

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MOHIT VARSHNEY

Petitioner/Respondent

-and-

CHARU SINGHANIA

Respondent/Applicant

Application to extend the limitation period for claim under the *Family Law Act*,
SNWT 1997 c 18

Heard at Yellowknife: January 17, 2023

Written Reasons filed: January 27, 2023

**REASONS FOR JUDGMENT OF THE
HONOURABLE JUSTICE K.M. SHANER**

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Erik L. Bruveris

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REASONS FOR JUDGMENT

INTRODUCTION

[1] The parties married in 2012 in India. They both worked in the mining industry and were living in the Northwest Territories when they separated in October of 2019. During the marriage they acquired property. The Applicant/Respondent, Charu Singhania (“Singhania”) moved to Ontario very shortly after the separation. The Petitioner, Mohit Varshney (“Varshney”) remained in Yellowknife.

[2] Varshney filed a Petition for Divorce in this Court on April 26, 2022, seeking a divorce judgment and costs. Singhania filed an Answer and Counter Petition on June 20, 2022, seeking the same relief, with the addition of a claim for equalization of family property under the *Family Law Act*, SNWT 1997 c 18 (the “*FLA*”)

[3] Section 38(3) of the *FLA* provides, among other things, that a claim for equalization must be made within two years after the day the parties separate and there is no reasonable prospect cohabitation will resume. Singhania’s claim was

filed outside this limitation period, which would have closed on or about October 6, 2021.

[4] Singhania seeks relief under s 66 of the *FLA*, which allows the Court to extend the time limit in s 38(3) if three conditions are met: there are apparent grounds for relief; the delay incurred in good faith; and no person will suffer substantial prejudice because of the delay. All three conditions must be met and the applicant bears the burden of proof. (See: *Hevey v Hevey*, 2021 ONCA 740 at para 40, which considered identical wording from Ontario’s *Family Law Act*, RSO 1990, c F-3).

ISSUE

[5] The parties agree two of the three requirements for relief in s 66 have been met: they acquired property during their marriage, so there are apparent grounds for an equalization claim; and Varshney concedes he would not suffer substantial prejudice because of the delay. Thus, the issue is whether Singhania incurred the delay in good faith, as that term is used in s 66.

“GOOD FAITH” UNDER THE *FLA*

[6] The meaning of “good faith” in s 66 of the *FLA* was considered by this Court in *Delorey v Wong Estate*, 2013 NWTSC 26. Noting an identical provision in Ontario’s *Family Law Act*, it adopted the reasoning set out by Mendes da Costa, J in *Hart v Hart*, 1990 CanLII 12268 (ON UFC), 1990 CarswellOnt 276 as a guide to determining whether and applicant incurred delay in good faith:

... I believe, to establish “good faith”, it must be shown that the moving party acted honestly and with no ulterior motive. It does not seem to me that the legislature, anticipating the general newsworthy nature of the family property provisions of the Act, intended that a mere failure to make enquiries should necessarily negate “good faith”, provided that the absence of enquiry does not constitute willful blindness or does not otherwise, in all the circumstances, fall below community expectations. . .

Hart at para 24

[7] Cases from Ontario have added more precision to the concept of “good faith” since *Hart*. Though not binding on this Court, they, like *Hart*, offer opinion on a provision which mirrors s 66 of the *FLA* and, accordingly, are very persuasive. Notably, in *Busch v Amos*, 1994 CanLII 7454 (ONSC), 1994 CarswellOnt 470, Salhany, J stated:

8 I agree that the term “good faith” means acting honestly and with no ulterior motive. I also agree that failure to act in ignorance of one’s rights may, in some

circumstances, amount to “good faith.” However, in my view, it is not enough for a party who must establish good faith to say that he or she was ignorant of their rights. They must also establish that they had no reason to make enquiries about those rights. . .

[8] The policy and purpose behind limitation periods is also relevant to determining whether a delay has been incurred in good faith. In *Irish et al v MacKenzie Hotel et al*, 1997 CanLII 4510 (NWTSC) Richard J stated, at paras 12 and 13:

Limitation periods are enacted by the legislature for good reason. An express limitation period cannot simply be ignored.

A defendant or prospective defendant in civil litigation is entitled to the benefit of any limitation period prescribed in an enactment . . . The policy underlying the enactment of a limitation period includes reliance on consequences which flow from expiration of the limitation period.

[9] The importance of a limitation period is not diminished where the Court has express authority to extend it such as, for example, the *Rules of the Supreme Court of the Northwest Territories*, R-010-96 or the *Residential Tenancies Act*, RSNWT 1988 c R-5. In *Wilman v Northwest Territories (Commissioner)*, 1997 CanLII 4522 (NWTSC), Richard J dismissed an application to extend the time to bring a judicial review application because no satisfactory explanation had been provided. He stated (at para 13):

The 30-day time requirement in Rule 596 is not to be lightly disregarded. It exists for valid reasons. One reason is that public authorities require effective and reliable administration and this, of course, includes finality in decision-making.

[10] More recently, in *Salt River First Nation #195 et al v 5721 NT Ltd. et al*, 2022 NWTSC 26, this Court considered an application to extend the 30-day period within which applicants are required to file and serve a Notice of Intention to Tax following a discontinuance. The Court held an applicant is required to provide satisfactory evidence setting out why they could not bring the application within the time period, as well as demonstrating there would be no prejudice to any other party.

[11] In summary, given the policy and purpose behind limitation periods, an applicant seeking an extension under s 66 of the *FLA* must present evidence demonstrating tangible reasons for failing to act within the limitation period. As Salhany, J noted in *Busch*, it is not enough for an applicant to say they were ignorant of their rights; they must demonstrate they had no reason to enquire about them.

Anything short of this standard for proving good faith would render the limitation period meaningless.

ANALYSIS

[12] Singhania sets out the reasons she did not bring the claim within the limitation period in an affidavit sworn November 21, 2022. She states she did not put her mind to fully exploring issues relating to the divorce until the 2-year limitation had run out. She says the separation was difficult for her. She moved to Ontario shortly after the separation to work at a mine. She also states the parties had discussed asset division within the two-year period following the separation and although they did not come to an agreement, they were contemplating it for some time. She says she was not wilfully blind. She was not at any point aware of the limitation period.

[13] In cross-examination on her affidavit, Singhania said in the period following the separation she was under a lot of stress. She was “not in the right frame of mind” and “not ready” to discuss the separation or property issues with Varshney. She was rebuilding her life; she was in a new job and in a new city; the COVID pandemic began a few months after they separated. As well, she pointed to the difficulty of discussing divorce in her culture. With respect to the discussions between the parties about property following separation, she says Varshney proposed what she considered an unfair division.

[14] Respectfully, this evidence does not establish the delay was incurred in good faith as that term is used in s 66 of the *FLA*. As noted, Singhania said she was under a lot of stress following the separation, but “stress” is a broad term which can range from feeling awkward discomfort to debilitating mental illness. There is no evidence the stress she experienced was so great as to prevent her from making enquiries about her rights and obligations respecting property equalization. She was able to move to a new city and start a new job. She was able to have limited discussions with Varshney about what to do with their property, so it can be assumed she had some awareness of a potential claim. There is no evidence she was under the impression the parties were on their way to settling the issues or that Varshney had made any commitments or promises about property equalization.

[15] Singhania has not demonstrated the delay in filing a property equalization claim was incurred in good faith. There is no evidence she was prevented from making enquiries about her rights. Rather, she chose not to make enquiries about her rights even though she had ample reason to do so.

[16] The application is dismissed.

K. M. Shaner
J.S.C.

Dated at Yellowknife, NT, this
27th day of January, 2023

Counsel for the Petitioner/Respondent: Jeremy Lewsaw

Counsel for the Respondent/Applicant: Erik Bruveris

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