

CITATION: Taub v. Cabba, 2018 ONSC 2311
COURT FILE NO.: FS-16-20673
DATE: 20180412

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:)
)
LISA TAUB) *Julie Stachieri*, for the Applicant
)
Applicant)
)
- and -)
)
TRAIAN CABBA) *Self-represented*
)
Respondent)

ENDORSEMENT

D.L. Corbett J.:

[1] This is a motion for interim support and related relief initiated by Ms Taub in January 2017. Mr Cabba delivered his responding materials in July 2017. In those materials, he brought a cross-motion to dismiss the entire application for want of jurisdiction.

Disposition

[2] The jurisdictional cross-motion is dismissed. The respondent attorned to Ontario long ago and in any event Mr Cabba is as much or more resident in Ontario as he is in Quebec or anywhere else.

[3] Partial summary judgment was granted at the return of the motion respecting a claim that Mr Cabba indemnify Ms Taub for \$31,710.21 in credit card debt. This debt was advanced on Mr Cabba's behalf. Mr Cabba acknowledges the debt and has no legal defence to the requested indemnity order.

[4] An order for \$250,000 in lump sum interim spousal support is granted payable by Mr Cabba to Ms Taub within 30 days.

[5] Order to go adding Mr Cabba's company as a third party because it is Mr Cabba's financial alter ego where he keeps his money and from which he pays his expenses.

[6] Order to go adjourning the balance of the motion to a case conference before any judge, to be scheduled after this order is taken out, to give directions for next steps in this litigation.

Background

[7] The facts are somewhat unusual. The parties were high school sweethearts. Mr Cabba proposed marriage to Ms Taub when he was 16 and she was 15. Marriage did not ensue and they went their separate ways. Decades later, Ms Taub (who then lived in Toronto) used the internet to find Mr Cabba (who then lived in Montreal with his son). They exchanged messages and things quickly led to a rekindling of their relationship. They were soon corresponding on the basis that they were soul mates who had found each other once again.

[8] This was in August 2009. By the fall of 2009, Ms Taub had gone to Montreal where she began living with Mr Cabba. Ms Taub kept her apartment in Toronto, but on her evidence the parties were living together in Montreal from October 2009 to 2011.

[9] While Mr Cabba does not accept all of the details of Ms Taub's account of this period, he does agree that Ms Taub was living in his apartment in Montreal for a good deal of the time between October 2009 and October 2011, and that their relationship was close and included sexual congress. In cards, letters and electronic communications during this period, the parties described themselves as being in a familial relationship. In these motions, Mr Cabba described the relationship as a close Platonic relationship, perhaps akin to siblings. That characteristic is not a reasonable reading of Mr Cabba's own account of events, the acknowledged sexual relationship between the parties, and the substance of their personal communications.

[10] In 2011, the parties gave up the apartment in Montreal. Ms Taub co-signed a lease with Mr Cabba's son, Armando, for an apartment in Montreal because Armando was continuing to live in Montreal while going to school. Ms Taub arranged to move some of Mr Cabba's furniture from the Montreal apartment to Toronto. Ms Taub says that, from that time forward, Mr Cabba lived with her in Toronto until the date of separation in April 2014.

[11] Mr Cabba acknowledges that he spent some time in the apartment in Toronto, but he says that his residence was always in Quebec or outside Canada. He said that he has had a series of four residences during the material time. The first was the apartment shared with Ms Taub until October 2011 (1460 Dr Penfield Rd., Apt. 1460, Montreal). The second was his son's apartment, for which Ms Taub co-signed the lease (1474 De La Montagne, Apt. 1402, Montreal). The third was a room in a condominium that Mr Cabba told me he rented from a friend who owned and lived there (201 Chemin Du Golf, Apt. 903, Verdun). The fourth was said to be 201 Chemin de Penguey, Apt. 6B, St.-Prex, Switzerland, about which I was not given particulars – I was told that there were documents corroborating this Swiss residence in the motion materials though I was unable to find them.

[12] Mr Cabba noted that his driver's license is issued by the Province of Quebec, his health card is from Quebec, and his passport shows a Quebec address. He advises that, because he is not in Quebec for the majority of the calendar year, he does not file or pay Canadian or Quebec

income taxes (indeed, he assures me that he is not liable to pay income taxes anywhere in the world).

[13] Finally, Mr Cabba told me that, not only is he a resident of Quebec, but also that he must remain a resident of Quebec. He (or a company of which he is the principal) is plaintiff in an action in Quebec, and if he is not resident in Quebec, he advised, he will be required to post security for costs in that proceeding of upwards of \$250,000. There was no evidence to this effect in the motion materials, but Mr Cabba told me about it during his submissions.

Analysis

[14] Ms Taub has three sets of claims:

- (a) family law claims for support;
- (b) trust law claims for money and property; and
- (c) indemnity claims for credit card debts.

(a) The Family Law Claims

(1) Jurisdiction

[15] Even if parties maintain separate residences, they can still cohabit for the purposes of establishing entitlement to spousal support.¹ But that is not this case. Ms Taub's position is that, even if Mr Cabba maintained residences elsewhere, he maintained a residence at her apartment in Toronto between October 2011 and April 2014. I accept her argument on this point.

[16] I conclude that Mr Cabba did reside in Toronto between October 2011 and April 2014. I conclude that he also resided elsewhere, though I decline to make findings as to precisely where else he has resided during this period. Mr Cabba appears to be doing his best to minimize his legal attachment to any particular jurisdiction, apparently to avoid income taxes, and his evidence on the issue of residency has been a moving target within these proceedings. For example, in his affidavit sworn July 16, 2017, para. 2, Mr Cabba swears that he was resident in Quebec, Switzerland and Italy during the relationship, but never Ontario: in his Answer at paragraph 4, Mr Cabba states that he is a citizen of the USA and is primarily resident in Italy. He pleads that he "has not been a resident of Canada for several years, since well before the period of the alleged 'relationship'...." On this motion he claimed to be a resident of Quebec and Switzerland.

¹ *Rowe v. Piche*, 2012 ONCJ 114, para. 27.

[17] Mr Cabba has business interests in Ontario, including property owned by his company (including bank accounts and a residential premises). He moved his personal possessions from Quebec to Toronto in 2011. He cohabited here with Ms Taub from 2011 to 2014. He made plans with Ms Taub to purchase a house in Toronto (this was never completed, but I accept that this project was initiated by Mr Cabba because of his settled intention to maintain a residence here). He has spent almost no time in Quebec during the material period and has acknowledged that he has maintained the façade of Quebec residency to avoid an order for security for costs in Quebec. Taking all this into account, I am satisfied that Mr Cabba was resident in Ontario for the last 2.5 years of his relationship with Ms Taub and is amenable to the jurisdiction of the courts of Ontario.

(2) Application of Ontario Law

[18] Ontario law provides that spousal support may be available where an unmarried couple cohabits for at least three years. Quebec law does not provide for spousal support for unmarried couples. Mr Cabba placed great emphasis on the Supreme Court of Canada's decision in *Eric v. Lola*, in which the court found the applicable Quebec legislation to be constitutional.²

[19] Mr Cabba's first argument is that Ontario law does not apply to him because he is resident in Quebec, not Ontario. The factual basis for this argument is not true. I have concluded that, as a matter of fact, Mr Cabba was resident in Ontario at material times, and thus that he is subject to Ontario law. *Eric v. Lola* does not bear on this conclusion.

[20] Mr Cabba's second argument is that most of the period of cohabitation was in Quebec, not Ontario, and that Ms Taub is not entitled to spousal support for this reason. On the facts of this case, this argument must fail.

[21] The *Family Law Act* does not circumscribe eligibility for spousal support to a three year period of cohabitation within Ontario. Section 29(a) of the *Act* defines "spouse" to include two persons who are not married to each other and have cohabited continuously for not less than three years. It does not provide that the period of cohabitation be in Ontario.

[22] When a couple moves to Ontario, they become subject to Ontario law. See, for example, *Geishardt v. Ahmed*, where the couple cohabited in Montreal, lived apart in Chicago and Montreal while still being spouses, lived apart in Montreal and Toronto while still being spouses, and then lived in Ontario together. The entire 10.5 years of the spousal relationship counted for

² *Eric v. Lola*, [2013] 1 SCR 61.

the purposes of calculating spousal support, and not just the years they spent together in Ontario.³

[23] Matters might be different if one spouse intended to separate prior to the move to Ontario, and came here for the purposes of securing a more advantageous jurisdiction in which to assert a support claim. Matters also might be different if the period of the spousal relationship including Ontario residency was *de minimis*. I do not have to decide these questions in this case. Neither of the parties intended to separate when they sold the condominium in Quebec and moved to Ontario in 2011. The period during which the spousal relationship continued after the move is measured, not in days or weeks, but was 2.5 years, between October 2011 and April 2014.

[24] On the basis of a 4.5 year relationship, 2.5 years of which was in Ontario, Ms Taub is eligible in law to spousal support from Mr Cabba.

(3) Claim for Interim Spousal Support

[25] In his factum, Mr Cabba does not address the issue of need, ability to pay or quantum of spousal support.

[26] Ms Taub takes the position that the period of the relationship was between October 2009 and April 2014. There is evidence to support these dates and I accept them. That puts the duration of the relationship at 4.5 years.

[27] Ms Taub says that she left her business in the charge of a manager, and then subsequently closed it, at the urging of Mr Cabba, to pursue their joint endeavours and to make a life for themselves together. I accept this evidence. Ms Taub says that she had earned upwards of \$100,000 per year from her business when she was working in it full-time. Since she closed the business, she has not earned an income and has relied entirely on Mr Cabba for funds. Ms Taub says that she went into debt heavily to pay for family expenses, including tuition for Mr Cabba's son, Armando, at Concordia University and the Florence School of Art. She says that Mr Cabba assured her that he would repay her when he received funds from various projects. In January 2014, Mr Cabba received over \$530,000, but failed to repay any funds to Ms Taub; she says that it was at this point she started to realize that Mr Cabba was not going to keep his financial promises to her. Subsequently she learned that Mr Cabba had started an affair with another woman back in November 2013, whereupon Ms Taub ended the relationship with Mr Cabba. I accept all of this evidence.

³ *Geishardt v. Ahmed*, 2017 ONSC 5513. See also *Molodowich v. Pentinen*, 1980 CarswellOnt 274, *Hazelwood v. Kent*, [2000] OJ No. 5263, *MacMillan-Dekker v. Dekker*, [2000] OJ No. 2957, *Sternat v. Hell*, 2010 CarswellOnt 2380 and *Cockerham v. Hanc*, 2015 ONCJ 736.

[28] Ms Taub takes the position that Mr Cabba's income is substantial but that she is unable to demonstrate this because Mr Cabba has failed to provide disclosure. I accept this argument. Ms Taub argues that I should treat Mr Cabba's business, "Can Petrus", as his alter ego and impute the income in that company to him. She points to the following facts in support of this position: Can Petrus owns a "business premises" in Toronto, which is a residential condominium. Mr Cabba stays in this condominium when he is in Toronto, and it is to this residence that he moved upon separation. Can Petrus has bank accounts in Ontario, and Mr Cabba treats the funds in the company as his own, paying his personal expenses from company assets, apparently in order to avoid creating a trail establishing income in his own hands, thus avoiding income taxes. He "cannot remember" the last time he filed income tax returns anywhere. He declares no income. He has no personal bank accounts anywhere in the world. He hides behind corporate bank accounts so that judgments cannot be collected from him. Ms Taub established that slightly more than \$4 million went into the Can Petrus bank accounts between 2009 and 2016, of which \$140,000 was her own money and the balance, she argues, should be attributed to Mr Cabba as income (\$3,941,404 divided by 7 years equals \$563,057 per year). She argues that this is probably a conservative figure, that Mr Cabba has been secretive about his financial affairs and likely has resources elsewhere, but that the court can be confident in at least these figures).

[29] Mr Cabba does not own 100% of Can Petrus. While he has not provided anything like the kind of disclosure required to make his position clear to the court, Ms Taub accepts that there are other shareholders in the company. The arrangements among the shareholders and the nature of their business dealings, is murky at best. Whatever these arrangements, Mr Cabba seems able to use the resources of Can Petrus for his own expenses: at questioning he stated "The monies that are put into Canadian Petrus Oil and Gas are advances from shareholders with the understanding that I can utilize them for my own personal use" (Transcript, page 146). Mr Cabba's use of these funds is apparently not something for which he must account to his shareholders (Transcript, pages 157-58).

[30] After separation, the parties discussed support and other financial issues. In April 2014, Mr Cabba promised to pay \$25,000 per month as well as a lump sum of between \$2 and \$3 million. One week later Mr Cabba revised his promise to \$12,500 per month for one year and \$25,000 per month thereafter. Over the ensuing year he made sporadic payments totaling \$88,500 (averaging \$6808 per month). After April 30, 2015, payments stopped without warning or explanation.

[31] Ms Taub seeks interim support of \$9,429 per month from April 2014. This is at the high end of the range. She argues for this higher end on the basis that Mr Cabba's income is likely much higher than she has been able to establish from the limited disclosure provided, that she compromised her financial security substantially on the promises made by Mr Cabba about their financial future, she gave up her business, and because she is no longer able to work for medical reasons.

[32] I would not order support so high on an interim basis. Also, given the passage of time, the support will effectively be lump sum. Since Mr Cabba apparently pays no income taxes anyway, a lump sum payment need not attract a deep discount. I order support in the mid-range,

for four years (between April 2014 to April 2018, at the rate of \$7,000 per month, not deductible in Mr Cabba's hands and not taxable in Ms Taub's hands. This gives a total of \$336,000. From this should be deducted the support actually paid from April 2014 to April 2015 (\$88,500). This gives a total of \$247,500, which I round up to \$250,000.

[33] I order Mr Cabba to pay lump sum support to Ms Taub of \$250,000, payable within thirty days, on account of spousal support. This order is without prejudice to the position of the parties at trial on the issues of entitlement and quantum of spousal support, or to recharacterization of this payment by the trial judge.

(b) Claim for Credit Card Indemnity

[34] Ms Taub claims \$31,710.21 of credit card indebtedness incurred by Mr Cabba which she is responsible to pay. Mr Cabba does not dispute this claim. I granted partial summary judgment for Ms Taub in respect to this claim at the return of the motion.

(a) Request for Relief Against Can Petrus

[35] Mr Cabba did not address this issue in his factum. In oral argument he noted that the company has other shareholders and argued that there was no basis for this court to order relief that is effectively against these shareholders.

[36] Given the evidence that Can Petrus is Mr Cabba's alter ego, and Mr Cabba's own evidence that he can spend what he likes of the company's money as if it was his own, I reject Mr Cabba's argument that an order against the company would unfairly impact on other shareholders. Where a litigant acknowledges that he has shielded himself from personal responsibility by using a corporation as his alter ego, the court will be prepared to order support jointly against the party and his company.

[37] On the record before me, Mr Cabba has substantial assets and income, though the details will probably be never known to the court. Mr Cabba is the person who could dispel the mystery around his financial circumstances. He has not done so, and ordering his company to be responsible jointly for his obligations to Ms Taub is the only way in which Ms Taub will stand a realistic chance of recovering her entitlement. Personal judgments against Mr Cabba on behalf of his first two wives, totaling over \$350,000, are apparently unpaid and, according to Mr Cabba, he has no plans to pay them (Transcript pages 18-22).

(b) Relief Requested by Mr Cabba

[38] In his factum, Mr Cabba asks this court to dismiss the applicant's claims, declare that Mr Cabba is not subject to the jurisdiction of the Ontario courts and is not subject to Ontario family law. Mr Cabba did not bring a formal motion in this regard. However, Mr Cabba did provide affidavit evidence bearing on these issues, and his argument on these issues was his primary defence to Ms Taub's motion. In my view, it is appropriate to waive the requirement for a formal notice of motion and to treat Mr Cabba's materials, including his factum, as sufficient to raise the jurisdictional issues and to found a request for relief in respect to them. Those requests are all dismissed.

(c) Costs

[39] Ms Taub has succeeded on this motion and shall have her costs. She claims costs on the basis of \$41,765.04 for partial indemnity, \$51,402.80 for substantial indemnity and \$64,180.05 for full indemnity costs.

[40] These costs are high for a motion for interim relief. The issues of jurisdiction and applicable law, while very important to Ms Taub, were not overly complex. However, the issues of Mr Cabba's income were complicated by the way in which Mr Cabba has managed his affairs, which appears to me, on the limited record before me, to be a deliberate effort to obfuscate his circumstances to hide from his creditors (including ex-wives in Quebec to whom he owes substantial sums). Taking everything into account, I conclude that something between partial and substantial indemnity costs is appropriate here and would be in keeping with the principles

of proportionality that apply to all costs awards. I fix costs at \$45,000, all inclusive, payable within 30 days by Mr Cabba to Ms Taub.

Other Claims

[41] Ms Taub seeks a broad range of case management orders. In my view the parties ought to address these issues in a case conference before a family law case conference judge in light of this court's decision on support and jurisdiction. The balance of Ms Taub's motion is adjourned to the case conference judge, to be addressed as s/he sees fit.

D.L. Corbett J.

Released: April 12, 2018

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Lisa Taub

Applicant

- and -

Traian Cabba

Respondent

ENDORSEMENT

D.L. Corbett J.

Released: April 12, 2018