

CANADA / JUDGMENT

Zemtsova v. Shevaley Estate

2025 BCCA 114

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 114 Zemtsova v. Shevaley Estate

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Zemtsova v. Shevaley Estate,

2025 BCCA 114

Date: 20250407

Docket: CA49274

Between:

Larisa Zemtsova, also known as Larisa Ivanovna Zemtsova

Appellant

(Petitioner)

And

Sergei Kornev, in his capacity as administrator of the estate of Vladimir Shevaley, also known as Vladimir Konstantinovitch Shevaley, also known as Vladimir Chevaley

Respondent

(Respondent)

Before:

The Honourable Chief Justice Marchand

The Honourable Madam Justice Fenlon

The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia,
dated August 9, 2023 (Zemtsova v. Shevaley Estate, 2023 BCSC 1375,
Vancouver Docket S192492).

Counsel for the Appellant:

G.J. Fahey

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Counsel for the Respondent:

M. Dew

Place and Date of Hearing:

Vancouver, British Columbia

March 13, 2025

Place and Date of Judgment:

Vancouver, British Columbia

April 7, 2025

Written Reasons by:

The Honourable Chief Justice Marchand

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Justice Edelmann

Summary:

This appeal concerns the division of certain property, namely sales purchase agreements (SPAs), following a divorce. The SPAs are owned by a holding company. An arbitrator concluded the holding company was a family asset and that the parties would therefore hold the SPAs through their joint beneficial ownership of the shares of the holding company. The appellant's application to have the arbitration award set aside was dismissed. She now appeals, claiming the arbitrator erred in concluding the holding company was a family asset. Held: Appeal dismissed. The arbitrator was correct to conclude the holding company was a family asset. It served as a vehicle for holding the SPAs, which were purchased as a family investment.

Reasons for Judgment of the Honourable Chief Justice Marchand:

Introduction

- [1] Larisa Zemtsova, the appellant, and Vladimir Shevaley were married in Russia and later moved to Canada. Mr. Shevaley passed away in 2015. Sergei Kornev, his Executor, appears as respondent as the administrator of the Estate.
- [2] A 2014 order ("2014 Order") finalized Ms. Zemtsova and Mr. Shevaley's divorce and made arrangements for the division of their property. It also mandated future disputes be resolved through arbitration.
- [3] At the time of the 2014 Order, the parties' assets included Rion Financial Corp ("Rion"), a Belizean corporation that owned 12 sales purchase agreements ("SPAs") for a real estate development in Dubai. According to the 2014 Order, the SPAs--valued at \$5.5 million at the time--were to be transferred to Ms. Zemtsova.
- [4] Due to subsequent events in Dubai, the value of the SPAs became uncertain and the transfer did not happen. In a 2016 arbitration award, Arbitrator Kahn held the transfer had been frustrated. He varied the 2014 Order such that the SPAs were to be held jointly by the parties but he did not specify how the parties would hold the SPAs going forward ("Kahn Award").
- [5] In 2019, Arbitrator Nordlinger issued an arbitration award determining how the SPAs were to be held ("Nordlinger Award"). Arbitrator Nordlinger concluded Rion was a family asset. The parties would therefore hold the SPAs through joint beneficial ownership of the Rion shares. Ms. Zemtsova applied to set aside the Nordlinger Award. The chambers judge dismissed her petition: 2023 BCSC 1375 [RFJ]. Ms. Zemtsova now appeals that decision.
- [6] During the course of oral argument, it became clear the sole issue on appeal is whether Arbitrator Nordlinger erred in concluding Rion is a family asset. For the reasons below, I am of the view she made no such error. I would therefore dismiss the appeal.

Background

- [7] The SPAs are owned by Rion. The shares of Rion are legally owned by an entity called Global Management & Audit (GMA), an asset management firm located in Switzerland and managed by Marcus Gitz. There was a trust agreement between GMA and Mr. Shevaley concerning Rion. Given the death of Mr. Shevaley, there is some dispute as to whether the trust agreement is still operative. Before Arbitrator Nordlinger, Mr. Gitz testified GMA holds the Rion shares in trust for the Estate.
- [8] On March 24, 2014, Justice Thompson of the Supreme Court of British Columbia made the 2014 Order finalizing the divorce. The 2014 Order was entered into by consent.
- [9] The 2014 Order divided property between the parties, including the 12 SPAs. It provided the SPAs would be transferred to Ms. Zemtsova, after which Mr. Shevaley would retain Rion. According to the order, the parties agreed to share expenses related to maintaining the SPAs until the SPAs were transferred:

28. [Mr. Shevaley] shall retain free of all claims of [Ms. Zemtsova] the following assets:

The Dalv Foundation and Rion Financial Ltd. after the transfer of the SPAs to [Ms. Zemtsova], provided that any debts owing by these entities shall be the sole responsibility of [Mr. Shevaley] save for the expenses to maintain these entities until the transfer of the SPAs is completed, with the understanding that the expenses until the transfer of the SPAs shall be shared equally by the parties.

29. [Ms. Zemtsova] shall retain free of all claims of [Mr. Shevaley] the following assets:

- (a) The SPAs currently registered in the name of Rion, upon the transfers as provided for in this Order;

[Emphasis added.]

[10] The 2014 Order also provided an arbitration mechanism for resolving any disputes over the enforcement or implementation of the order.

[11] Under the 2014 Order, Mr. Shevaley received \$5.5 million in other assets to compensate for the value of the SPAs.

[12] Subsequently, the SPAs were placed on a cancellation list by the Dubai Land Department. As a result, their status and value became uncertain. This led to an arbitration between the parties, resulting in the Khan Award. He found the 2014 Order had been frustrated as it related to the SPAs. Arbitrator Khan concluded the effect of the cancellation should be shared between the Estate and Ms. Zemtsova, and varied the order to reflect this conclusion:

106. Accordingly, the [2014] Order shall be varied as follows:

(a)

- (i) The SPA's will be held jointly by the Estate and Ms. Zemtsova. I will leave it to the parties to discuss how that should occur.

(ii) It may be sufficient for there to be an agreement between the parties, or the parties may prefer that if the Dubai Pearl Project is removed from cancellation, that the SPA's be registered in their joint names, or in specie, to achieve an equal division of that asset.

[Emphasis added.]

[13] In 2017, Arbitrator Kahn ordered the Estate to pay \$2.75 million to Ms. Zemtsova to equalize the division of property in light of the variation.

[14] However, following the Khan Award, the parties were not able to agree how to hold the SPAs jointly as contemplated by para. 106(a)(i) of the Khan Award. They engaged Arbitrator Nordlinger to determine the issue (among others), in accordance with an arbitration agreement ("Arbitration Agreement"). According to the Arbitration Agreement:

The Parties agree that the following issues may be determined by the Arbitrator:

1. The further implementation of paragraph 106(a) of the award of Lawrence A. Kahn, QC (Arbitrator) dated December 8, 2016, and in particular:
 - a. In what manner will the parties jointly hold the SPAs pending realization of any residual value in the SPAs?
 - b. Are the parties required to jointly agree and decide on the ongoing management and handling of the SPAs pending realization of any residual value in the SPAs?
 - c. Are the parties required to share equally in the costs and expenses related to the holding of, and realization on any residual value in, the SPAs?
 - d. Is additional disclosure of ownership documentation related to the SPAs required, and if so, how are the costs of obtaining such additional disclosure to be shared between Ms. Zemtsova and the Estate i.e. are such costs an exception to whatever ruling is made in response to subparagraph (c) above?

[15] This appeal concerns issue 1(a) of the Arbitration Agreement.

[16] Before Arbitrator Nordlinger, Ms. Zemtsova argued it was necessary for the Estate to obtain legal ownership of Rion from GMA. Ms. Zemtsova raised concerns about the vague and complex corporate structure, which she claimed put her interest in the SPAs at risk.

[17] The Estate argued it was unnecessary, unworkable, and imprudent to transfer the Rion shares from GMA to the Executor.

[18] The Nordlinger Award was issued on January 7, 2019. Arbitrator Nordlinger concluded it was implicit in the 2014 Order that the shares of Rion are a family asset. Since the SPAs were held by Rion, and both parties were beneficial owners of the Rion shares, nothing more needed to be done to achieve joint holding of the SPAs.

[19] She reasoned as follows:

17. It is implicit in the Order that the shares of Rion are the family asset. It is stated in paragraph 28 of the [2014] Order that the [Estate] is to retain the Dalv Foundation and the Rion shares, after the transfer of the SPAs to [Ms. Zemtsova]. As Mr. Shevalev was the beneficial holder of Rion, the parties' manner of dividing that asset by the transfer of the SPAs does not change the characterization of the shares as family assets. The parties agreed to a division of those assets as set out in the [2014] Order. However, the inability of the parties to transfer the SPAs to [Ms. Zemtsova] due to the frustration of their agreement, in my view restores [Ms. Zemtsova's] ownership of the shares in Rion as a tenant in common. Thus, the shares of Rion are owned equally by the Estate and by [Ms. Zemtsova]. It is not necessary for the shares to be held in the name of both parties at this point, as it is clear under British Columbia law that [Ms. Zemtsova] owns a 50% interest in the shares as a tenant in common. Both the legislation, s. 56 of the Family Relations Act, and the Kahn Award confirms this result. It is implicit in the Kahn Award that the parties continue to hold the shares in joint ownership, although he only refers to the SPAs. The SPAs are an asset of

Rion, not the parties.

18. It is my view that to change the ownership of the Rion shares to the Executor at this point would, even assuming that I had jurisdiction to do so, unduly complicate matters further. The Executor must act in accordance with his fiduciary [duty] to the Estate, which must also recognize the joint ownership of [Ms. Zemtsova] in Rion.

[Emphasis in original.]

- [20] Arbitrator Nordlinger concluded, "the parties will continue to be the beneficial owners of 50% each of the Rion shares legally held by the Trustee, GMA."
- [21] Having concluded the parties held an equal interest in the Rion shares, Arbitrator Nordlinger found the parties would be equally responsible for the ongoing management and costs of Rion and the SPAs pending realization of any residual value in the SPAs, and both had the right to all information regarding the shares in Rion and the SPAs.
- [22] Ms. Zemtsova applied to set aside the Nordlinger Award. She argued Arbitrator Nordlinger exceeded her powers and failed to observe the rules of natural justice when she determined the shares of Rion were family assets. She claimed Arbitrator Nordlinger exceeded the scope of her powers in the Arbitration Agreement and impermissibly relied on the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], in reaching her decision. In addition, Ms. Zemtsova argued Arbitrator Nordlinger erred in law in finding the shares of Rion were a family asset.
- [23] The chambers judge rejected the contention Arbitrator Nordlinger had exceeded her powers or breached the rules of natural justice: RFJ at paras. 34, 39, 40-41, 42, 51-53, 55-59.
- [24] Turning to whether Arbitrator Nordlinger erred in concluding the Rion shares were a family asset, the chambers judge began by noting the applicable standard of review for an appeal from a family law arbitration award "is currently unsettled": RFJ at para. 61. He considered the standard of review issue and concluded appellate standards of review apply: RFJ at para. 63. He found Ms. Zemtsova, in challenging Arbitrator Nordlinger's determination that the Rion shares were a family asset, was raising an issue of mixed fact and law: RFJ at paras. 82, 86-96.
- [25] Ultimately, the chambers judge concluded Arbitrator Nordlinger did not commit a palpable and overriding error when she concluded the Rion shares were a family asset: RFJ at paras. 97-102.

Discussion

- [26] On appeal, Ms. Zemtsova renews the same arguments she made before the chambers judge. She also contends the chambers judge erred in his consideration of the applicable standard of review.

- [27] In my respectful view, there is no need to address the applicable standard of review. That is because I consider Arbitrator Nordlinger's conclusion that the shares of Rion are a family asset to be correct.
- [28] The parties agree their dispute must be resolved under the FRA, rather than its replacement, the Family Law Act, S.B.C. 2011, c. 25.
- [29] Under the FRA, there are three categories of assets: family assets, business assets, and "other" assets: *Underhill v. Underhill*, 45 B.C.L.R. 244 at 248, 1983 CanLII 294 (C.A.).
- [30] Section 58 of the FRA defines family assets as assets owned by one or both spouses that are ordinarily used for a family purpose. Section 58 also lists certain assets that are to be considered family assets. Property held for investment purposes to provide financial security for the family "may be said to be used for a family purpose" and therefore is a family asset: *Ogilvie v. Ogilvie*, [1996] 14 B.C.L.R. (3d) 296 at 298-299, 1995 CanLII 2199 (C.A.).
- [31] Under s. 58(3)(a)(i), a share in a corporation is a family asset where the corporation owns property that, if owned outright by a spouse, would be a family asset: *Nowak v. Nowak*, 2014 BCCA 409 at para. 108. As this Court stated in *Nowak*, "It is well-established that the FRA permits tracing through sophisticated corporate chains to identify whether shares (not the underlying asset) should be deemed to be a family asset under s. 58(3)(a)(i)": at para. 114. An asset that would be a family asset if owned by a spouse does not cease to be a family asset just because it is owned by a corporation, if the spouse instead owns shares in the corporation: *Underhill* at 250.
- [32] Section 59 defines business assets as those assets owned by one spouse to the exclusion of the other, used primarily for business purposes, and to which the non-owning spouse made no direct or indirect contributions.
- [33] "Other" assets are those assets that fall outside of ss. 58 and 59: *Haring v. Haring*, 2011 BCCA 65 at para. 34.
- [34] As Arbitrator Nordlinger correctly pointed out, upon an order for divorce--the 2014 Order--the parties became joint owners of all family assets as tenants in common by virtue of s. 56 of the FRA. She then interpreted the 2014 Order by applying the definition of family assets under s. 58 to the evidence before her.
- [35] The evidence established Rion was a holding company that served as a vehicle for holding the SPAs. The SPAs themselves were purchased as a family investment. There was no evidence Rion held other assets or served any business ends.

- [36] Based on this evidence and her proper understanding of the FRA, Arbitrator Nordlinger concluded the Rion shares are a family asset. She did not, as Ms. Zemtsova contends, wrongly imply a new term into the 2014 Order. Rather, when Arbitrator Nordlinger found it was "implicit in the Order that the shares of Rion are the family asset", I take her to have been saying simply that, on the evidence, it was obvious that was so and could not be otherwise.
- [37] A plain reading of the 2014 Order demonstrates as much. The heading directly above para. 28 of the order is "Division of Assets". More importantly, para. 28 stated, in part, that Mr. Shevaley was to retain Rion only after the transfer of the SPAs to Ms. Zemtsova. That transfer never occurred, and therefore Mr. Shevaley did not retain Rion. The logical, legal and proper conclusion is that Rion therefore remained a family asset.
- [38] Arbitrator Nordlinger did not exceed the scope of the Arbitration Agreement or violate the rules of natural justice.
- [39] As the chambers judge noted, the "Arbitrator's mandate to determine joint ownership was cast in broad terms" and the "Arbitrator considered and 'did exactly what the parties together asked [her] to do in the arbitration'", namely, decide in what manner the parties were to jointly hold the SPAs: RFJ at paras. 34, 39-41.
- [40] Similarly, the chambers judge correctly found Arbitrator Nordlinger did not breach natural justice by failing to permit the parties to make submissions on the FRA: RFJ at paras. 42, 59. He noted Ms. Zemtsova, when appearing before Arbitrator Nordlinger, had the opportunity to respond to the Estate's argument that the shares in Rion and the SPAs were beneficially owned by both parties. Arbitrator Nordlinger ultimately agreed with the Estate's position: RFJ at paras. 51-53, 56-57. As the chambers judge correctly held, in the circumstances, it was open to Arbitrator Nordlinger to consult an authority--the FRA--beyond those referred to by the parties in reaching her conclusion: RFJ at paras. 54-55; MSI Methylation Sciences, Inc. v. Quark Ventures Inc., 2019 BCSC 440 at paras. 52-53, aff'd 2019 BCCA 448.
- [41] Ultimately, Arbitrator Nordlinger exercised her powers in accordance with the Arbitration Agreement and found Rion was a family asset. As the chambers judge concluded, "[t]he Arbitrator's finding that Rion was a family asset resulted in a simple resolution to the issue put before her, since as a consequence the Arbitrator concluded that actually nothing further needed to be done for the parties to jointly hold the SPAs to implement the Kahn Award": RFJ at para. 24. I agree.
- [42] I understand Ms. Zemtsova is uncomfortable with being enmeshed in the complicated corporate structure surrounding the SPAs. But the decision to manage family assets through GMA was made when Ms. Zemtsova and Mr. Shevaley were married, as were the decisions to purchase the SPAs and then have Rion hold the shares of the SPAs. These were family decisions.

[43] Ms. Zemtsova is not entitled to enjoy only the benefits of family decisions. It's a two-way street. She must also bear the burdens of those decisions. If she wants to realize and share in the residual value of the SPAs, she has to bear her share of the burden of continuing to hold the SPAs within Rion--including the management, fees, and any complications arising from this complex structure.

Disposition

[44] For all of these reasons, I would dismiss the appeal.

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Justice Edelmann"

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