

CANADA / JUDGMENT

Sullivan v. Bullock

2024 BCSC 648

COURT

Supreme Court of British Columbia

DECIDED

22 April 2024

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2024 BCSC 648 Sullivan v. Bullock IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sullivan v. Bullock, 2024 BCSC 648 Date: 20240422 Docket: 61487 Registry: Kamloops Between: Jenna Jacqueline Joan Sullivan Claimant And Brayden Garrett Allan Bullock Respondent Before: The Honourable Justice B. Smith Corrected Judgment: The Reasons for Judgment were corrected at paragraph 52 on April 25, 2024 Reasons for Judgment Counsel for the Claimant: R.R. Lammers Counsel for the Respondent: J.H. Mason Place and Date of Hearing: Kamloops, B.C. April 2, 2024 Place and Date of Judgment: Kamloops, B.C. April 22, 2024

Introduction

- [1] This is a family law dispute. The primary issue is whether the claimant should be permitted to add two corporations as respondents in the action. The secondary issue concerns the appropriate remedy for the respondent's alleged non-compliance with financial disclosure obligations.

Background

- [2] The claimant and the respondent were in a marriage-like relationship of approximately 15 years duration. They are the biological parents of three children, aged 13, 10 and 8.
- [3] Upon separation, the respondent began cohabiting with his current partner, J.B., to whom he is now married.
- [4] The claimant asserts the respondent is using two corporations to hide his income and shield himself from his obligations to pay child support, spousal support, or both. The respondent has held an ownership interest in the corporations at various times proximate to the commencement and continuation of this litigation.
- [5] The claimant applies to add the two corporations as respondents in the action. The respondent denies the claimant's allegations, and opposes the addition of the corporations as respondents in the action.

- [6] The claimant seeks an order that the respondent pay her \$2,500 for his non-compliance with financial disclosure obligations. The respondent offers various explanations for his non-compliance.
- [7] For the reasons that follow, I grant the claimant's application to add the two corporations as respondents in the action, order the respondent to pay \$2,500 to the claimant for non-compliance with his financial disclosure obligations, and award costs to the claimant. The Proposed Respondents
- [8] The proposed respondents are two British Columbia corporations, 1239281 B.C. Ltd. ("123") and 1358353 B.C. Ltd. ("135").
- [9] 123 and 135 are engaged in the business of constructing steel buildings.
- [10] In January 2020, 123 was incorporated, with J.B. as the sole shareholder and director.
- [11] In April 2022, 135 was incorporated by the respondent, with J.B. and another person added as shareholders and directors a month later.
- [12] In May 2022, the respondent became a shareholder and director of 123 and J.B. became a shareholder and director of 135.
- [13] In October 2022, less than two weeks after the claimant filed her Notice of Family Claim, the respondent ceased to be a shareholder and director of 123 and claimed to be "a Project Manager in a closely held company". The Alleged Scheme
- [14] The respondent now claims to be financially supported by J.B., earning no substantial income. The respondent continues to perform the same duties at 123 as when he was a shareholder and director.
- [15] 135 does business as Diamond Edge Building. The respondent has disclosed various invoices in the name of Diamond Edge Building dating from July to December 2022 (the "Invoices"). The respondent has also disclosed Scotiabank account statements for 135 for the period from June to November 2022. According to the claimant, the Invoices cannot be matched to any deposits to the Scotiabank account. The respondent also provided paystubs showing he is receiving income from 135. According to the claimant, the payroll payments cannot be matched to any withdrawals from the Scotiabank account. The respondent disputes that the Invoices and payroll payments cannot be reconciled with the Scotiabank account.
- [16] The claimant alleges the respondent lives a lifestyle far beyond his alleged income, including multiple international vacations, and other activities, such as ski trips and winery tours. The respondent responds he has no means to pay for such a lifestyle and J.B. pays for everything. Position of the Parties and Proposed Respondents Claimant's Position

- [17] The claimant alleges 123 and 135 are not operating at arm's length to the respondent and that he is the main or sole operating mind of both corporations. She alleges 123 and 135 generate income that is misdirected by the respondent to J.B. in an effort to limit his obligation to pay child or spousal support to the claimant. She alleges the respondent earns income from 123 and 135, and is a beneficial owner of corporate shares which generate income. Respondent's Position
- [18] The respondent denies the existence of a scheme to hide his income and assets.
- [19] The respondent submits the claimant has presented no evidence of a scheme except for the bare existence of the companies and the change in structure of 123 in 2023, which he says was for a reasonable business reason.
- [20] In summary, the respondent submits there is an innocent explanation for the changes in the ownership structures of 123 and 135, all having to do with payments by 123 or 135 to third parties for services, as well as obtaining credit facilities. Position of the Proposed Respondents
- [21] Neither 123 nor 135 attended the hearing of the application, despite being properly served. Neither were represented by counsel.
- [22] The respondent and J.B. were present in the courtroom. Neither chose to make any submissions on behalf of either 123 or 135. Neither sought an adjournment to obtain counsel to make submissions on behalf of either 123 or 135.
- [23] Counsel for the respondent did not appear as agent for either 123 or 135, but made submissions opposed to the relief sought. Discussion Adding Parties
- [24] At any stage of a family law case, the court may order that a person be named as an additional party to the proceedings if their participation is necessary to ensure that all matters in the case may be adjudicated on: Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules]: Rule 8-2(7)(b). The court may also order that a person be named as an additional party if there may exist between that person and any other named party, a question or issue relating to any relief claimed in the case or the subject matter of the case, that in the opinion of the court it would be just and convenient to determine as between the person and the named party: Rule 8-2(7)(c).
- [25] In *Taherkhani v. Este*, 2020 BCSC 101, at paras. 31-33, Justice Giaschi discussed the interpretation of Rule 8-2(7)(b) and (c):
- [3] Rule 8-2(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] governs the addition of parties to a family matter. It provides:
- (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.

[32] Rule 8-2(7) of the SCFR is almost identical to R. 6-2(7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [SCCR]. In *Alexis v. Duncan*, 2015 BCCA 135, the Court of Appeal addressed the proper test for the addition of a party under the SCCR.

[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), 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.

- [33] In *Lantzius v Lantzius*, 2015 BCSC 2066, at para. 26, Justice Kelleher noted that R. 8-2(7)(b) and (c) should be given a broad purposive interpretation. I accept R. 8-2(7)(c) is to be given a broad interpretation but that is not the case with R. 8-2(7)(b). As indicated in para. 15 of the above quotation from Alexis, R. 6-2(7)(b) of the SCCR is concerned with remedying defects in a proceeding and has a narrow application. The same must be so with R. 8-2(b) which is framed almost identically.
- [26] I am satisfied the claimant has met the threshold test under Rule 8-2(7)(c) for adding 123 and 135 to the proceedings.
- [27] The first part of the test under Rule 8-2(7)(c) is whether, between the person sought to be added and any party to the proceedings, there exists a question or issue relating to or connected with the relief claimed in the proceedings or the subject matter of the proceedings.
- [28] As between 123 and the claimant, there exists a question relating to or connected with the relief claimed in the proceedings or the subject matter of the proceedings. The question pertains to the respondent's income, if any, from 123 and whether he has beneficial ownership in 123, even though he stopped being a shareholder and director of 123 less than two weeks after the claimant filed her Notice of Family Claim. The question is directly connected to the relief the claimant is claiming in the proceedings.
- [29] As between 135 and the claimant, there exists a question relating to the respondent's receipt of income from the corporation, for which he apparently has paystubs, while the corporation apparently has no corresponding withdrawals from its bank account. As with 123, the question is directly connected to the relief the claimant is claiming in the proceedings.
- [30] The questions regarding both 123 and 135, involve the subject matter of the proceedings, namely the respondent's income and assets, and his child support and spousal support obligations.
- [31] The second part of the test under Rule 8-2(7)(c) is whether it is "just and convenient" to add the proposed parties to the proceedings.
- [32] The proper determination of the claimant's and the respondent's interests in the resolution of the issues in this case is important. The participation of both 123 and 135 is necessary to ensure that all matters relating to the respondent's income and assets, and his child support and spousal support obligations, are adjudicated on.
- [33] The determination of the existence or otherwise of the alleged scheme is important in the interests of the administration of justice.

- [34] The proceedings are not at an early stage. The trial is currently scheduled to commence on July 8, 2024. Adding 123 and 135 could result in an adjournment of the trial, and will add to the expense of this litigation for the parties. While that is unfortunate, it would be unjust to subordinate the just determination of this family law dispute to considerations of expediency and cost.
- [35] It is suitable to try all issues pertaining to the respondent's income and assets together. I do not foresee any complications arising. If the claimant is unsuccessful in establishing the existence of the alleged scheme, or the involvement of either 123 or 135 in it, she faces very significant costs consequences. Financial Disclosure Obligations and Enforcement of Disclosure Orders
- [36] The parties to a family law dispute are subject to financial disclosure obligations: see, e.g. Rule 5-1 and s. 21 of the Federal Child Support Guidelines, SOR/97-175. In addition to such statutory obligations, the parties can also be subject to orders of the court.
- [37] Section 213 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides various options for the enforcement of disclosure orders, one of which is the payment of an amount, not exceeding \$5,000, to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure.
- [38] In *J.D.G. v. J.J.V.*, 2013 BCSC 1274, at para. 21, Punnett, J. said this about s. 213 of the FLA:
- [21] Section 213 recognizes that non-disclosure is a barrier to the speedy and inexpensive determination of cases. In many cases considerable resources, both private and public, are expended on pre-trial disclosure. This before any consideration of the real issues can be carried out. It is a barrier that should not be countenanced. Private and public resources are better spent on resolving the real issues between the parties rather than being depleted on such matters.
- [39] In this case, in addition to the respondent's statutory obligations, he is subject to the disclosure terms of a January 4, 2023 order by Majawa, J. (the "Majawa Order"). Claimant's Position
- [40] The claimant's position is that the respondent is in flagrant breach of his disclosure obligations.
- [41] The claimant submits the court should order the respondent to pay her \$2,500. Respondent's Position
- [42] The respondent's position generally falls within one or more of the following descriptive categories: · "I provided some disclosure"; · "Some disclosure was publicly available"; · "I did not have a lawyer"; · "My accountant changed firms"; · "The disclosure sought was not specified in the order"; and · "I am willing to provide the disclosure now".

- [43] The respondent has failed to comply with his financial disclosure obligations. He has been dismissive of at least one letter sent to him by the claimant's counsel following up on disclosure, to which he responded: "When your client is prepared to discuss proper shared parenting, and stops alienating me from my children, we can talk."
- [44] More than 15 months have elapsed since the Majawa Order. As of April 2, 2024, when this application was heard, a significant amount of the material subject to disclosure pursuant to the Majawa Order had not been disclosed, without reasonable explanation.
- [45] I am satisfied the claimant's psychological, emotional and financial interests were negatively affected by the respondent's non-disclosure. Family law disputes are stressful and costly for the parties. When a claimant has to bring applications to court to enforce a former spouse's disclosure obligations in the context of claims for child and spousal support, what is already undoubtedly a stressful and costly experience for the claimant, surely becomes even more so.
- [46] The respondent's explanations do not excuse his failure to comply with his financial disclosure obligations. If there are no consequences to the respondent's past behaviour he will have inadequate incentive not to repeat it in future.
- [47] In my view, an order that the respondent pay the claimant \$2,500 will account for the negative effect on the claimant's interests which I find the respondent's failure to comply with his disclosure obligations has had on her. It will also hopefully bring home to the respondent the seriousness of his failure to comply with his disclosure obligations and encourage his future compliance.

Orders

- [48] I make the following orders:
- [49] Pursuant to Rule 8-2(7) of the Rules, British Columbia corporations 1239281 B.C. Ltd. and 1358353 B.C. Ltd. are added as respondents to this action.
- [50] The style of cause is amended as follows: Claimant: Jenna Jacqueline Joan Sullivan
Respondents: Brayden Garrett Allan Bullock, 1239281 B.C. Ltd., and 1358352 B.C. Ltd.
- [51] Pursuant to Rule 8-1 of the Rules, the claimant may file an Amended Notice of Family Claim in the form of claim set out in Appendix "A" to the claimant's Notice of Application filed February 28, 2024.
- [52] Pursuant to s. 213 of the FLA, Brayden Garrett Allan Bullock shall pay Jenna Jacqueline Joan Sullivan \$2,500 no later than April 30, 2024, on account of non-compliance with his financial disclosure obligations in this action, including non-compliance with the disclosure terms of the order of Majawa, J. pronounced January 4, 2023. Costs
- [53] The claimant is entitled to her costs. "B. Smith J." B. SMITH J.

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