as found by Crerar J. Gurmeet and Navdeep are not adverse in interest and cannot be expected to ensure that the court hearing their family law trial is fully apprised of all relevant facts. The Court of Appeal was cognisant of this potential problem; that is why they directed Navdeep to file a copy of the entered orders of the Supreme Court in this proceeding in her family law proceeding. I do not think, however, that that is a complete answer to the procedural conundrum posed by this case.

[Emphasis added.]

- [20] Justice Lyster concluded that it would be "unfair to KSCU for Navdeep's share of the Property to be determined without its participation.": para. 17. In essence it is the scope of that participation that KSCU now seeks to crystalize in this application by seeking to be added as a party.

- [21] It is with these facts that I now turn to my analysis.

III. Discussion

- [22] KSCU, the claimant and the respondent made various arguments as to policy reasons and legal principles for why KSCU should or should not be added as a party to the family proceedings. In my view, the heart of the issue is to determine KSCU's appropriate level of participation in the family trial to ensure that the administration of justice is properly served. I note that, as a starting point, Lyster J. and our Court of Appeal in their orders have already expressed some concerns that it is important that the judge hearing the family trial is aware of the claimant and respondent's previous efforts to fraudulently put the Property beyond KSCU's reach.

- [23] That said, I must balance KSCU's legitimate concerns in having its collection efforts frustrated against the presumption that parties and their counsel will act with integrity during the family proceeding and that, ultimately, the division of assets between parties is a fundamental aspect of family trials. In other words, the claimant may have legitimate grounds for claiming an interest in the entirety of the Property. Just because that outcome may frustrate a creditor does not mean that the interests of justice are not met.

- [24] To be added as a party, KSCU relies upon Rule 8-2(7) of the Family Rules:

- (7) At any stage of a family law case, the court, on application by any person, may, subject to subrule (9),

- (a) order that a person cease to be named as a party if it is not appropriate or necessary for that person to be named as a party,
- (b) order that a person be named as an additional party or be named as a party in substitution for another named party if
 - (i) that person ought to have been named as a party, or
 - (ii) that person's participation in the family law case is necessary to ensure that all matters in the family law case may be adjudicated on, and
- (c) order that a person be named as an additional party if there may exist, between the person and any other person who is named as a party to the family law case, a question or issue relating to or connected with
 - (i) any relief claimed in the family law case, or
 - (ii) the subject matter of the family law case

that, in the opinion of the court, it would be just and convenient to determine as between the person and the other person who is named as a party

[Emphasis added.]

- [25] KSCU asserts that it satisfies the test under the Family Rules because its participation is necessary to ensure that all matters in the family law case may be adjudicated upon, and there is an issue between the parties to the family law proceeding and KSCU connected with the subject matter of the family law case. KSCU contends it has an interest in the outcome of how the Property is distributed and it is necessary to add it as a party to adjudicate that issue. Further, KSCU asserts that it would be just and convenient to be added as a party so that the issue of the determination of the claimant's and respondent's respective interests in the Property is ventilated during the trial.
- [26] KSCU relies upon *Taherkhani v. Este*, 2020 BCSC 101, aff'd 2023 BCCA 290. In *Taherkhani*, Justice Giaschi added the brother and mother of one of the spouses, and the corporations and trusts they controlled, as parties to the family law proceeding. Justice Giaschi discussed Rule 8-2(7) at paras. 31-41.
- [27] At para. 32, he noted the test from *Alexis v. Duncan*, 2015 BCCA 135, for the addition of a party under the former, near identical Rule 6-2(7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009:
- [15] Rule 6-2(7)(b) is concerned with remedying defects in the proceedings as they stood prior to the application to add a party. It has a narrow application. Under R. 6-2(7)(b) the court must decide if the person ought to have been joined as a party or the person's participation in the proceeding is necessary to ensure that all matters may be effectually adjudicated: see *Enterprise Realty Ltd. v. Barnes Lake Cattle Co. Ltd.* (1979), 1979 CanLII 612 (BC CA), 13 B.C.L.R. 293 (C.A.). The discretion to add a party under R. 6-2(7)(b) exists if one of the

conditions in subsections (i) and (ii) is established: *Enterprise Realty Ltd.* at 296. However, "if neither of the prerequisite conditions is established then there is no discretion in the chambers Judge and he must refuse the application": *Enterprise Realty Ltd.* at 296.

- [16] The predecessor to R. 6-2(7)(c) was added to the Rules in 1980 shortly after and presumably to counter the narrow interpretation adopted in *Enterprise Realty Ltd.* I note that the broad interpretation considered but rejected in *Enterprise Realty Ltd.* by this Court was "that parties should be added if, after balancing the interests of all the parties, existing and prospective, it is just and convenient to do so": *Enterprise Realty Ltd.* at 296.
- [17] Under R. 6-2(7)(c) the court can order a person be added as a party if there exists, between the person sought to be added and any party to the proceeding, "a question or issue relating to or connected with the relief claimed in the proceeding or the subject matter of the proceeding" and, "if in the opinion of the court, it would be just and convenient to do so" (emphasis added). The decision as to whether to add a party under R. 6-2(7)(c) is discretionary. It is up to the presiding judge to determine whether or not joinder of the new defendant is just and convenient in any particular case: see e.g., *Letvad v. Fenwick*, 2000 BCCA 630. It cannot be said with any assurance that a claim for professional negligence will automatically be joined: see *Zymtech Development Inc. v. Sport Central Enterprises Ltd. et al.*, 2004 BCSC 309.
- [28] Justice Giaschi further noted that Rule 8-2(7)(b) is to be given a narrow application, whereas Rule 8-2(7)(c) is to be interpreted broadly: at para. 33.
- [29] KSCU argues that in the unique circumstances of this case, in which the Court has already found the parties' conduct in attempting to mislead the Court as to the ownership interests in the Property was egregious, it is appropriate that it be added as a party. KSCU contends that to not add it as a party risks the claimant and respondent will again collude and mislead the Court about the ownership interests in the Property to frustrate KSCU's collection attempts. KSCU asserts its participation is necessary to safeguard both the process and the outcome from bad behaviour on the part of the claimant and respondent.
- [30] The claimant and respondent argue that granting KSCU party status is not warranted and, in fact, sets a dangerous precedent that could lead to creditors applying to be parties in family law proceedings on the basis in an attempt to preserve assets. For example, the claimant's and respondent's counsel both gave examples of an institutional bank holding a mortgage on a matrimonial home seeking party status to preserve or maximize collection on its mortgage. They argue this could not be the intent of Rule 8-2 of the Family Rules, as it would complicate and add expense to family law proceedings and further burden a busy and overloaded court system. Adding expense and time to court proceedings, argues the claimant and respondent, presents a further obstacle to access to justice and is not in the interests of justice.

- [31] Further, the claimant and respondent argue that Taherkhani is distinguishable because the issue in that case was adding family members to the family law proceeding who each had an ownership interest in the property at issue. In the case at bar, KSCU is a creditor and has no right to the Property per se. Its interest is only as a judgment creditor, and does not rise to the level contemplated in Rule 8-2(7) of the Family Rules.
- [32] The claimant and respondent point to the decision of Justice Russell in *L.A.D. v. T.G.D.*, 2005 BCSC 1802, to support their argument that it cannot be the intention of Rule 8-2 to permit creditors to be added as parties to family law proceedings.
- [33] In *L.A.D.* at para. 28, Russell J. expressed serious concern about adding a creditor as a party to a family proceeding. At para. 31, she distinguished the case of *Bray v. Bray* (1979), 9 C.P.C. 241, [1979] O.J. No. 384 (Ont. H.C.J.), where the spouses sought to declare a property to be solely the wife's to shield it from the husband's creditors. Russell J. determined that the spouses were seeking to resolve all manner of matrimonial issues including property division as well as child and spousal support, and child custody and access. Ultimately, she accepted the policy rationale that "in bona fide matrimonial proceedings, the interest of the spouses in the equitable resolution of the issues arising from the breakdown of their marriage is paramount": at para. 33. She then made the following point before concluding her reasons for judgment:
- [34] The conclusion I have reached is consistent with the observation made by Robert A. Klotz based on his review of the authorities in *Bankruptcy, Insolvency and Family Law*, 2d ed., looseleaf (Scarborough: Thomson Canada, 2001) at para. 9.10(b)(5):

In egregious cases the court will intervene, either through a stay or by joining the creditors, to frustrate a collusive proceeding between the spouses. But unlike the Australian experience [where creditors have significant rights of intervention], Canadian courts have issued no ringing endorsements of the primacy of unsecured creditors' claims. It appears that creditors will have difficulty obtaining a stay or other relief in the face of bona fide matrimonial proceedings, even if the effect of such proceeding may be to frustrate their ability to recover the debt.

- [34] Justice Russell articulated that the issues in a bona fide family claim take priority over the concerns of unsecured creditors. The bona fides of the dispute between the claimant and respondent is central to KSCU's argument. In essence, KSCU alleges that the family law trial, at least to the extent of the Property, is not bona fide and is instead a concerted effort to put the respondent's interest in the Property beyond KSCU's reach. Justice Lyster described the concern as a "friendly trial" between the claimant and respondent in regard to the division of the Property.
- [35] However, in this case, there has been significant judicial attention on KSCU's concerns regarding the position advanced by the respondent and claimant in regards to the Judgment Debt and the Property. As such, even without KSCU being added as a party, the judge hearing the family trial will undoubtedly be aware of these issues during trial. Further, I will now provide some guidance in an attempt to give form to the scope of KSCU's participation

at the family trial, noting however, that it will ultimately be the decision of the trial judge as to how the trial and application will be conducted.

IV. Disposition

- [36] I accept that based on the claimant's and respondent's past conduct, as found by Crerar J., KSCU has legitimate concerns that the claimant and respondent may work in concert to put the ownership of the Property in the claimant's hands. This would frustrate KSCU's collection efforts against the Judgment Debt. However, in my view, granting full party status to a creditor in a family law proceeding, on the facts of this case, would be unwise and is unnecessary.
- [37] While some circumstances may require the Court to take the step of adding a creditor as a party, in my view, the purpose of Rule 8-2 of the Family Rules is to provide a mechanism for a person who has a closer relationship to the matters in issue than a mere creditor. To potentially open the door to full participation in family law proceedings by creditors with an interest in the family property is not in the interests of justice. It could lengthen and delay trials and put parties through additional expense. Adding costs and delay to litigation hinders access to justice and requires additional court time, which is a scarce resource. Further, as noted by Russell J., in bona fide family law proceedings, the family law issues must be paramount over issues related to unsecured creditors. I note that I have been provided with no authorities to dissuade me from my conclusion.
- [38] In the case at bar, some level of KSCU's participation in the family law trial has already been ordered. I am satisfied that there are currently safeguards to protect KSCU's concerns that the ownership of the Property will be determined on its merits short of adding it as a party. In other words, I conclude that KSCU's participation pursuant to Rule 8-2(7)(b) and (c) of the Family Rules as a party is not necessary to ensure a fair adjudication of the rights to the Property because KSCU will participate in a more limited capacity, and because of the previous litigation and findings of this Court of which the trial judge will be aware. Further, I will order additional measures--short of adding KSCU as a party--to assist the Court hearing the family law proceeding to fairly determine the Property's ownership on the merits.
- [39] In terms of safeguards, I acknowledge KSCU's argument that if it is only permitted to make final submissions, KSCU may find itself running afoul of the rule in *Browne v. Dunn*. In this regard, KSCU contends that if it were to make submissions that assert facts contrary to the testimony of the witnesses at trial, which were never put to the witness, it would be unfair to the witness and preclude the Court from making credibility findings on those issues. Further, a trier of fact would be unable to have the evidence before the Court properly tested. I acknowledge this may be a legitimate issue.
- [40] As such, I grant leave to KSCU to renew its application before the trial judge in the family law matter to seek cross examination of witnesses, solely pertaining to issues of the transfer of the Property. In my view, given the family law trial and the applications are to be heard

together, I do not wish to prevent the trial judge from being unable to have access to information she or he finds necessary to make a determination of the interests in the Property on the merits. My decision is rooted in a concern that the trial judge may be faced with different and potentially contrary evidence between the application and the family trial, which could lead to contrary findings of fact between the two proceedings. In my view, avoiding this potential conflict is in the best interests of the administration of justice. However, that decision should ultimately be left to the judge presiding over the family law trial and the application, and the inherent jurisdiction to control the trial process.

- [41] While I understand that, given Lyster J.'s order that KSCU's application and the family law trial will be heard at the same time, the claimant and respondent already contemplated and accepted that KSCU would be entitled to make closing submissions. As such, I will formalize that acceptance by ordering that, subject to the trial judge's decision to the contrary, KSCU will have an ability to make both opening and closing submissions at the family law trial.
- [42] Further, I remind the parties and KSCU of the order of Lyster J. that the application of KSCU for the payment out of court of the funds protecting the Judgment Debt be heard immediately after the family law trial, or as otherwise directed by the judge hearing the matters.
- [43] Finally, given that the family trial and KSCU's application will be heard together, I direct that the respondent and claimant consult with KSCU in setting the length needed for trial and the application, including any potential additional time for KSCU to call either the respondent, claimant or other witnesses for cross examination at the application. I direct that the parties schedule a Trial Management Conference and grant KSCU leave to appear at the Trial Management Conference, without the requirement of KSCU to file a Trial Brief. I direct that the claimant and respondent will consult with KSCU regarding the scheduling of the trial, the TMC and the application to ensure there is sufficient time for KSCU to make opening and closing submissions, as well as for KSCU's application.
- [44] Finally, in the event that the family law trial never proceeds because it resolves or for some other reason, or is delayed unreasonably, I grant KSCU leave to bring an application to have its application heard separately from the family trial some time in the future. The purpose of this specific order is so that KSCU's application is not unduly coupled to the family law proceeding indefinitely. My concern is that given KSCU's application is now tethered to the family law trial, the parties to the family law proceeding may not move the matter forward with alacrity. I envision that the delay of the family trial would need to be of an inordinate amount of time before KSCU could bring such an application.
- [45] I have no doubt that, given the previous orders of our Court and our Court of Appeal, at the family law trial, counsel for the claimant and for the respondent will raise the previous litigation as well as Crerar J.'s decision in the fraudulent conveyance trial. Further, given that KSCU's counsel will participate in providing both opening and closing submissions, the presiding judge will certainly be aware of these issues when considering how the Property

should be apportioned in the family proceeding. In my view, while I have attempted to provide some guidance as to how the matter might proceed, ultimately, the decision on how to specifically address issues of concern relating to a "friendly", non-adversarial, litigation between the respondent and claimant is best decided by the trial judge.

- [46] To reiterate, I have concluded that KSCU should be denied full party status at the family law proceeding. I have attempted to provide some framework to the participation ordered by Lyster J. to allow the claimant, respondent and KSCU to prepare their respective cases and application. In so doing, I have attempted to strike a balance between having the fair adjudication of the family law proceeding on its merits while not encumbering the family law proceeding with additional burdensome steps and requirements for the claimant and respondent.
- [47] Further, I note the unusual circumstances of this case. There has been a previous finding of a fraudulent conveyance between the parties, and our Court has expressed serious credibility concerns. Both point to possible collusion of the claimant and respondent to put the Property beyond the reach of creditors. It is concerning that, given the ownership of the Property will be a central issue in the family law proceeding, the issue will be based on the evidence of the parties who earlier were untruthful about the conveyance of the asset. With these unusual circumstances in mind, as well as our Court's finding that it was appropriate that KSCU participate to some extent in the family law trial, I have concluded what I consider to be the appropriate scope of KSCU's participation. I have remained mindful that it is generally not in the interests of justice under the current family law regime that a creditor play a role in bona fide family law proceedings.

V. Costs

- [48] The claimant and respondent have been generally successful in defeating KSCU's application to be granted party status. However, KSCU has achieved some success in better defining its participation in the family law trial. Further, I find that there was ambiguity in what KSCU's participation would entail, and given the novel nature of this issue and unique factual background, this application was not unnecessary. In fact, it could be seen as having been prudently brought in advance so that the trial was not adjourned when it commenced.
- [49] Given the foregoing, I order that the costs will be in the cause. The cause being KSCU's application for payment out of Court of the Judgment Debt. In my view, it may be that KSCU's desire for participation in the family law trial that was the genesis for this application will have some impact on whether the respondent is ultimately required to fulfill the Judgment Debt. As such, this application is linked to the outcome of KSCU's application for payment out of the funds paid into Court.

VI. Conclusion

- [50] I thank counsel for their helpful and well-argued submissions on this application.

"Gibb-Carsley J."

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