

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20151016
Docket: E074283
Registry: Vancouver

Between:

Milena Maria McMillan

Claimant

And

Bruce Edwin McMillan

Respondent

Before: The Honourable Madam Justice Choi

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

T.L. Jackson
O. Stoklosa

Counsel for the Respondent:

T.H. Hopman

Place and Date of Trial/Hearing:

Vancouver, B.C.
October 16, 2015

Place and Date of Judgment:

Vancouver, B.C.
October 16, 2015

[1] **THE COURT:** This is an application brought by the respondent, Mr. McMillan, to further encumber his equity in 6805 Crabapple, Whistler, B.C., with a line of credit secured by a mortgage in favour of CIBC in the amount of 1.2 million dollars, and that the claimant, Ms. McMillan, sign all necessary documents to have the loan advanced to Mr. McMillan, and that Mr. McMillan will reduce the monthly payments on the Crabapple mortgage to interest only.

[2] Ms. McMillan opposes this application for three main reasons:

1. She says that Mr. McMillan is in breach of an order of May the 29th, 2015.
2. He has not shown an inability to raise the funds elsewhere. He simply asserts that he has no other option, but has failed to produce any financial information actually demonstrating that the order he seeks is in fact his only viable option.
3. He is vague as to the actual documentation he requests that Ms. McMillan sign. Mr. McMillan will not specify or produce that documentation, she says, despite requests to do so by Ms. McMillan.

[3] Ms. McMillan says that it is because Mr. McMillan is likely needing her to sign a Form A transfer, transferring her 50 percent interest in the Crabapple property. She is not prepared to take that risk.

[4] Mr. McMillan admits that he has not made all payments owing to Ms. McMillan that have been ordered by the court. He explains he cannot do so until he can refinance the Crabapple mortgage, which is only possible with Ms. McMillan's cooperation, and that he is caught.

[5] He says his other assets are owned jointly with his new wife, Ingrid McMillan, and that she will not consent to encumbering any of her assets.

[6] Other than assets owned jointly with Ingrid McMillan, Mr. McMillan says that he does not have any other assets to post as security.

[7] The parties settled their *Family Law* claim by way of an agreement in 2010 and averted a trial. Assets at issue were in the range of 47 million dollars. Mr. McMillan received a reapportionment of those assets and took on a larger share of the debt.

[8] Since the agreement, however, various issues have continued to be in litigation, both in British Columbia and in the United States. At the date of the hearing, Mr. McMillan owes Ms. McMillan in the range of \$660,000, including costs. Ms. McMillan says there is no reason why he cannot pay. Mr. McMillan asserts that he is in a bind.

[9] In a recent application before Mr. Justice Macintosh, Mr. McMillan's application for a stay was denied. Mr. Justice Macintosh held in his reasons, indexed as *McMillan v. McMillan*, 2015 BCSC 1472, at paragraph 14:

In my view, that is not enough evidence to satisfy Mr. McMillan's obligation to establish irreparable harm. Mr. McMillan is rich. He needs to pay under \$700,000 to satisfy the two awards. The evidence he presents does not go further than demonstrating inconvenience from having to come up with that money now. Any restructuring of his affairs needed to accommodate the payment may cost money. If it does, and Mr. McMillan succeeds on his appeal, he can make a claim for such costs. Ms. McMillan can afford to pay such a claim if it is successfully advanced.

[10] In reviewing the affidavit material filed for this application, I am in agreement with Mr. Justice Macintosh's finding.

[11] Mr. McMillan has not satisfied me on the evidence presented that he has no other choice but to refinance the Crabapple property in the manner that he seeks.

[12] He has not demonstrated that other options are foreclosed such that Ms. McMillan ought to bear any risk, so that he can pay her to satisfy the orders made against him.

[13] His application is dismissed.

[SUBMISSIONS RE COSTS]

[14] THE COURT: I am going to order that costs be payable at Scale B for this application.

“Choi, J.”