NOVA SCOTIA COURT OF APPEAL
Citation: *Moore v. Darlington*, 2017 NSCA 67

Date: 20170713
Docket: CA 450760
Registry: Halifax

Between:

David Moore and Sand, Surf & Sea Limited, a body corporate

Appellants

v.

Michelle Darlington

Respondent

Judge:	The Honourable Justice David P.S. Farrar
Appeal Heard:	April 10, 2017, in Halifax, Nova Scotia
Subject:	**Family Law. Division of Matrimonial and Business Assets.**
Summary:	The parties were in a common law relationship from 1990 until December 2009. After a 10-day trial, the trial judge addressed a number of issues arising between the parties including the division of matrimonial assets and business assets, unjust enrichment and spousal support. The division of assets and liabilities largely favoured Ms. Darlington. She was also awarded indefinite spousal support. Mr. Moore appeals.
Issues:	The appellant raised 15 grounds of appeal in his Notice of Appeal questioning virtually every decision made by the trial judge including his award of costs in the amount of $50,000 against Mr. Moore.
Result:	Appeal dismissed with costs in the amount of $20,000. The appeal was without merit. In a well-reasoned and fair decision, the trial judge addressed all of the issues raised by the parties.

His decision is amply supported by the evidence. The appeal was a veiled attempt at having this Court retry the case and reach a different conclusion than the trial judge. That is not our role.

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Respondent

Judges:	Beveridge, Hamilton and Farrar, JJ.A.
Appeal Heard:	April 10, 2017, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Farrar, J.A.; Beveridge and Hamilton, JJ.A. concurring
Counsel:	Richard A. Bureau, for the appellant Peter D. Crowther, for the respondent

Reasons for judgment:

Overview

[1] Michelle Darlington and David Moore first met in Prince Edward Island in 1989. They lived together in a common law relationship from June 1990 until December 2009. The proceedings giving rise to this appeal were commenced by Ms. Darlington by filing an application for maintenance, custody and other relief on January 7, 2010.

[2] Ms. Darlington's application was first heard in March 2011 before Justice Mona Lynch. Mr. Moore was unrepresented at the time. He requested an adjournment of that hearing to retain counsel. It was denied.

[3] On April 18, 2011, Justice Lynch rendered her decision (reported as 2011 NSSC 152).

[4] Justice Lynch's decision was subsequently overturned by this Court as a result of her failure to grant the requested adjournment. The matter was remitted for rehearing to the Supreme Court (Family Division) (reported as 2012 NSCA 68). It was heard by Associate Chief Justice Lawrence I. O'Neil over a total of 10 days in 2013 and 2014 (October 15, 16, 17 and 21, 2013; June 10 and 11, 2014; and September 8, 9, 10, and 11, 2014).

[5] The trial judge rendered four separate decisions as a result of the rehearing. In his first ruling he determined the income of Mr. Moore for the purposes of calculating his support obligations (reported as 2013 NSSC 103).

[6] In a second ruling (reported as 2014 NSSC 358), the trial judge determined his ongoing and retroactive obligation to pay child support, special expenses and past and future spousal support.

[7] The third decision addressed a myriad of issues between the parties including the division of matrimonial assets and business assets, unjust enrichment and spousal support (reported as 2015 NSSC 124).

[8] Finally, in the fourth decision (reported as 2016 NSSC 84) Justice O'Neil ordered costs payable by Mr. Moore in the amount of $50,000.

[9] It is the latter two decisions which are the subject-matter of this appeal. When I refer to the trial judge's decision in these reasons I am referring to the 2015 decision. I will refer to the 2016 decision as the costs decision.

[10] Mr. Moore appeals almost every aspect of the trial judge's decisions including the award of costs. I will address his grounds of appeal in more detail later in these reasons.

[11] For the reasons that follow, I would dismiss Mr. Moore's appeal with costs to Ms. Darlington in the amount of $20,000 inclusive of disbursements, being 40% of the costs awarded at trial.

Background

[12] The parties met in Prince Edward Island in 1989. Mr. Moore was a member of the Royal Canadian Mounted Police and Ms. Darlington was attending school, studying to become a nurse. Ms. Darlington had a child from a previous relationship.

[13] In June 1990, Ms. Darlington and her daughter moved in with Mr. Moore at his home in Summerside, PEI. In December 1990 they became engaged although they never married.

[14] In March 1991 Mr. Moore was transferred to Halifax. Ms. Darlington and her daughter moved with him. They continued to reside together in a common law relationship. At that point Ms. Darlington worked as a nurse. Mr. Moore continued his career with the RCMP.

[15] When they moved to Halifax, Mr. Moore and Ms. Darlington resided at a home on Sawyer Street in Lower Sackville. They lived there until 2000.

[16] The parties have two children together: Siobhan born on January 24, 1992 and Cameron born on April 23, 1993.

[17] In March 1994 Ms. Darlington left her employment as a nurse to care for Siobhan, who had been diagnosed with cancer. Siobhan made a full recovery. At some point the parties talked about Ms. Darlington returning to work.

[18] In the meantime, on December 6, 1995, Sand, Surf and Sea Limited was incorporated.

[19] In 1995, SSS Ltd. purchased a restaurant and rental property to renovate and operate. The parties operated the restaurant until it burned in May of 2003.

[20] As a result of the fire, SSS Ltd. received $285,000 in insurance proceeds.

[21] SSS Ltd. also owned a number of other properties and was involved in a number of business ventures over the years. These are set out in detail in the trial judge's decision (see ¶14). It is not necessary to repeat them here.

[22] In October 2000, the parties jointly purchased a home located at 141 Lakeshore Drive in the Kingswood Subdivision in Halifax, where they lived until they separated in 2009.

[23] In 2012, SSS Ltd. and Mr. Moore commenced an action against Ms. Darlington. That litigation was transferred from the General Division of the Supreme Court to the Family Division to be consolidated with the ongoing matrimonial dispute. The issue in that proceeding was Ms. Darlington's responsibility, if any, for the liabilities that flowed from the operation of SSS Ltd.

[24] In his decision, the trial judge made the following findings:

1. Siobhan was no longer a dependent child as of May 1, 2014;
2. Cameron was no longer a dependent child as of August 31, 2014;
3. Mr. Moore's income for the purposes of making an order for retroactive child support and retroactive and prospective spousal support was imputed to be $145,266.88. He was ordered to pay the amount of $23,409.00 in retroactive child support and an amount of $59,500 in retroactive spousal support. He was ordered to pay the amount of $1,700 to Ms. Darlington in monthly ongoing spousal support;
4. The claim of SSS Ltd. against Ms. Darlington was dismissed;
5. Mr. Moore and Ms. Darlington each held a 50% interest in the matrimonial home, less disposition costs and the amount owed on the line of credit at the time of separation in the amount of $86,393.37, and less the insurance fees incurred after it was learned the property was not insured. The insurance fees were to be reimbursed to Ms. Darlington;

6. The matrimonial home was to be listed for sale on or before the close of business on Friday, May 15, 2015;
7. Mr. Moore was to transfer an undispersed RESP to Cameron;
8. Ms. Darlington was entitled to 40% of the value of the parties' combined RRSPs at the time of trial, being $146,974.38 plus the interest growth in the RRSP;
9. Subject to the amount of the line of credit to be paid out of the proceeds of the sale of the house (referred to in 5 above), Ms. Darlington was not liable for the balance on the line of credit;
10. Mr. Moore would have for his sole use the property of SSS Ltd. and other assets held by him personally or through SSS Ltd.;
11. Mr. Moore was solely responsible for any and all debts and liabilities arising from his various business pursuits and litigation, including but not limited to SSS Ltd.;
12. Ms. Darlington had no liability, present, past or future, to SSS Ltd. or to Mr. Moore for monies advanced to her directly or indirectly from either;
13. Ms. Darlington would retain for her sole use the Honda motor vehicle in her possession;
14. Mr. Moore was to pay Ms. Darlington's costs in the amount of $50,000.

Issues

[25] Mr. Moore raises 15 grounds of appeal. I will address them in the order set out in Mr. Moore's factum. In doing so, I will identify the applicable standard of review for each issue.

Issue #1 The trial judge erred in failing to allow the appellant to present oral and documentary evidence to the Court in support of his case, in particular the testimony of witnesses

[26] The appellant properly identifies the standard of review with respect to this issue: it involves the exercise of discretion on behalf of the trial judge. The appropriate standard of review is one of deference. We will only intervene if the

trial judge applied wrong principles of law or a patent injustice would result (*Minkoff v. Poole*, [1991] N.S.J. No. 86).

[27] Contrary to Mr. Moore's assertions, he was given ample opportunity to present evidence.

[28] The problem Mr. Moore had was failing to have his proposed witnesses available at the time that was allotted for their evidence. An example is the evidence of Judith Schoen, his previous counsel. Mr. Moore wished to call her to give evidence with respect to a settlement offer which Mr. Moore says he made to Ms. Darlington. The following exchange took place about her evidence on September 10, 2014:

> **MR. MOORE:** That would be the letter of offer for settlement. Judy Schoen was one of the witnesses to come in.
>
> **THE COURT:** Does she know she's supposed to be here tomorrow?
>
> **MR. MOORE:** Dates have been all over the place. I haven't had a chance to talk to her. I've been here tied up.
>
> **THE COURT:** So She's not expecting to be here tomorrow.

[29] There is further discussion between the Court and Mr. Moore, with the Court concluding:

> **THE COURT:** That's fine. Well, listen, you have your witnesses here tomorrow, whoever they might be. This has been known for a long time, Mr. Moore.

[30] The appellant identifies two other witnesses that he says were not allowed to give evidence. Peter Wilde, an accountant who was to testify on a number of matters and a representative from Canada Revenue Agency.

[31] Mr. Wilde was present and did give evidence in relation to this matter. The trial judge did not prevent Mr. Wilde from testifying but rather limited what he could speak to due to a lack of disclosure. Mr. Wilde provided evidence to the court by way of direct examination, cross-examination and rebuttal evidence. He was not permitted to provide expert evidence as he had not been qualified as an expert.

[32] In giving his evidence, Mr. Wilde indicated that he had not had any communication with Mr. Moore since 2003 and had destroyed any file he had in

relation to SSS Ltd. due to lack of communication and an assumption that his services were no longer required.

[33] The CRA representative, Mr. Moore says, would have provided further information about Mr. Moore's and SSS Ltd.'s rights and responsibilities regarding taxation.

[34] I cannot, from a review of the transcript, identify who Mr. Moore was identifying as the representative from CRA, nor can I see where Mr. Moore indicated that any of his witnesses were to speak to tax issues. The appellant does not identify in his factum which witness was going to give the evidence, nor what the evidence was going to be or what it was intended to show.

[35] On September 11, 2014, Mr. Moore appeared without any witnesses, prompting O'Neil, A.C.J. to issue the following decision:

> With respect to the other witnesses that Mr. Moore was … says he would like to call, the Court's decision with respect to that matter which is that the opportunity for them to testify is today reflects a number of considerations.
>
> First of all, the issue of disclosure of the details of their evidence. And number two, the responsibility of both parties to ensure that witnesses are prepared and available for trial. Thirdly, this matter has gone on for a long time. Fourthly, looking at the can-says, the sum of a significant part of what Mr. Moore was proposing to . . . these witnesses offer is not particularly relevant …
>
> **MR. MOORE**: Hmm.
>
> **THE COURT:** … to the main issues or the issues the Court has to decide.
>
> So in terms of evaluating and weighing prejudice and convenience and in the interests of justice, I'm satisfied that there is a compelling case to … in favour of the decision I did make. The prospect of this litigation going on indefinitely is a real possibility.

[36] It is evident from a review of the transcript the trial judge was more than patient in dealing with Mr. Moore and gave him ample opportunity to present his evidence.

[37] After hearing from Mr. Moore, the trial judge analyzed whether it was in the interest of justice to adjourn the trial further to allow Mr. Moore to present further evidence. He concluded it was not. His decision cannot be divorced from the fact, at that point, the litigation had been going on for four years and the trial before O'Neil, A.C.J. had been ongoing, off and on, for almost a year. Much of the delay

in bringing the matter to a conclusion, as will be seen from the costs decision, was attributable to Mr. Moore.

[38] The trial judge committed no error in refusing to prolong the trial. His reasons properly balanced the factors he had to consider.

[39] I would dismiss this ground of appeal.

Issue #2 The trial judge erred in failing to take into account business assets and liabilities when calculating the equalization payment required for the division of matrimonial property.

[40] The next 13 issues deal with property division and spousal support, attracting the standard of review set out in *Saunders v. Saunders*, 2011 NSCA 81:

> [18] As this appeal is concerned with spousal support and the division of property, the trial judge's decision is entitled to deference. Unless he has erred in principle, significantly misapprehended the evidence or made an award that is clearly wrong, we will not interfere.

(See also *Hickey v. Hickey*, [1999] 2 S.C.R. 518, ¶10-12).

[41] This is the standard I will apply in reviewing the trial judge's decision.

[42] Mr. Moore relates this ground of appeal, in part, to the first ground of appeal saying that if he had been allowed to present documentary and oral evidence with respect to the debt owing to SSS Ltd., it would have had a significant impact on his decision.

[43] During oral argument, Mr. Bureau on behalf of Mr. Moore, stressed that a $235,000 loan to Mr. Moore and Ms. Darlington from SSS Ltd. was not taken into account by the trial judge (the funds came from the insurance proceeds for the restaurant fire). Almost Mr. Bureau's entire oral argument focused on this aspect of the appeal.

[44] With respect, it is clear that O'Neil, A.C.J. was aware of the $235,000 which was received from SSS Ltd. and referenced it at various times in his decision.

[45] After awarding Ms. Darlington spousal support, which the trial judge considered at the low end of the *Spousal Support Guidelines*, the trial judge says he did so because of the amount of debt being assumed by Mr. Moore:

> [134] A factor that often results in an order of support at the low end of the guidelines is a high level of indebtedness assumed by one or both parties. I have concluded the following with respect to Mr. Moore inter alia:
>
> > 1. Mr. Moore has an outstanding child support obligation requiring him to pay arrears; to August 2013 this was $20,598 in after tax income, subject to the adjustments/credits for any subsequent overpayments (see paragraphs 59 & 130, 2014 NSSC 358).
> >
> > 2. Mr. Moore is personally responsible for what remains on the parties' line of credit with the exception of $86,393.37; this being the balance on the line of credit at separation (infra. at paragraph 82);
> >
> > 3. Mr. Moore remains liable to 'SSS Ltd.' for any liability to 'SSS Ltd.' flowing from this family having spent 'SSS Ltd.' funds, principally the insurance proceeds.
> >
> > 4. Mr. Moore remains potentially liable to the Canada Revenue Agency for the use of corporate funds for personal purposes.
>
> [135] I am alive to the argument that Ms. Darlington should not be penalized with a lower spousal support obligation because Mr. Moore underpaid his child support. However, Mr. Moore finds himself responsible for a very high level of indebtedness attributable to this family's lifestyle and he has been managing this obligation since the parties' separation.
>
> [136] I am satisfied for example, that almost all of the insurance proceeds owned by 'SSS Ltd.' in the amount of $235,000 were applied to the debt against the parties' home as Mr. Moore testified to. 'SSS Ltd.' has not filed a tax return in more than twelve years, nor has it prepared comprehensive business records from which its income, expense, asset and debt position could be known.
>
> [137] Regardless, it is clear that a substantial financial obligation awaits Mr. Moore and or 'SSS Ltd.' when these filings are made. Those records will need to be prepared and tax filings will need to be completed. Mr. Moore will need to declare this money as personal income or repay it to the company and/or demonstrate where it was invested on behalf of the company.
>
> (Emphasis added)

[46] He recognized that Mr. Moore and Ms. Darlington did not repay the debt to SSS Ltd. and that Ms. Darlington benefited from the receipt of those monies:

> [139] As stated, Mr. Moore and Ms. Darlington did not repay 'SSS Ltd.' the subject insurance monies. I have ruled that Ms. Darlington does not have responsibility for this debt, associated interest or penalties. She has benefited but was not involved in the financial decisions associated with the use of monies advanced to this family by 'SSS Ltd.' As stated I have come to this conclusion

> because I am satisfied Mr. Moore made the decisions affecting the management of these funds and Ms. Darlington was not part of the decision making process, notwithstanding I am also satisfied she benefited from those decisions.
>
> (Emphasis added)

[47] The trial judge continues, referencing the lifestyle that both parties enjoyed from the funds borrowed from SSS Ltd.:

> [141] This couple had a very good lifestyle funded in large measure because of Mr. Moore's salary; funds 'borrowed' from 'SSS Ltd.'; their use of the funds available on the line of credit and because of Mr. Moore had access to additional thousands of dollars when his lawsuit settled in 1997 and his properties sold.

[48] The trial judge again referred to the debt when addressing the claim of SSS Ltd. against Ms. Darlington, and concluded that she was not liable for the intermingling of the insurance proceeds with the parties' personal financial affairs. At the same time he also dismissed any claim that Ms. Darlington may have to any other personal or real property Mr. Moore has acquired through SSS Ltd.:

> [167] … I am satisfied that Ms. Darlington is not liable to 'SSS Ltd.' for any mingling of the company's insurance proceeds with the parties' personal financial affairs. I am also dismissing any claim she asserts to other personal or real property Mr. Moore has acquired through the company or through use of the company's resources. …

[49] The trial judge comes back to the SSS Ltd. debt when referring to Ms. Darlington's claim to 50% of Mr. Moore's pension entitlement for his years of service with the RCMP. The trial judge dismissed her claim taking into consideration her relief from debt obligations, which included the SSS Ltd. debt:

> [205] However, some assets are clearly separable and can be isolated in a relationship. In my view the pension and severance entitlements of Mr. Moore fall into this category on these facts. The award for Ms. Darlington flowing from this decision is substantial, particularly when her relief from debt obligations is considered. This is a possible outcome because the court took a holistic view. Ordering an equal sharing of all of the assets and leaving Mr. Moore with the debt and failing to recognize his disproportionate contribution of assets and income to this family, even after considering non monetary contributions of Ms. Darlington would be unfair. The result would be an unjust enrichment of Ms. Darlington.
>
> (Emphasis added)

[50] The appellant, in his factum, says that there is "no basis in Justice O'Neil's decision for absolving her of "the liability to SSS Ltd.".

[51] As I have set out in considerable detail above, the trial judge went to great lengths to explain why he was absolving her of that debt.

[52] The SSS Ltd. debt was but one factor that was taken into account when addressing the complex intermingling of the personal and corporate finances of the parties.

[53] I would dismiss this ground of appeal.

Issue #3 The trial judge erred in failing to discount the value of matrimonial assets for pre-cohabitation and post-separation contributions

[54] The appellant, again, relates this ground of appeal to the first ground of appeal where he says the trial judge prevented Mr. Moore from entering relevant evidence.

[55] In his factum, he says the following:

> 63. It is Mr. Moore's position that he owned an apartment complex in PEI through his company, Moore Enterprises, for approximately 16 years, beginning prior[to] the formation of his relationship with the Respondent. Mr. Moore also had a significant amount of RRSPs prior to the relationship.

[56] He goes on to say that the trial judge failed to take into account his pre-cohabitation assets when dividing the assets.

[57] This evidence was before the trial judge. The trial judge made specific reference to Mr. Moore's RRSPs in his decision:

> [166] As observed the parties did have a joint family venture. I am satisfied on the balance of probabilities of the following:
>
> …
>
> 3. Mr. Moore had an RRSP account when the parties met, his evidence is that it was in the range of $65,000 in the early nineties, I am satisfied this is correct.

[58] The trial judge also referenced Mr. Moore's other contributions, including the apartment in PEI:

> [175] Mr. Moore contributed the proceeds from the sale of the home he formerly occupied in PEI; proceeds from the sale of the triplex in PEI; the proceeds flowing from the settlement of his lawsuit against the RCMP and an inheritance.

[59] He took into account Mr. Moore's financial contribution to the Lower Sackville home (where the parties lived when they first moved to Halifax) and the Lakeshore Drive home:

> [179] I am satisfied that Mr. Moore paid off the Lower Sackville home and Ms. Darlington made little financial contribution to this debt. Mr. Moore acquired the property, held it in his name solely and retired the mortgage in the nineties when he settled his lawsuit and received $140,000.
>
> [180] I am also satisfied the Lakeshore Drive home, built in 2000, did cost several hundreds of thousands of dollars as Mr. Moore testified to. I am also satisfied that over the following years, tens of thousands of dollars were spent constructing a garage on the property and completing an apartment in the home. Ms. Darlington made very little contribution to meeting those costs.

[60] Finally, at ¶187-195 the trial judge did a detailed analysis of the RRSPs before and after separation before coming to a conclusion as to their division. In the end, he took into account Mr. Moore's pre and post-separation contributions concluding:

> [195] … Herein, I conclude the appropriate ratio of division of the total value of all RRSPs is 60:40 in favour of Mr. Moore recognizing he began the relationship with a significant RRSP portfolio and contributed significantly more to the growth of the account than would Ms. Darlington.

[61] The evidence Mr. Moore complains that he was not permitted to introduce was before the trial judge. It is also apparent the trial judge took it into consideration in arriving at his overall division of property.

[62] I would dismiss this ground of appeal.

Issues #4 The trial judge erred in failing to properly account for the appellant's ability to loan funds through SSS Ltd.

Issue #5 The trial judge erred in not accounting for the corporate loans from SSS Ltd. to the appellant and the respondent when dividing assets and liabilities.

[63] The appellant addressed these two issues together. So will I.

[64] These grounds of appeal are simply a rehashing of the argument which the appellant made under the second ground of appeal. It is abundantly apparent from the trial judge's decision that he was aware of the activities of SSS Ltd. and took them into consideration. In fact, ¶39 through to ¶87 of his decision are devoted to a discussion of SSS Ltd.'s assets and liabilities. After this review he then turns his mind to the legal principles governing the determination of the parties' property entitlement and liability for debts, both personal and corporate.

[65] Again, after a lengthy review of the law and the evidence, the trial judge concluded:

> [167] As between Ms. Darlington and Mr. Moore I have concluded Mr. Moore is responsible for the debts and liabilities arising from various business pursuits and litigation. I am satisfied that Ms. Darlington is not liable to 'SSS Ltd.' for any mingling of the company's insurance proceeds with the parties' personal financial affairs. I am also dismissing any claim she asserts to other personal or real property Mr. Moore has acquired through the company or through use of the company's resources. This includes any claim by her to a Florida property (ies) and vehicles Mr. Moore has acquired. These assets are clearly a product of Mr. Moore's business activities to which Ms. Darlington has disavowed any significant role. Similarly, she does not want any liability for the losses flowing from Mr. Moore's business activities.

[66] The trial judge found that not only was Ms. Darlington not responsible for the corporate loans, but that she was not entitled to any of the assets owned by SSS Ltd.

[67] The evidence of SSS Ltd.'s activities was before the trial judge and he considered it in his final determination of the division of assets.

[68] Mr. Moore may not like the way in which the trial judge accounted for the assets/liabilities of SSS Ltd. However, his dissatisfaction with the decision does not equate to legal error.

[69] I would dismiss these grounds of appeal.

Issue #6 The learned trial judge erred in not taking into account renovations to the matrimonial home after the separation, which increased its value, for the purposes of division of matrimonial property.

[70] This ground of appeal, like many others, is simply asking us to review the evidence and come to a different conclusion than the trial judge. The repairs which Mr. Moore did to the matrimonial home post-separation were taken into account by the trial judge. He simply was not satisfied, on the evidence, as to the amount spent on the renovations or that there was an increase in value to the property as a result of those renovations:

> [181] Mr. Moore says he paid for the garage and the apartment with funds borrowed against the line of credit. This is probably so. However, compensation can not be ordered to his benefit because of his poor record keeping. The Court can not be simply asked to figure it out and to pick a number. The task required of this Court has been challenging enough given the poor quality of the evidence offered by Mr. Moore.

[71] In the end, the evidence was insufficient for him to reach the conclusion Mr. Moore impressed upon him. It was Mr. Moore's burden and he failed to meet it.

[72] I would dismiss this ground of appeal.

Issue #7 The trial judge erred in his valuation of the RRSPs for the purposes of dividing matrimonial assets.

[73] The appellant, in his factum, acknowledges the trial judge took into account a number of factors when considering the RRSPs including: Mr. Moore coming into the relationship with a substantial RRSP portfolio; and his contributing more to the combined RRSPs than Ms. Darlington. He also acknowledges the trial judge made an allowance for these factors. Despite these concessions, Mr. Moore argues:

> 97. This division of the RRSP funds takes the above factors into account, but it does not accurately reflect either the value of Mr. Moore's pre-relationship RRSP portfolio or the large difference in his and the Respondent's respective contributions during the relationship.

[74] The appellant is essentially arguing that we should weigh the factors differently than the trial judge. That is not our role.

[75] I would dismiss this ground of appeal.

Issue #8 The trial judge erred in ordering the appellant to purchase an additional insurance policy without replacement coverage when he already had an insurance policy with full replacement value.

[76] This ground, perhaps more than any of the others, highlights the complete lack of merit to this appeal.

[77] This issue was raised on three occasions before the trial judge. First, on June 10, 2014 and for a second time on June 20, 2014. On June 20, Mr. Moore indicated that he was not qualified to obtain insurance on the house because he no longer was the title holder. It appears there was an agreement that day as to how matters would move forward to make sure there was insurance coverage on the house. At this point the house was without insurance for more than two years.

[78] Despite the apparent agreement on June 20, 2014, there continued to be issues with respect to the insurance on the house requiring another appearance before O'Neil, A.C.J. on August 22, 2014. The conference memorandum details what occurred on that date:

> 6. The court directed that the property currently in the name of both parties be transferred into the name of Ms. Darlington solely so that she could complete the papers necessary to continue the house insurance. The court was advised that the current policy arranged by Ms. Darlington is subject to cancellation in the event that Mr. Moore does not sign the necessary forms to confirm the policy. Mr. Moore refused to comply with a court directive to sign those documents.
>
> 7. The court responded by directing that the entire interest in the home be put in the name of Ms. Darlington on the assumption that this would permit the policy to continue and that she will hold whatever interest the parties have in trust.

[79] In these circumstances, it was entirely appropriate for the trial judge to order the house be placed in the name of Mr. Darlington so that insurance could be placed on it.

[80] I would dismiss this ground of appeal.

Issue #9 The trial judge erred in ordering the freezing of corporate assets.

[81] On September 15, 2014, O'Neil, A.C.J. issued an Interim Preservation Order preserving, among other things, all property in the name of Mr. Moore, Sand, Surf & Sea Limited and Ms. Darlington.

[82] The order further provided that the parties could not sell, rent, list for sale, place the properties in contract to be sold or leased or encumbered in any manner without the written consent of the other parties or by order of the court.

[83] In his decision the trial judge says:

> [214] The preservation order in place will continue until further order of this court.

[84] There is no further elaboration on the reason for the preservation order. However, it appears that the trial judge may have been concerned that Ms. Darlington would not be able to realize on the monies owed to her.

[85] Regardless of the reason for the trial judge making this order, if any of the parties have any difficulty with it, or wish to dispose of assets, they could either seek the other's agreement or, alternatively, return to the court for direction. If Mr. Moore wishes to deal with the assets of SSS Ltd. he could simply apply to the court to lift the order.

[86] I would dismiss this ground of appeal.

Issue #10 The trial judge erred in failing to recognize the substantial loss of value of the matrimonial home due to poor economic conditions.

[87] I have difficulty understanding the appellant's point on this ground of appeal.

[88] The trial judge found that Ms. Darlington and Mr. Moore would share equally in the value of the matrimonial home after disposition costs and payment of the line of credit debt. If there is a loss in value of the home, that will be reflected in the sale price and the parties will share a lower equity pay-out.

[89] I would dismiss this ground of appeal.

Issue #11 The trial judge erred in failing to take into account the interest that the appellant has paid on the respondent's share of the TD Canada Trust line of credit since separation.

[90] This was just another factor the trial judge had to take into consideration when considering the overall division of assets and liabilities between the parties. I have already set out where he took into account the debt load the appellant would have to shoulder when considering a division of property and spousal support quantum.

[91] I would dismiss this ground of appeal.

Issue #12 The trial judge erred in failing to address the transfer of the ownership of the matrimonial home to Boyne Clarke LLP mid-trial.

[92] There was no evidence that the home was transferred to Boyne Clarke. In his factum, the appellant does not mention the transfer to Boyne Clarke but rather refers to the transfer from Ms. Darlington to her sister who, in turn, transferred it back to Ms. Darlington. She says that this allowed Boyle Clarke to place a collateral mortgage on the property.

[93] The appellant is correct that O'Neil, A.C.J. did not address this issue in his decision. He did not do so because, in my view, it was not necessary nor would it have made any difference in the final result.

[94] The trial judge directed that the parties were to share in the proceeds of sale after expenses. He also directed that the proceeds of the sale were to be held in trust by Ms. Darlington's law firm and to be distributed as further directed by the court. The order issued on April 1, 2016 provides:

> 9. The proceeds from the sale of the matrimonial home are to be held in trust by Michelle Darlington's law firm, BOYNECLARKE LLP, and are to be distributed as further directed by this court.

[95] If there are any issues surrounding the transfer of the house or any collateral mortgage that may have been placed by Boyne Clarke, those issues can be dealt with by the court after the sale of the home.

Issue #13 The trial judge erred in ordering indefinite spousal support without regard to the abilities of the respondent and her current partner to adequately support themselves.

[96] In ¶125-158 of the trial judge's decision he does a detailed analysis of the parties' relationship over the years, arriving at his conclusion that the spousal support should be $1,700 per month indefinitely. He concludes by saying:

> [158] Should Ms. Darlington commence cohabitation with another, she shall notify Mr. Moore. As contemplated by the *Maintenance and Custody Act,* this is a factor relevant to the issue of spousal maintenance.

[97] Obviously, the trial judge was not satisfied that Ms. Darlington was cohabitating with anyone at the time of trial. If she subsequently commenced co-habitation with someone that would be, as the trial judge stated, a factor that is relevant to the issue of spousal maintenance. If Mr. Moore now has evidence she is cohabitating with someone it can be addressed in a variation application.

[98] I would dismiss this ground of appeal.

Issue #14 The trial judge erred in ordering a hold on the sale of SSS Ltd.'s properties.

[99] I have already addressed this issue under Issue #9 above.

Issue #15 The trial judge erred in ordering an award of costs to the respondent, despite the appellant's settlement offers exceeding the respondent's award at trial.

[100] The standard we apply when reviewing a trial judge's award of costs is well-known. We will not interfere with the trial judge's exercise of discretion unless wrong principles of law have been applied, or the decision is so clearly wrong as to amount to a manifest injustice (*Barkhouse v. Wile*, 2011 NSCA 50).

[101] Mr. Moore's argument focuses on settlement offers which Mr. Moore made to Ms. Darlington in 2011, in particular, a letter dated March 23, 2011 from Mr. Moore's then counsel, Kymberly Franklin. The offers pre-date the hearing before Justice Lynch.

[102] The trial judge, in his costs decision, quotes extensively from Fichaud, J.A.'s decision in *Armoyan v. Armoyan*, 2013 NSCA 136 where this Court considered the

factors to be considered under Rule 77.07(2) when making an award of costs. It provides:

> **77.07(2)** The following are examples of factors that may be relevant on a request that tariff costs be increased or decreased after the trial of an action, or hearing of an application:
>
> (a) the amount claimed in relation to the amount recovered;
>
> (b) a written offer of settlement, whether made formally under Rule 10 Settlement or otherwise, that is not accepted;
>
> (c) an offer of contribution;
>
> (d) a payment into court;
>
> (e) conduct of a party affecting the speed or expense of the proceeding;
>
> (f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily;
>
> (g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent;
>
> (h) a failure to admit something that should have been admitted.
>
> [Emphasis added]

[103] After reviewing the law the trial judge reached the following conclusions:

- Ms. Darlington was the more successful party. (¶24)
- Mr. Moore was tardy with disclosure. (¶34)
- Mr. Moore was a particularly difficult litigant. (¶35)
- Mr. Moore's frequent verbal wanderings and grandiose descriptions as to his ability and accomplishments were tolerated by the court simply because effective management of the trial was best served by ignoring his behaviour. (¶36)
- Throughout his appearances before the court Mr. Moore was obstinate, unpredictable, obstructionist and defiant in the face of Court orders. (¶47)
- He openly displayed contempt for Ms. Darlington and her counsel. (¶47)

- He unnecessarily prolonged the hearing process and was uncooperative with the court and with the other side. (¶47)
- Any benefit to Mr. Moore that the "offers to settle" could have on the decision on costs lapsed and was not revived. (¶48)
- Mr. Moore's conduct in the proceedings re-enforced the conclusion that he was not prepared to enter into any effort to settle the issues before the court. (¶48)

[104] The trial judge was in the best position to assess costs. He was, obviously, of the view Mr. Moore's conduct played a significant part in the length and complexity of the trial. He concluded that his behaviour required costs sanction (¶37). In his considerations, he took into account the fact that Mr. Moore had made offers of settlement but discounted that factor because of his subsequent conduct.

[105] He set out the proper law and applied it to the facts before him. His award of costs in the amount of $50,000 inclusive of disbursements is imminently reasonable in these circumstances.

[106] I would also dismiss this ground of appeal.

Conclusion

[107] This appeal was an attempt by the appellant to have us retry the case. Mr. Moore parses the trial judge's decision and argues that he erred in isolated aspects of his decision. He fails to recognize that all of the issues are intertwined. You cannot separate one from the other. The trial judge was considering a large volume of evidence on a number of issues and weighing various factors in coming to his conclusions.

[108] After a lengthy trial with a number of challenges, the trial judge rendered a well-reasoned and fair decision. He was able to synthesize the evidence and his conclusions are amply supported by the record. There is no reason to interfere with his decision.

[109] The appeal is dismissed, with costs to Ms. Darlington in the amount of $20,000 inclusive of disbursements.

Farrar, J.A.

Concurred in:

Beveridge, J.A.
Hamilton, J.A.