

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Korem v. Crown Jewel Resort Ranch Inc., 2011 NSSC 76

**Date:** 20110216

**Docket:** SYDJC339992

**Registry:** Sydney

**Between:**

Nahman Korem

Plaintiff

v.

Crown Jewel Resort Ranch, Inc.

Defendant

**Judge:**

The Honourable Justice Frank Edwards

**Heard:**

February 14, 2011 in Sydney, Nova Scotia

**Written Decision:**

February 21, 2011

**Counsel:**

Jennifer Nolan, for the Plaintiff

Christopher Conohan, for the Defendant

**By the Court (Orally)**

**INTRODUCTION:**

This is a motion by Mr. Korem for a Preservation Order pursuant to CPR 42.01.

**FACTS:**

[1] Nahman Korem and Iris Kedmi have been married for twelve years.

According to Ms. Kedmi they separated on August 17, 2010. The couple, who have one daughter, are currently going through divorce proceedings in the Family Division of this Court.

[2] Prior to 2002 the couple resided in Connecticut, U.S.A. They sold their U.S. home for approximately \$500,000.00 but, according to Mr. Korem, netted only about \$200,000.00 after the mortgage payout. The couple moved to Baddeck, Cape Breton and invested the house sale proceeds in the start-up of a business. Mr. Korem claims that since the business began, he has also advanced over \$2 million of his own money to the Company.

[3] The couple operated a resort business known as the Crown Jewel Resort Ranch Inc. (the Company) in the Baddeck area. Apparently the Company was to cater to persons wishing to enjoy the wilderness experience with farm animals and, in season, dog sledding. As of now, there are still 5 of the 11 Eskimo dogs on the premises. There are also 19 Highland cattle, nine horses, one Llama and 21 bee hives. Mr. Korem says the Company is in the hospitality business, offering both hotel and leisure activities and also operates a farm (Nov. 26 Affidavit, paragraph 5). The Company has never made a profit.

[4] For business reasons, Mr. Korem had the Company incorporated to operate the family business. Iris Kedmi is the Director and sole shareholder of the Company. The Company leases the land on which it operates from I.N.K. Real Estate Inc. (INK). Mr. Korem is the Director and sole shareholder of INK. (INK is derived from the initials of Iris, Nahman and their respective surnames). Despite the presence of distinct corporate entities, I am satisfied that this was and is a family enterprise. To what extent the assets of the corporate entities are matrimonial property, I will leave to future determination. I note that the matrimonial home, presently occupied by Ms. Kedmi and their daughter, is on INK

land. Mr. Korem apparently now resides in one of the rental rooms also on the property.

[5] There is a third corporate entity on the property, namely Crown Jewel Aviation Ltd. (Aviation Co.). The Aviation Co. is apparently owned by Mr. Korem and Gregor Allison. Mr. Korem leases an aircraft he owns to the Company. Ms. Kedmi claims to be a joint owner of the Aviation Co. (Affidavit, Paragraph 8).

[6] It is clear that Mr. Korem has looked after the business aspects of the entire enterprise. Ms. Kedmi has been responsible for housekeeping and cooking for the guests. Following their separation in August, 2010, Mr. Korem, at the time, the President of the Company, fired Ms. Kedmi as chef. He then took steps to exclude her from most of the company records and assets. He also hired two employees, one of whom Ms. Kedmi suspects is Mr. Korem's lover.

[7] On November 17, 2010, Ms. Kedmi delivered a Shareholder's Resolution to Mr. Korem directing him to terminate the two employees, to evict the Aviation Company, and to clear any future business dealings for the Company with her. Mr.

Korem responded on November 24, 2010 by starting an action in the General Division, NSSC to recover his alleged \$2 million loan to the Company.

[8] Ms. Kedmi then passed another Shareholder's Resolution on November 29, 2010. This time she terminated Mr. Korem as President of the Company. She also terminated the two employees.

[9] Mr. Korem responded on November 30, 2010 by having INK give notice to the Company terminating its lease and demanding that the Company vacate the premises. Then, on December 2, 2010, Mr. Korem brought a motion to obtain an Interim Preservation Order. He did this because he stated that Ms. Kedmi had removed company assets without his permission. He contends that she will continue to do so and therefore, negatively affect the Company business.

[10] This Court issued a temporary Preservation Order on December 6, 2010 which was extended until the motion could be heard on February 14, 2011. On December 9, 2010, SPCA investigators and the RCMP attended the property to remove some dogs about which the SPCA was concerned. Mr. Korem showed the RCMP the Preservation Order. The SPCA interpreted the Order to mean that they

could not take the dogs. I want to make it clear that in future, unless there is a specific Court Order to the contrary, the SPCA (or the relevant government department) should not feel in any way inhibited in exercising their mandate re the animals. The welfare of the animals trumps the domestic or business interests of the parties to this litigation.

**Law And Analysis:** This Motion is made pursuant to CPR 42.01. The Rule states:

42.01 (1) A party to a proceeding may make a motion for an order preserving any of the following, in accordance with this Rule:

- (a) Evidence that is relevant to an issue in the proceeding;
- (b) Property claimed in the proceeding;
- (c) Assets that would be available to satisfy a judgment claimed in the proceeding.

(2) A similar motion may be made to a prothonotary in limited circumstances under Rule 43 - Temporary Recovery Order, and Rule 44 - Attachment.

[11] Mr. Korem says that the Company now has less than \$1 million in assets, which is insufficient to cover the total debt owing.

[12] In *RJR-MacDonald Inc. v. Canada (Attorney General)*(1994), 111 D.L.R. (4<sup>th</sup>) 385 (hereinafter referred to as “*RJR MacDonald*”), and was summarized by the Supreme Court of Canada follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm.

### **1. Is There A Serious Question to be Tried?**

[13] No. This action for debt is a strategic manoeuvre by Mr. Korem to counter the actions taken by his wife. This is a matrimonial dispute which should be litigated in the Family Division. This action is artificial. There is no document or paper trail of any kind outlining the alleged debt. The note on p.3 of the Grant Thornton December 31, 2008 financial statement "Loan from Director, \$2,006,628.00" is ambiguous and certainly is not capable of proving the alleged loan. I believe Ms. Kedmi when she says that she and Mr. Korem never had any discussion about any loan. The timing of the recall of the loan could not be more suspicious.

[14] This is a frivolous and vexatious motion. As I have noted, all of these matters should be litigated in the Family Division. The "serious issue" to be tried is the calculation and apportionment of matrimonial assets. According to Counsel,

the action was started in the General Division because of Counsel's perception that it would be faster to do it that way. With respect, I doubt that that is the case. In any event, this is not the appropriate forum.

**2. Would Mr. Korem Suffer Irreparable Harm if the Motion is Refused?**

[15] No. I do not believe that Ms. Kedmi is attempting to disrupt the business of the Company. Nor do I believe that she is destroying assets of the Company.

[16] In the first place, the business of this Company has been at a virtual standstill at least since the couple separated in August 2010. As noted, the Company has never made a profit even when Mr. Korem had unfettered control over its direction. I am satisfied that the Company does not have a chance of resuming normal operation until this couple get their matrimonial issues resolved. In short, for all practical purposes, there is not now, nor will there be for the foreseeable future, much of a business to disrupt.

[17] Secondly, I do not believe that Ms. Kedmi will destroy assets. She has a vested interest in maintaining the business and its assets in the best condition



possible. If I am wrong and she does commit waste, then Mr. Korem can be compensated from her share of the matrimonial property after that share is finally determined.

[18] Finally, the assets are subject to an encumbrance in the form of a 2005 Security Agreement with the Cape Breton Development Corporation Development Growth Fund Corporation. Clause 9.2 of that Agreement prevents the sale of assets by the Company “except in the ordinary course of its business or for the purposes of carrying on its business”. In the face of that Agreement, Ms. Kedmi’s ability to sell off assets is significantly eliminated.

[19] In view of the above, I need not consider the so-called “balance of convenience” test. I will not be granting a Preservation Order. However, I am prepared to order that Ms. Kedmi permit Mr. Korem to take the records relating to the Aviation Company and store them in one of the rooms, other than the one in which he now resides. I recognize that she claims that she is also part owner of the Aviation Co. and I therefore make this order without prejudice to her claim.

[20] Further, as the sole owner of Crown Jewel Ranch Resort Ltd., (pending determination in the Family Division) Ms. Kedmi is entitled to have interim possession of all the keys, financial records and documents, computer passwords and other proprietary information and property owned by the Company. She cannot preserve the Company otherwise and, as of his termination, he has no legal standing in the Company. I am therefore ordering Mr. Korem to provide same to her no later than Monday, February 21, 2011. He may retain the keys to the room where he resides and the key to the room designated for storage of the Aviation Company records. He may have the locks changed on those two rooms and he may also continue to use the Company vehicle he has been using. (provided he provides written proof of \$2 million of automobile liability insurance).

[21] Ms. Kedmi shall have her costs for this motion in the amount of \$1500.00, plus reasonable disbursements, payable forthwith. If Counsel cannot agree on disbursements, I will tax same upon receipt of brief memos from Counsel.

Order Accordingly

J.

**Sydney, Nova Scotia**