

CANADA / JUDGMENT

Yusufi v. Yusufi

2022 BCSC 900

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 900 Yusufi v. Yusufi IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Yusufi v. Yusufi, 2022 BCSC 900 Date: 20220531 Docket: E202489 Registry: Vancouver Between: Jawaher Yusufi Claimant And Sultan Ali Yusufi Respondent Before: The Honourable Mr. Justice Milman Reasons for Judgment Counsel for the Claimant: S. Jamal No other appearances Place and Dates of Trial: Vancouver, B.C. April 19-20, 2022 Place and Date of Judgment: Vancouver, B.C. May 31, 2022 Table of Contents I. Introduction. 3 II. The Facts. 3 III. Discussion. 6 A. The Maher Agreement 6 B. Spousal Support 7 C. Division of Assets and Debt 9

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[1] The claimant, Ms. Yusufi, now known as Ms. Wahidi, brings this matrimonial action seeking a divorce and various items of corollary relief under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The action was undefended. Although the respondent, Mr. Yusufi, retained counsel and was involved intermittently at various stages of the litigation, he did not formally respond to the claim and did not attend the trial, although duly served with notice of both.

[2] Following the trial, I granted Ms. Wahidi an order for divorce and the associated name change but reserved judgment on the balance of the relief sought. The following is my decision on those outstanding matters. II. The Facts

[3] The parties are originally from Afghanistan. They were married in Calgary, Alberta on July 25, 2002 but moved soon after that to Burnaby, British Columbia, where they resided together until their separation on April 29, 2019. There were no children.

[4] The parties are Ismaili Muslims. As is traditional in that community, they signed a "maher" contract when they married, the terms of which called for Mr. Yusufi, in the event they divorced, to pay Ms. Wahidi the sum of \$50,000, in addition to any other entitlement she might otherwise have under the law (the "Maher Agreement").

- [5] The marriage was not a happy one. Ms. Wahidi has recounted several episodes of psychological and physical abuse. Mr. Yusufi was often away travelling and, during one recent trip to Afghanistan, appears to have taken a second wife. Ms. Wahidi adduced in evidence a photograph she received in October 2021 showing what appears to be his wedding ceremony on that occasion.
- [6] Ms. Wahidi has a grade 12 education and speaks English at an elementary level. During the marriage, she earned income as a cleaner and housekeeper. She did the cooking and cleaning in the home. Mr. Yusufi was employed as a maintenance worker at the Royal Vancouver Yacht Club.
- [7] The parties maintained both joint and their own separate bank accounts. Nevertheless, Mr. Yusufi generally controlled the family finances, often in a manner that disadvantaged Ms. Wahidi. For example, he would deposit into his personal account the reimbursements received from the insurer for prescription medications that Ms. Wahidi had paid for herself.
- [8] The parties owned two properties in British Columbia.
- [9] The first was the former matrimonial home at #107-3883 Laurel Street, Burnaby (the "Laurel Property"), which was held in Mr. Yusufi's name alone. Mr. Yusufi acquired the Laurel Property in 2001, one year prior to the marriage. The original purchase price was \$79,000, which was partly financed with a mortgage of \$59,250. In 2008, during the marriage, a larger mortgage in the amount of \$225,000 was placed on title but that debt was paid off in full before the property was sold. Ms. Wahidi says that from 2016 until 2019, she generally paid all of the bills in relation to the Laurel Property, except for the strata fees.
- [10] The parties jointly owned a rental property at 3787 Manor Street in Burnaby (the "Manor Property"), which they acquired in 2008 during the marriage. The Manor Property contained three rental suites, one upstairs and two in the basement. Between 2008 and November 15, 2016, Mr. Yusufi kept all of the rental revenue for himself. After November 15, 2016, the rent from the upstairs suite was split between the parties and used, at least in Ms. Wahidi's case, to pay her share of the mortgage. Ms. Wahidi also received the rental revenue from one of the two basement suites from May 15, 2016 until May 2019, when that tenant refused to pay her following the parties' separation.
- [11] In 2000, Mr. Yusufi acquired an interest in a property located at 4819 60 Street NE in Calgary (the "Calgary Property"). Initially, he shared ownership in the Calgary Property jointly with a third party. In 2004, that third party's interest was transferred to him, apparently for nominal consideration. In 2014, he sold the Calgary Property for \$257,000. Ms. Wahidi was given \$10,000 from the proceeds of sale for investment in her RRSP, but she does not know what became of the balance of those proceeds.

- [12] In the same year, 2014, Mr. Yusufi told Ms. Wahidi that he had purchased a two-level home in Kabul, Afghanistan (the "Kabul Property") with the assistance of his brother. He also told her that one of the floors in the Kabul Property was rented out to a third party and that the other was occupied by his nephew. Ms. Wahidi asked to have her name placed with his on title to the Kabul Property but that request was refused.
- [13] Following their separation, the parties entered into a mediation that was only partly successful. They did agree to sell the Laurel Property on certain terms. One of those terms was that, once the Laurel Property was sold, Ms. Wahidi would have vacant possession of one of the two basement suites in the Manor Property so that she could reside there.
- [14] When the Laurel Property was sold in November 2020, Ms. Wahidi attempted to move into the vacant basement suite in the Manor Property as contemplated by their agreement. However, it turned out that the upstairs tenant, who ran a daycare business on the site, had placed some of her belongings in the basement and refused to remove them. On learning of this, Ms. Wahidi demanded to see the rental agreement that Mr. Yusufi had signed with the tenant but none was provided. Ms. Wahidi was forced to move into her brother's home. She has been renting space from him and sleeping on his living room sofa since that time.
- [15] Ms. Wahidi commenced this action on November 23, 2020.
- [16] The parties subsequently agreed to sell the Manor Property as well. On June 2, 2021, a consent order was made giving the parties joint conduct of sale. However, after they received a qualifying offer, Mr. Yusufi refused to cooperate in completing the sale and Ms. Wahidi had to apply for an order to see it through. On August 24, 2021, Ahmad J. ordered the sale approved and awarded Ms. Wahidi \$2,000 in costs. The costs award remains unpaid.
- [17] The order of Ahmad J. called for the parties to provide vacant possession of the Manor Property by November 1, 2021 so that the sale could complete. That date turned out to be unworkable because the tenants refused to leave. Mr. Yusufi had, without informing Ms. Wahidi, renewed the lease with the tenants on July 2, 2021 for a further one-year period, just one month after the consent order was made calling for the Manor Property to be sold.
- [18] Ms. Wahidi duly gave the tenants two-months' notice to end the tenancy. The tenants responded by serving a Notice of Dispute Resolution Proceeding before the Residential Tenancy Board ("RTB"), with a hearing in that forum set for January 18, 2022, after the sale was supposed to complete. Ms. Wahidi had, once again, to seek an order from this Court to resolve the issue.
- [19] On October 21, 2021, Harvey J. amended the order of Ahmad J. to extend the deadlines and directed the hearing to continue before him one week later, on October 28, 2021. His order on that date finally resolved the RTB dispute and required the tenants to vacate so that the sale could complete on schedule. III. Discussion A. The Maher Agreement

- [20] The parties entered into the Maher Agreement in 2002, prior to the enactment of the FLA. Pursuant to FLA s. 252(2), this aspect of the claim falls to be determined under the provisions of its predecessor legislation, the Family Relations Act, R.S.B.C. 1996, c. 128.
- [21] The formal requirements of a marriage agreement were set out in s. 61(2) of the FRA. That provision stipulated that a marriage agreement was one entered into by two people before or during their marriage that was intended to take effect on the date of the marriage or on the execution of the agreement, whichever is later, for:
- (a) management of family assets or other property during marriage, or
 - (b) ownership in, or division of, family assets or other property during marriage, or on the making of an order for dissolution of marriage, judicial separation or a declaration of nullity of marriage.
- [22] To be enforceable, such an agreement had to be in writing, signed by both parties and witnessed by at least one other person. This Court has previously recognised and enforced maher contracts in that legislative context: *Kariminia v. Nasser*, 2018 BCSC 695; *Amlani v. Hirani*, 2000 BCSC 1653.
- [23] In this case, I am satisfied that the Maher Agreement satisfies the statutory requirements and that Ms. Wahidi is therefore entitled by its terms to payment of \$50,000, in addition to any other relief that she may receive in this action. B. Spousal Support
- [24] Ms. Wahidi seeks spousal support on both compensatory and non-compensatory grounds. This was a 17-year marriage. Mr. Yusufi generally maintained control of the family finances and Ms. Wahidi was therefore dependent upon him. He was secretive about his finances and has refused to disclose his income or assets in this litigation. There is a history of family violence.
- [25] Ms. Wahidi is now 55 years old. She reads and writes English at only an elementary level, making her employment prospects limited. She resided at the Laurel Property until it was sold on November 26, 2020. Thereafter, she had to rent space from her brother and sleep on his sofa because Mr. Yusufi did not keep his promise to allow her to move into the vacant suite in the Manor Property.
- [26] I accept that Ms. Wahidi has established a strong case for entitlement to spousal support on those grounds.
- [27] Ms. Wahidi earned the following amounts during the last three years: 2019 \$25,606 2020 \$23,420 2021 \$30,118
- [28] Her average annual income over that three-year period was \$26,381.33.

- [29] Ascertaining Mr. Yusufi's income for support purposes is more complicated. Because he has not participated in this litigation and has refused, despite demand, to produce any financial information, it is necessary to impute income to him. In these circumstances, it is also appropriate to draw an adverse inference against him with respect to his financial means: *Bodine-Shah v. Shah*, 2014 BCCA 191; *LeBlanc v. Aspell*, 2021 BCSC 2458.
- [30] When Mr. Yusufi took title to the Laurel Property in 2001, he declared his occupation to be a "kitchen helper." During the marriage, he told Ms. Wahidi that he worked full time as a maintenance worker at the Royal Vancouver Yacht Club.
- [31] In an effort to quantify his income, Ms. Wahidi has adduced online data showing the salaries paid to public sector maintenance workers, which are said to range from \$42,059.60 to \$47,440.42. She urges me to impute Mr. Yusufi's income at the top end of that range because his last-known position was in the private sector and he will by now have attained a high level of seniority.
- [32] I agree that it is appropriate to fix Mr. Yusufi's income at the proposed level. I am satisfied that he is also earning additional income from other sources, such as the rental revenue he is said to be receiving for part of the Kabul Property. I therefore fix Mr. Yusufi's income for the purpose of spousal support at \$47,440.42.
- [33] As Ms. Wahidi acknowledges, lump sum spousal support awards are made only exceptionally: *Parton v. Parton*, 2018 BCCA 273. In this case, however, there are several factors weighing in favour of such an award, including the following:
- a) the need for these parties to have no further dealings with one another;
 - b) the dim prospect that Mr. Yusufi would reliably make any periodic payments that might be ordered; and
 - c) the availability of trust funds to be divided between the parties.
- [34] Assuming Mr. Yusufi's income is imputed to be \$47,440.42 and that Ms. Wahidi's income is fixed at \$25,606, with the award made retroactively to 2019, she seeks a lump-sum spousal support award at the mid-range amount of \$167,243, according to her calculation. I prefer to fix Ms. Wahidi's income on the basis of the three-year average, or \$26,381.33, which is only slightly higher than the \$25,605.36 she has used for her calculation.
- [35] Using those figures, the Divorcemate calculation yields a lump sum award ranging from \$104,362 at the low end to \$140,460 at the high end, with a mid-range figure of \$122,154. Because of the strong case for entitlement that she has made out, I am awarding Ms. Wahidi lump sum spousal support toward the higher end of that range, at \$133,000. C. Division of Assets and Debt
- i. Legal Principles

- [36] Pursuant to s. 81 of the FLA, spouses are generally entitled on separation to a half interest in family property, and equally responsible for family debt, regardless of their respective use and contribution.
- [37] The term "family property" is defined in s. 84 of the FLA to mean property that either spouse owns at the time of their separation or was acquired after their separation but derived from such property, unless it is excluded. Property may be excluded pursuant to s. 85, which states in relevant part as follows: Excluded property 85 (1) The following is excluded from family property:
- (a) property acquired by a spouse before the relationship between the spouses began;
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.
- [38] Pursuant to s. 84(2)(g), included within family property is:
- (g) the amount by which the value of excluded property has increased since the later of the date
 - (i) the relationship between the spouses began, or (ii) the excluded property was acquired.
- [39] The family debts subject to division are defined in s. 86 to include all financial obligations incurred by either spouse during the relationship, or after the relationship if incurred for the purpose of maintaining family property.
- [40] Despite s. 81, the Court may order an unequal division of family property or family debt pursuant to s. 95, which states as follows: Unequal division by order 95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;

- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met. ii. Property Available for Division
- [41] In this case, the property that is available for division consists of funds held in trust from the sale of the Laurel Property and the Manor Property. Those funds reflect both net family assets and debts, as well as some excluded property of Mr. Yusufi.
- [42] The Laurel Property sold on November 26, 2020. The net proceeds of sale, less \$50,000 in advances that the parties have already withdrawn for themselves, \$25,000 each, are currently being held in trust by counsel for Mr. Yusufi. The sum of \$221,198.90 remains available from that source.
- [43] The Manor Property sold in November 2021. The net proceeds of sale in the amount of \$1,103,256.11 are currently being held in trust by counsel for Ms. Wahidi.
- [44] The total amount in trust and available for division is \$1,324,455. iii. The Appropriate Division
- [45] Ms. Wahidi seeks an unequal division of the funds in trust so that they are paid out entirely to her.
- [46] The net proceeds from the sale of the Manor Property, which was acquired during the marriage, consist entirely of family property subject to division. The net proceeds from the Laurel Property consist partly of family property and partly of Mr. Yusufi's excluded property. Ms. Wahidi says that the value of Mr. Yusufi's excluded property has already been paid out to him with the \$25,000 advance that he received. I agree that most of the Laurel

Property proceeds is attributable to the increase in value of the Laurel Property since the parties' marriage in 2002, and should therefore be treated as family property. The Laurel Property was purchased one year before the marriage in 2001 for \$79,000, subject to a mortgage of \$59,250. Mr. Yusufi's net equity in 2002 would have been worth approximately \$19,750. The Laurel Property sold in 2020 with no mortgage for \$271,198.90. Treating Mr. Yusufi's \$25,000 advance as his excluded property leaves a balance of \$246,198.90 as family property subject to division.

- [47] The proceeds of sale from the Calgary Property likewise consisted partly of excluded property and partly of family property, to the extent of its increase in value during the marriage. In 2000, two years before the marriage, Mr. Yusufi acquired a partial interest in the Calgary Property. The property was acquired for \$107,000, subject to a mortgage of \$92,769, but it is unknown how much Mr. Yusufi contributed to the purchase price. In 2004, during the marriage, the remaining interest in the Calgary Property was transferred to him, apparently for nominal consideration. He sold the entire Calgary Property in 2014 for \$257,000. It is unknown how much, if anything, was owing on the mortgage at that time. The increase in value of the Calgary Property (that is, \$150,000, being the difference between \$257,000 and \$107,000) should therefore be treated as family property.
- [48] In 2014, the same year that Mr. Yusufi sold the Calgary Property, he also acquired an interest in the Kabul Property. It is reasonable to assume that he used the proceeds of sale from the Calgary Property, less the \$10,000 that he gave to Ms. Wahidi, to do so. I am therefore attributing a value of \$150,000 to that part of Mr. Yusufi's interest in the Kabul Property that should be treated as family property.
- [49] On that basis, the family property to be divided between the parties consists of the following: ITEM VALUE Manor Property \$1,103,256.11 Laurel Property \$246,198.90 TD TFSA 6739 \$401.05 CIBC TFSA 2804 \$14,595.92 CIBC TFSA 9623 \$4.17 CIBC TFSA 8629 \$0.00 CIBC RRSP 7725 \$17,459.37 CIBC RRSP 5742 \$11,071.15 Kabul Property \$150,000 Other Property unknown
- [50] The known assets have a total value of \$1,542,986.67.
- [51] I agree with Ms. Wahidi that an equal division of that sum would be substantially unfair to her for the following reasons:
- a) Mr. Yusufi likely has other assets that have not been accounted for; and
 - b) Mr. Yusufi appears to have taken a disproportionate share of the parties' rental revenue and other income, and left Ms. Wahidi to bear a disproportionate share of the associated expenses during the marriage.

- [52] To account for those factors, I am ordering the known family property to be divided 60% in her favour. In the result, Ms. Wahidi is entitled to be paid from the funds held in trust the sum of $\$1,542,986.67 \times 60\% = \$925,792$, less the \$25,000 advance she has already received, for a net payment of \$900,792. D. Protection Order
- [53] Ms. Wahidi fears that Mr. Yusufi will become violent with her again when he is made aware of the final order in this action. On that basis, she seeks orders under s. 183 of the FLA as follows:
- a) restraining Mr. Yusufi from communicating with her either directly or indirectly, save and except through his lawyer and no more than once a week, unless urgency requires further communications;
 - b) restraining Mr. Yusufi from attending at, nearing or entering a place regularly attended by her, including her residence, place of worship, and place of employment; and
 - c) directing a police officer to remove Mr. Yusufi immediately or within a specified period of time from the places he is restrained from attending as specified above.
- [54] Section 183 of the FLA states as follows: Orders respecting protection 183 (1) An order under this section
- (a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and
 - (b) need not be made in conjunction with any other proceeding or claim for relief under this Act.
- (2) A court may make an order against a family member for the protection of another family member if the court determines that
- (a) family violence is likely to occur, and
 - (b) the other family member is an at-risk family member.
- (3) An order under subsection (2) may include one or more of the following:
- (a) a provision restraining the family member from
 - (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person, (ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place, (iii) following the at-risk family member, (iv) possessing a weapon, a firearm or a specified object, or
 - (v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;

- (b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
- (c) directions to a police officer to
 - (i) remove the family member from the residence immediately or within a specified period of time, (ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or (iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);
- (d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- (e) any terms or conditions the court considers necessary to
 - (i) protect the safety and security of the at-risk family member, or (ii) implement the order.
- (4) unless the court provides otherwise, an order under this section expires one year after the date it is made.
- (5) If an order is made under this section at the same time as another order is made under this A.C.t, including an order made under Division 5 [Orders Respecting Conduct] of Part 10, the orders must not be recorded in the same document.
- [55] The considerations that must be weighed in deciding whether to make an order of that kind are set out in s. 184(1), which states as follows: Whether to make protection order 184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:
 - (a) any history of family violence by the family member against whom the order is to be made;
 - (b) whether any family violence is repetitive or escalating;
 - (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
 - (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;
 - (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
 - (f) the at-risk family member's perception of risks to his or her own safety and security;

- (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.
- [56] The protection orders sought by Ms. Wahidi can only be made if I determine that "family violence" is likely to occur: s. 183(2)(a).
- [57] Although there was a history of family violence during the marriage, it is now dated. The three incidents recounted by Ms. Wahidi occurred in 2010, 2012 and 2017, respectively, while the parties were still together. There has been no such incident since their separation, despite the ongoing litigation, which has often been acrimonious. Throughout that period, the parties have been attending the same place of worship on a regular basis, apparently without incident.
- [58] In the circumstances, I am not persuaded that family violence is likely to occur when Mr. Yusufi is made aware of the final order. It follows that the application for a protection order must be refused. E. Costs
- [59] Ms. Wahidi seeks an award of special costs in her favour, payable forthwith as a lump sum from the remaining funds in trust, on the following grounds, among others:
- a) Mr. Yusufi's failure to respond to the claim or produce financial information;
 - b) his failure to participate in the judicial case conference;
 - c) his failure to meet his obligations, as previously agreed and ordered, in relation to the sale of the Laurel Property and the Manor Property; and
 - d) his signing of a one-year renewal lease with the tenants, one month after entering into a consent order to sell the Manor Property, and then refusing upon demand to produce the lease he signed.
- [60] The circumstances in which this Court has in the past awarded special costs in matrimonial litigation were conveniently summarized by Warren J. in *Hu v. Dickson*, 2015 BCSC 218, as follows:
- [46] Special costs are awarded where a party's litigation conduct can be characterized as "reprehensible". In this context the word reprehensible encompasses both scandalous and outrageous conduct and also milder forms of misconduct deserving of reproof or rebuke. This does not mean that all forms of misconduct justify a special costs order - rather, the misconduct must be such as to be deserving of reproof or rebuke.
- [47] The purpose for this high level of costs is punitive and intended to express the court's disapproval of the party's conduct. It is not necessary that all aspects of a party's conduct in the litigation be reprehensible in order to make an award of special costs that applies to the entire action. However, pursuant to Rule 16-1(14) of the Supreme Court Family Rules, the court has the discretion to award costs that relate to only certain aspects of a proceeding and may do so where it would be disproportionate to award special costs of the entire

proceeding

- [48] The court must exercise restraint in awarding special costs and as such the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order
- [49] In *Kim v. Hong* Justice Griffin quoted extensively from the judgment of Justice Williams in *Schwabe v. Dr. Lisinski* where he summarized a number of cases in an effort to discern the kinds of conduct that had been characterized as reprehensible and thus warranting an award of special costs. Justice Griffin also categorized the conduct that had been found to justify an award of special costs in a number of family cases. From her reasons, it is apparent that the kinds of conduct that warrant an award of special costs include the following: · acting with an improper motive, such as to intimidate, exhaust or financially drain the other party in the hopes that they will give up or soften their position in the litigation; · dissipating and/or not disclosing assets; · abusing the court's process by, among other things, failing to disclose documents, delaying in disclosing documents, failing to respond to reasonable requests, causing unnecessary interlocutory applications, and breaching the Rules of Court in a manner that prejudices the other party; · misleading the court, through outright fabrications or through evasive and/or equivocal responses; and · disobeying a court order. [Citations omitted.]
- [61] I agree with Ms. Wahidi that an award of special costs in her favour is justified in the circumstances of this case, for the reasons given above. I disagree, however, that it would be appropriate for me to assess those costs forthwith as a lump sum with the limited information I was given.
- [62] Instead, I am referring the assessment to a registrar, who is better suited to that task: *Gichuru v. Smith*, 2014 BCCA 414, leave to appeal ref'd [2014] S.C.C.A. No. 547. IV. Summary and Disposition
- [63] I am awarding Ms. Wahidi the following:
- a) payment in satisfaction of the Maher Agreement in the amount of \$50,000;
 - b) lump-sum spousal support in the amount of \$133,000;
 - c) \$900,792 for her share of the family property; and
 - d) special costs of this action, to be assessed by the registrar.
- [64] The monetary awards I have made in favour of Ms. Wahidi (\$50,000 + \$133,000 + \$900,792) total \$1,083,792, which exceeds by \$19,464.11 the amount that her counsel holds in trust from the net proceeds of sale of the Manor Property (namely, \$1,103,256.11).
- [65] The net proceeds of sale of the Manor Property held by Ms. Wahidi's counsel are therefore to be paid to Ms. Wahidi forthwith in partial satisfaction of this judgment, subject to any holdback that she and her counsel may agree upon to secure payment of outstanding legal fees.

[66] The net proceeds of sale of the Laurel Property held by Mr. Yusufi's counsel shall be paid out as follows:

- a) \$19,464.11 is to be paid forthwith to Ms. Wahidi in satisfaction of the remaining part of this judgment, before accounting for costs;
- b) the balance remaining is to continue to be held in trust to secure payment of the award of special costs that I have made, pending assessment by the registrar of the amount payable, which, following that assessment, is to be paid to Ms. Wahidi; and
- c) after payment of those amounts to Ms. Wahidi, the remaining funds are to be paid to Mr. Yusufi.

[67] All other claims advanced in the action are dismissed. "Milman J."

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