

Court of King's Bench of Alberta

Citation: Stepmar Holdings Ltd v Aydin, 2024 ABKB 247

Date: 20240429

Docket: 2303 04688, 2301 14294

Registry: Edmonton, Calgary

Between:

Docket: 2303 04688

Registry: Edmonton

Stepmar Holdings Ltd. and 1990208 Alberta Ltd.

Applicants

- and -

Ebru Aydin

Respondent

and

Docket: 2301 14294

Registry: Calgary

Marco DeGregorio and Stephanie DeGregorio

Applicants

- and -

Ebru Aydin, Pino DeGregorio, Gino DeGregorio and Stepmar Holdings Ltd.

Respondents

**Reasons for Decision
of the
Honourable Justice G.S. Dunlop**

1. Introduction

[1] Stepmar Holdings Ltd. and 1990208 Alberta Ltd. apply for removal of a certificate of *lis pendens* registered against four parcels of land. Marco DeGregorio and Stephanie DeGregorio apply for declarations that Pino Degregorio holds 20% of the shares of Stepmar Holdings and 1990208 Alberta in trust for Marco and Stephanie. The two applications were brought by originating applications filed on March 15, 2023 and October 30, 2023. Both were heard by me in a half-day special chambers hearing on February 8, 2024.

2. Names

[2] These actions involve five individuals and five corporations, specifically:

- two brothers, **Pino** and **Gino** DeGregorio;
- Gino’s adult children, **Marco** and **Stephanie** DeGregorio;
- Pino’s estranged wife, **Ebru** Aydin;
- **Stepmar Holdings** Ltd., whose directors were Pino and Gino DeGregorio until recently (Pino resigned on July 23, 2023) and whose shareholders are Pino’s and Gino’s holding companies, **Pino Holdings** Ltd. and **Aiello Holdings** & Properties Ltd.;
- **1990208** Alberta Ltd., whose shareholders are Pino Holdings, Aiello Holdings, Marco DeGregorio and Stephanie DeGregorio; and
- **G&M** Stone Masonry **1993** Ltd., whose shareholders are Pino and Gino.

[3] In these reasons I will refer to each of the individuals by their first names: Pino, Gino, Marco, Stephanie and Ebru. I will refer to the corporations as Stepmar Holdings, Pino Holdings, Aiello Holdings, 199 and G&M 1993.

[4] Confusingly, Stepmar Holdings and 199 use inconsistent names for two of the four parcels of land relevant to these actions, reversing the parcels referred to as “Parcel One” and “Parcel Two” between their Originating Application and Gino’s affidavit, both filed on March 15, 2023. In these reasons, I adopt the names used in the Originating Application, as follows:

Parcel One

Plan 7823404, Block F, Lot 2A
12535 – 133 Street NW, Edmonton

Parcel Two

Plan 782304, Block F, Lot 3A
12545 – 133 Street, NW, Edmonton

Parcel Three

Plan 507NY, Block F, Lot 1
13230 Yellowhead Trail NW, Edmonton

Parcel Four

Plan 6466MC, Block 18B
52 Airport Road NW, Edmonton

3. Evidence

[5] At the beginning of the hearing on February 8, 2024 I sought submissions regarding the admissibility of four categories of evidence:

- Pino’s affidavit filed on February 22, 2023 in a separate action, the divorce and family property action between Pino and Ebru, which was included in a compendium of evidence filed by Stephanie and Marco on January 19, 2024;
- transcripts of questioning of Gino and Ebru on affidavits and undertakings, filed January 29, 2024, which was after the deadline for filing materials pursuant to a consent order filed October 6, 2023;
- affidavits filed by Marco and Stephanie on January 31, 2024, also after the deadline in the October 6, 2023 consent order; and
- documents attached to the briefs filed by Stepmar Holdings and 199 and by Ebru.

[6] Each of the parties either agreed that those things were admissible, or did not oppose their admission into evidence. On that basis, I admitted all of that evidence. I note that only the body of Pino’s February 22, 2023 affidavit is before me, not the exhibits, and that there is no transcript of any questioning of Pino on that affidavit before me.

[7] According to the recitals in the December 1, 2023 consent order setting these two actions for hearing together on February 8, 2024, the two actions “rely on the same facts and evidence”. Based on that statement and the reference in each party’s argument to evidence in both actions, I conclude that the parties have agreed that all of the evidence on one action is also evidence in the other action.

[8] The evidence before me is:

Action 2303 04688 Stepmar Holdings and 199 v Ebru

Gino affidavit including exhibits filed March 16, 2023

Gino affidavit including exhibits filed September 8, 2023

Ebru affidavit including exhibits filed October 27, 2023

Gino questioning on affidavit July 20, 2023 filed January 29, 2024

Gino questioning on undertakings January 11, 2024 filed January 29, 2024

Ebru questioning on affidavit November 14, 2023 filed January 29, 2024

some exhibits and undertaking responses from Gino’s and Ebru’s questioning attached to briefs filed by Stepmar Holdings and 199 and by Ebru

Action 2301 14294 Marco and Stephanie v Ebru, Pino, Gino and Stepmar Holdings

legal assistant Nicole Angus affidavit filed October 30, 2023

Stephanie affidavit filed January 31, 2024

Marco affidavit filed January 31, 2024

Action 4803 187888 Ebru v Pino

Pino affidavit filed February 22, 2023, without exhibits

4. Chronology

4.1. Before Ebru and Pino Were Married

[9] Stepmar Holdings was incorporated on January 23, 1987. At that time its name was G&M Stone Masonry Ltd. Initially the sole director and shareholder was Pino. On October 28, 1988 Pino resigned as a director and transferred all of his shares to Gino. At that point the entire share capital of Stepmar Holdings was 100 Class A shares held by Gino.

[10] On February 10, 1990 Stepmar Holdings (at the time its name was G&M Stone Masonry Ltd.) purchased an office building in Edmonton, Parcel Two.

[11] In March 1993 Gino changed the corporation's name from G&M Stone Masonry Ltd. to Stepmar Holdings Ltd. At about the same time a pre-existing numbered company was renamed G&M Stone Masonry 1993 Ltd. and Pino became a 50% shareholder and a director of that company, G&M 1993.

[12] Gino's affidavit reads as follows at paragraph 10:

Shortly after Stepmar was formed, Pino indicated that he would be interested in acquiring an equity interest in the company. After some discussion, and in order to assist my brother, I agreed to sell Pino 30% of the Stepmar shares for \$300,000, payable by way of a demand promissory note.

[13] In response to an undertaking to provide documentation supporting that statement, Gino provided a typed document entitled "Share Purchase Option" dated March 30, 1993 and a handwritten document entitled "Promissory Note" dated January 13, 1993.

[14] There is an obvious discrepancy between the purported date of the document titled "Promissory Note" and the balance of the evidence, including Gino's affidavit. At the bottom of the "Promissory Note" there is a reference to three properties that Stepmar Holdings has purchased, being Parcels One, Two and Three. However, Parcels One and Three were not purchased by Stepmar Holdings until December 4, 1995, as set out in paragraph 20 of Gino's affidavit, nearly 3 years after the purported date of the "Promissory Note".

[15] In addition to the discrepancy in the date, the "Promissory Note" is not a promissory note because it does not contain a promise to pay. At best it sets out in the top half of the single page document a promise by Gino to sell to Pino 30% of Stepmar Holdings for \$300,000 and 45% of G&M 1993 for \$80,000 with the payment of the purchase price to be agreed upon. In the bottom half of the document, Gino promises to transfer 50% of Stepmar Holdings to Pino on condition Pino hold 20% for Gino's two children, with the proviso that "my children will be transferred their 10% each only on the following (3) three property addresses that Stepmar Holding Ltd have purchased." After that the municipal addresses of Parcels One, Two and Three are listed. In this document, Gino's daughter's name is spelled "Stefanie", but in all the documents filed in this action, including her affidavit, her name is spelled "Stephanie".

[16] Gino was asked about the “Promissory Note” in questioning on his undertakings. He admitted that he signed it, but he did not recall who wrote it or the circumstances in which it was signed. He testified that he did not receive \$300,000 from Pino. Gino could not recall whether he gave the “Promissory Note” to his accountants and lawyers in 1993.

[17] The only evidence of the date of the “Promissory Note” is the date on its face, January 13, 1993, which appears to be incorrect, given the reference to Parcels One and Three at the bottom of the document. The absence of a date for the “Promissory Note” is significant because it is the only document in evidence that refers to a trust for Marco and Stephanie.

[18] The “Share Purchase Option” is an agreement between Pino and Stepmar Holdings in which Stepmar Holdings grants Pino an option to purchase 50% of the shares in Stepmar Holdings for \$1 per share, on condition that Pino have been employed by Stepmar Holdings for an uninterrupted period of 10 years. The “Share Purchase Option” provides that Pino commenced employment on January 1, 1986, so the option would not be available until January 1, 1996. The termination date of the option was December 31, 1997. The “Share Purchase Option” makes no reference to shares being held in trust and no reference to Marco or Stephanie.

[19] Pino’s affidavit reads as follows at paragraph 4:

We also had a related business, Stepmar Holdings Ltd. incorporated in 1987. The name references Gino’s two children, Stephanie and Marco. It functions as a holding company of multiple assets, including a couple of buildings. My brother Gino and I signed a trust and transfer agreement making his two children 20% shareholders in 1994. Attached as **Exhibit ‘B’** is the said agreement. Attached as Exhibit ‘C’ is the corporate search. It shows the trust and transfer agreement was never submitted by the corporate solicitor such that the annual returns continue to show me and Gino as 50% shareholders.

(underlining added)

[20] Exhibit B to Pino’s affidavit is not before me. None of the exhibits to that affidavit are. There is no document entitled “trust and transfer agreement” before me and no documents dated 1994. Gino makes no reference to such an agreement in his affidavit. He was not asked about it in questioning. Stephanie and Marco’s lawyer’s letter dated August 3, 2023 to lawyers for the other parties makes no reference to a 1994 agreement, instead asserting that a trust was created on or about April 4, 1997. Similarly, Stephanie and Marco’s originating application filed October 30, 2023 alleges a trust created on or about April 4, 1997, and makes no reference to a trust and transfer agreement in 1994. In these circumstances I give no weight to Pino’s evidence that he and Gino created a trust for Stephanie and Marco by written agreement in 1994.

[21] On December 4, 1995 Stepmar Holdings purchased a building and lot adjacent to Parcel Two: Parcels One and Three.

[22] On April 4, 1997 Stepmar Holdings issued 100 class A shares to Pino. The share capital thus grew to 200 Class A shares, 100 shares held by Pino and 100 shares held by Gino. According to the documents in the Stepmar Holdings minute book, Pino paid Stepmar Holdings \$100 for his 100 Class A shares.

[23] By trust declaration dated April 4, 1997 Pino agreed to hold 40 of the Stepmar Holdings shares in trust for Gino. The affidavits of execution of the trust declaration are dated September 29, 1997. According to Gino, he and Pino agreed that Pino would hold a 30% interest in Stepmar

Holdings personally and that the other 20% interest would be held for Gino's children. However, the trust declaration says the beneficiary of the trust is Gino and makes no reference to Marco or Stephanie. The trust declaration requires Pino to transfer the 40 shares subject to the trust to whomever Gino directs, immediately upon request and requires Pino to use any income or capital from the trust shares as directed by Gino. There is no evidence of Gino ever directing Pino to transfer the 40 shares or use any income on those shares.

[24] In March 1999 the lawyer and the accountant for Stepmar Holdings exchanged letters including the following:

March 11, 1999 lawyer to accountant

The 40 shares which Pino holds in trust for Gino are part of the 100 shares issued to Pino under the terms of the Option Agreement. In other words, Pino exercised his option to purchase 100 shares but 40 of those 100 shares he purchased as trustee for Gino.

March 17, 1999 accountant to lawyer

Further to your letter of March 11, 1999, I understand that Pino Degregorio acquired 40 shares from Stepmar Holdings Ltd. in trust for Gino Degregorio.

An important technical matter is of concern to me. The share purchase agreement refers only to Pino and not to Gino. I recognize that Pino was entitled to acquire shares under the terms of the agreement, but I am not certain that the agreement can reasonably be interpreted to include shares acquired for other persons, be it in trust or by any other means.

The risk is that Revenue Canada may conclude that Pino acquired shares in trust for Gino, but the acquisition is not subject to the terms of a share purchase agreement. If so, then a benefit equal to the difference between the fair market value of the shares acquired and the cost of the shares must be included in Gino's income in the year the transaction was effective.

(underlining added)

[25] The March 1999 letters between the lawyer and the accountant refer to Pino holding shares in trust for Gino. They make no reference to Stephanie or Marco. This is inconsistent with Gino's testimony in his questioning on July 20, 2023 that he told his accountant that Pino held shares in trust for Gino's children and that the accountant knew that "from day one".

[26] According to the Share Certificate from Stepmar Holdings' minute book, on February 7, 2001, Pino and Gino's share certificates for Class A shares were cancelled and replaced with share certificates for 100 Class A shares held by Gino and 100 Class B shares held by Pino.

[27] On December 19, 2001 Stepmar Holdings acquired a building in Edmonton: Parcel Four.

[28] A change of director document from the Stepmar Holdings' minute book indicates that Pino became a director on January 28, 2004. He had previously been a director from January 23, 1987 to October 28, 1988.

[29] On July 4, 2005 Pino and Ebru entered into a Pre-Nuptial Agreement, which limited each party's rights to the other party's property upon divorce or separation. The agreement had a clause that the limitations on property division did not apply if the Pino and Ebru remained

together for at least ten years, which they did. However, it is noteworthy that the Pre-Nuptial agreement describes 100 class “B” voting shares in Stepmar Holdings as Pino’s property. If Pino held any of those shares in trust, they would not be his property.

4.2. After Ebru and Pino Were Married

[30] On July 28, 2005 Ebru and Pino were married.

[31] On January 16, 2007 Gino and Pino executed an incumbency certificate directed to the Bank of Montreal and to Stepmar Holdings’ lawyer indicating that Gino held 100 Class A voting shares and Pino held 100 Class B voting shares. The certificate makes no reference to shares being held in trust and no reference to Marco or Stephanie.

[32] Between 2009 and 2015 Stepmar Holdings declared dividends to Gino and Pino as follows:

November 30, 2009	\$60,000 to Gino and \$40,000 to Pino
November 30, 2011	\$45,0000 each to Gino and Pino
November 30, 2014	\$5,000 each to Gino and Pino
October 30, 2015	\$50,000 each to Gino and Pino
November 30, 2015	\$269,007 each to Gino and Pino

[33] Gino was questioned about these dividends and was unable to say whether any portion of them was paid to Stephanie or Marco. Stephanie and Marco, in their affidavits filed January 30, 2024, imply that they did not receive any dividends, as each provide the following evidence:

If there have been dividends paid from any of Stepmar Holdings Ltd, 1990208 Alberta Ltd., G&M Stone & Masonry (1993) Ltd I understand that such payments would have been made to Pino or Gino DeGregorio, not me. My [sibling] and I do not hold the shares of any of those companies in our names (rather, as set out by Gino and Pino DeGregorio in their affidavits, I understand they are held in trust for me) so I do not understand how I could have received a dividend.

[34] The evidence of Stefanie and Marco that they do not hold shares in 199 in their own names is clearly incorrect and frankly baffling given their reliance in their originating application filed on October 30, 2023 on Gino’s affidavit filed on March 16, 2023 which attaches as part of Exhibit E share certificates in their names.

[35] Gino undertook to advise whether the children’s beneficial interest was ever referred to in documents or records filed with the CRA. His answer was: “Not to our present knowledge. If any further records are located, they will be produced prior to the hearing of this application.”

[36] On August 30, 2016, 199 was incorporated with Pino and Gino as directors and Pino Holdings and Aiello Holdings each holding 50% of the shares as of August 31, 2016.

[37] On September 5, 2016 Stepmar Holdings agreed to transfer certain land to 199. According to Gino’s affidavit, Parcels One, Two and Three were transferred to 199 in 2016, but the certificates of title indicate the following transfer dates:

Parcel One	November 4, 2021
Parcel Two	May 23, 2018

Parcel Three November 4, 2021

[38] According to Gino he created 199 and transferred property from Stepmar Holdings based on accounting and tax advice.

[39] Parcel Four was not transferred. Consequently, Parcels One, Two and Three are owned by 199 and Parcel Four remains owned by Stepmar Holdings.

[40] At about the same time as Stepmar Holdings agreed to transfer land to 199, the shareholdings in Stepmar Holdings changed resulting in Aiello Holdings owning 34 Class A shares and Pino Holdings owning 34 Class B shares. While 199 owned either 34 or 66 Class A and Class B shares in Stepmar Holdings at some point, those shares were cancelled as part of the land transfer. Consequently, from September 2016 to the present the share capital of Stepmar Holdings consists of 34 Class A shares owned by Aiello Holdings and 34 Class B shares owned by Pino Holdings. Pino does not own any shares in Stepmar Holdings directly; rather, his holding company, Pino Holdings owns those shares.

[41] Pino Holdings is not a party to either action before me.

[42] While 199 is an applicant in action 2303 04688 seeking removal of certificates of *lis pendens* against land, 199 is not a party to Marco's and Stephanie's action seeking a declaration.

4.3. After Ebru and Pino Separated

[43] Ebru and Pino separated on February 1, 2019. According to Ebru, there were strains in their relationship going back at least two years before that. The breakdown in their relationship created a potential for a family property claim between them.

[44] On an unspecified date in March 2019 Pino signed a document entitled "Letter of Intent". It is addressed to Marco and Stephanie. While the copy in evidence is not entirely clear, it appears that Pino signed on his own behalf and on behalf of Pino Holdings. In that document 199 is defined as "PropCo". The recitals included the following:

It has long been the intention of Gino and Pino that Pino should have a thirty (30%) percent interest in PropCo rather than a fifty (50%) interest, and that Marco and Stefanie should have a twenty (20%) interest in PropCo, divided between Marco and Stefanie on an equal basis.

(underlining added)

[45] I note that the letter of intent refers to an intention regarding a future state of affairs and does not refer to an existing trust. After the recitals, the letter of intent states that Pino Holdings will transfer 20% of the shares in 199, being 46.4 Class B Common Shares, to Marco and Stephanie.

[46] On May 1, 2019 Pino signed a document entitled "Deed of Gift". He signed it on behalf of Pino Holdings. The Deed of Gift describes 199 as being owned by Pino Holdings and Aiello Holdings. Like the Letter of Intent, the Deed of Gift describes a transaction changing the ownership of 199, and is silent regarding an existing trust. It names Pino Holdings as the "Donor" and Marco and Stephanie (spelled "Stefanie") as the "Donees". It states that the consideration for Pino Holdings transferring 46.4 Class B shares to Stephanie and Marco is "the natural love and affection of Pino for the Donees". It includes the following provision:

The Donor shall report the transfer of the Class B Shares to the Donees at fair value on its 2019 Income Tax return. The Donor declares the fair value of the Class B Shares to be Four Hundred Fifty Seven Thousand Five Hundred (\$457,500.00) Dollars. The Donor shall be solely responsible for the payment of all Tax related to the disposition of the Class B Shares. The Donor indemnifies and saves harmless the Donees against any claims with respect to such Tax.

[47] On May 1, 2019 Pino Holdings transferred 23.2 shares in 199 to each of Marco and Stephanie. As there are 232 shares in 199, Stephanie and Marco each own 10% of 199. Pino Holdings owns 69.6 shares, or 30%, and Aiello Holdings owns 116 shares, or 50%.

[48] On June 24, 2019, Ebru filed a Statement of Claim for Divorce and Division of Matrimonial Property which does not refer specifically to any parcels of land. According to Ebru the majority of her family property claim relates to Pino's interests in Stepmar Holdings and 199.

[49] On May 7, 2020 Ebru filed a certificate of *lis pendens* against Parcels One, Two, Three and Four (as well as another parcel which is not the subject of these applications). The certificate of *lis pendens* asserts:

that proceedings have been taken in the Court of Queen's Bench of Alberta, Judicial Centre of Edmonton, Action No 4803 187888 under the *Matrimonial Property Act* in which the Plaintiff, EBRU AYDIN, claims an interest in the following lands:

[50] On December 10, 2020 Ebru obtained an order in the matrimonial proceedings granting various interim relief, including a prohibition on Pino disposing of any assets or doing anything to encumber or reduce the value of any assets.

[51] On July 23, 2023 Pino resigned as a director of Stepmar Holdings and 199.

5. Trust

[52] For the reasons set out in paragraph [20] above, I give no weight to Pino's affidavit evidence that he and Gino signed a trust agreement for the benefit of Stephanie and Marco in 1994. That leaves the following evidence that Gino and Pino created a trust over 20% of the Stepmar Holdings shares for the benefit of Stephanie and Marco:

- the handwritten "Promissory Note" bearing the incorrect date of January 13, 1993 which describes a trust over 20% of the Stepmar Holdings shares, but limited to Parcels One, Two and Three; and
- Gino's affidavit evidence that on April 7, 1997 he and Pino had an understanding that Pino would hold a 30% equity interest in Stepmar Holdings for himself, and a 20% beneficial interest in trust for Gino's children.

[53] In oral argument Stephanie and Marco submitted that the fact that Gino and Pino either support or do not oppose their application for a declaration supports the conclusion that a trust in their favour was created. I do not agree. A position taken on an application is not evidence. Furthermore, given Ebru's family property claim, Gino and Pino have a motive for wanting a declaration that effectively removes assets from family property subject to division.

[54] On the other hand, the following evidence supports the conclusion that no trust was created over some of the Stepmar Holdings shares for the benefit of Marco and Stephanie:

- the absence of any reference to a trust or to Marco and Stephanie in the March 30, 1993 Share Purchase Option;
- the fact that Gino is the beneficiary of the trust over 20% of Stepmar Holdings' shares in the April 4, 1997 Declaration of Trust, which makes no reference to Stephanie or Marco;
- the fact that letters between Stepmar Holdings' lawyer and accountant in March 1999 refer to Pino holding shares in trust for Gino, and make no reference to Stephanie or Marco;
- the July 4, 2004 Pre-Nuptial Agreement between Pino and Ebru which describes Pino's 100 Class B shares in Stepmar Holdings as Pino's property, with no reference to some being held in trust and no reference to Stephanie or Marco;
- the January 16, 2007 incumbency certificate which states that Pino held 100 Class B shares in Stepmar Holdings, with no reference to some being held in trust and no reference to Stephanie or Marco;
- the declaration of dividends to Pino between 2009 and 2015 corresponding to 100 Class B shares, and no payment to Stephanie or Marco;
- Gino is not aware of any disclosure to CRA of a trust for the benefit of Stephanie and Marco;
- the March 2019 Letter of Intent describes an intention by Gino and Pino that Marco and Stephanie "should have" a 20% interest in 199, which at that point held title to Parcels One, Two and Three, with no reference Stephanie and Marco holding an existing interest in 199 or those Parcels;
- the May 1, 2019 Deed of Gift states that 199 is owned by Pino Holdings and Aiello Holdings and that Pino Holdings is giving 46.4 Class B shares in 199 for "natural love and affection" with no reference to a trust by Pino for Stephanie and Marco's benefit.

[55] In oral argument Stephanie and Marco submitted that the reference to "successors in title" in the April 4, 1997 Declaration of Trust was a reference to Stephanie and Marco. I disagree. That phrase is not defined in the Declaration of Trust. If it means the beneficiaries of Gino's estate when he dies, I have no evidence of who that will be, nor do I have evidence of anything requiring that it be Marco and Stephanie.

[56] Stephanie and Marco also submitted in oral argument that it does not matter whether they are the beneficiaries of the trust, as opposed to Gino; what is important is that 20% of the shares in Pino's name are held in trust for someone else, and therefore not subject to division as family property. I disagree. For Stephanie and Marco to succeed in obtaining a declaration that there is a trust for their benefit, it is essential that they prove there is a trust for their benefit.

[57] The evidence against a trust for the benefit of Marco and Stephanie outweighs the evidence that there was such a trust. I find that no trust for the benefit of Marco and Stephanie was created by Gino and Pino.

[58] In oral submissions some of the parties submitted that the evidence falls short of establishing that Gina and Pino attempted to create a sham trust, to frustrate Ebru's family property claim. That is not an issue I need to decide. The singular question is: did Gino create a trust in favour of Stephanie and Marco? On the evidence before me, he did not.

[59] For those reasons, Stephanie's and Marco's application for a declaration is dismissed.

6. Certificate of *Lis Pendens*

[60] Section 35(1) of the *Family Property Act* reads:

A spouse or adult interdependent partner who commences proceedings under this Act may file a Certificate of Lis Pendens with the Registrar of Land Titles.

[61] Sections 148, 152 and 190(1) of the *Land Titles Act* read:

148(1) A person claiming an interest in any land, mortgage or encumbrance may, instead of filing a caveat or after filing a caveat, proceed by way of action to enforce the person's claim and register a certificate of lis pendens in the prescribed form.

(2) A person who has proceeded by way of action to call into question some title or interest in any land may register a certificate of lis pendens in the prescribed form.

...

152 The Registrar shall cancel the registration of a certificate of lis pendens on receiving

(a) a certificate from the clerk of the court stating that the proceedings for which the certificate of lis pendens was granted are

(i) discontinued, or

(ii) dismissed and the time for commencing an appeal has expired and no appeal has been commenced, or if commenced, has been finally disposed of or discontinued,

(b) a withdrawal of the certificate of lis pendens signed by the person on whose behalf the certificate was registered, or

(c) where a certificate of lis pendens relates to a caveat that was signed by an attorney or an agent, a withdrawal of the certificate of lis pendens signed by

(i) the attorney or the agent, as the case may be,
or

(ii) the person on whose behalf the certificate was registered.

...

190(1) In any proceeding respecting land or in respect of any transaction or contract relating to it, or in respect of any instrument, caveat, memorandum or entry affecting land, the judge by decree or order may direct the Registrar to cancel, correct, substitute or issue any certificate of title or make any memorandum or entry on it and otherwise to do every act necessary to give effect to the decree or order.

[62] In *Patel v Cunningham High Performance Execution Team Corp* 2022 ABCA 323 the Court of Appeal considered the provisions of the *Land Titles Act* relating to discharges of certificates of *lis pendens* and held at paragraphs 34 – 37:

Unlike the Registrar, the court is not limited to discharging a CLP [certificate of *lis pendens*] in the circumstances outlined in s 152. Pursuant to s 190, the court can direct a CLP be discharged where doing so is just and equitable in the circumstances. Nonetheless, the preferred approach is to proceed by way of an application to strike, or for summary judgment to dismiss that aspect of, the claim. It is only in extraordinary circumstances that a person "claiming an interest in any land, mortgage or encumbrance" or calling "into question some title or interest in any land" in an ongoing action and who has registered a certificate of *lis pendens* pursuant to s 148 should be prevented by court order from having that disclosed on the title to the lands in questions at the land titles registry, as long as the claims continue to be the subject of litigation: see, for example, *Main v Jeerh* [2006 ABCA 138].

Where a certificate of *lis pendens* has been issued in an action which claims or calls into question an interest in land, an application can be brought to strike that aspect of the claim pursuant to rule 3.68, either on the basis of the pleadings where the allegations in the Statement of Claim do not disclose a reasonable claim (r 3.68(2)(b)), or on an appropriate evidentiary record pursuant to the other provisions of the rule. Alternatively, an application can be brought for dismissal of that aspect of the claim pursuant to rules 7.1, 7.2 or 7.3. Where the proceedings for the which the certificate of *lis pendens* was granted are discontinued or dismissed, its registration can be cancelled by the Registrar pursuant to s 152. Where a certificate of *lis pendens* was registered in respect of an action where the pleadings do not claim or call into question an interest in land, a court application could presumably be brought pursuant to s 190 for its discharge for failing to meet the requirements in s 148 of the Land Titles Act.

In our view, there are no extraordinary circumstances in this case that would justify the court discharging the CLPs while the claims to an interest in land and questioning the validity of the mortgage are the subject of ongoing litigation.

We make no comment on whether there is any merit to the claims advanced by the plaintiffs in the actions or whether the claims, as plead, could give rise to, or question, an interest in land. Those questions are left to be determined in the appropriate forum.

(underlining added)

[63] In *Patel* (which did not involve a family property claim) the registered owner of the land against which the certificate of *lis pendens* was registered was a defendant in the action in which the certificate of *lis pendens* was filed. Consequently, the registered owner in *Patel* had standing to apply to strike or summarily dismiss the part of the claim relating to the land. In the case before me the registered owners (Stepmar Holdings and 199) are not parties to the matrimonial action in which the certificate of *lis pendens* was filed and consequently are not able to bring an application to strike or for summary dismissal of any part of the matrimonial action. As registered owners Stepmar Holdings and 199 have standing to apply pursuant to section 190 of the *Land Titles Act* on the grounds Ebru's statement of claim against Pino does not claim or call into question an interest in land. As I noted in the Chronology section of these reasons, Ebru's statement of claim against Pino does not specifically refer to any land.

[64] In *Rosam Holdings Ltd. v Libin* 2015 ABCA 110, the Court of Appeal addressed the validity of a certificate of *lis pendens* filed in a matrimonial action and registered against a property owned by a corporation (Rosam Holdings) owned in part by the husband. The Court wrote at paragraph 18:

Section 35 of the *Matrimonial Property Act* provides that a spouse who commences proceedings under the Act may file a certificate of *lis pendens*. This possibly provided a basis for the certificate of *lis pendens* filed against title to Gilbert's condominium. But without any underlying claim to the real property of Rosam, section 35 does not provide for the filing of a certificate of *lis pendens* against Rosam. The relationship of Mary's claim to Rosam arises because of the provisions in clause 44 which trigger the equalization payment. Rosam existed long before the marriage. It was not incorporated to assist Gilbert in hiding assets. There was no allegation of dissipation of assets.

(underlining added)

[65] In *Rosam* the spouses had entered into a matrimonial property agreement in which the wife had given up her rights to the corporation which held the property against which she filed a certificate of *lis pendens*. There is no such agreement between Ebru and Pino. Nevertheless, the words I have underlined in the passage quoted above provide me with a question to consider on this application: does Ebru have an underlying claim to the real property of Stepmar Holdings and 199?

[66] Ebru has a family property division claim against Pino. Pino owns 100% of Pino Holdings which owns 50% of Stepmar Holdings which owns Parcel Four. Pino Holdings also owns 30% of 199 which owns Parcels One, Two and Three.

[67] Parcels One, Two, Three and Four are not owned by Pino. They are owned by a corporation (Stepmar Holdings or 199) owned in part by another corporation (Pino Holdings) which Pino owns.

[68] In *McFarlane v McFarlane* 2018 SKQB 62 the court addressed a certificate of pending litigation filed by a wife in a matrimonial property action and registered against title to land held by a corporation (Blackheart Excavating) owned by the husband. The Court wrote at paragraphs 13, 14 and 16:

The value of the shares in Blackheart Excavating Inc., either as at the date of the issuance of the petition, or a subsequent date as determined by the court,

constitutes family property in these proceedings. The value of that family property is subject to division as between the parties. The property held by the corporation is not subject to division.

In *MacEwen v. MacEwen*, 2004 SKCA 29, 241 Sask. R. 226 (Sask. C.A.) [*MacEwen*], the petitioner in a family property action had registered a certificate of pending litigation against property owned by two corporations, MacEwen Constructors Inc. and MacEwen Holdings Ltd. The respondent was the owner of all of the issued shares in the two corporations. The Court of Appeal directed the certificates of pending litigation be vacated as the action did not call into question title to the subject land:

[9] The question at issue here is whether some title to land is called in question which would support the filing of a certificate of pending litigation against land owned not by the respondent, but rather, land owned by a corporation owned and controlled by him. The land in question has never been owned by the respondent.

[10] We are all of the opinion that the appeal must be denied, notwithstanding that the trial judge mischaracterized the issue as one of a "proprietary interest" in the land rather than the issue of whether title to the land was called in question. Here, the family property which has been brought in question is not land, but rather, shares in the construction and holding companies which are owned by the respondent.

...

In the case before me, the petitioner has no family property interest in the title to the land in question. She has an interest in the value of the shares held by the respondent in the corporation, Blackheart Excavating Inc. As a result, there is no support for the filing of a certificate of pending litigation against this property.

[69] While the land titles and family property legislation in Saskatchewan is worded differently than Alberta's *Land Titles Act* and *Family Property Act*, the reasoning set out above applies to the facts of this case. Ebru does not have a claim to the real property held by Stepmar Holdings and 199. She has at best a claim to Pino's shares in Pino Holdings (and perhaps Pino Holdings' shares in Stepmar Holdings and 199).

[70] Ebru submitted that lifting the corporate veil is or may be appropriate in this case, citing *Aubin v Petrone* 2020 ABCA 13. *Aubin* involved securing a family property judgment against assets of a closely held corporation, some of the shares of which were held by the husband. The fact that Ebru has not yet obtained a family property judgment against Pino distinguishes the *Aubin* case from the case before me.

[71] More fundamentally the *Transamerica* test for lifting the corporate veil is not met here. The Court of Appeal referred to the three-part formulation of that test from *Arsenault v Arsenault* (1998) 38 RFL (4th) 175 at paragraph 24 of *Aubin*:

1. The individual exercises complete control of finances, policy and business practices of the company.

2. That control must have been used by the individual to commit a fraud or wrong that would unjustly deprive a claimant of his or her rights.
3. The misconduct must be the reason for the third party's injury or loss.

[72] Pino has complete control of his holding company, so the first part of the test is met with respect to Pino Holdings. It is not met for Stepmar Holdings and 199. Prior to resigning in July 2023 Pino was one of two directors of Stepmar Holdings and 199. He did not have complete control. Since July 2023 Pino has no control, except as a shareholder, but again he is one of two equal shareholders in Stepmar Holdings and a 30% minority shareholder in 199. He does not have complete control.

[73] While the transfer by Pino Holdings to Stephanie and Marco of 20% of the shares of 199 in March 2019 might satisfy the second and third parts of the test, that would at best justify lifting the corporate veil on Pino Holdings to get at its assets directly. It would not justify lifting the corporate veil on Stepmar Holdings and 199, because Pino does not have complete control over those corporations. Consequently, on the evidence before me, there is no basis for Ebru to advance a claim over the assets of Stepmar Holdings and 199, specifically Parcels One, Two, Three and Four.

[74] Having commenced a family property action, Ebru was entitled to file and register a certificate of *lis pendens* pursuant to section 35 of the *Family Property Act* (which was the *Matrimonial Property Act* at the time), but subject to section 148 of the *Land Titles Act*, which requires that a certificate of *lis pendens* be supported by an action either claiming an interest in land or calling into question some title or interest in land. Ebru's family property claim against Pino does not do so with respect to land held by Stepmar Holdings and 199. If Pino held land in his own name, either solely or with others, Ebru would likely be entitled to maintain a certificate of *lis pendens* against that land until resolution of her family property claim. That issue is not before me on these applications.

[75] For those reasons, I grant the application by Stepmar Holdings and 199 and order the discharge of Ebru's certificate of *lis pendens* from title to Parcels One, Two, Three and Four.

7. Disposition

[76] I dismiss the application for a declaration of trust and grant the application to discharge the certificate of *lis pendens*. If the parties are not able to agree on costs, they may schedule a hearing before me on that point.

Heard on the 8th day of February, 2024.

Dated at the City of Edmonton, Alberta this 29th day of April, 2024.

G.S. Dunlop
J.C.K.B.A.

Appearances:

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