IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Etemadi v. Maali,*
2021 BCSC 1003

Date: 20210525
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 by Counterclaim

Before: Master Keighley

Reasons for Judgment

In Chambers

Counsel for the Claimant:	S.L. Specht
Counsel for the Respondent:	S. Stanislaus
Counsel for Respondents by Counterclaim:	C.E. Drake
Places and Dates of Hearing:	New Westminster, B.C. March 18, 2021 Vancouver, B.C. April 23, 2021
Place and Date of Judgment:	Vancouver, B.C. May 25, 2021

[1] In case of *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93, this Court offered the following, often cited with approval:

> [9] Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done. Non-disclosure also has a tendency to deprive children of proper support.

[2] Restatement of those comments, perhaps a gender-neutral restatement, is equally applicable today. It does seem to this writer, however, that opportunities for abuse arise not only on the “disclosing” side but also on the “requesting” side and this application may be seen, at least in part, is an example of the latter.

[3] This is a family law claim and a very high conflict family law claim at that. The claimant and respondent are former spouses. The respondents by counterclaim are the parents of the claimant husband. I will refer to the respondents by counterclaim as (“the Parents”) and in other circumstances, where appropriate, by their first names: “Daryoush” in the case of the claimant’s father and “Soheila” in the case of the claimant’s mother.

THE APPLICATIONS

[4] Both claimant and respondent have applications before me. The claimant seeks the following orders:

1. That the Respondent Mehrsa Maali forthwith produce to the Claimant the computer hard drive in her possession, such hard drive to be delivered to the Claimant no later than February 15, 2021;
2. That the Respondent Mehrsa Maali forthwith produce to the Claimant copies of all documents downloaded by her personally or via any third party from the computer hard drive in her possession, no later than February 15, 2021;
3. That the Respondent Mehrsa Maali forthwith and in any event no later than February 15, 2021 produce copies of all files, correspondence, records or other documents relating to her

engagement of TCS Forensics Ltd. as it may relate to the Claimant or the litigation;

4. Costs in any event of the cause; and

5. Such other relief as this Honourable Court deems appropriate or just.

[5] The respondent seeks the following orders:

1. An Order pursuant to Rule 9-1(10) of the *Supreme Court Family Rules* that the Claimant produce copies of the following documents within fourteen (14) days:

(a) With respect to the property located at Parcel No. 1 B-I 1-6 (Type 5) on Floor No. 20 of the Block NO. MYHABITAT 1, Kuala Lumpur, Malaysia (the "Malaysian Condominium"):

(i) The Statement of Adjustments for the purchase of the Malaysian Condominium (including those documents showing the purchase funds being provided to the Seller, such as wire transfers, trust cheques, banking statements, etc.);

(ii) If the Malaysian Condominium has been sold, the Contract of Purchase and Sale (or like documents);

(iii) If the Malaysian Condominium has been sold, the Statement of Adjustments (or like documents);

(iv) If the Malaysian Condominium has been sold, any and all documents tracing the net proceeds of sale to current assets;

(collectively, the "Malaysian Condominium Documents")

(b) With respect to the property located at 3902-1408 Strathmore Mews, Vancouver, BC (the "Strathmore Mews Property"):

(i) The Contract of Purchase and Sate for the purchase of the 3902 Strathmore Mews Property;

(ii) The Statement of Adjustments for the 3902 Strathmore Mews Property;

(iii) Any and all documents showing the funds used to purchase the 3902 Strathmore Mews Property, including the funds required for the initial deposit, the down payment, the legal fees, the property transfer tax and the buyer’s tax;

(iv) Any and all rental agreements relating to the 3902 Strathmore Mews Property;

(v) Statements for the mortgage registered against the 3902 Strathmore Mews Property from January 1, 2015 onward;

(collectively, the “Strathmore Mews Property Documents”)

(c) With respect to the property located at 2802-1483 Homer Street, Vancouver, BC (the “Homer Street Property”):

(i) Any and all documents showing the funds used to purchase the Homer Street Property, including the funds required for the initial deposit, the down payment, the legal fees, the property transfer tax and the buyer’s tax;

(ii) Any and all rental agreements relating to the Homer Street Property;

(iii) Statements for the mortgage registered against the Homer Street Property from January 1, 2020 onward;

(collectively, the “Homer Street Property Documents”)

(d) With respect to the property located at Movahed danesh Street, Qasemist, No 12, 8th floor, Tehran, Iran (the “Tehran Property”):

(i) Any rental or tenancy agreements for the Tehran Property;

(ii) The Contract of Purchase and Sale (or like document) for the purchase of the Tehran Property;

(iii) The Statement of Adjustments (or like document) for the purchase of the Tehran Property;

(iv) Any and all documents showing the funds used to purchase the Tehran Property;

(v) If sold, the Contract of Purchase and Sale (or like document) for the sale of the Tehran Property;

(vi) If sold, the Statement of Adjustments (or like document) for the purchase of the Tehran Property;

(vii) If sold, any and all documents tracing the net proceeds of sale to current assets;

(collectively, the "Tehran Property Documents")

(e) With respect to Koorosh Diagnostic Medical Imaging Center (KDMIC), Koorosh Medical Company or any similarly named entities:

(i) The incorporation documents;

(ii) All shareholder agreements and/or resolutions;

(iii) The general ledger (or like document) from 2012 onward;

(iv) All Financial Statements (or like document) from 2012 onward;

(v) The Central Securities Register (or like document);

(vi) The Directors Register (or like document);

(vii) Any documents relating to remuneration the Claimant received;

(viii) Copies of share certificates the Claimant held at any point;

(collectively, the "Corporate Documents")

(f) Statements for the following accounts from January 1, 2012 to the present:

(i) BMO Primary Chequing Acct #...723;

(ii) Scotiabank Chequing Account #...0624;

(iii) Coast Capital Trust Acct #...1010;

(iv) Bank Meli Chequing/Savings Acct #...7003;

(v) RBC Avion VISA #...0214;

(vi) RBC Rewards VISA Gold #...5618;

(vii) ScotiaGold Passport VISA #...8034;

(viii) Statements from any other bank account or credit card account, whether located in Canada or abroad and whether in the Claimant's sole name, joint with another individual or in another individual's name but beneficially owned by your client, from January 1, 2012 onward;

(g) With respect to Affidavit #7 of the Claimant, the original or more legible copies of the Farsi documents referred to at Exhibits G, I, J, K, L, M, N, 0 and R;

(h) Any and all documents relating to the Claimant's participation in an executive MBA program;

(i) Documentary particulars of the quantum of $130,000 in personal items alleged to be in the possession of the Respondent;

(j) Purchase documents for all motor vehicles purchased during the marriage;

(k) Wire transfer slips for any and all funds received by the Claimant from outside Canada since January 1, 2012;

(l) Wire transfer slips for any and all funds received by the Claimant from his parents since January 1, 2012; and

(m) A full copy of the Claimant's Canadian and Iranian passports.

2. An Order pursuant to Rule 9-1 (10) of the *Supreme Court family Rules* that the Respondents by Counterclaim produce copies of the following documents within fourteen (14) days:

(a) The Malaysian Condominium Documents;

(b) The Strathmore Mews Property Documents;

(c) The Homer Street Property Documents;

(d) The Tehran Property Documents;

(e) The Corporate Documents;

(f) Statements for any and all banking accounts, whether located in Canada or abroad and whether in the sole names of either Respondent by Counterclaim, joint with another individual or in another individual's name but beneficially owned by either Respondent by Counterclaim, from January 1, 2015 onward;

(g) The purchase documents relating to the 2006 Mercedes C230;

(h) Wire transfer slips for any and all funds sent by either Respondent by Counterclaim (or an individual on their behalf) to the Claimant, the Respondent or the Claimant's current spouse since January 1, 2012;

(i) Documentary particulars of any loans made to the Claimant, the Respondent or the Claimant's current spouse; and

(j) A full copy of their Canadian and Iranian passports.

3. An Order that the Ms. Soheila Samimi and Dr. Daryoush Etemadi also known as Darioush Etemadi also known as Dario Etemadi shall each provided an updated Financial Statement in accordance with the Order of Madam Justice Fitzpatrick, pronounced October 29, 2020 and that these Financial

Statements shall include a listing of all global assets in their personal names or which they hold a beneficial interest in.

4. An Order pursuant to Rule 9-(10) and 9-1(15) of the *Supreme Court Family Rules* that the Strata Corporation (BCS 435) produce copies of the following documents within fourteen (14) days:

   (a) Any and all move-in forms or like documents or correspondence since April 2009 that a tenant or owner may fill out when moving into the Unit;

   (b) Any and all move-out forms or like documents or correspondence since April 2009 that a tenant or owner may fill out when moving out of the Unit;

   (c) Any video surveillance or like footage of Mr. Koorosh Etemadi, his family members or representatives moving into the Unit since January 1, 2020;

   (d) Any video surveillance or like footage of Mr. Koorosh Etemadi, his family members or representatives moving out of the Unit since January 1, 2020;

   (e) Any Form K or similar documents showing which tenants leased the Unit;

   (f) Any infraction letters issued by your client or Rancho Management on your client's behalf to Mr. Koorosh Etemadi, his family members or representatives;

   (g) Any documents relating to changes to the locks of the Unit since January 1, 2020; and

   (h) Any keyfob tracking reports or like documents showing the use of key fobs issued to Mr. Koorosh Etemadi since July 1, 2020.

   (collectively, the "Strata Disclosure")

5. An Order pursuant to section 213 of the *Family Law Act* that the Claimant pay a fine of $5,000 or indemnify the Respondent for her legal expenses incurred to his non-disclosure.

6. An Order pursuant to sections 213 and 230 of the *Family Law Act* that the Respondents by Counterclaim pay a fine of $5,000 or indemnify the Respondent for her legal expenses incurred due to their non-disclosure and non-compliance with the Order of Madam Justice Fitzpatrick, pronounced October 29, 2020.

7. Costs as against the Claimant and the Respondents by Counterclaim.

BACKGROUND

[6] The claimant is 42 years of age and the respondent, 41. They commenced a marriage-like relationship in January of 2006 and married on February 28, 2006, in Tehran, Iran. They moved to Vancouver on December 16, 2007. They separated on several occasions but finally parted ways on September 1, 2017. This proceeding was commenced less than a week later. The matter is now scheduled for trial over 15 days commencing February 7, 2022.

HISTORY OF THE LITIGATION:

[7] The following history of this litigation is outlined in paras. 13-21 of the respondent's Notice of Application:

> 13. On October 17, 2017, Master Keighley ordered *inter alia* that the Claimant would pay spousal support of $2,000 per month on an interim and without prejudice basis.
>
> 14. On September 10, 2020, the parties attended a Trial Management Conference before Mr. Justice Myers, who found that the matter was clearly not ready for trial, in part due to the lack of document disclosure, and likewise adjourned the trial.
>
> 15. On October 29, 2020, the parties attended a Case Planning Conference before Madam Justice Fitzpatrick, who ordered that:
>
> (a) The Respondent's application for an interim distribution would be heard on November 13, 2020 and be pre-emptive on the parties;
>
> (b) That a second CPC would be set for December 4. 2020; and
>
> (c) That each member of the Etemadi family would file an updated Financial Statement by November 10, 2020, with the Respondents by Counterclaim only providing those sections relating to assets.
>
> 16. On November 13, 2020, the parties appeared before Mr. Justice Gomery regarding the Respondent's application for an interim distribution.
>
> 17. On December 4, 2020, the parties attended a second CPC before Madam Justice Gerow, who ordered *inter alia* that:

(a) That the parties would provide their 9-1 demands and answers to discovery requests by December 18, 2020;

(b) That the parties would provide responses to the 9-1 demands by January 11, 2021;

(c) That, if there remained outstanding requests, a heating regarding document disclosure would take place by the end of February 2021;

(d) That Examinations for Discovery would take place in March 2021;

(e) That appraisals would be completed by August 2021; and

(f) A third CPC would take place in March 2021.

18. On December 9, 2020, Mr. Justice Gomery released his Reasons for Judgment, whereby he ordered that *inter alia*:

(a) The Respondent would receive an interim distribution of $250,000;

(b) That the Claimant would have 30 days to provide this interim distribution; and

(c) If the Claimant does not provide the interim distribution within 30 days, the Respondent would have sole conduct of sale of the property located at 2802-1483 Homer Street in Vancouver, BC (the "Homer Street Property").

19. On January 7, 2021, the Claimant filed a Notice of Application for Leave to Appeal the Order of Mr. Justice Gomery. The Respondents by Counterclaim filed their Notice of application for leave to Appeal the Order of Mr. Justice Gomery the next day.

20. The parties are scheduled to appear before Mr. Justice Gomery on February 5, 2021 with respect to a stay of his Order.

21. The parties have agreed that the continuation of Examinations for Discovery will take place the week of March 22, 2021 with specific dates to be confirmed.

THE CLAIMANT'S APPLICATION

[8] At her examination for discovery held on February 7, 2020, the respondent admitted that she had retained possession of a computer hard drive from the family home and had provided it to her then counsel, Mr. Stanislaus for safekeeping. By the conclusion of these applications, heard April 23, 2021, the respondent was self-represented. Whether she has possession of the hard drive, or whether it remains with Mr. Stanislaus, I do not presently know.

[9] The hard drive was, the respondent says, used at least up to 2013 to back up the parties' personal computers. The respondent says that she continued to

use the hard drive for her own purposes thereafter and that she retained possession of it even after the parties reconciled in 2014. It remained in her possession after the parties finally separated in 2016. She says that the hard drive contains documents relevant to this litigation, but also contains documents covered by solicitor/client privilege as well as personal correspondence, pictures and videos. I am not aware of the precise number of files stored on the hard drive but, I gather they number in the thousands.

[10] Following the respondent's acknowledgement, at her examination for discovery, that she had retained the hard drive, counsel for the claimant requested its production. Respondent's counsel took the request under advisement stating that, at the very least, the hard drive contained confidential and privileged communications. To date, the hard drive has not been produced, but it appears that some files or documents have.

[11] With respect the reference to TCS forensics Ltd ("TCS") in paragraph 3 of the claimant's application, the respondent says that credit card statements recently disclosed by the respondent show a payment to that firm in the amount of $4,000 in December of last year. The claimant says that TCS provides digital forensic services and wonders what relevance this payment and the services provided may have with respect to digital information related to this litigation. The respondent says that she is not willing to waive litigation coverage with respect to the purpose of this payment or any documents which relate to it.

[12] I will deal firstly with disclosure issues relating to the hard drive.

[13] A computer hard drive is not a document, as contemplated by the provisions of Rule 9-1 Rule 1(1) of the *Supreme Court Family Rules*. Rather, a hard drive is the digital equivalent of a bookshelf, a filing cabinet or a documentary repository. While the court may order the production of relevant documents stored in a hard drive, the Rules do not authorize an unrestricted search of a digital storage device.

[14] It may assist the reader to be reminded that a "document" is defined in Rule. 1(1) of the *Supreme Court Family Rules* as having an extended meaning ,"…and includes a photograph, film, recording of sound any record of a permanent

or semi-permanent character and any information recorded or stored by means of any device".

[15] Context, as ever, is crucial. In this regard, I have found the decision of Myers,J. in the case of *Desgagne v. Yuen*, 2006 BCSC 955, to be particularly helpful.

[16] The disclosure application in that case arose in a motor vehicle litigation. The plaintiff, at 44 years of age, alleged that, as a result of her injuries, she was permanently disabled from competitive employment. The claim for income loss, given the relative youth, might, the court noted, be substantial. The defendants therefore sought production of, *inter alia*, the hard drive from the plaintiff's computer for analysis by an expert.

[17] In that case, Myers, J. noted that the types of information sought by the applicant from the hard drive could be divided into three separate categories:

1. Actual document files;
2. Metadata; and
3. History of web sites visited.

[18] With respect to the first category, Myers, J. noted that the defendants were seeking correspondence files recording conversations to and from the plaintiff's friends in which the plaintiff might describe her condition in terms more favourable to the defence: in other words, admissions against interest. With respect to metadata, the learned judge noted that metadata relates to computer usage and that each computer file has metadata associated with it. Metadata, he noted, records such information as the time and date upon which a file is created modified or deleted, which user (if more than one) was logged in at the time the data was generated and how long the file was open. He noted that the defendants sought access to metadata to allow them to assess the plaintiff's level of computer functionality after the accident. With respect to the last category, the history sites visited, it appear from the materials that the defence wished to determine whether the plaintiff had been accessing medical sites to learn the diagnostic criteria of her injuries, in particular, her alleged brain injury to prepare herself for interviews with specialists.

[19] Myers, J. commented that, although he was prepared to examine each element of the application closely, he was struck by the breadth or scope of the application. The defendants, he said, were seeking disclosure, from the computer, of all available documentation to recording virtually every element of the plaintiff's activities for all of her waking hours.

[20] In that case, the plaintiff argued, as the respondent says here, that all relevant documents had been disclosed from the hard drive and that granting the order sought would allow the applicants to search through the hard drive as if it were a filing cabinet, making their own assessments as to what was relevant and what was not.

[21] Myers, J. noted a similar application to that before him had been brought in the case of *Park v. Mullen*, 2005 BCSC 1813, in which case Dorgan, J., referred to the decision of the British Columbia Court of Appeal in *Privest Properties Ltd. v. W.R. Grace & Co. – Conn* (1992), 74 B.C.L.R. (2d) 353 (C.A.). In that case, the plaintiff sought access to a document repository established by the defence (for use in U.S. litigation due to jurisdictional overlap). After reviewing the provisions of then Rule 26, Southin, JA, commented, at paras. 37-40:

> "But these rules do not empower a judge to require a party to give access to his opponent to documents which are neither in his list not in an affidavit required to be made under sub-rule 4 nor referred to in one of the documents listed in sub-rule 8.
>
> Sub-rule 10 confers no power to make the order under appeal which is really an authorization to search.
>
> If the court had power to make this order then it would also have the power to permit a litigant access to all places in which his opponent might keep documents to see if there is anything "relating to any matter in question".
>
> It would require much different rules to give the court such an extraordinary invasive power in circumstances such as these. However, if the fact that the respondents at one time wrongly believed to exist – that is to say, a deliberate concealment of documents – was proven to exist, it may be that an order of the sort made here could be made for the purpose of redressing dishonesty in the course of litigation. That issue can be determined if, as and when it arises".

DISCUSSION

[22] In the respective decisions, both Dorgan, J. and Myers, J. declined to order production of the hard drive. In the case before Myers, J., the plaintiff's former counsel had visited the plaintiff's home, examined the documents on her computer

and advised defence counsel that nothing relevant was found. Myers, J. found no difference between that situation, as a matter of law, from one where counsel had examined a box of documents provided by the client and advised that there was no relevant material to list.

[23] I must agree with counsel for the respondent that the application before me does not reference any specific documentation which may be relevant to this application, and which is not been listed. The application, at least with respect to items 1 and 2 is a classic "fishing expedition": the claimant wishes to leaf through the digital files on the hard drive to determine whether any relevant material is been disclosed, and that is not a mode of disclosure contemplated by the *Supreme Court Family Rules.*

[24] In her response to the application, the respondent suggested the following as a means of ensuring that disclosure of relevant documentation recorded on the hard drive is been complete:

a) The respondent will provide a copy of the hard drive, with any contents added after September 1, 2016 redacted;
b) The copy will be inspected by counsel for the respondent who will redact any documents with respect to which solicitor/client privilege is claimed; and
c) The cost of creating a copy of the hard drive will be paid by the claimant in the first instance.

[25] This proposal is problematic, from the claimant's perspective, in several respects, including:

a) It does not contemplate the existence of relevant documentation added to the hard drive after September 1, 2016;
b) It will not satisfy the claimant's concerns that files on the hard drive have not been modified or deleted. Access to the metadata by an expert may be required to resolve this issue;
c) The respondent is not presently represented by counsel who might review the hard drive; and
d) It does not deal with the potential privacy concerns of third parties whose privacy concerns might be violated or with the manner in which any claim

for privilege is to be supported.

[26] The involvement of a third party expert may put the parties on a path to resolving this disclosure issue, but the materials before me are simply insufficient to establish how privacy and privilege might be protected. I am also not certain, without further evidence, what precise services the expert might be able to provide which might furnish relevant results. For example, I would assume, without any scientific foundation, that an expert may be able to advise, from a review of the metadata, when files were created, if when they were modified and if and when they may have been deleted.

[27] In the result, I am not, on the basis of the authorities to which I have referred, prepared to order the wholesale production of the hard drive to the claimant. The application at paras. 1 and 2 is dismissed, but the claimant will be at liberty to revisit the issue of disclosure of the hard drive addressing the technical issues which concern me.

[28] That leaves paragraph. 3 of the claimant's application, whereby the claimant seeks production of documentation relating to the engagement of TCS. As indicated, disclosure of credit card records by the respondent indicated a December 2020, payment of $4,000 to this firm which the claimant says is engaged in digital forensics.

[29] The respondent resists production of any materials related to TCS on the basis of litigation privilege, citing the well-known principles derived from *Hamalainen (Committee of) v. Sippola*, [1991] B.C.J. No 3614, namely:

(a) Was litigation in reasonable prospect at the time it was produced, and

(b) If so, what was the dominant purpose for its production?

[30] In her Response to the application, he respondent says that she has met the test with respect to TCS documentation in that:

a) payment was made to TCS well after litigation was commenced and thus litigation was not only in reasonable prospect but was, in fact, a reality; and

b) the sole purpose of providing the payment to TCS relates to the litigation.

[31] With respect to the engagement of TCS, and the claim for litigation privilege the respondent says at paragraph 20 of her #9 affidavit made February 10, 2020:

> "20. In December 2020, I paid $4,000 to TCS Forensics Ltd. ("TCS") in order to provide assistance in this legal proceeding. I contacted TCS solely for the purpose of providing assistance in this litigation. Any files, correspondence, records or documents that may exist as a result of providing TCS those funds ate related solely to this litigation and have the intention of providing assistance in this legal proceeding. Any files, correspondence, records or documents that may exist were created for the sole purpose of providing assistance in this legal proceeding. Had this litigation not been ongoing, I would not have contacted TCS and there would be no documents from TCS to produce."

The respondent simply states a legal conclusion which is really a matter for the Court. She produces no evidence upon which the Court might determine the purpose for which any documentation related to TCS was created. With respect to the first point of the *Hamalainen* test, although payment was made well after litigation was commenced, there is nothing in the material (apart from the credit card statement) to indicate when individual documents related to the engagement of TCS were created.

[32] The issue of litigation privilege must be established by the party claiming it on a document by document basis. I am not satisfied that the respondent has met this onus. Having reached this conclusion it is unnecessary for me to determine whether the respondent waived privilege by disclosing the payment to TCS. The respondent will, by May 17, 2021, provide to counsel for the claimant all documentation relating to her engagement of TCS relevant to the claimant or to this litigation.

THE APPLICATION OF THE RESPONDENT

[33] Earlier in these reasons for judgment, I set out the relief claimed by the respondent on her application.

[34] It might be helpful to the reader if I attempt to articulate the essential elements of the parties' positions taken in this litigation.

[35] The respondent says that this litigation has been described by judges of this Court and the Court of Appeal as "fiercely contested". She says that this is a result of the significant imbalance in power and wealth between her and the Etemadi

family. She says that wealth was a feature of her relationship with the claimant. He insisted for example, she says, that she not work so the parties could travel and spend time together. She says that she and the claimant shared a luxurious lifestyle which included international travel (by first class or business class), accommodation in “5 star” hotels, driving luxury vehicles, shopping in luxury stores and acquiring expensive jewelry.

[36] The respondent further says of the parties lived in and/or owned several properties, including a sub-penthouse rental unit in Tehran, (the “Tehran property”), a property at 3902-1408 Strathmore Mews, Vancouver (the “Strathmore Mews property”), a property at 2802 -1483 Homer Street, Vancouver (the “Homer Street property”), a condominium in Malaysia (the “Malaysian condominium”) and a large detached home in West Vancouver.

[37] The respondent says of the claimant and his family largely derive their wealth from property and their interests in Koorosh Diagnostic Medical Imaging Centre (“KDMIC”), a business in Tehran. She says that the claimant has been, and may yet be, the CEO, vice-president, a board member and a major shareholder of that company.

[38] The parents say they were generous to their son and the respondent during the marriage and to the respondent even after separation – allowing her, for example, to continue living in the Strathmore Mews property for a time. Their generosity, they say is been repaid by being joined in this litigation and being obliged to defend themselves and their assets against groundless claims brought by the respondent, who they say regards “family property” as anything owned by the claimant or his parents.

[39] The claimant characterizes his relationship with the respondent as brief, unhappy and childless. The respondent, he says is young, highly educated and healthy whereas he is now unable to work as a result of severe back problem. He characterizes this application is yet another attempt in this litigation by the respondent to “shake” himself and his parents “down” with no evidentiary foundation for the disclosures she seeks.

THE SPECIFICS OF THE APPLICATION

THE MALAYSIAN CONDOMINIUM

[40] At paragraph 1(a) of her application, the respondent seeks documentation with respect to the Malaysian condominium from the claimant and by paragraph 2(a) seeks the same from the parents.

[41] It appears the material before me that this property was purchased by Daryoush for approximately $200,000 (CDN) in 2009. Neither the claimant nor the respondent made any contribution toward the purchase of this property but the claimant was added to the title at one point for estate planning purposes. Daryoush sold the property in or about 2015 at a loss. The parents received and retained the entire proceeds of sale. There is no indication that the claimant or respondent ever travelled to Malaysia after the condominium was purchased or that they made any contribution towards its acquisition or maintenance.

[42] The respondent's claim to a share of the Malaysian condominium or the proceeds derived from sale appears, for the purposes of this application to be pretty tenuous. Daryoush’s efforts to obtain additional documents appear reasonable. I think the most sensible order I can make in the circumstances is to require Daryoush to make his best efforts to obtain the documentation sought. The application is dismissed as against the claimant as is there is no evidence that the documentation sought, with respect to this property, is or was in his possession or control.

THE STRATHMORE MEWS PROPERTY

[43] At paragraph 1(b) of her application the respondent seeks documentation concerning this property from the claimant and makes the same request from the parents at paragraph 2(b).

[44] This property was purchased by the parents (registered in the name of Soheila) in 2007 as their personal residence in Vancouver. The claimant and respondent were not involved in the purchase of this property. Neither has ever appeared on title. Neither has contributed to mortgage payments, taxes, strata fees or other expenses related to the property in the 14 years since it was purchased.

[45] The respondent asserts that this property, worth over $1 million, was “gifted” to her by the parents as a wedding present. There is no evidence before

me to support this claim and indeed, Gomery, J., in Reasons for Judgment in this action delivered December 9, 2020, said as follows:

> 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.

[46] The respondent faces the same evidentiary challenges on this application and I am simply not satisfied that the disclosure sought relates to any asset an issue in this litigation. This aspect of the application is dismissed as against both the claimant and his parents.

THE HOMER STREET PROPERTY

[47] The Homer Street property was purchased by the claimant and Daryoush in 2009, following the sale of another property they had owned together. The claimant says that he has produced all documentation in his possession or control or accessible to him. He has confirmed that the Daryoush had a 50% interest in the property. He has listed the two rental agreements. He has provided copies of the mortgage statements up to current.

[48] It appears to me that the respondent's disclosure requests have been satisfied by the claimant and, accordingly, the respondent's applications as against the claimant at paragraph 1(c) and as against the parents at paragraph 2(c) are dismissed.

THE TEHRAN PROPERTY

[49] The claimant and the parents deny ownership of a Tehran property at any material time. The respondent has provided no evidence with respect to the

source of funds used for an alleged purchase or details with respect to the purchase price. She indicates in her financial statement that this property is in the name of Soheila, although she alleges that she and the claimant purchased the property together. The evidence presented by the respondent in support of this aspect of her application is confusing and inconsistent.

[50] Perhaps this is an issue which might be pursued out of further examination for discovery. There is, at this point, no evidence that the documentation sought by the respondent exists. This aspect of the application is also dismissed as against both the claimant and his parents.

KDMIC and KMC DOCUMENTS

[51] KDMIC is a private company in Iran, founded in or about 1998. The parents are shareholders; the claimant ("according to the claimant") is not. KDMIC is not a party to this litigation and no application was made seeking third party production from it. The pleadings do not disclose any claim made by the respondent against the parents' shareholdings. Accordingly, the parents are under no obligation to provide the disclosure sought and this aspect of the respondent's application is dismissed as against them.

[52] For his part, the claimant says that he has not even been an employee of KDMIC since 2011, prior to the parties' first separation. The only share held by him, he says, was required for him to fulfil his managerial role. He says that he no longer holds that share and has produced documentation from the company to support this.

[53] The respondent has produced a document which she says is a list of KDMIC, shareholders showing that the claimant holds 15 shares. The list is handwritten and in the Farsi language. The claimant and his parents have produced correspondence from the company indicating that the respondent's list is a forgery. Regardless of how that issue eventually plays out, I cannot see that the company documentation sought from the claimant on this application might, even if he was a shareholder, be said to be in "his possession or control". Accordingly, the application from production of KDMIC documentation from the claimant is dismissed as well.

[54] No foundation been made out for production concerning “Koorosh Medical Company or any similarly named entities” beyond that sought from KDMIC. Those aspects of the application are dismissed as well.

BANK STATEMENTS

[55] The respondent’s counterclaim makes no claim against the parents’ accounts as family assets and no other reason is given as to why this disclosure should be given by them. The application against the parents’ for the production of bank statements is dismissed entirely.

[56] As far as the claimant is concerned, the account and credit card statements sought may be relevant to show patterns of spending and income available to the parties to and following their separation. If the claimant has in his possession or is able to access through bank records the documentation sought, he will provide it from January 1, 2012 to present.

ORIGINAL OR MORE LEGIBLE COPIES OF DOCUMENTS

[57] The claimant says that he does not have the originals or better copies. This aspect of the application appears to relate entirely to the issue of credibility. Surely, if there is some doubt as to the authenticity of the copies or as to their contents, this is an issue which can be dealt with on discovery. This aspect of the respondent’s application is also dismissed.

ITEMS 1(h), (j), (k) , (l) and (m):

[58] In the case of *Mossey v. Argue*, 2013 BCSC 2078, Master Young, as she then was, reviewed the provisions of the *Supreme Court Family Rules* with respect to document disclosure, and then went on to say as follows:

> [15] The law is not that a party can demand every document that has come into a party’s possession or control because they are suspicious of wrongdoing. They have to specify what document or class of documents they are requesting and tie it to an issue in the proceedings.
>
> [16] As Master Baker said in *Anderson v. Kauhane* (February 22, 2011), Vancouver Registry -- and this is quoted in Master Bouck’s decision in *Przybysz* (as read in):
>
>> ...there is a higher duty on a party requesting documents under...Rule 7-1(11)...they must satisfy either the party being demanded or the court...with an explanation “with reasonable specificity that indicates the reason why such additional documents or classes of documents should be disclosed”...

> [17] *Przybysz and Anderson* are civil cases, but civil Rule 7-1(8) and *Supreme Court Family Rule* 9-1(8) are identical. The only difference in document disclosure in family law proceedings is that the first tier of disclosure is at least partially proscribed in the family law financial disclosure Rule 5-1, which makes disclosure of income information from personal and corporate sources mandatory and sets out some basic rules for disclosure of business interests. There will likely be other documents that fit into the first tier of disclosure.
>
> [18] However, gone are the days of the full underwear drawer disclosure, unless the demand is made with specificity and justification.
>
> [19] In this case, the initial demand letter does not set out the reason for the demand. I have combed through the letters and emails to see if that flaw has been addressed. Some of the follow-up emails and letters do allude to some specific issues that the respondent wishes to prove. The notice of application is a disappointing cut-and-paste of the original deficient demand letter. It does not specify many of the documents or classes of documents, and it does not establish a reason for many of the requests.
>
> [22] The rules of document disclosure were changed to avoid document disclosure demands like the one I have before me today. It is impractical to expect a party conducting business will be required to produce a photocopy of every cheque front and back, every invoice, credit and debit note, and receipts for years of business transactions. The costs of the legal proceeding will far exceed the value received by the party if the court has to condone forensic audits of the parties' businesses because the parties are mistrustful of one another. Mistrust is a common theme in matrimonial proceedings. The threshold for document disclosure has to be higher than that.

[59] I agree that the objects of the *Supreme Court Family Rules* will not be met if a party is forced to facilitate a forensic audit of their circumstances merely because an opposing party is mistrustful of them. In the absence of evidence that the disclosure sought in these paragraphs will actually facilitate the resolution of claims in this action, these aspects of the respondent's application are also dismissed. Paragraphs. 2(g)-(j) which make the same requests from the parents are also dismissed and for the same reasons.

[60] By paragraph 1(i) of her application, the respondent seeks "documentary particulars of the quantum of $130,000 in personal items alleged to be in the possession of the respondent". This request is absurd, as well as ungrammatical. Particulars are properly demanded in order to allow the party to plead in response. The value of any items retained or taken by respondent is a matter for evidence at trial and as to the nature of any items personally taken by or retained by the

respondent, well, she knows what they are This aspect of the respondent's application against the claimant is also dismissed.

FINANCIAL STATEMENTS FROM THE PARENTS

[61] By paragraph 3 of the respondent's application, she seeks to have the parents file updated financial statements "including a listing of all global assets in their personal names or which they hold a beneficial interest in". The parents have filed financial statements dated November 10, 2020. *Supreme Court Family Rules*. Rule. 5(1)(13) provides that if a party feels that a financial statement "lacks sufficient information" that party may demand "particulars". That remedy, or questions posed in the examination for discovery, might provide the respondent with the information she seeks, but the rules do not countenance a request by a party for serial production of financial statements until the party from whom the request is made "gets it right" in the opinion of the applicant. The pleadings establish the parameters of the litigation. The parents are not obliged to list assets which are not the subject of claims made against them. This aspect of the respondent's application is also dismissed.

STRATA COPRPORATION DOCUMENTS

[62] I gather that the Strata Corporation was served with notice of this application and does not oppose the relief sought. The comments of then Master Young in *Mossey v. Argue* quoted above, seem to apply equally well to the disclosure sought here. I cannot see how, and I not assisted here by evidence from the respondent, that production of the material sought will assist in the resolution of claims in this proceeding. The information sought may afford for the respondent with opportunities to discredit the claimant, impeach his credibility or keep up-to-date with this comings and goings, but disclosure for those purposes is not sanctioned by the *Supreme Court Family Rules*. This aspect of the respondent's application is also dismissed.

FINES AGAINST THE CLAIMANT AND THE PARENTS

[63] The respondent has been largely unsuccessful on her application, in part because it appears that, having received responses from the claimant and the parents prior bringing this application, that, for example, the documents sought do not exist, are not in their possession or control or are documents which she,

herself, has in her possession, she nonetheless proceeded with it. If the goal of the respondent is, as I fear it may be, to conduct the prosecution of her claims in a way which maximizes the cost of this litigation for all parties in an attempt to achieve favourable results through emotional or financial attrition, that is not a goal which this Court should help her achieve. This aspect of the respondent's application is also dismissed.

COSTS

[64] Each party will bear their own costs of the claimant's application.

[65] With respect to the respondent's application the claimant and the parents will have their costs from the respondent in the cause.

"Master Keighley"