

2013 ONSC 4244
Ontario Superior Court of Justice

Ahmed v. Ghuman

2013 CarswellOnt 8523, 2013 ONSC 4244, [2013] W.D.F.L. 4735, 229 A.C.W.S. (3d) 366

**Sania Muneeb Ahmed, Applicant and Muneeb Ahmed Ghuman, Respondent and
Envision Mobile Limited, Third Party**

Czutrin J.

Heard: June 03, 2013
Judgment: June 21, 2013
Docket: FS-11-371125

Proceedings: additional reasons at *Ahmed v. Ghuman* (2013), 2013 CarswellOnt 13542, 2013 ONSC 5972 (Ont. S.C.J.);
additional reasons to *Ahmed v. Ghuman* (2013), 2013 ONSC 4773, 2013 CarswellOnt 9784 (Ont. S.C.J.)

Counsel: James S. Marks, for Applicant
Respondent, for himself
W. Eric Kay, for Non-Party, Vizio Mobile Inc. / Envision Mobile Limited

Subject: Family; Property; Civil Practice and Procedure

Headnote

Family law --- Division of family property — Practice and procedure — Documents on application — Financial statements

Parties were married for 11 years — Husband was officer and director of company E — Parties lived for time in Dubai — There were significant deposits by husband while in Dubai — Issues between parties concerned equalization payment husband owed to wife and spousal support — Wife brought motion for disclosure of bank documents and other financial documents from E — Motion granted — Non-party disclosure was necessary and appropriate — Request was not disproportionate to issues — To proceed without disclosure would be unfair to wife — Request was relevant and reasonable.

Table of Authorities

Rules considered:

Family Law Rules, O. Reg. 114/99
R. 19(11) — considered

MOTION by wife for disclosure of bank documents and other financial documents from husband's company.

Czutrin J.:

1 The Applicant wife brings this motion for disclosure of bank documents and other financial documents of Vizio Mobile Inc. /Envision Mobile Limited for the financial years ending December 31, 2008, 2009, 2010 and 2011 pursuant to *Family Law Rule* 19(11).

2 The motion is opposed by the Respondent husband, who acts in person, and by Envision Mobile Limited ("Envision") represented by its counsel, Eric Kay.

3 The Applicant submits that the requested disclosures is relevant, has been requested by her proposed expert business valuator and that it would be unfair to go on with the case without this information.

4 The requested disclosure is opposed by Envision as well as the Respondent husband.

5 For reasons that follow, I'm satisfied the requested non-party disclosure is necessary and appropriate and should be produced without delay.

6 Rule 19(11) provides:

(11) If a document is in a non-party's control, or is available only to the non-party, and is not protected by a legal privilege, and it would be unfair to a party to go on with the case without the document, the court may, on motion with notice served on every party and served on the non-party by special service,

(a) order the non-party to let the party examine the document and to supply the party with a copy at the legal aid rate; and

(b) order that a copy be prepared and used for all purposes of the case instead of the original.

7 The major issue between the parties is financial requiring the determination of an equalization payment, if any, owed by the Respondent/husband to the Applicant/wife and spousal support. In order to determine these issues the valuation of Envision is relevant and necessary to determine the value of the husband 22% interest in Envision and the income he derives from Envision.

8 The husband is an officer and director of Envision. The two other directors and shareholders are Imram Bashir (39%) and Vasdev Chanchlani (39%).

9 The requested disclosure is made by the Applicant's retained expert Harry Figov for the purposes of valuing the Respondent's interests, determining the accuracy of his net family property and providing an opinion of the Respondent's income.

10 This case began in August 2011 by the Applicant claiming a divorce, support, and an equalization payment.

11 The parties married on June 30, 2000, and separate July 9, 2011.

12 While initially living in Canada, the parties lived for a time in Dubai, commencing in 2005.

13 Bank records which were ultimately produced shows significant deposits by the husband while in Dubai. There was considerable dispute over the production of these bank records and the source of deposits.

14 The parties returned to Canada in March 2007.

15 The other two directors of Envision were involved financially with the Respondent, and they started a company known as Vizio-Mobile Inc. The wife's counsel has reasonable questions arising from the financial relationship between the husband and the directors.

16 The wife when commencing her application asserted that the husband's net worth, without taking into account his businesses, was \$772,000 as of July 2011.

17 The husband initially took the position that he did not have a lot of money and that he was in severe debt (paragraph 25 of his August 21, 2011 affidavit).

18 He also took the position that he owed \$700,000 US to the other two shareholders of Envision.

19 The husband recognized that the company (Envision) would need to be valued (paragraph 56 of the Respondent's August 21, 2011 affidavit).

20 He claimed he was a salaried employee and that his interest was worthless.

21 On December 1, 2011, Sanderson J. considered a variety of issues, including maintaining the preservation order of Kiteley J. granted August 25, 2011, and as well the wife's request that the shareholders (Mr. Bashir and Mr. Chanchin) be enjoined from dealing with their shares in Envision. That request was denied based ("on all the evidence before me that such an order would be appropriate"). (See Sanderson J.'s endorsement of December 1, 2011.)

22 Sanderson J.'s reasons for denying the request against the shareholders continued to say: "These matters of course must be finally decided in the future and these comments relate only to meeting the test on the present motion before me."

23 Sanderson J. considered the wife's request for disclosure.

24 I do not conclude that Sanderson J.'s order and reasoning raises the same issues or deposed of the current requests of the wife of Envision. It is not unusual to get disclosure and further requests are made. Envision was not a non-party to that motion.

25 Envision's counsel submitted that the wife's request aims at testing the husband's credibility and not valuation issues. The underlying assumptions made by the husband's experts are entitled to be tested by the disclosure requested by the wife's expert. The requests arise from the husband's expert's reports and the disclosure that has been made since the order of Sanderson J. and the questioning of the husband.

26 The wife, her counsel, and her expert have already signed a confidentiality agreement.

27 I do not find that the request is disproportionate to the issues. Whether it will ultimately prove to be disproportionate after disclosure is completed and the report of Mr. Figov is prepared and a finding of the court can ultimately be tested. Once Mr. Figov obtains the disclosure and prepares his report might result in a further report likely from the husband's expert, however to proceed without the disclosure, I find, would be unfair to the wife.

28 I find that the request is relevant and reasonable.

29 I find that the disclosure to date raises questions and that Mr. Figov's estimate of fees is reasonable, and meets the requirements of rule 19(11) of the *Family Law Rules*.

30 Envision shall assemble the documentation requested by Mr. Figov in his letter of February 15, 2013 within 60 days and advise when and where the documentation is located and Mr. Figov is to be allowed and any one in his employ to attend and make copies of originals and shall be given unfettered access. He shall be permitted access between 9 AM and 5 PM. He shall bring his own equipment to scan or copy documents.

31 I do not intend to review in greater detail what I perceive as serious questions raised by the wife's as only the disclosure, once produced, might shed light on the inconsistencies in the husband's position. He, of course, might be proven correct and, if so, the wife may fail and costs consequences may follow. The husband's disclosed documentation raises questions about the accuracy of his financial situation and the relationship between him and the shareholders as outlined by the wife's counsel (for example his mortgage application, changes to the husband's Financial Statement of August 21, 2011 and his more recent February 1, 2013 Financial Statement.

32 I am also satisfied that the wife is entitled to interim disbursement to allow her expert to obtain the ordered disclosure and to prepare a report. The husband shall pay \$15,000 to Mr. Marks, in trust, for this specific purpose forthwith.

33 A draft order may be presented to me for signature, approved by counsel, and the husband failing approval to be returned before me as counsel arrange on notice the week of July 15, 2013. The draft order will detail the disclosure of Mr. Figov as I have ordered and the date for inspection as parties agree or I can fix.

34 I will consider further interim disbursements as requested once this disclosure is satisfied.

35 Written submissions on costs may be exchanged, firstly by the wife's submissions being served and filed by July 30, 2013 and with Envision's and the husband's by August 30, 2013, and any reply by the wife by September 23, 2013.

Motion granted.