

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Etemadi v. Maali*,
2020 BCSC 1908

Date: 20201209
Docket: E181820
Registry: Vancouver

Between:

Koorosh Etemadi

Claimant

And

Mehrsa Maali

Respondent

And

**Soheila Samimi and Daryoush Etemadi, also known as Darioush Etemadi
and also known as Dario Etemadi**

Respondents

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

In Chambers

Counsel for the Claimant, appearing by
videoconference:

J. Cudmore

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Maali, appearing by videoconference:

S.R. Stanislaus

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Etemadi, appearing by videoconference:

C. Drake

Place and Date of Hearing:

Vancouver, B.C.
November 13, 2020

Place and Date of Judgment:

Vancouver, B.C.
December 9, 2020

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DISPOSITION

Introduction

[1] This is fiercely contested family litigation. A central issue is the division of property pursuant to Part 5 of the *Family Law Act*, S.B.C. 2011, c. 25 [FLA]. Mehrsa Maali and Koorosh Etemadi ("Mr. Etemadi") were married in Tehran in February 2006 and separated in September 2016. Ms. Maali claims that there is property to be divided in Canada, Iran, and Malaysia. Mr. Etemadi maintains that the only family property of any significance is a townhouse in Vancouver (the

“Homer St. Property”) in his name in which his father holds a 50% beneficial interest.

[2] Mr. Etemadi’s parents, Soheila Samimi and Daryoush Etemadi (“Mr. Etemadi Sr.”) are respondents to a counterclaim filed by Ms. Maali.

Mr. Etemadi Sr. is a party because Ms. Maali disputes his claim to a 50% beneficial interest in the Homer St. Property. Ms. Samimi is a party because she holds title to another condominium property in Vancouver (the “Strathmore Mews Property”) that Ms. Maali claims is family property. Mr. Etemadi Sr. and Ms. Samimi are each separately represented but closely aligned with their son in defending the action.

[3] The action was commenced by Mr. Etemadi in September 2017. It was set for trial for three weeks in September 2019 and again in October 2020, but both trials were adjourned. The first adjournment was on Mr. Etemadi’s application. The second occurred at a trial management conference on September 10, 2020 on the basis that the case was not ready for trial.

[4] Ms. Maali applies pursuant to s. 89 of the *FLA* for an interim distribution of family property in the amount of \$250,000 for legal fees. The order she seeks would require the sale of the Homer St. Property, or would oblige Mr. Etemadi to borrow funds against a mortgage of the Homer St. Property or the Strathmore Mews Property. Ms. Maali maintains that at trial, a compensation order in her favour is inevitable and that an interim distribution is necessary to level the playing field in order that her claims may be justly adjudicated at trial.

[5] Mr. Etemadi resists the application on multiple grounds. He says that, fairly evaluated, it is unlikely that Ms. Maali will be awarded as much as \$250,000 and any money distributed to her in advance of the trial will not be recoverable. He resides in the Homer St. Property together with his new partner and their two young children. He says they will suffer irreparable harm if the property is sold.

[6] Mr. Etemadi Sr. joins in these submissions. He asserts his alleged 50% beneficial interest in the Homer St. Property. He does not consent to the sale or refinancing of the Homer St. Property, and maintains that it should not be sold or refinanced against his wishes.

[7] Ms. Samimi says that Ms. Maali's claim to an interest in the Strathmore Mews Property is bound to fail, because there is no cogent evidence that the property was legally gifted to Mr. Etemadi and Ms. Maali during the marriage. She says that the Strathmore Mews Property is simply not family property.

[8] This application is made challenging by the state of the record. The parties filed 16 affidavits, many of them lengthy, in connection with this application, and relied on a further ten previous affidavits, again often lengthy. Many of the affidavits are argumentative and stray far afield from the matters in issue on the application. Ms. Maali and Mr. Etemadi each accuse the other of barefaced lying and say that documents exhibited to the other's affidavits are fabricated. Credibility is very much in issue.

Legal framework

[9] This is an application pursuant to s. 89 of the *FLA* and the issues are defined by the statutory language. It provides:

Orders for interim distribution of property

89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution,
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[Emphasis added.]

[10] Section 89 requires me to address:

- (1) whether the interim distribution sought is one in relation to family property that is at issue in the action;
- (2) whether the interim distribution would harm Mr. Etemadi's interests;
- (3) whether the interim distribution is necessary to provide money to fund resolution of the dispute; and
- (4) if all these conditions are satisfied, whether the interim distribution is in the interests of justice.

See *Bartch v. Bartch*, 2018 BCCA 271 at para. 56, aff'g 2017 BCSC 210.

[11] The cases recognize that an order for an interim distribution is extraordinary in nature; *McKenny v. McKenny*, 2015 BCSC 1345 at para. 57.

[12] The requirements of s. 89 are interpreted purposively, bearing in mind that “[t]he blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets”, as Justice Ballance put it in *I.F. v. R.J.R.*, 2015 BCSC 793 at para. 192. In *Bartch*, Saunders J.A., speaking for the Court, further described its purpose and added a note of caution, stating:

[75] Section 89 is a special provision crafted to allow a financially disadvantaged spouse funds to participate in family dispute resolution by sharing in financial resources despite the parties’ ultimate respective entitlement not having been determined. While sometimes this is referred to as ‘levelling the playing field’, I would describe this as a measure to further balanced participation in the dispute resolution processes. Every order under s. 89 entails a degree of risk the case will not turn out as expected, with prejudice to the distributing spouse. This special character demands careful application of the section, so to keep any distribution squarely within the parameters of s. 89.

[Emphasis added.]

[13] Where a proposed interim distribution has the potential to prejudice the opposing party if triable issues are ultimately resolved in his or her favour, it does not follow that the application must be dismissed. Rather, the court must address the apparent strength of the parties’ respective positions and make a preliminary assessment of the merits, asking whether the applicant has established “a *prima facie* case of sufficient merit to warrant pursuit”; *Bartch*, at paras. 57–63.

[14] In this case, the alleged family property that is the subject of the application is real property, but what is sought is a distribution of funds. Ms. Maali seeks an order that would turn the property into funds by way of a court-ordered sale or loan. This aspect imposes an additional consideration that a sale must be “necessary or expedient”, in the language of *Supreme Court Family Rules*, R. 15-8(1). Master Muir made such an order in *Y.L. v. G.L.*, 2018 BCSC 1571 at paras. 105–116.

[15] Factors to be taken into account in the exercise of the court's discretion under R. 15-8(1) include "whether the sale will promote early settlement, whether the sale will defeat a spouse's claim for reapportionment, whether the sale is inevitable or whether a spouse might be able to retain the property on a division of assets"; *G.J.U. v. J.L.U.*, 2017 BCSC 1352 at para. 57.

[16] Notably, while R. 15-8 expressly authorizes the court to order a sale, it does not authorize a loan. Counsel did not identify any express legislative authority for the court to order a party to borrow money on an interim application. Such an order might be justified as part of an order giving effect to a division of family property pursuant to s. 97(1)(b) or (2)(f) of the *FLA*, but that would not be an interim order. However, there are cases in which the court has ordered an interim distribution that would be funded by a refinancing of property held by the respondent; *Nelson v. Woodward*, 2020 BCSC 399 at paras. 37–42; *Bandpey v. Talebpourazad*, 2019 BCSC 2059 at para. 43; *Zhang v. Fan*, 2018 BCSC 2162 at para. 31. None of these cases discusses the source of the court's authority to make the order; it may lie in the court's inherent jurisdiction.

Issues

[17] Applying the legal framework I have outlined, the issues are as follows:

1. Should the Homer Street Property and Strathmore Mews Property be considered family property for the purpose of this application?
2. Will an interim distribution harm Mr. Etemadi's interests?
3. Is an interim distribution necessary to fund resolution of the dispute?
4. Is it necessary or expedient that the Homer Street Property be sold to fund an interim distribution?
5. What order is in the interests of justice?

Analysis

- 1. Should the Homer Street Property and Strathmore Mews Property be considered family property for the purpose of this application?**

[18] In addressing this question and the remaining questions, I must embark upon the preliminary merits test enunciated in *Bartch*.

[19] Mr. Etemadi purchased the Homer Street Property for \$878,000 during the relationship on June 11, 2009. Its assessed value in 2020 is \$2,046,000. The increase in value would appear to exceed \$1.1 million. On the face of it, the increase in value is family property. However, it is not family property to the extent that it is held in trust for Mr. Etemadi Sr.; *Yang v. Zhang*, 2017 BCSC 524 at para. 52, citing *Tribe v. Soiseth*, 2006 BCSC 652.

[20] Mr. Etemadi swears that the money for the purchase of the Homer St. Property came from the sale of an earlier property in respect of which he and Mr. Etemadi Sr. were co-owners. In this case, title was taken in Mr. Etemadi's name only, but Mr. Etemadi and his father signed a co-ownership agreement agreeing that they owned the property 50:50. The agreement was apparently made on April 5, 2009, just before Mr. Etemadi signed a contract to purchase the property on April 6, 2009. The parties to the co-ownership agreement registered the agreement with a notary on November 27, 2009.

[21] Because Mr. Etemadi Sr.'s claim to a 50% interest in the Homer St. Property is supported by a notarized contemporaneous co-ownership agreement, for the purpose of this application, I find that only Mr. Etemadi's 50% interest should be considered as family property for the purpose of an interim distribution pursuant to s. 89 of the *FLA*. It is subject to a claim that all or a part of the initial purchase price is excluded property pursuant to s. 85(1)(a) of the *FLA*, but that claim would not extend to at least \$550,000 (50% of the increase in value of at least \$1.1 million).

[22] Ms. Samimi holds title to the Strathmore Mews Property. She and Mr. Etemadi Sr. say that she holds title in trust for herself and Mr. Etemadi Sr. They acquired the property in January 2007, after Ms. Maali married Mr. Etemadi in February 2006.

[23] Ms. Maali says that the Strathmore Mews Property was purchased as a marriage gift to her and Mr. Etemadi. She says that she and Mr. Etemadi renovated the condominium and moved into it in March 2008. They lived there until July 2009.

[24] Ms. Maali's claim that the Strathmore Mews Property is family property faces substantial obstacles because of an absence of evidence to substantiate a

legally valid gift. To this point, there are no documents to corroborate Ms. Maali's claim that the property was a marriage gift to her and Mr. Etemadi. If a marriage gift was intended, it post-dates the marriage by more than a year. If there was an intended gift, Ms. Maali does not point to an act of delivery to perfect the gift. There is no documentary evidence that she or Mr. Etemadi ever contributed to the down payment, mortgage payments, strata fees, utilities, or property taxes. Ms. Samimi, Mr. Etemadi, and Mr. Etemadi Sr. all deny that a gift was intended or made.

[25] For the purpose of this application for an interim distribution, I do not consider the Strathmore Mews Property as family property.

2. Will an interim distribution harm Mr. Etemadi's interests?

[26] Mr. Etemadi maintains that an interim distribution will harm his interests because, at the end of the trial, Ms. Maali may be entitled to less than the amount distributed. He makes the following arguments. If the Homer St. Property is sold, his family will lose their home and capital gains tax will be payable. The encumbrances on title are not limited to a mortgage placed in 2009 when the Homer St. Property was acquired: they include a judgment that he says relates to credit card spending by Ms. Maali. He has claims against Ms. Maali for the repayment of interim support and in relation to property he maintains she stole in 2013 and 2017. He says that there is the potential for a significant costs award if the court concludes that Ms. Maali has fabricated evidence, as he says she has.

[27] Mr. Etemadi also says that he has a claim to an unequal division of family property in his favour. This is his only argument that calls into question Ms. Maali's presumptive entitlement pursuant to s. 81(b) of the *FLA* to a 50% interest in family property. It would require a finding that an equal division would be significantly unfair to Mr. Etemadi. On the record on this application, I cannot say that an unequal division in Mr. Etemadi's favour is any more likely than an equal division or, for that matter, an unequal division in Ms. Maali's favour. I do not think it would be right to assume a finding in Mr. Etemadi's favour for the purpose of this application.

[28] I turn to Mr. Etemadi's remaining arguments.

a. If the Homer St. Property is sold, Mr. Etemadi's family will lose their home and capital gains tax will be payable

[29] As matters stand, Mr. Etemadi is occupying this family property and Ms. Maali is living in a rented two-room basement suite, which she shares with a university student to save expense. It is a situation very much to Mr. Etemadi's advantage. At the end of the day, unless he is able to raise funds to buy Ms. Maali out, the Homer Street Property will have to be sold. Bearing in mind that the trial has already been adjourned twice, it is not harmful to Mr. Etemadi's interests, within the meaning of s. 89, that the moment of decision should arrive today rather than at the conclusion of the trial when it eventually takes place.

[30] The incidence of capital gains tax may affect the quantification of the value of Ms. Maali's interest, but there is no evidence of the quantum and it is not obvious that it is material.

b. The encumbrances on title to the Homer St. Property include a judgment debt that Mr. Etemadi says relates to credit card spending by Ms. Maali

[31] Title to the Homer St. Property is encumbered by a judgment held by Royal Bank of Canada and registered on January 23, 2019. The judgment is not in evidence. Mr. Etemadi says that it is in the amount of \$60,000 (presumably an approximate figure) and relates to debt accumulated by Ms. Maali in credit cards on a joint account after separation. He points to a notice of civil claim issued by the Royal Bank in the Kamloops registry. The notice of civil claim does not state when the debt was incurred.

[32] In her affidavit #5 made on August 27, 2020, Ms. Maali says she is unaware of the credit card debt. Mr. Etemadi says that is untrue, exhibiting a substitutional service order made in the Royal Bank's action. The substitutional service order permitted service on Ms. Maali by mail to the Homer St. Property, where she was not residing, and by email. It is not clear that she actually received the Royal Bank's notice of civil claim. She would not have had to have been served for judgment to be entered against Mr. Etemadi and registered against title to the Homer St. Property.

[33] Apart from Mr. Etemadi's bald assertion, there is no evidence as to when, for what, and by whom the debt to the Royal Bank was incurred. Mr. Etemadi has

not attached credit card statements or other documents that would establish that the debt was incurred by Ms. Maali, prior to separation. The statements would be available to him from the Royal Bank.

[34] In the circumstances, I am not satisfied that Mr. Etemadi is likely to obtain an order against Ms. Maali in connection with this debt.

c. Mr. Etemadi has claims against Ms. Maali in relation to property he maintains she stole in 2013 and 2017

[35] Mr. Etemadi and Ms. Maali separated in August 2013 and reconciled at some point in 2014. Mr. Etemadi says that Ms. Maali stole \$130,000 in gold and coins from his property in Tehran before she left him in 2013. Ms. Maali denies the theft.

[36] If Ms. Maali took anything in August 2013, it was presumptively family property. Together with traceable proceeds, it remained family property when the parties reconciled in 2014. That property is subject to division in this action. Overall, putting the Homer St. Property to one side, I am not persuaded on the record on this application that the value of family property in Ms. Maali's possession exceeds the value of family property in Mr. Etemadi's possession.

[37] Following the separation in September 2016, Ms. Etemadi lived in the Strathmore Mews Property until October 2017, when Ms. Samimi had the locks changed to exclude Ms. Maali from the property. Mr. Etemadi says that she took "my father's old Rolex, and my mother's Omega, along with furniture, and \$20,000 USD in cash and other valuable items". It is unclear when this would have occurred. Ms. Maali denies stealing anything and says that she only learned she had been evicted from the Strathmore Mews Property on returning from a holiday and unexpectedly discovering that her keys and fob no longer worked. It is common ground that Ms. Samimi had the locks changed and arrangements had to be made subsequently for the return of Ms. Maali's personal possessions. Ms. Maali did not anticipate that she would be locked out. Be that as it may, Mr. Etemadi does not say that any of the property allegedly taken belonged to him.

[38] I am not persuaded that Mr. Etemadi is likely to obtain an order against Ms. Maali in connection with the alleged thefts.

d. Mr. Etemadi says that he has a claim for the return of interim support

[39] On October 17, 2017, Master Keighley ordered Mr. Etemadi to pay Ms. Maali spousal support of \$2,000 per month on an interim and without prejudice basis. Mr. Etemadi made the payments until May 2020. I am told that the arrears currently total \$13,000.

[40] Mr. Etemadi says that his support obligation under Master Keighley's order is much too high because his income has dropped to nothing. He says that he is disabled by a back condition. He has consulted with doctors in Arizona, Istanbul, Vancouver, California, and New York and undergone surgeries, which were unsuccessful. He says that his income was reduced in 2019 and he has been unemployed since December 2019.

[41] Mr. Etemadi's evidence concerning his income prior to 2019 is a cause for concern. In a financial disclosure statement made on June 15, 2018, he swore that his income was \$56,347.72, being the average of his income in 2015, 2016, and 2017.

[42] During the marriage, Mr. Etemadi and Ms. Maali lived very comfortably and travelled extensively. She was not working. She swears:

Over the course of our marriage, we travelled to Europe, Asia and North America on numerous occasions, always flying in either first or business class and staying at 5 star hotels. We only drove brand new luxury vehicles (including two Mercedes Benz vehicles, one BMW and one Porsche). It was common for us to shop at luxury stores after we moved to Canada such as Harry rosen, Holt Renfrew, Nortstrom, Louis Vuitton and Tiffany. In 2009, the Claimant bought me a \$25,000 USD necklace and in 2013 bought himself an IWC wristwatch for \$23,000 CAD.

[43] Ms. Maali's evidence of their travels during the marriage is corroborated by a photocopy of her passport.

[44] Mr. Etemadi says that they were living beyond their means and he was borrowing money from his parents.

[45] A former employer of Mr. Etemadi was the Koorosh Diagnostic Medical Imaging Center ("KDMIC"), which provides medical imaging services in Iran. Mr. Etemadi Sr. and Ms. Samimi are shareholders in KDMIC. In his affidavit #5

made on September 12, 2019, Mr. Etemadi says that, while he worked for KDMIC as an executive, he held only a single managerial share in the company. The share had no value and Mr. Etemadi has no financial interest in KDMIC.

[46] In his affidavit sworn for this application, Mr. Etemadi Sr. swears that Mr. Etemadi owns only one managerial share in KDMIC “from when he worked as a manager and then an executive for the company, but that share has no value and yields no dividends”. Ms. Samimi has not addressed Mr. Etemadi’s interest in KDMIC in her affidavit.

[47] Ms. Maali exhibits to her affidavit an undated letter signed by S. Samimi, Head of the Board, and K. Amiri, Financial Director. She attributes the letter to the early years of the marriage. It bears a corporate seal and states:

To whom it may concern,

This letter is to certify that Mr. Koorosh Etemadi has been board member and executive director of the Koorosh Medical Imaging Centre (KDMIC) and Tehran Koorosh Medical Inc. since Jun. 2002 and one of the main share holders since 2002. His monthly income and interest is about 14000 CAD\$.

[Emphasis added.]

[48] Counsel for Ms. Maali, Mr. Stanislaus, advises that he has the original of the letter in his possession.

[49] Notwithstanding the evidence of Mr. Etemadi and Mr. Etemadi Sr., for the purpose of this application, I judge it unlikely that the letter is a forgery. It is likely that Mr. Etemadi was a main shareholder of KDMIC, or was held out by KDMIC as a main shareholder, in the early years of the marriage, after 2006.

[50] Mr. Etemadi says that, after 2012, he stopped working for KDMIC and worked instead for an unrelated company, Kaj Management Industry Company (“KMIC”) in which he had, again, no financial interest.

[51] There is nothing in the evidence to make sense of a decision to abandon KDMIC for KMIC, if the change meant a reduction in Mr. Etemadi’s income from something in the order of CAD\$168,000 annually to something in the order of CAD\$56,000, bearing in mind the lifestyle that Mr. Etemadi and Ms. Maali were living.

[52] By letters dated January 30, 2020, Mr. Stanislaus sought documents from both Mr. Etemadi and his parents pertaining to KDMIC and loans made to Mr. Etemadi. Despite repeated reminders, opposing counsel (who are not counsel on this application) did not respond.

[53] On October 29, 2020, a case conference was held in this action. According to the clerk's notes, Ms. Samimi and Mr. Etemadi Sr. were ordered to file Form F8 financial disclosure statements prior to the hearing of this application, but only with respect to assets and not income and expenses. Ms. Samimi and Mr. Etemadi Sr. filed affidavits more limited than those apparently contemplated by the Court's order. They list only real property in Canada and debt secured against that property.

[54] In sum, for the past 11 months, in the face of repeated requests, all of the respondents have resisted producing documents that would shed light on the presence or absence of Iranian assets and income belonging to Mr. Etemadi. They have offered no explanation for their failure to make this information available. I draw an adverse inference that full and proper responses would assist Ms. Maali in the litigation.

[55] Although Mr. Etemadi says he has no income at present, he is living in Vancouver with his present partner and their two young children. He says that he is borrowing money from his parents to make ends meet, and his parents say so as well. Mr. Etemadi says that he owes his father \$358,000. He says that his father is paying the mortgage. He does not say whether the mortgage payments in particular are a gift or a loan.

[56] Mr. Etemadi provides extensive details of his travels to other countries to obtain medical attention for his back. In an affidavit made on August 19, 2020, he says that, when his young daughter fell ill on August 18, 2020, he took her across the border (despite the COVID-19 pandemic) to Seattle Children's Hospital for care. His counsel explain that he and his family are covered by medical insurance that pays for all the medical treatments (though I doubt that it would cover the cost of travel) at an annual cost of \$15,000, which is paid by his father.

[57] Despite his health problems, so far as the record discloses, Mr. Etemadi is not living the life of someone who is suffering financial difficulty. It is plausible that

he has undisclosed sources of income and is not simply surviving on loans from a benevolent parent. On this record and for the purpose of this application, I find it likely that financial resources and income will be imputed to him at trial, and his application for the return of spousal support paid on an interim and without prejudice basis will fail.

e. *Mr. Etemadi says that there is the potential for a significant costs award if the court concludes that Ms. Maali has fabricated evidence*

[58] I cannot conclude that it is any more likely that the court will conclude that Ms. Maali has fabricated evidence than that Mr. Etemadi has fabricated evidence. I am not persuaded that Mr. Etemadi is likely to obtain a substantial costs award at the conclusion of the trial.

f. *Conclusion with respect to harm to Mr. Etemadi's interests*

[59] I am not persuaded by any of the arguments made by Mr. Etemadi. To the contrary, so far as I can tell on the record, it is unlikely that an interim distribution that is limited to 50% of the apparent value of Mr. Etemadi's interest in the Homer St. Property would harm Mr. Etemadi's interests within the meaning of s. 89 of the *FLA*.

3. *Is an interim distribution necessary to fund resolution of the dispute?*

[60] Since the separation, Ms. Maali complains that she has been reduced to a hand-to-mouth existence. She is employed as a part-time instructor at LaSalle College. She earns less than \$20,000 annually at that job and depended on spousal support from Mr. Etemadi to get by, at least until he stopped making his support payments earlier this year.

[61] If Ms. Maali is correct, there is a gross imbalance of resources between the parties because Mr. Etemadi is generously supported by his parents and there are grounds for suspicion that he has access to undisclosed assets of his own.

[62] Mr. Etemadi submits that Ms. Maali's evidence fails to establish that she is unable to find a lawyer to pursue her case under a contingency fee arrangement; pointing to *Ren v. Emerson*, 2017 BCSC 547 at para. 45. I do not think that is realistic in the context of this litigation. Ms. Maali should be able to pursue her

case under a reasonable fee arrangement with counsel of her choice; *Bartch v. Bartch*, 2017 BCSC 210 at para. 26; *Nelson* at para. 34; *Murtack v. Murtack*, 2019 BCSC 487 at paras. 61–62; *Zhang* at para. 28. A contingency fee arrangement cannot be imposed upon counsel.

[63] This is expensive litigation. Mr. Stanislaus says that he is owed more than \$30,000 for services rendered to Ms. Maali in the litigation to date, and that he has been constrained by the lack of financial resources from hiring experts and pursuing a disclosure application. Taking into account past and anticipated applications, the retention of experts, and further discovery, he estimates that the cost of taking the case through to trial will exceed \$250,000. In my view, this is a reasonable, high-level estimate, with some room for manoeuvre.

[64] Mr. Etemadi says that Ms. Maali comes from a wealthy family in Iran. He asks me to find that she has many assets and properties in Iran that she has not disclosed. He relies on hearsay advice from unnamed sources and on documents provided to him by an unnamed private investigator.

[65] Ms. Maali disputes the authenticity of the documents, all of which are in Farsi. At least some of them are clearly inauthentic. In the case of a purported deed showing Ms. Maali as the buyer of a property in Iran on July 13, 2016, she has obtained a sealed statement from the notary in question that “the requested number and date do not match the records of this office, the document you are requesting is not in the name of your client, Ms. MEHRSA MAALI”. In the case of a document purporting to show that Ms. Maali is a major shareholder of Fadak Tejarat Company (Ltd.), she has obtained a notarized letter from the Iranian Registry of Companies indicating that the registration number pertains to a different company and no company exists with that name.

[66] On this record, I decline to find that Ms. Maali has undisclosed assets and properties in Iran. To the extent that it is admissible, the evidence to the contrary is not at all convincing.

[67] Mr. Etemadi points to unexplained deposits in Mr. Maali’s bank account and asks me to infer that she is being supported by her family or a benefactor. While I accept that it is possible that she is receiving some help, I do not think it can be

substantial or she would not be living in a rented basement suite with a room-mate to share costs.

[68] All things considered, I am satisfied that the apparent imbalance in the parties' resources makes necessary an interim distribution to fund resolution of the dispute. Otherwise, the financial pressure on Ms. Maali places her at an unfair disadvantage.

4. Is it necessary or expedient that the Homer St. Property be sold to fund an interim distribution?

[69] In my opinion, to the extent that an interim distribution is appropriate, taking everything into account, it makes a sale of the Homer St. Property necessary, unless an alternate means of funding the distribution can be found.

[70] The obvious alternative to a sale is that the money be borrowed against the security of the property. Borrowing has obvious advantages from the point of view of the Etemadi family. Mr. Etemadi, his partner, and their young children would not be forced to leave their home. Mr. Etemadi believes that this is not a good time to sell because condominium prices are depressed by the COVID-19 pandemic.

[71] I do not think that I can order Mr. Etemadi to refinance the Homer St. Property by borrowing money from a third party against mortgage security. Assuming that the Court's inherent jurisdiction extends to making such an order in some circumstances, in this case, the mortgage would prejudice Mr. Etemadi Sr.'s beneficial interest in the property.

[72] Mr. Etemadi Sr.'s beneficial interest is not an obstacle to an order for sale, because Mr. Etemadi Sr. could receive everything he was entitled to from the net proceeds of sale.

[73] I think it is entirely possible that Mr. Etemadi Sr. would prefer to lend the funds required for an interim distribution, rather than see the Homer St. Property sold at this time. If he were to do so, his beneficial interest in the property would increase to the extent of the loan and he would be secured to the extent of the loan.

5. What order is in the interests of justice?

[74] Having established that the prerequisites to an interim distribution are satisfied, I must still decide whether to order a distribution and, if so, in what amount.

[75] Ms. Maali is at a distinct disadvantage in the litigation. She is litigating against three apparently well-funded adversaries in a case complicated by foreign elements and substantial uncertainty as to the facts. To make out her case, she requires full discovery that, to date, the respondents have been reluctant to provide. If she is to have a chance of success, either at trial or through the negotiation of a reasonable settlement, she requires energetic and capable legal representation. That costs money.

[76] The respondents argue that the \$250,000 distribution sought by Ms. Maali is excessive and disproportionate. They submit that, because her claim to the Strathmore Mews Property is bound to fail and her claim to the Homer St. Property is limited by the presence of Mr. Etemadi Sr.'s beneficial interest, \$250,000 represents most or all of what she can hope to recover. They say that it makes no sense to contemplate incurring \$250,000 in legal fees in pursuit of such a claim.

[77] Of course, Ms. Maali's claim is not limited to her interest in the Homer St. Property. Apart from the Strathmore Mews Property, she says that she is pursuing claims in respect of overseas condominiums, automobiles, silk carpets, jewellery, and gold coins, as well as the assets she hopes to uncover through discovery.

[78] The respondents' submission that a \$250,000 interim distribution is disproportionate assumes that, except for the Homer St. Property, Ms. Maali's claims will fail. It is too soon to say whether that will happen. If the respondents are right, Ms. Maali will be wasting her own money by pursuing improvident litigation. She is in a much better position than the court to assess the risk she is running.

[79] I have considered whether to authorize an interim distribution in an amount that would take the case to the brink of trial, when the discovery process will be complete, leaving it to Ms. Maali to apply for trial funding, if necessary, on a better record. On balance, I think that the parties would not be well served by an order that left open the possibility that Ms. Maali would be unable to afford to pursue her claims at trial. The parties should not be given more things to argue about. The

respondents should not be offered an opportunity to practice funding brinkmanship.

[80] I conclude that it is in the interests of justice that Ms. Maali receive an interim distribution of \$250,000 for her legal costs.

Disposition

[81] For these reasons, I order as follows:

- a) Within 30 days, Mr. Etemadi will advance \$250,000 to Ms. Maali as an interim distribution of family property.
- b) The advance is without prejudice to the parties' rights and will be taken into account in the division of family property and debt at trial.
- c) If Mr. Etemadi Sr. loans to Mr. Etemadi the funds necessary for the advance, he will be secured for the loan by an equitable charge against Mr. Etemadi's interest in the Homer St. Property in priority to any interest claimed by Ms. Maali in this action.
- d) If Mr. Etemadi does not advance \$250,000 to Ms. Maali within 30 days, the Homer St. Property will be sold and Ms. Maali will have conduct of sale;
- e) For the purpose of effecting a sale, Ms. Maali or a realtor engaged by her may enter the Homer St. Property during daylight hours on weekdays and Saturdays on at least 48 hours' notice in writing or by email to Mr. Etemadi;
- f) Any sale of the Homer St. Property will be subject to court approval; and
- g) \$250,000 of the net proceeds of any sale of the Homer St. Property will be paid to Ms. Maali as an interim distribution of family property and the balance will be paid to and held in trust by Mr. Etemadi's solicitors, pending further order of the Court.

[82] The costs of this application are reserved to the trial judge.

“Gomery J.”