SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Armoyan v. Armoyan*, 2015 NSSC 92

Date: 2015-04-01
Docket: No. 1201-065036; 070342; 73536
Registry: Halifax

Between:

Lisa Armoyan

Applicant

v.

Vrege Armoyan

Respondent

Judge:	The Honourable Justice Theresa M. Forgeron
Heard:	February 26, 2015, in Halifax, Nova Scotia
Decision:	April 1, 2015
Counsel:	Harold Niman and Leigh Davis, for the Applicant Gordon Kelly and Stacey O'Neill, for the Respondent

By the Court:

[1] **Introduction**

[2] An order for suit costs is an interlocutory tool designed to level the litigation playing field between spouses who have disparate financial resources. Ms. Armoyan seeks suit costs so that she can present expert opinion during the *Matrimonial Property Act* trial. Vrege Armoyan vigorously objects to a further payment of suit costs.

[3] **Issues**

[4] Should suit costs of $400,000 be granted?

[5] **Background Information**

[6] The parties are engaged in an aggressively litigated matrimonial dispute. Numerous motions were previously argued and determined, including an earlier motion for suit costs. In a May 2014 decision, reported at **Armoyan v. Armoyan**, 2014 NSSC 143, this court awarded Ms. Armoyan $25,000 in suit costs. The award was not substantial because an evidentiary foundation was lacking as noted at para. 67 of the decision.

[7] On November 21, 2014, Ms. Armoyan filed a notice requesting the appointment of an expert to perform a valuation of Mr. Armoyan's corporate interests, to be funded by Mr. Armoyan. On February 9, 2015, Ms. Armoyan recast the motion to one of suit costs. Ms. Armoyan seeks $400,000 so that she can retain experts to speak on foreign law, forensic accounting, and business valuations. Mr. Armoyan contested the motion.

[8] The motion was heard on February 26, 2015. Eighteen exhibits were tendered during the chambers hearing, including numerous affidavits. Neither party sought to cross examine. Oral submissions were provided, to supplement the written briefs. The court reserved its decision.

[9] **Analysis**

[10] **Should suit costs of $400,000 be granted?**

[11] *Position of Ms. Armoyan*

[12] Ms. Armoyan indicates that a suit cost order of $400,000 is appropriate for the following reasons:

- She requires experts to testify at trial given the extensive and complicated financial and jurisdictional issues.
- She is impecunious.
- She established a *prima facie* case of sufficient merit.
- She would not be able to pursue the litigation without suit costs because her financial circumstances have deteriorated since the last suit cost decision was rendered.

[13] *Position of Mr. Armoyan*

[14] Mr. Armoyan disputes the suit cost request for a number of reasons including the following:

- He lacks the resources to pay additional suit costs. Mr. Armoyan states that his assets are outnumbered by his debts.
- He previously paid $400,000 in security for costs, and $25,000 in suit costs. A further suit cost order will jeopardize his ability to continue with the litigation. A further suit cost order will negatively impact on his ability to pay child and spousal support.
- An expert in Ontario matrimonial property law is not necessary. Nova Scotia courts often refer to decisions from Ontario. Nova Scotia courts regularly interpret legislation and consider case law. It is therefore unnecessary for this court to receive expert opinion on Ontario law.
- In the alternative, Mr. Grant's proposed expert's fee is excessive. Mr. Armoyan consents to video conferencing at trial, which will reduce travel expenses. Mr. Armoyan should not be required to contribute more than $5,000 for an expert opinion on Ontario matrimonial property law.
- No evidence was led about the cost of an expert to testify about Florida's matrimonial property laws. The court should not speculate; suit costs cannot be awarded in such circumstances.

- The fees of the proposed business valuator, Mr. Ranot, are "outrageous" and "grossly inflated", and are based upon flawed assumptions. For example, there is no need to value assets before the date of separation. There is no need to review 41 corporations when only six were active. There is no need for Mr. Ranot to attend at trial for 25 days; the expert can testify by video conferencing and will likely conclude his evidence in 2.5 days. Further, a KPMG estimate proves that a business valuation should not exceed $61,000.
- Ms. Armoyan should not benefit from the previous trial adjournment. Had the matter proceeded to trial in September 2014, as scheduled, there would not have been another request for suit costs.

[15] In all the circumstances, Mr. Armoyan states that suit costs should not be awarded, but if suit costs are payable, then they should be decreased by the $25,000 awarded in May 2014.

[16] *Rule 77.02(1) and Okanagan*

[17] The court's authority to award suit costs is grounded in Rule 77.02(1) and in the Supreme Court of Canada's decision of **British Columbia (Minister of Forests) v. Okanagan Indian Band Council**, 2003 SCC 71. The three part test identified in **Okanagan** is as follows:

- The party seeking the order must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case.
- The claimant must establish a *prima facie* case of sufficient merit to warrant pursuit.
- There must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where the extraordinary exercise of its power is appropriate.

[18] *Ms. Armoyan's Circumstances*

[19] Ms. Armoyan has satisfied the burden upon her, for reasons similar to those articulated in the May 2014 decision. In particular, the court finds as follows:

- Ms. Armoyan continues to be impecunious. She is not employed; her student visa does not allow her to work. Ms. Armoyan's sole source of

income is the maintenance, which Mr. Armoyan steadfastly refuses to pay in accordance with the court order. Ms. Armoyan receives about one-third of the monthly payment of $29,612 U.S., that is due to her.

- Ms. Armoyan owns few assets, other than mounting judgements against Mr. Armoyan. These judgements have yet to be realized. The quantum of the judgements is appalling, and include unpaid costs of $306,000 as ordered in **Armoyan v. Armoyan**, 2013 NSCA 136; unpaid costs of $41,000 as ordered by this court in **Armoyan v. Armoyan**, 2014 NSSC 403; and costs in excess of $1.4 million as awarded by the Florida court. In addition, child support arrears are ongoing and may total approximately $1.6 million, according to the records from the Florida maintenance enforcement program. Further, Mr. Armoyan did not pay the solicitor and client costs that were awarded by the Supreme Court of Canada in his failed attempt to seek leave, although such costs were only recently tabulated.

- Ms. Armoyan established a *prima facie* case of sufficient merit as noted in the May 2014 decision at para. 65.

- Ms. Armoyan has proven special circumstances or public interest. Mr. Armoyan is in control of most of the parties' assets, including Ms. Armoyan's trust fund. Mr. Armoyan shrewdly removed the majority of the assets from the jurisdiction, and then encumbered most of the remaining chattels within the jurisdiction, after the Nova Scotia Court of Appeal rendered its decision as noted in the May 2014 decision at para. 34.

- Ms. Armoyan has no income or assets upon which she can draw to fund the retainer of experts.

[20] *Forensic Accounting and Business Valuation Opinion*

[21] The court finds that suit costs are appropriate to fund a forensic accounting analysis and business valuation, for the following reasons:

- The business valuation, with a forensic accounting component, is logically relevant to the facts in issue. It will likely have significant probative value. The expert evidence will likely assist the court with its understanding and appreciation of the technical issues at play, given the extensive and complicated corporate holdings.

- Mr. Armoyan provided no independent valuation of the corporate assets. He had an obligation to do so. In this regard, I agree with the legal reasoning of the Ontario Court of Appeal in **Homsi v. Zaya** 2009 ONCA 322, wherein Epstein, J.A., stated that "… the onus is on the party asserting the value of an asset that he or she controls to provide credible evidence as to its value…": para.38.

- Mr. Armoyan's own post separation conduct raises red flags and supports the need of a forensic analysis. Mr. Armoyan divested himself of significant assets in favour of related third parties after separation. The transactions were not at arm's length. For example, Mr. Armoyan transferred the former matrimonial home and contents to his mother in December 2010. Mr. Armoyan also transferred his shares in Geovex Investments Ltd. to his sister-in-law in the fall of 2010. Mr. Armoyan transferred his interest in 3102479 Nova Scotia Ltd. to Armco Capital, a related corporation in February 2010. In the fall of 2010, Mr. Armoyan transferred his interest in 1181830 Alberta Ltd. and APL Property Ltd to his brother. Although these transactions may ultimately survive scrutiny, Ms. Armoyan has nevertheless proven the need for further forensic investigation.

- Other post separation conduct, proving the importance of a forensic accounting analysis, arises from Mr. Armoyan's decision to move most of his investments out of this jurisdiction. A rough tabulation of Mr. Armoyan's Statement of Property indicates that, at the time of separation, his net worth was about $40 million. After separation, Mr. Armoyan began to transfer his investments out of the jurisdiction, including the $20 million Geovex sale proceeds. Mr. Armoyan also moved his yacht to Lebanon and then sold it to a third party. He collapsed most of his RRSPs and then moved those funds out of the jurisdiction, despite the negative income tax consequences. Mr. Armoyan now states that he lost his investments, excepting the $6 million he used to create the children's trust, post separation, and the money retained in the Lisa Armoyan trust. Mr. Armoyan did not produce any documentary evidence in support of the alleged children' trust. Mr. Armoyan also placed chattel mortgages on the majority of the assets which remained in Nova Scotia, such as his automobile collection, after the Nova Scotia Court of Appeal released its decision in the fall of 2013. In such circumstances, the court finds that it is appropriate for an expert to review the complicated transactions and provide expert opinion.

[22] Having created the need for a business valuation, with a forensic component, Mr. Armoyan cannot now be permitted to dictate and limit the terms of the retainer. The retainer is a matter for Ms. Armoyan, her lawyers, and Mr. Ranot. Given the value of the assets at separation, and the circumstances surrounding the various transfers, the fee estimate of Mr. Ranot appears appropriate. In any event, potential unreasonable fees and expenses can be dealt with by way of costs, or otherwise, at the conclusion of the trial. $350,000 in suit costs is awarded for the Ranot retainer.

[23] *Ontario Matrimonial Property Law Expert*

[24] An expert opinion on Ontario matrimonial property law is likewise logically relevant to the issues before the court, given s. 22 of the *Matrimonial Property Act*, with its focus on the last common habitual residence of the parties. Again, the terms of the retainer are appropriately a matter for Ms. Armoyan, her lawyers and Mr. Grant. Given the complex nature of this case, an expert opinion will likely provide the court with the technical assistance that it requires in this area.

[25] *Florida Matrimonial Property Law Opinion*

[26] I am not ordering suit costs for the expenses associated with an expert on Florida matrimonial property law because there is no evidentiary foundation to do so.

[27] *Mr. Armoyan's Ability to Pay*

[28] Ms. Armoyan has proven her need for an additional $375,000 in suit costs. Mr. Armoyan has not proven, by clear, convincing and cogent evidence that he does not have the ability to pay. I make this finding for the following reasons:

- Mr. Armoyan's income tax returns and T4s confirm that Mr. Armoyan earned in excess of one million dollars in each of the years 2011, 2012, and 2013.

- Mr. Armoyan stated that he received in excess of one million dollars from his mother in 2013.

- Mr. Armoyan did not prove that he was unable to work based on the test set out in **MacGillivary v. Ross**, 2008 NSSC 339, and as reviewed in the May 2014 decision at para. 30.

- Mr. Armoyan did not produce any documentary evidence of the alleged trust which he said he established post separation for the children. He did not produce any banking documentation either.

- As noted in the May 2014 decision, at paras. 31 to 34, Mr. Armoyan shrewdly transferred the majority of his assets out of the jurisdiction during the course of the Florida and Nova Scotia litigation, and then encumbered remaining chattels after the Nova Scotia Court of Appeal decision was released. Such conduct does not equate with proof that assets no longer exist. Blanket and empty assertions are insufficient in such circumstances.

- Mr. Armoyan did not prove that he was unable to raise the funds, by tapping into foreign investments and holdings, or by accessing loans.

[29] **Conclusion**

[30] Ms. Armoyan proved that she is entitled to a further sum of $375,000 in suit costs. Mr. Armoyan did not prove that he lacked an ability to pay. I am awarding $375,000 in suit costs, payable by Mr. Armoyan to Ms. Armoyan, on or before April 21, 2015.

Forgeron, J.