SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Armoyan v. Armoyan*, 2015 NSSC 244

Date: 2015-08-27
Docket: *Halifax* No. No. 1201-065036; 73536
Registry: Halifax

Between:

Vrege Armoyan

Petitioner

v.

Lisa Armoyan

Respondent

Judge:	The Honourable Justice Theresa M. Forgeron
Heard:	June 4, 2015, in Halifax, Nova Scotia
Written Release:	August 27, 2015
Counsel:	Vrege Armoyan, self-represented Petitioner, and not present Harold Niman, Leigh Davis and Amber Penney for the Respondent, Lisa Armoyan Michael Scott, for the non-party, Anahid Armoyan

By the Court:

Introduction

[1] This decision involves Lisa Armoyan's motion for disclosure from Anahid Armoyan who is the mother of the Petitioner, Vrege Armoyan. Anahid Armoyan objects to the production of the requested disclosure.

Issues

[2] The following issues will be determined in this decision:

- What is the impact of Rule 59.27?
- What is the applicable test for non-party disclosure?
- What disclosure order should be granted?

Background

[3] Lisa and Vrege Armoyan are engaged in litigation involving the division of property following their separation and divorce.

[4] In the course of that proceeding, Vrege Armoyan filed a statement of property with two supporting volumes of information. Lisa Armoyan filed a motion to obtain further disclosure from Vrege Armoyan. This motion was resolved by consent on February 27, 2015. A consent order, dated March 3, 2015, required Vrege Armoyan to "forthwith request, obtain and produce all disclosure requested" in schedules A, B, and C which were attached to the order.

[5] The consent order did not result in the production of the requested disclosure. As a result, on March 16, 2015, Lisa Armoyan filed numerous motions for disclosure from various non-parties, including the motion involving Anahid Armoyan.

[6] The motion hearing involving Anahid Armoyan was held late afternoon on June 4, 2015. The affidavits of solicitor Penney and the statement of property of Vrege Armoyan were entered as exhibits. Anahid Armoyan did not file an

affidavit. Both parties filed written submissions. No cross examination was requested. Oral submissions were received and the court adjourned for decision.

Analysis

[7] **What is the impact of Rule 59.27**?

Position of the Parties

[8] Lisa Armoyan relies on Rule 59.27 and Rule 14.12 in her motion for disclosure.

[9] Anahid Armoyan suggests that Rule 14.12 is not applicable because Rule 59.27 is more restrictive, and as such, it should supersede Rule 14.12. which is more general. Rule 59.27(1) serves the public interest by militating against the presumption that a non-party should be compelled to turn over personal financial and business information except in very specific circumstances. Anahid Armoyan argues against the use of Rule 14.12 in this disclosure motion.

Decision

[10] In the companion decision of **Armoyan v. Armoyan** 2015 NSSC 241, this court rejected similar arguments as noted at paras 17 to 20, which provide as follows:

> [17] Rule 59.27 has no application to the motion before the court. Rule 59.27 distinguishes between a "court officer" and the "court": Rule 59.27 sets out the authority of a court officer to order disclosure from a non-party. The Rule does not refer to the court's authority to do so as noted in the definition section of Rule 59.01. "Court officer" is defined in Rule 59.01 as follows:
>
> > "court officer" means a court official at an office of the Supreme Court (Family Division) who performs duties and provides services on behalf of the court such as reviewing statements and documents submitted for filing, conducting conciliation, directing and ordering disclosure, arranging and scheduling for parties to appear before a judge, and determining interim child support in some circumstances;
>
> [18] A "judge" is defined in 59.01 as follows:

> "judge" means a judge of the Supreme Court (Family Division) and any other judge of the Supreme Court determining or hearing a proceeding brought in the Supreme Court (Family Division);

[19] Further, s 7 of the Court Officials Act, R.S.N.S. 1989, c 373 also notes the distinction between a court officer and the court. Section 7 provides as follows:

> "every court administrator, officer, or employee appointed pursuant to this Act is an officer of the court in respect of which that person serves and that person shall obey the orders of the court and of a judge of the court."

[20] Rule 59.27 does not apply. The court's jurisdiction to order non-party disclosure falls under the umbrella of Rule 14.12, not Rule 59.27. This finding is in keeping with Rule 59.28(5) which states as follows:

> (5) A judge may order a person to file any statement, disclose information, or produce documents the judge sees fit, and this power does not diminish a power of a judge under Part 5 – Disclosure and Discovery.

[11] The submission of Anahid Armoyan is therefore rejected.

[12] **What is the applicable test for non-party disclosure?**

[13] In **Armoyan v. Armoyan**, supra, this court reviewed the test for non-party disclosure at paras 35 to 44, which provide as follows:

> [35]Rule 14.12 describes a judge's discretionary authority to compel production of a relevant document or electronic information. Rules 14.12 (1) and (2) state as follows:
>
> > 14.12 (1) A judge may order a person to deliver a copy of a relevant document or relevant electronic information to a party or at the trial or hearing of a proceeding.
> >
> > (2) A judge may order a person to produce the original of a relevant document, or provide access to an original source of relevant electronic information, to a party or at the trial or hearing.

[36]Relevant and relevancy are defined in Rule 14.01, which provides as follows:

> (1) In this Part, "relevant" and "relevancy" have the same meaning as at the trial of an action or on the hearing of an application and, for greater clarity, both of the following apply on a determination of relevancy under this Part:
>
> (a) a judge who determines the relevancy of a document, electronic information, or other thing sought to be disclosed or produced must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the document, electronic information, or other thing relevant or irrelevant;
>
> (b) a judge who determines the relevancy of information called for by a question asked in accordance with this Part 5 must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the information relevant or irrelevant.
>
> (2) A determination of relevancy or irrelevancy under this Part is not binding at the trial of an action, or on the hearing of an application.

[37]In **R v. Grant**, 2015 SCC 9, the Supreme Court of Canada held that '[e]vidence is logically relevant where it has any tendency to prove or disprove a fact in issue": para 18. In *The Law of Evidence in Canad*, the authors note in part, that "[a] fact will be relevant not only where it relates directly to the fact in issue, but also where it proves or renders probable the past, present or future existence (or non-existence) of any fact in issue": para §2.45

[38]In **Laushway v. Messervey**, 2014 NSCA 7, Saunders, J.A. reviewed the test applicable to Rule 14.12, and confirmed the following points:

- "Trial relevance" replaced the old "semblance of relevancy" test when the new Rules came into effect, as noted in **Brown v. Cape Breton (Regional Municipality)**, 2011 NSCA 32; and **Saturley v. CIBC World Markets Inc**., 2011 NSSC 4: para 47.

- The court should apply a more liberal view of relevance at the disclosure stage than at trial, subject to confidentiality,

privilege, prod,uction costs, timing and probative value: para 49, quoting Wood, J.

- It is "better to err on the side of requiring disclosure of material that, with the benefit of hindsight, is determined to be irrelevant, rather than refusing disclosure of material that subsequently appears to have been relevant. In the latter situation, there is a risk that the fairness of the trial could be adversely affected": para 49, quoting Wood, J.

- It is axiomatic that relevance must be connected or linked between people, events or things, as relevance is not determined in a "pristine, sealed vacuum": para 61.

- Once a finding of relevance is made, the burden then shifts to the non-moving party to attempt to rebut the presumption and thereby defeat the motion for production pursuant to Rule 14.08: para 66.

[39]In addition, Saunders, J.A. provided a non-static, non-exhaustive list to supplement the guidance already provided in the **Rules**, and to assist trial judges in the exercise of their discretion pursuant to Rule 14.12. Paragraph 86 provides, in part, as follows:

> 1. Connection: What is the nature of the claim and how do the issues and circumstances relate to the information sought to be produced?
>
> 2. Proximity: How close is the connection between the sought-after information, and the matters that are in dispute? Demonstrating that there is a close connection would weigh in favour of its compelled disclosure; whereas a distant connection would weigh against its forced production;
>
> 3. Discoverability: What are the prospects that the sought-after information will be discoverable in the ordered search? A reasonable prospect or chance that it can be discovered will weigh in favour of its compelled disclosure.
>
> 4. Reliability: What are the prospects that if the sought-after information is discovered, the data will be reliable (for example, has not been adulterated by other unidentified non-party users)?
>
> 5. Proportionality: Will the anticipated time and expense required to discover the sought-after information be

> reasonable having regard to the importance of the sought-after information to the issues in dispute?
>
> 6. Alternative Measures: Are there other, less intrusive means available to the applicant, to obtain the sought-after information?
>
> 7. Privacy: What safeguards have been put in place to ensure that the legitimate privacy interests of anyone affected by the sought-after order will be protected?
>
> 8. Balancing: What is the result when one weighs the privacy interests of the individual; the public interest in the search for truth; fairness to the litigants who have engaged the court's process; and the court's responsibility to ensure effective management of time and resources?
>
> 9. Objectivity: Will the proposed analysis of the information be conducted by an independent and duly qualified third party expert?
>
> 10. Limits: What terms and conditions ought to be contained in the production order to achieve the object of the **Rules** which is to ensure the just, speedy and inexpensive determination of every proceeding?

[40]In **Laushway v. Messervey**, supra, the court was not addressing a non-party disclosure request. Whether additional considerations apply to non-parties is answered to some extent by Rule 22.11(6) which states as follows:

> (6) Rules applicable to a party on a motion, including Rules about an *ex parte* motion, must, as nearly as possible, be applied to a non-party who moves for an order or who is sought to be bound by an order, as if the non-party were a party.

[41]Two additional factors, to those expressed in **Laushway v. Messervey**, supra, are also applicable to non-party production considerations, as follows:

- Non-parties who have an interest in the subject matter of the litigation, and whose interests are allied with a party opposing production, should be more susceptible to a production order than a true "stranger" to the litigation: **Ontario (Attorney General) v. Ballard Estate**, [1995] O.J. No. 3136 (C.A.), para 15.

- Non-party production should be used as a last resort.

[42]At this juncture, it is also important to underscore the significance of full disclosure in the family law context. In **Leskun v. Leskun**, 2006 SCC 25, the Supreme Court of Canada approved the comments of Fraser, J. who held that "[n]on-disclosure of assets is the cancer of matrimonial property litigation" at para 34, wherein Binnie, J. states as follows:

> 34 In all of these circumstances, the appellant has a poor platform from which to launch an attack against the trial judge's conclusion regarding his assets and liabilities. As Fraser J. commented in **Cunha v. Cunha** (1994), 99 B.C.L.R. (2d) 93 (B.C. S.C.), at para. 9:
>
> Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlement 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.

[43]In **Armoyan v. Armoyan**, 2013 NSCA 99, Fichaud, J.A. held that the court is "a warden" in family law proceedings to ensure cost efficient disclosure which is essential to the court's fact finding at para 281, which states as follows:

> 281 At the hearing in this Court, Mr. Armoyan's counsel submitted that Nova Scotia would be the more convenient forum for various reasons, including that Mr. Armoyan's information was located in Nova Scotia, making the information more amenable to discovery. It was heartening to hear that comment on Mr. Armoyan's behalf, given the Florida Courts' difficulties with the extraction of his financial disclosure. I reiterate, as guidance for the upcoming disclosure, this Court's comments in **Foster-Jacques v. Jacques**, 2012 NSCA 83 (N.S. C.A.):
>
> [93] Rules 59.19 to 59.27 advertently engage the court in the mandatory pre-trial acquisition of evidence. The court is enlisted as a warden to ensure that, in family proceedings, obtaining the information which is essential to the court's fact finding is not a costly battleground, lever of procrastination or "game of hide and seek": **O'Brien v.**

> **O'Brien**, 2007 NBCA 22, para 15; **Chernyakhovsky v. Chernyakhovsky**, [2005] O.J. No. 944 (S.C.), para 6. The parties' court filings under Rule 59 are vital to the workings of the court's administration of justice for the divorcing litigants.
>
> [44]The balance of privacy interests against the importance of disclosure of relevant information involves a proportional, contextual analysis, rooted in the law and the evidence.

[14] The court adopts this test to this non-party motion.

[15] **What disclosure order should be granted?**

Position of Lisa Armoyan

[16] Lisa Armoyan seeks disclosure from Anahid Armoyan as found in paras 9(a) of schedule A; 1(f) of schedule B; and paras 5, 7 and 8 of schedule C. In para 9(a) of schedule A the following is requested:

> **Geovex Investments Limited**
>
> a) Provide all payment documents evidencing the repayment of the below noted amounts to Sami Armoyan and Anahid Armoyan.
>
> 'Note 8' to the unconsolidated financial statements of Geovex Investments Ltd. reports the amounts "Due to Related Parties" as of the following dates:

Related Party	**October 31, 2009**	**January 31, 2010**
Sami Armoyan	$7,996,593	Nil
Anahid Armoyan	$1,551,231	Nil

[17] Paragraph 1(f) of schedule B states as follows:

> **1(f)Armco Capital Inc./Kimberly-Lloyd Developments Ltd/Scotia Learning Centres Ltd.**
>
> **i.** Provide all documentation including the relevant financial statements related to the amalgamation of Kimberly-Lloyd Developments Ltd, Scotia Learning Centres Ltd., Anahid Investments Ltd and 3099477 Nova Scotia Ltd into Armco Capital Inc. effective January 1, 2008.

[18] Paragraphs 5, 7 and 8 of schedule C state as follows:

5.CIBC records of mortgage assumption and mortgage assignment 855 Marlborough Woods (3rd party)

7.Promissory Notes from Anahid Armoyan to Vrege Armoyan;

8. Documentation re loans to/from Sami and/or Anahid Armoyan;

[19] Lisa Armoyan argues that the disclosure must be ordered for a number of reasons, including the following:

- The valuation of the assets and corporate interests of Vrege Armoyan is an integral part of resolving the outstanding matrimonial property issues. To proceed to a trial without the necessary valuation of the parties' property would be unfair and prejudicial to Lisa Armoyan's position at trial.

- The request outlined in para 9 (a) is relevant as it deals with money owed by Geovex Investments Limited to Anahid Armoyan personally, in the amount of $1,551.231. In his statement of property, Vrege Armoyan states that he held a 50% interest in Geovex at the time of separation. The total sums owed to the parents of Vrege Armoyan exceeded $9.5 million, which sum is directly relevant to the valuation of Geovex.

- The request set out in para 1(f) is relevant as it relates to an amalgamation that occurred in late 2007 and was effective January 1, 2008. Anahid Armoyan was the Director and President of Anahid Investments Limited, which was a company that amalgamated with Armco Capital Inc. Armco Capital Inc. was a subsidiary of Geovex. The amalgamation took place during a time when there were serious problems in the marriage. This is relevant to the question of whether Vrege Armoyan conspired to produce a strategy to liquidate his assets and move the proceeds out of the jurisdiction.

- Paragraph 5 is relevant because it requests records relating to the mortgage on the former matrimonial home, while para 7 deals with promissory notes from Anahid Armoyan to Vrege Armoyan as stated in the statement of property. These documents are relevant to the issue surrounding the transfer of the matrimonial home by Vrege Armoyan to his mother following the parties' separation.

- Paragraph 8 requests documents about loans to/from Sami and/or Anahid Armoyan. In his statement of property, Vrege Armoyan states that he

accepted cash advances from his parents from 2006 to 2009 and that he repaid $3,750,000 to his parents in December 2009, two months after Lisa Armoyan filed the divorce petition. These documents are relevant to the issue of whether the repayments were designed to assist Vrege Armoyan in evading his financial obligations.

Position of Anahid Armoyan

[20] Anahid Armoyan objects to the production of the requested documents for a number of reasons, including the following:

- The scope of the requests are overly broad and provide little guidance as to what documentation is actually sought.
- There is no evidence to suggest that the corporate requests cannot be obtained directly from the corporate entities.
- Lisa Armoyan has not proved relevance.
- Public policy privacy considerations dictate that the motion should be refused.

Decision

[21] Lisa Armoyan has proven that the disclosure listed below is relevant from the vantage and perspective of a trial judge. Anahid Armoyan must therefore sort[1] and deliver to Lisa Armoyan, a copy of the listed documents and electronic information[2], or exactly copy[3], with the exception of documentation which is subject to privilege[4]. Anahid Armoyan must provide Lisa Armoyan with a listing of any documentation which she asserts is subject to privilege. All disclosure is subject to the implied undertaking rule. The following documents and electronic information must be produced by Anahid Armoyan:

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[1] Rule 14.02

[2] Rule 14.02

[3] Rule 14.02

[4] Rule 14.05

- All payment documents evidencing the repayment of $1,551,231 from Geovex Investments Limited which was reported "Due to Related Parties" in Note 8 to the unconsolidated financial statements of Geovex Investments Limited on October 31, 2009 and which was reported as Nil on January 31, 2010.

- CIBC records of mortgage assumption and mortgage assignment respecting 855 Marlborough Woods when Anahid Armoyan purchased the property from Vrege Armoyan in 2011.

- Promissory notes between Anahid Armoyan and Vrege Armoyan.

- Documentation re: loans between Anahid Armoyan and Vrege Armoyan between 2006 and 2009.

[22] This disclosure order is granted for the following reasons:

- In his statement of property, Vrege Armoyan indicated that he held a 50% ownership interest in Geovex and related entities and that his shares were redeemed in October 2010. According to the evidence, Geovex paid Anahid Armoyan $1,551,231 after the parties separated and before January 31, 2010. This is a substantial amount of money and is relevant to the valuation of Geovex at separation and when Vrege Armoyan redeemed his shares. Anahid Armoyan, as a recipient of this money, would have records to confirm repayment.

- There is no evidence that Anahid Armoyan is the executrix of the estate of Sami Armoyan and thus no production order will issue for information about the deceased.

- The evidence indicates that Vrege Armoyan transferred title to the former matrimonial home to his mother after separation. In his statement of property, Verge Armoyan indicates that Anahid Armoyan assumed the mortgage as part of this transfer. In addition, paras 16 and 17 of the Penney supplementary affidavit show payments which Vrege Armoyan states that Anahid Armoyan made to him for the purchase of her interest in the former matrimonial home. Vrege Armoyan did not provide a full copy of these documents which he states originated with Anahid Armoyan. A copy of the front and back of each cheque must be provided. Anahid Armoyan would

have records to confirm the matters which involve her. This disclosure is relevant because it impacts the status and value of the former matrimonial home.

- In his statement of property, Vrege Armoyan states there is an IOU with Anahid Armoyan in the outstanding amount of $1,395,000 in relation to the purchase of the former matrimonial home. Anahid Armoyan would have records to confirm this statement. This is relevant because it impacts the value of the former matrimonial home.

- The loan documentation is relevant because in his statement of property, Vrege Armoyan states a loan was owing to Sami and Anahid Armoyan in the amount of $3,852,300 as of October 19, 2009. Verge Armoyan then states that he paid $3,750,000 of this loan by December 31, 2009. Anahid Armoyan would have records to confirm the existence of the loan(s) and the payments which Vrege Armoyan states that he made. This is relevant to the value of the net assets accumulated before or during the marriage.

- Lisa Armoyan has proven that the requested disclosure is relevant to the valuation of Vrege Armoyan's property holdings and the net worth that was accumulated prior to separation. Connection and proximity weigh strongly in favour of disclosure.

- I have no evidence to suggest that the time and expense associated with the production of the information would be unreasonable, especially in light of the significance of the information to Lisa Armoyan's **MPA** claim.
- There are no less intrusive measures available to acquire the documents. Vrege Armoyan did not disclose the financial information; he abandoned the **MPA** proceeding.
- The implied undertaking rule applies to non-party disclosure. No other privacy suggestions were advanced.
- The balancing factors weigh in favor of production. Production is required to ensure that the court has the necessary facts from which to value the net property acquired before separation.
- The amalgamation documents are not subject to disclosure because there is no evidence that marital problems existed in 2007 around the time of

amalgamation. Further, such disclosure is properly sought from the corporate entities, and not Anahid Armoyan.

Conclusion

[23] Lisa Armoyan has proved that the documents and electronic information which have been ordered to be produced by Anahid Armoyan are relevant and probative. She further established that the benefit of production outweighs any harm or inconvenience to Anahid Armoyan's privacy interests based upon a proportional and contextual analysis.

[24] Counsel for Lisa Armoyan is to prepare the order and reserve the court's jurisdiction on costs. The orders are to be prepared without the use of schedules. If costs cannot be resolved by consent, submissions are to be filed by September 30, 2015.

Forgeron, J.