

CITATION: Bolster v. Star, 2012 ONSC 2278

DATE: 20120416

DOCKET: FS-11-17625

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Beverley A. Bolster, Applicant

AND:

William G. Star, Respondent

AND

Elizabeth Star

BEFORE: Czutrin J.

COUNSEL: *Douglas J. Spiller*, for the Applicant

David Jarvis, for the Respondent

Paul McInnis for Respondent, Elizabeth Star

HEARD: February 6, 2012

ENDORSEMENT

[1] William Star, Respondent and the former husband of the Applicant, Beverley Bolster, and the current husband of a named Respondent, Elizabeth Star, move for Summary Judgment to dismiss this new Application brought by the Applicant on September 22, 2011.

[2] In the Application Ms. Bolster seeks the following relief:

1. An order declaring that the respondent Elizabeth Star holds her interest in 1735 Fifeshire Court, Mississauga in trust for the Respondent William G. Star.
2. An order tracing the proceeds of sale of this property and declaring that that all assets acquired are held in trust for William Star and secured for the payment of spousal support;
3. An order declaring that the conveyance and transfer of this property by William Star in favour of Elizabeth Star was made with the intent to defeat ...the applicant creditor Beverley Bolster and accordingly the conveyance is void against Beverley Bolster pursuant to the *Fraudulent Conveyances Act* (RSO 1990, c. F.29);
4. An order declaring that the respondent Elizabeth Star holds her shares in Trillium Insurance Group Inc. and other companies, in trust for the respondent William Star;
5. An order that the conveyance or transfer of the shares by William Star was made contrary to the *Fraudulent Conveyances Act*.

[3] The claims go on to total 17 specific claims with the same purpose to allow Ms. Bolster to enforce any continuing obligation of support that Mr. Star may have to the Applicant against his wife Elizabeth Star by looking to her assets and income depending on the outcome of the motion to change commenced by William Star now scheduled for a trial commencing June 11, 2012.

[4] The Applicant claims that William Star's failure to pay spousal support in an amount indexed as required by the consent judgment of June 16, 1999 is the underlying basis for her claims against Respondent, Elizabeth Star. The June 16, 1999 judgment required Mr. Star to pay a monthly support payment of \$12,000 per month indexed to the cost of living. In addition

Mr. Star was ordered to maintain medical and dental coverage at the level existing January 29, 1998 and to maintain a life insurance policy in the amount of \$500,000 to secure payment of support. The Applicant now seeks relief against Elizabeth Star on the theory that since William Star was in arrears, any transfers of or property by him to Elizabeth Star was intended to defeat her claims and recovery of the existing arrears.

[5] While Mr. Star maintained his support payments, he failed to index the support and this he continued to pay only the \$12,000 per month support as ordered. Until 2010 no steps were taken by either Ms. Bolster or Mr. Star to enforce the indexing of payments or to seek compliance with the medical benefit or life insurance requirement.

[6] Mr. Star commenced by way of motion to change a request to terminate or reduce his spousal support obligations and to rescind retroactively the indexing requirement.

[7] The current claims are based on the fact that Mr. Star was, as of March 2011, in arrears of support in the amount of \$256,426.64 for failure to pay the indexing portion of his support.

[8] I have dealt with the motion to change on a number of occasions and ordered disclosure and questioning.

[9] On June 28, 2011, the 'proposed added party, Ms. Elizabeth Star, retained counsel, Mr. McInnis, (who joined in this motion now before me for Summary Judgment to dismiss the new action against his client), and he sought an adjournment.

[10] I granted Ms. Star's adjournment request and then endorsed:

There remain two motions:

1. The Respondent Ms. Bolster's request that the motion to change ...be stayed pending payment of arrears and satisfying his health benefit and life insurance obligations ...
2. The Applicant's request to temporarily vary the support and other obligations..."

[11] I provided some background of the parties' marriage of Ms. Bolster and Mr. Star. I noted that with the indexing Mr. Star's support obligation was \$15,008.73 and that the arrears at that time were \$226, 144.65.

[12] The insurance and medical coverage ended. The medical coverage soon after the 1999 order and the life insurance ended in April 2011.

[13] Ms. Bolster, in September 2010, sought payment of the indexed support not paid, medical coverage and proof of life insurance. Ms. Bolster's requests appeared to have triggered Mr. Star's motion to change his support, medical and other insurance obligations and to rescind the arrears that he commenced in October 2010.

[14] In support of his motion to change, Mr. Star claimed that he never saw the Final Order arising from the consent judgment of June 16, 1999, the medical coverage lapsed in 2008 and is no longer available or needed and he thought his obligation was tied to his Kingsway employer, and finally the life insurance lapsed in April 2011 when Kingsway stopped coverage that they were paying.

[15] The June 16, 1999 order for support was based on Mr. Star's income of \$585,000.

[16] I endorsed that it was complicated to understand a comparison of Mr. Star's current income to his income at the time of the order sought to be changed.

[17] I stated that in order for Mr. Star to succeed in changing the order, he will need to satisfy the court that there has been a material change as contemplated by s. 17 of the *Divorce Act*, in the condition, means, needs or other circumstances of either former spouse since the making of the spousal support and that if a variation is ordered, the judge is to take that change into consideration.

[18] Apparently there was an earlier motion to change brought by Mr. Star, dismissed by Mesbur J. in 2000, but again Mr. Star claimed that he was not aware of this.

[19] Previously I endorsed that it is "impossible to sort out the merits of the parties' position absent a hearing and a proper income analysis of Mr. Star.

[20] To date, I have not been advised that Mr. Star has retained an expert to provide such analysis. So far, Ms. Bolster has retained an expert who has reviewed the disclosure and continues to ask for more disclosure and raise questions.

[21] On the material presented by Mr. Star, I observed that he had the ability to maintain life and medical insurance and to pay the indexed support. Until the year 2008 his income was significantly higher than the \$585,000 income in 1999. His 2008 income was 4.9 million dollars and in that year he received a significant severance package.

[22] Rather than invest his significant earnings well in excess of 1 million dollars from 2005 through 2008, he invested them in new ventures with his wife Elizabeth Star.

[23] Had he not made the investments, it appeared to me that he would have been in a position to pay the arrears and the discussion may have been on about his net worth and the income that could have been achieved from his investments, rather than his new business ventures.

[24] I encouraged completion of the experts' work and disclosure followed by a hearing if no settlement could be reached.

[25] I ordered Mr. Star to pay the indexed support and made no further adjustment and did not stay the motion to change.

[26] Rather than conclude the motion to change by Ms. Bolster, or retain an expert by Mr. Star, Ms. Bolster started this new action and Mr. Star and Mrs. Star now seek to dismiss this action by way of Summary Judgment. While the motion to change is clearly governed by the Family Law Rules, the new action is in my view intended to enforce a family law judgment that is now the subject of a pending motion to change, and is arguably governed by the Rules of Civil Procedure. As I have determined that the new action is to be stayed as premature, I will leave the discussion of what Rule applies for a later date if necessary.

[27] While I understand the desire on the part of Ms. Bolster to understand where Mr. Star's significant income went and her desire to seek relief against Ms. Star and to question her, I

find that the action, if appropriate, is premature and should be stayed pending the hearing of the motion to change brought by Mr. Star.

[28] The onus is on Mr. Star to satisfy the court that he is entitled to a change of the consent judgment of June 16, 1999 and he will need to explain to the court what he did with his significant income and why, given his age, he chose to invest as he did.

[29] It may be that if the court finds that he diverted assets, or that he could have maintained payments or satisfied the other obligations he had, and he is no longer able to do so, then an action for enforcement might be appropriate.

[30] Ms. Bolster seeks to question Ms. Star and to compel her to file a Financial Statement. Ms. provided an unsworn net worth statement and tax returns. The Applicant also asks that Mr. Star provide his marriage contract as referred to in his Answer.

[31] I order Mr. Star to deliver and produce the Marriage Contract and all attachments.

[32] Ms. Star may be questioned at the hearing for the motion to change and at the now scheduled conference before Mesbur J. on May 7, 2012. Her Honour may give further directions on the conduct of the hearing.

[33] It is now time to complete motion to change.

[34] Depending on the outcome of the hearing, the judge hearing Mr. Star's motion to change may consider what to do with the stay of this action and the request to strike certain paragraphs as disclosing no cause of action.

[35] Costs of this motion to be decided on the viva voce hearing of the trial of the issue of whether Mr. Star is entitled to a variation of the consent judgment of June 16, 1999.

Czutrin J.

Released: April 16, 2012