

CANADA / JUDGMENT

Stenner v. Stenner

2025 BCSC 2440

COURT

Supreme Court of British Columbia

DECIDED

10 December 2025

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2025 BCSC 2440 Stenner v. Stenner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stenner v. Stenner,

2025 BCSC 2440

Date: 20251210

Docket: E67647

Registry: New Westminster

Between:

Justyn Stephen Stenner

Claimant

And

Kimberly Shane Stenner

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

The Claimant appearing in person:

J. Stenner

Counsel for the respondent:

M. Magaril

Place and Date of Trial/Hearing:

Port Coquitlam and New Westminster, B.C.

November 20 to 21, 2024

Place and Date of Judgment:

New Westminster, B.C.

December 10, 2025

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Introduction

- [1] These are reasons for judgment on an application filed August 23, 2024, by the respondent for an order striking the whole, or alternatively portions, of the notice of family claim in this matter for offending Supreme Court Family Rules 11-2(1)(a) through (d) or for an order pursuant to R. 21-5(1)(a)(i) striking the whole, or alternatively portions of the notice of family claim for failing to comply with R. 4-1(1).
- [2] In the further alternative, the respondent seeks an order pursuant to R. 11-2(1) (a) striking out the portion of the notice of family claim as it relates to seeking to set aside the parties' separation agreement on the basis that the application is brought incorrectly and that the Court otherwise lacks jurisdiction to hear the matter, and related orders.
- [3] The respondent also seeks special costs against the claimant, or costs on a scale to be assessed by this Court payable forthwith by the claimant in any event of the cause.
- [4] The claimant, on November 21, 2024, filed an application response and cross-application opposing five of the orders sought by the respondent and sought orders seeking:
 - a) dismissal of the claimant's application to strike pleadings on the basis that the respondent's pleading raises legitimate legal and factual issues requiring determination at trial; and
 - b) permitting the respondent to cross-examine the claimant and affiants including Stuart Jay Zukerman and Kenneth Westlake, K.C.

Factual Basis

- [5] On June 16, 2021, the respondent filed in this Court a separation agreement between the parties dated August 16, 2019, (the "Separation Agreement") in British Columbia Supreme Court action number VLC E211494 (the "Main Proceeding").
- [6] The Separation Agreement specified comprehensively the division of assets of the parties, and provided lump sum payments to the respondent on account of property division through a tort claim, and a companion Underinsured Motorist Protection claim brought by the claimant (the "MVA Claim").
- [7] On an application within the Main Proceeding, the respondent obtained an order granted by Mr. Justice Funt on June 18, 2021, which prevented the dissipation by Mr. Stenner or any other person in possession of monies arising from the MVA Claim. While asserting that he intended to make various challenges to the Separation Agreement, the claimant elected not to bring an application in the Main Proceeding but instead commenced the family claim presently before this Court, filed June 14, 2023, under New Westminster Registry No. E067647.
- [8] This notice of family claim ("NOFC") was filed on June 14, 2023, a date more than two years after correspondence from Mr. Stenner dated March 23, 2021, indicating that he believed he had grounds to challenge the Separation Agreement. Mr. Zukerman, then counsel for Mrs. Stenner, wrote a reply to the March 23, 2021 correspondence which noted that Mr. Stenner had executed the Separation Agreement to which was attached as Schedule "F" an executed copy of an Irrevocable Direction to Pay from Mr. Stenner to Mr. LeBlanc requiring Mr. LeBlanc to pay \$1,250,000 from any ICBC settlement in the MVA Claim directly to Mrs. Stenner, separate and apart from a \$300,000 assignment expense agreement.
- [9] On July 7, 2021, the claimant, through counsel, wrote letters to Mr. Westlake and Mr. Rizzuto alleging wrongs in the nature of conspiracies between those two lawyers, who provided independent legal advice to the claimant allegedly to change pages of the document which Mr. Stenner had executed.
- [10] In response, both counsel, Mr. Westlake and Mr. Rizzuto, wrote letters providing a strong rebuke of the allegations made by the claimant, in professional and factual letters, which demonstrated that observed changes in versions of the document were simply work product with an innocent explanation that the Separation Agreement filed was the true and accurate copy of the Separation Agreement executed by the claimant.
- [11] Mr. Westlake, Ms. Margaret Wilson, Mr. Westlake's legal assistant, and Mr. Zukerman all gave evidence in affidavits as to the creation, continuity and execution of the Separation Agreement by the parties including the claimant. The salacious allegations made by the claimant, as noted above, are rebuffed by the legal counsel and staff referred to above, noting that the allegations of Mr. Stenner are uncorroborated, and are not contained in any list of documents produced by the claimant.

- [12] In the First Affidavit of Mr. Zukerman, made on May 15, 2024, he stated that on instructions from the respondent, Mr. Zukerman was retained by her to draft the Separation Agreement in late February 2019. Mr. Zukerman testified that on August 14, 2019, he emailed an unsigned final draft of the Separation Agreement to Mr. Westlake, then acting for the claimant, with the final draft as now attached to Mr. Zukerman's First Affidavit aforesaid as Exhibit "A".
- [13] Exhibit "B" to the same is a letter dated October 28, 2019, from Mr. Westlake to Mr. Zukerman which encloses the original Separation Agreement signed by the claimant, and also includes an additional 20 unnumbered pages marked as Schedules C through F, being pages 51 to 70 of the Affidavit, which included the Claimant's Declaration of Bare Trust and Agency Agreement executed by the claimant, a copy of the claimant's BC service card, a Form A Property Transfer executed by the claimant on February 2, 2019, a Property Transfer Tax Return, a Statement of Coverage together with a Change of Beneficiary Form, and an Irrevocable Direction to Pay, all of which documents aforesaid were signed by the claimant.
- [14] Due to a delay caused by the COVID-19 pandemic and the illness of Mr. Zukerman, the execution of the Separation Agreement by Ms. Stenner with all attachments listed above was delayed until August 21, 2020. The letter which enclosed two fully executed copies of the Separation Agreement and an Authorization Letter in duplicate to be signed by Mr. Stenner concerning Insurance Policy inquiries was attached to the First Affidavit of Mr. Westlake as Exhibit "B" and the First Affidavit of Mr. Zukerman at Exhibit "C".
- [15] In the First Affidavit of Mr. Zukerman at para. 8, he confirms that the Separation Agreement signed by the Claimant on August 16, 2019 is identical to the one signed by the respondent on August 21, 2020, and is identical to the draft 22-page agreement (containing only Schedules "A" and "B") that Mr. Zukerman sent to Mr. Westlake by email on August 16, 2019.
- [16] In the First Affidavit of Kenneth Westlake, K.C., made on June 18, 2024, he confirmed the facts concerning the execution of the Separation Agreement stated by Mr. Zukerman in his affidavit. Mr. Westlake confirmed that the Separation Agreement, marked Exhibit "A" to that affidavit, was a true copy of the final document which Mr. Westlake assisted in preparing, and that Mr. Stenner negotiated and understood it to be the final Separation Agreement between himself and Mrs. Stenner.
- [17] In the First Affidavit of Margaret Wilson, the legal assistant of Mr. Westlake, made on July 24, 2024, she confirmed that she received instructions from Mr. Westlake to send the original Separation Agreement, which had been signed by Mr. Stenner, to Mr. Zukerman. She confirmed that Exhibit "A" to Mr. Westlake's affidavit was a true copy of the draft.
- [18] The claimant was represented by several legal counsel as this action progressed but was self-represented at trial. He repeatedly asserted that he had been adversely affected in his cognitive capacity by the sequelae of a motor vehicle accident. Curiously, none of the counsel who acted for Mr. Stenner made any attempt to obtain the representation or the services of litigation guardian nor was any evidence presented in the form of an admissible

medical legal report to evidence the loss of mental capacity of Mr. Stenner. He continued to work for various automobile dealerships dealing with highly valuable automobiles which suggests a working capacity at a high level dealing with valuable assets. In the First Affidavit of Mr. Westlake at para. 9, the following appears:

On 16/August/2019, Mr. Stenner attended at my office. When I met with Mr. Stenner, I had no reason to believe that he was unable to understand the Separation Agreement, or was in any way impaired or had diminished mental capacity.

[19] No evidence was given which in any way challenged or otherwise contradicted the above statement of Mr. Westlake.

Analysis

Should the NOFC be struck?

[20] The claimant asserted in pleadings that there was some swapping of pages in the Separation Agreement. There is not one scintilla of evidence that supports the specious suggestion that Mr. Westlake, Mr. Zukerman or any of their staff made any change of pages in the Separation Agreement or otherwise made any edits, changes or alterations in the contents of the Separation Agreement.

[21] It must be remembered that the NOFC in this proceeding is not consistent with the Form F3 specified for such documents in R. 4-1. The NOFC is remarkably prolix and contains a wide variety of verbose claims over 48 pages in length, containing descriptions of claims against the respondent that are completely inappropriate in an NOFC and in which the claimant alleges the respondent "knew" a wide variety of allegations which are not relevant to a family claim. None of the allegations made in the NOFC have been submitted in the form of affidavits which could be considered evidence. No admissible evidence has been submitted by Mr. Stenner.

[22] In addition, after the execution of the Separation Agreement, the claimant took a variety of steps, with the assistance of legal counsel including:

- (a) on January 4, 2018, Robert W. Ross, a solicitor acting for Justyn Stephen Stenner, executed, witnessed by P. Faminoff, also a lawyer, a declaration to cancel the charge registered under the Land (Spouse Protection) Act for a property described as 018-264-859, LOT 7 Section 17 Township 1 NWD Plan LMP 10112, Application for Cancellation in Form D registered under Document Number BB 3051534 (the "LSPA charge");
- (b) on January 4, 2018, Mr. Stenner executed a Form C abandoning all homestead rights in the land described as 018-264-859, LOT 7 Section 17 Township 1 NWD Plan LMP 10112, Application for Abandonment in Form C registered under Document Number BB3051534 (the (Surrey Property)). The LSPA Charge also relates to the Surrey Property which property also has a civic address of 2280 133 Street, Surrey, B.C.;

- (c) On January 5, 2018, Mr. Stenner, through his lawyer, Robert W. Ross, executed a Form 17 cancelling a Spouse Protection Charge CA3058897 also filed in the Land Title Office at New Westminster as BB3051534 on the 5th of January 2018;
- (d) On January 15, 2018, before Vincent Rizzuto, a lawyer acting for Mr. Stenner, Mr. Stenner executed a Declaration of Bare Trust and Agency Agreement giving Ms. Stenner sole ownership of the Surrey Property and also the property known as: 003-738-809 Lot 3 Plan KAP31391 District Lot 490 Regional District 07 Land District 41 Actual Use 060. Attached thereto was a Certificate of Independent Legal Advice executed by Vincent Rizzuto and Acknowledgment and Declaration acknowledging receipt of legal advice from Mr. Rizzuto by Mr. Stenner on 15th of January 2018.
- [23] Mr. Stenner has not submitted any admissible form of evidence to contradict or refute the evidence about the participation of legal counsel in paras. 23(a) to (d) above. It is clear from that evidence that Mr. Stenner acted in a manner that indicated he had accepted the provisions of the Separation Agreement and was acting in accordance with its terms. There seems little doubt that he expected to win more damages than he was awarded in the MVA Claim but the failure of his expectation is not a basis to set aside the Separation Agreement.
- [24] Mr. Stenner has continually made statements without any expert medical or psychiatric opinions in support thereof that he has suffered a significant brain injury, which has adversely affected his ability to comprehend matters including those set out in the Separation Agreement. As noted above, Mr. Stenner has received legal advice from several lawyers including Randeep S. Gill in May 2023, Vincent Rizzuto in 2018, and Robert W. Ross in 2018. At no time has any lawyer representing Ms. Stenner taken steps to have a litigation guardian or other legal representative for a person experiencing such issues to be appointed to support or assist Mr. Stenner. During the course of the hearing, on a number of occasions this Court was advised that a litigation guardian or other legal representative was about to be appointed. No guardian or representative appeared nor was appointed.
- [25] On August 23, 2024, Ms. Stenner filed an application seeking orders that the NOFC be struck out in whole or in part. This Court is fully satisfied, after a review of the NOFC, that it offends R. 11-2(1)(a) through (d), and that the NOFC should be subject to an order pursuant to R. 21-5(1)(a)(i) striking the whole, or alternatively portions of the NOFC for failing to comply with R. 4-1(1).
- [26] Based on the state of the evidence, this is an appropriate case for this Court to make an order striking out the whole of the NOFC, without leave to amend, the result being that this action is dismissed.
- [27] To the extent that Mr. Stenner seeks an order to set aside the Separation Agreement in this case, he has purported to use a process which is not applicable and is also well out of time for any attempt to set aside a Separation Agreement. Such an application must be made before trial, pursuant to R. 1-1, where the word "application" is defined as "an application made before trial". In order to obtain an order other than at trial, Mr. Stenner was obliged to

apply under R. 10-5 as specified in R. 10-1. This Rule specifies the "Usual Application Procedure" with a "fixed and proportionate" court process where the application "must not exceed 10 pages in length." That procedure was not followed.

Limitation Period

- [28] Ms. Stenner has also applied to strike the portion of the NOFC on the basis that the applicable limitation period has expired. Section 198(3) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides that a spouse may make an application to set aside or replace an order made under Part 5, 6, or 7, as applicable, or all or part of an agreement respecting property or spousal support, not later than 2 years after the spouse first discovered or reasonably ought to have discovered the grounds for making the application.
- [29] Non-disclosure does not postpone the running of the limitation period fixed by s. 198(3) of the FLA: *Jiang v. Baojian*, 2015 BCSC 394 at para. 42. It is also important to note that s. 198 of the FLA is a specific limitation period applicable only to this legislation. The Limitation Act does not apply herein.
- [30] Mr. Stenner relied upon the case of *Nourifard v. Emadzadeh*, 2024 BCCA 240, a case which considered R. 9-6 of the Supreme Court Civil Rules in relation to the dismissal of an action found to have been barred by the provisions of the Limitation Act. The Court of Appeal found there was a genuine issue bearing on the critical question to be answered and the Rule did not allow weighing of evidence. The difficulty with relying on this case is that the issue was a delay in a share transfer caused by a misrepresentation. There is no such issue in the case at bar. Further, *Nourifard* was decided under the Supreme Court Civil Rules; the Supreme Court Family Rules govern the practice herein, and these Family Rules are not referred to in the *Nourifard* case.
- [31] The evidence is that Mr. Stenner knew of the existence of the Separation Agreement in its exact form and Ms. Stenner's reliance on it as late as March 23, 2021, as confirmed by Mr. Stenner's correspondence with Mr. Zukerman on that date. However, he did not commence this proceeding seeking to set aside the Separation Agreement until August 23, 2024. The period between those two dates is approximately 30 months, and resultantly, the present proceeding was clearly out of time when it was filed in 2024. The applicant submits that the proceeding cannot be salvaged and must be dismissed under any of R. 11-2(1)(b) through (d) as being vexatious, an abuse of process, embarrassing and having no overall chance of success.
- [32] I agree. However, if I am incorrect about the limitations defence, allegations based on assumptions or simple speculation do not need to be treated as true. Such assumptions or speculation are to be "subjected to a skeptical analysis in order to determine their true character": *Brar v. British Columbia (Securities Commission)*, 2022 BCSC 1726 at para. 8.

- [33] Mr. Stenner has made very serious allegations against a number of lawyers, categorized by the respondent's counsel as "scandalous, outrageous, and vexatious allegations against Mr. Westlake, K.C., Mr. Rizzuto, and Mr. Zukerman, which might tarnish their professional reputations without any reasonably held belief in the veracity of such allegations."
- [34] Ms. Stenner called evidence from Mr. Westlake, his legal assistant, and Mr. Zukerman, although not required to do so, to refute the allegation that the Separation Agreement had been in any way doctored, tampered with, forged, or altered after the execution thereof, and I accept the evidence of these witnesses and prefer it over that of Mr. Stenner.

Costs

- [35] Paragraph 28(c) of the Separation Agreement provides that "the party bringing [legal] proceedings must indemnify the other party or actual legal costs and disbursements in defending the claim, whether or not recoverable in those proceedings". The respondent, Kimberly Shane Stenner, is based on that provision entitled to indemnity for actual legal costs and disbursements for this application.
- [36] The application of Justyn Stephen Stenner to set aside the Separation Agreement referred to herein is dismissed with costs as aforesaid.

"Ball, J."

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