

CANADA / JUDGMENT

Tait v. van Wollen

2022 BCSC 1509

COURT

Supreme Court of British Columbia

DECIDED

29 August 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 1509 Tait v. van Wollen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tait v. van Wollen,

2022 BCSC 1509

Date: 20220829

Docket: E192769

Registry: Vancouver

Between:

Brian Joseph Tait

Claimant

And

Veronica Zofia Maria van Wollen

aka Veronika van Wollen

Respondent

Before: Master Muir

Reasons for Judgment

Counsel for the Claimant, appearing via video conference:

W.A. McLachlan

The Respondent, appearing on her own behalf via video conference:

V. van Wollen

Counsel for the Attendees, Dr. Margaret A. Webb, Inc., 0893880 B.C. Ltd., and Rosehill Apartments Ltd., appearing via video conference:

R.R. Lee

Place and Dates of Hearing:

Vancouver, B.C.

July 28 and August 4, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 29, 2022

Introduction

- [1] This was an application by the respondent for an order that the parties, within 14 days, jointly retain either Crowe Mackay & Company Ltd. ("Crowe MacKay") or Walters Financial Forensics Ltd. as a forensic expert to investigate the accuracy and completeness of the financial disclosure of the claimant, as well as the income and assets of the claimant and his company for the period from 2016 to present. The respondent asks that the costs of this jointly retained expert be shared between the parties initially, with leave to seek to have them allocated differently at trial.
- [2] The respondent also seeks extensive financial disclosure from three corporations owned by the claimant's parents: Dr. Margaret A. Webb Inc. ("Webb Inc."), 0893880 B.C. Ltd. ("880"), and Rosehill Apartments Ltd. ("Rosehill") (collectively, the "parents' companies"). Specifically, the respondent seeks production of income tax returns, corporate minute books, and financial statements for 2016 to present for the parents' companies.
- [3] The respondent also seeks production of financial statements, income tax returns, and the corporate minute book for Salty Summit Designs Ltd. ("Salty Summit"), a company the claimant and his father own, for 2016 to present.
- [4] In addition, the respondent seeks documentation regarding a loan admittedly made from Rosehill to the claimant or a corporation under his control.
- [5] Finally, the respondent sought an order that the claimant, his company or companies, and the parents' companies be required to provide the jointly retained expert with any documentation requested.

Background

- [6] The parties were married on August 26, 2017 and separated on September 1, 2019. There are no children of the relationship.
- [7] The respondent is employed with a media group and reported 2020 line 1500 income of \$175,246.
- [8] The claimant is employed as an industrial designer and millworker and works under the name of Salty Summit. His 2020 line 1500 income was \$20,886.
- [9] Although the claimant uses the corporate name, he declares all of the business income and expenses personally.
- [10] The parties entered into a consent order on September 27, 2021 regarding document disclosure and for a joint valuation of Salty Summit to be conducted by Patti Daum or such other valuator as agreed. Despite the apparent willingness of the claimant to proceed with that valuation, the respondent has not taken any steps to cooperate in its initiation.
- [11] I understand that no examinations for discovery have been conducted. There is a five-day trial scheduled for January 16, 2023.

The Respondent's Position

- [12] The respondent's position is captured by the following paragraph of her affidavit sworn April 25, 2022:
 - 4. Upon receipt of the Claimant's disclosure, it became readily apparent that based on the disclosure it would be impossible to form a complete picture of the Claimant's finances. The claimant's finances are significantly intertwined with the finances of his mother, Dr. Margaret Webb, his father Gordon Tait, and a number of corporations that they own and control []
- [13] The disclosure referred to was that following the September 27, 2021 consent order and is found in the claimant's affidavit #5 sworn October 4, 2021.
- [14] The respondent specified some of her concerns in her notice of application as follows:
 - 7. []. Amongst other things the Claimant's disclosure indicates the following:
 - a. He has claimed fictitious transactions on his taxes, declaring dividends on his personal taxes that he claims he did not in fact receive from Dr. Margaret Webb Inc.
 - b. He has conducted business as the corporation Salty Summit Design Ltd (or Gordon Tait Design Ltd) but reported the income from doing so on his personal taxes.
 - [c] He has not prepared any corporate financial statements or tax returns for Salty Summit Design Ltd. despite earning substantial revenues.

[d] He has collected GST for Salty Summit Design Ltd. but seemingly not remitted any GST.

[e] He claimed on his financial statement \$17,958 of PST owing by the corporation Salty Summit Design, a corporation for which he has alleged there is no revenue.

[f] He has claimed expenses belonging to Salty Summit Design Ltd. in his personal capacity on his T1 (including commercial rent and lease payments, interest expenses, capital cost allowance / depreciation).

[g] He has claimed 100% of the expenses for Salty Summit Design Ltd. on his T1 despite his father's 50% ownership interest in the corporation.

[h] He has claimed expenses on his T1 for which there is no record of actually being incurred or paid.

[i] He has claimed investment losses on his T1 for investments that appear to be in the name of his father.

[j] He has performed renovation and construction work for the named corporations without any direct compensation recorded.

[k] He has engaged in a variety of significant asset transfers with his parents with the ostensible "payments" for these transfers not matching any actual payment reflected in documentation provided.

[l] He is sharing accounts with his father, Gordon Tait, which are used for both business and personal use.

[m] He has received significant bank deposits, totalling some \$81,000 from unknown sources.

[15] The respondent's opinion is supported by a letter dated December 22, 2021 from Jonathan McNair, partner and senior vice-president of the proposed joint forensic expert, Crowe Mackay.

[16] Unfortunately, Mr. McNair's letter does not comply with the requirements for an expert report in that, inter alia, he does not set out the materials that he reviewed in order to come to his conclusions.

[17] Mr. McNair opined that it is improper for the claimant to personally claim the income and expenses of Salty Summit. He also appeared to believe that the claimant had personally received dividends declared by Webb Inc. in the years 2015 to 2017, although the claimant, his accountant, Julia Wallis of Davidson & Company (who has provided three letters of explanation regarding the affairs of the claimant and the parents' companies), and Dr. Webb all state that is not the case.

[18] Mr. McNair comments on the income splitting that was used in 2015 to 2017, almost as if it was still occurring and yet, he acknowledges that the law changed to preclude that in 2018 and that the claimant's shares in Webb Inc. were redeemed in 2020.

[19] He also questions the fact that the claimant has "provided services" to his parents, including assisting with renovations, in return for their financial support, without keeping track of them.

[20] Mr. McNair concludes:

Based on the above, CMK finds that there is limited accounting information available for SSD [Salty Summit] and the tax treatment of SSD appears to be improper.

There are significant ongoing financial transactions being undertaken by the Related Parties. There is evidence to demonstrate that the related parties are considering various factors beyond their individual self-interest when conducting these transactions. These include, but are not necessarily limited to:

- Splitting income between family members to reduce the overall income tax burden;
- Renovation/construction work performed for the Related Parties that is not being recorded and is without direct compensation;
- Loans to SSD from Rosehill with non-commercial terms and documentation;
- Various non-cash transactions, and;
- Asset sales/transfers where official ownership/title differs from documents generated between the Related Parties.

Accordingly, given that SSD is not regularly preparing financial statements that can be reconciled to its bank account or otherwise reconciled to intercompany loans and balances, and given the apparent improper tax treatment of SSD combined with significant and ongoing transactions occurring between the Related Parties, CMK is unable to assess the accuracy and completeness of Brian Tait's financial disclosures in the Matrimonial Dispute.

Any financial assessment of Brian Tate would necessarily involve obtaining substantial additional accounting information on SSD, as well as additional information and disclosures from the Related Parties, in order to gain a fulsome picture of the Related Parties' assets, operations and undertakings wherein Brian Tait appears to be substantially involved.

[21] Regarding the appointment of a forensic expert, the respondent relies upon Rules 13-4(3) and 9 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR], which provide:

Application to court

- (3) If the parties do not agree that a joint expert is required or do not agree on any matter relating to the appointment of a joint expert, any party may apply to the court in accordance with Rule 10-5 for an order
 - (a) appointing a joint expert, and
 - (b) settling any matter relating to the appointment of the joint expert.

[]

Cooperation required

- (9) All parties must cooperate fully with a joint expert and make full and timely disclosure of all relevant information and documents to the joint expert.
- [22] The respondent also relies on the decision of Justice G.C. Weatherill in *Fan v. Zhang*, 2015 BCSC 2352 and the decision of Justice Verhoeven in *Saric v. Banden*, 2017 BCSC 1508, where note was made of a prior order for the appointment of a forensic accountant.
- [23] The respondent submits that without a forensic expert investigating the full financial picture of the claimant and as between the claimant and the parents' companies, she will be prejudiced.
- [24] The respondent says that to proceed with the ordered valuation by Ms. Daum would legitimize the flawed document production and accounting information provided by the claimant. Further, she submits that a certified business valuator, such as Ms. Daum, is not the appropriate expert to get to the bottom of the claimant's financial circumstances.
- [25] The respondent submits that she cannot even proceed with an examination for discovery because the claimant's document disclosure and evidence is contradictory and that she needs the report of a forensic expert before embarking on an examination for discovery of the claimant.
- [26] As to document disclosure the respondent only cites Rules 5-1(19) to (22) of the SCFR, which would apply to production of documents from the claimant regarding Salty Summit and perhaps his holding in 880, but would not otherwise apply to the parents' companies. SCFR 5-1(19) sets out the ambit of the rule:

Production of documents

- (19) If a party discloses business or corporate interests in a Form F8 financial statement served under this rule, the party receiving the Form F8 financial statement may, in writing, request the disclosing party to produce for inspection and copying specified documents or classes of documents in the disclosing party's possession or control that might reasonably be required to verify the valuation of the disclosing party's interest or to determine the disclosing party's income.
- [27] The respondent must rely on SCFR 9-1, the relevant portions of which are:

List of documents

- (1) Unless all parties consent or the court otherwise orders, each party to a family law case must
- (a) prepare a list of documents in Form F20 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

[]

Party may demand documents required under this rule

(7) If a party who has received a list of documents believes that the list omits documents or a class of documents that should have been disclosed under subrule (1) or (6), the party may, by written demand, require the party who prepared the list to

(a) amend the list of documents,

(b) serve on the demanding party the amended list of documents, and

(c) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (12) and (13).

(8) If a party who has received a list of documents believes that the list should include documents or classes of documents that

(a) are within the listing party's possession, power or control,

(b) relate to any or all matters in question in the family law case, and

(c) are additional to the documents or classes of documents required under subrule (1) or (6),

the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the party who prepared the list to

(d) amend the list of documents,

(e) serve on the demanding party the amended list of documents, and

(f) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (12) and (13).

[]

Application for production of documents

(10) If a party who receives a demand under subrule (7) or (8) does not, within 35 days after receipt, comply with the demand in relation to all of the demanded documents, the demanding party may apply for an order requiring the listing party to comply with the demand.

Court may alter requirements

- (11) On an application under subrule (10) or otherwise, the court may
- (a) order that a party be excused from compliance with subrule (1), (3), (12) or (13) or with a demand under subrule (7) or (8), either generally or in respect of one or more documents or classes of documents, or
 - (b) order a party to
 - (i) amend the list of documents to list additional documents that are or have been in the party's possession, power or control relating to any or all matters in question in the family law case,
 - (ii) serve the amended list of documents on all parties, and
 - (iii) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (12) and (13).

[]

Documents not in possession of party

- (15) If a document is in the possession or control of a person who is not a party, the court, on an application under Part 10 brought on notice to the person and the parties, may make an order for one or both of the following:

- (a) production, inspection and copying of the document;
- (b) preparation of a certified copy that may be used instead of the original.

[28] The respondent points out that fulsome financial disclosure is the foundation of our family law system. And that the questions raised, as set out above, warrant a complete analysis of the parents' companies and their dealings with the claimant both through fulsome financial disclosure and the services of a forensic expert. Otherwise she submits that she will be prejudiced in being unable to present a true picture of the claimant's assets and income in support of her claim.

The Position of the Claimant and the Parents' Companies

[29] Both the claimant and the parents' companies oppose the application.

The claimant

- [30] The claimant says that the application to appoint a joint forensic expert is unnecessary, not proportional to the matters in dispute, and that the SCFR do not require such an expert to be jointly retained.
- [31] The claimant distinguishes the cases relied upon by the respondent as being clear cases of worldwide assets that were intentionally concealed by one party. He submits that those cases bear no relationship to this case.

- [32] To the extent that the application seeks an order that the forensic expert investigate the accuracy and completeness of the claimant's disclosure, the claimant points out that is not a "financial issue" as defined in Rule 13-3(1) of the SCFR, for which a joint expert is required. He submits that if the claimant wants an expert to undertake such an investigation she is free to retain that expert herself.
- [33] Further, the claimant submits that as a corporate valuation of Salty Summit has already been ordered, that it should be proceeded with, despite his view that the cost of that valuation will be out of proportion to the value of the company.
- [34] As to the document demands, his position is that he has provided all available documents to truly disclose his financial position, including documents necessary to establish his interest or lack thereof in the parents' companies and the financial dealings that he has had with them.

The parents' companies

- [35] The parents' companies oppose the document production orders sought most vigorously. They indicate that they have voluntarily provided ample documents to establish what interest the claimant has in these companies now and historically, and the financial dealings between them. They authorized the claimant's accountant, Ms. Wallis, who is also the accountant for the parents' companies, to provide letters setting out the financial dealings between the parent companies and the claimant.
- [36] They submit that the requests are overly broad--seeking full financial information about the companies from 2016 to present. They submit there is no foundation laid for these demands, which they paint as a pure fishing expedition. They submit that the law is clear that where documents are demanded from a third party that there must be some evidence in support
- [37] Further, they argue that such an order would be prejudicial because, as Webb Inc. is the corporation through which Dr. Webb runs her dental practice, the documents will contain much private and confidential information about her patients and how her practice is run.
- [38] They point out that there was an offer for the respondent's counsel to review financial information from Webb Inc., if a non-disclosure agreement was signed. That did not come to fruition, with both parties saying the blame for that lies upon the other, but the fact is that the offer was there and not pursued with any vigor.

Analysis

- [39] After review of the evidence provided by the claimant and the parents' companies, I conclude as follows about the parents' companies and Salty Summit for the purposes of this application.

The parents' companies

- [40] Webb Inc. is controlled by the claimant's mother, Dr. Margaret Webb, who operates an active dental practice through that company. The claimant was a shareholder in Webb Inc. from about November 2010 to December 2020, as were his siblings.
- [41] The shares were issued to the children when income splitting was still permitted, and income was shared, on paper, between the family members to reduce taxes. The declared dividends were not actually paid to any of the children but liability for them was assumed by Dr. Webb personally. The claimant's shares and those of his siblings were redeemed in December 2020 for the set redemption amount of \$10.
- [42] A copy of the articles of Webb Inc., a document showing the special rights and restrictions on its shares, and copies of documents showing the redemption of the claimant's shares have all been produced.
- [43] In 2019, Webb Inc. retained the claimant to do extensive renovations to the dental office. Webb Inc. paid \$56,185.43 for these services direct to Salty Summit and directly paid costs of materials supplied in the amount of \$34,756.96.
- [44] 880 is also a company controlled by the claimant's mother. It is active, but does not conduct any active business, has never issued dividends, and is dormant, but may be used for future tax planning. The claimant holds 100 class A4 non-voting participating shares with a total redemption value of \$10. Copies of the share register, an excerpt of the articles of the company, and a November 1, 2020 director's resolution showing the claimant's interest have been provided.
- [45] Rosehill is a company owned by the claimant's parents. A copy of the central securities register has been produced confirming that the claimant does not now hold and has never held shares in this company.
- [46] Rosehill has provided a loan to Salty Summit as set out below.
- [47] Information about the parents' companies is from the affidavits of the claimant, sworn August 24, 2021, October 4, 2021, and May 16, 2022, as well as the affidavit of Dr. Webb sworn June 21, 2022. Some details are also confirmed in letters from Ms. Wallis, who, as noted, is the accountant for the claimant, the parents' companies, and Salty Summit.

Salty Summit

- [48] In 2015, when the claimant purchased a 50% interest in Salty Summit, then known as Gordon Tait Design Ltd., from his father, Rosehill provided start-up funds as a loan to the claimant. The claimant's father retains a 50% interest in Salty Summit as security for the loan. The funds came from the line of credit held by Rosehill and interest incurred on that line is charged to the loan account. No repayments have been made on the loan.

- [49] As noted, Salty Summit is owned 50% by the claimant and 50% by his father. The claimant deposes that it is intended that when the Rosehill loan is repaid that the father's interest will be transferred to the claimant.
- [50] The claimant does not run his business through the corporate entity of Salty Summit. As noted, he declares all income and pays and claims all expenses personally. This procedure was recommended by his accountant, Ms. Wallis, as, given that the business has limited income, it saves costs and reduces the administrative burden of preparing corporate income tax returns and other corporate documentation.
- [51] The financial circumstances of the claimant and Salty Summit are confirmed in the claimant's affidavits and as well by the three letters from Ms. Wallis.

The Forensic Expert

- [52] From my review of the evidence and the conclusions I was able to reach based on that review, I am satisfied that the evidence provided by the claimant and the parents' companies has gone a long way to answering the questions that the respondent has about the financial relationships between the claimant and the parents' companies.
- [53] The respondent's insistence that there are inconsistencies that point to a significant camouflage or distortion of the claimant's assets and income is simply not born out by the evidence.
- [54] This is not a case, such as those relied upon by the respondent, where a joint forensic review is warranted or proportional.
- [55] I see no reason why a certified business valuator, such as Ms. Daum, would have any difficulty in reviewing the evidence and advising the parties of whatever additional documentation or information she required to provide the agreed upon and ordered valuation of Salty Summit. That valuation should proceed in my view.
- [56] Any remaining questions can be dealt with on an examination for discovery of the claimant.

Document Production

Salty Summit

- [57] Dealing first with the demand for document production of Salty Summit, in my view, the claimant has provided all documents necessary under Rules 9-1(1) and 5-1(19) to (22) of the SCFR.
- [58] The basis for the application is the letter from Mr. McNair. Unfortunately, that letter does not identify any specific documents that exist that have not been produced. Further, his concerns are based on the disclosure that was made prior to December 22, 2021. There have been documents and evidence provided since that time.

[59] I conclude based on the evidence that I have seen, that the claimant has produced what exists. He cannot, under these rules, be required to create documents that do not exist. If there are gaps in his production, Ms. Daum or other certified business valuator can identify those and request documents or information that she requires to complete her valuation. If there are gaps in information, as noted above, the obvious avenue for the respondent is to make those inquiries on an examination for discovery of the claimant.

The parents' companies

- [60] The application for production of documents directly from the parents' companies must be brought under Rule 9-1(15) of the SCFR. It is trite law by now that applications under either Rule 7-1(18) of the Supreme Court Civil Rules or Rule 9-1(15) of the SCFR require a sufficient evidentiary basis to establish the existence and relevance of the documents sought.
- [61] In *Kaladjian v. Jose*, 2012 BCSC 357, Justice Davies concluded:
- [61] After considering the authorities and submissions of counsel, I have concluded that the pleadings continue to govern the determination of issues of relevance in relation to the scope of examination for discovery under the present Rules and will usually also govern issues concerning the initial disclosure obligations of a party under Rule 7-1(1), if challenged by a party under Rule 7-1(10).
- [62] I have also concluded that the narrowing of the discovery obligations of parties and most particularly the removal of the [*Cie Financiere du Pacificque v.*] *Peruvian Guano* [Co. (1882), 11 Q.B.D. 55 (Eng. Q.B.)] "train of inquiry" test of relevance will generally require a defendant to provide some evidence to support an application for additional documents, whether demand is made under Rule 7-1(11) or Rule 7-1(18).
- [63] A requirement for evidentiary support recognizes the difference between the scope of examination for discovery and the scope of document discovery under the present Rules and will allow considerations of proportionality to be addressed in specific cases.
- [64] A requirement for evidentiary support in requests for additional documents and third party records also prevents against unwarranted "fishing expeditions" based solely upon pro forma pleadings.
- [62] As noted, Mr. McNair seemed to be of the view that a fulsome picture of the parents' companies was required. It is unfortunate that Mr. McNair was not specific about the information that he thought he would need. It is also unfortunate that he was not clear about why he needed a "fulsome picture" of the parents' companies' assets, operations and undertakings, as opposed to an explanation and documentation regarding the financial dealings between the claimant and the parents' companies.

- [63] It is obvious, however, that Mr. McNair would not have been privy to the claimant's affidavit #8 sworn May 16, 2022, Dr. Webb's affidavit #1 sworn June 21, 2022, or the most recent letter from Ms. Wallis dated May 13, 2022.
- [64] I cannot, as a result, take Mr. McNair's views at face value. Nor can I use his letter as a basis for considering why the documents sought from the parents' companies from 2016 to present might be relevant to the analysis of the claimant's assets and income.
- [65] Just as I am not convinced that a forensic expert is needed here, I am not convinced that there is any evidentiary foundation for the extensive document production sought from the parents' companies.
- [66] The evidence that has been provided by the claimant and the parents' companies answers most of the questions raised by the respondent. The obvious route to obtain any additional information is an examination for discovery of the claimant. As noted in *Kaladjian*, the scope of examinations for discovery is broader and might be useful in the future in providing a basis for an application for additional documents.

Conclusion

- [67] As a result, I have concluded that the respondent's application must be dismissed. Given that examinations for discovery have yet to be conducted, I will grant liberty to apply should the examination of the claimant provide an evidentiary foundation for further document production.

Costs

- [68] This application came before me scheduled for one hour. On the first day, July 28, 2022, the application took the entire afternoon and had to be adjourned to August 4, 2022. On that day, the application continued for more than an hour and I reserved judgment.
- [69] Thus, not only did this application not conclude in the time set, it did not conclude in the maximum time of two hours for a regular chambers application and should have been heard on the long chambers list.
- [70] Failure to properly consider and accurately estimate the time required for applications is legion. It does, however, play havoc with our chambers system.
- [71] Chief Justice Hinkson commented on inaccurate time estimates in *Sangha v Goel*, 2018 BCSC 2267:
- [37] Given the circumstances set out in para. 34 and 35 above, I decline to award the costs of the applications to any party. Counsel who underestimate the time required for the hearing of their applications in chambers at the expense of other counsel or litigants must be discouraged from so doing. It serves no one's interests to terminate a hearing whose required time has been underestimated at the completion of that time estimate, and the only means by which such inaccuracy can be addressed is by refusing costs where such

conduct occurs.

[72] The respondent was self-represented for this application and did take much of the time in her submissions. The submissions of the claimant and the parents' companies, however, were in themselves over the one-hour time estimate given. It should have been obvious to the claimant and the parents' companies, simply from the lengthy demands in the notice of application and the voluminous affidavit materials, that the application was going to exceed the time estimate given.

[73] As a result, although the claimant and the parents' companies were totally successful and would ordinarily receive their costs of preparation for and attendance at the hearing, I am ordering each participant to bear their own costs of the hearing. The parents' companies will have their costs of preparation for the application, payable forthwith. The claimant will have his costs of preparation for the application in the cause.

"Master Muir"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/15/2022BCSC1509.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tait-v-van-wollen-2022>

Prepared on 28 October 2026 · Esheria