

CANADA / JUDGMENT

Anderson v. Anderson

2019 BCSC 1985

COURT

Supreme Court of British Columbia

DECIDED

20 November 2019

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2019 BCSC 1985 Anderson v. Anderson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anderson v. Anderson,

2019 BCSC 1985

Date: 20191120

Docket: Vancouver

Registry: E180716

Between:

Elizabeth Margaret Anderson

Claimant

And

Christopher John Anderson

Respondent

Before: The Honourable Mr. Justice Marchand

Reasons for Judgment

Appearing on her own behalf:

E.M. Anderson

Appearing on his own behalf:

C.J. Anderson

Place and Date of Trial:

Vancouver, B.C.

November 4-5, 2019

Place and Date of Judgment:

Vancouver, B.C.

November 20, 2019

Introduction

- [1] Elizabeth and Christopher Anderson were married in Australia on February 11, 1995. They have three children who are now 19, 16 and 13. They moved to Canada with their children in 2008. They physically separated from each other on August 4, 2015. They separated their financial affairs (but not their family assets) in July 2016.
- [2] Things have not gone smoothly since the parties separated.
- [3] The parties have been before the Provincial Court of British Columbia a number of times to resolve parenting issues, child support, spousal support, and special or extraordinary expenses. Mr. Anderson brought two appeals to this court, one of which was partially successful.
- [4] Currently, the children live primarily with Ms. Anderson. The two oldest children are in full-time post-secondary studies and the youngest is in grade 9. Mr. Anderson is obliged to pay Ms. Anderson child support of \$2,047 per month, spousal support of \$138 per month, special or extraordinary expenses of \$416 per month and 100% of the children's health-related expenses that are not covered by Ms. Anderson's employment-related health benefits.
- [5] Mr. Anderson appears to have fallen on hard times. At the outset of trial, he produced a one sentence letter from a physician dated October 30, 2019 indicating that he is dealing with severe anxiety and depression. He also produced a letter from the Ministry of Social Development and Poverty Reduction (the "Ministry") indicating that, effective October 1, 2019, he has been designated as a Person With Disabilities ("PWD") eligible to receive disability income assistance.
- [6] Mr. Anderson has accumulated substantial arrears of child support, spousal support, and special or extraordinary expenses. He has not made any payments to Ms. Anderson since he made a partial support payment to her in February 2019. I do not know much more about Mr. Anderson's situation because he did not participate in the trial and he does not communicate well with Ms. Anderson.
- [7] Ms. Anderson filed a Notice of Family Claim on March 15, 2018 seeking a divorce, an equal division of family property and a name change.

- [8] Mr. Anderson did not file a Response to Family Claim but he filed a Counterclaim on April 16, 2018. He made some claims regarding the parenting arrangements and child support, but these appear to have been appropriately dealt with in Provincial Court. The balance of his Counterclaim is difficult to interpret. Mr. Anderson appears to seek an equal division of family property, except for the parties' pensions. He also raises but makes no specific claim in relation to "an outstanding matter of breach of fiduciary duty relating to the family corporation."
- [9] Ms. Anderson has satisfied all of the requirements under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) to obtain a divorce. She is also entitled to change her surname back to Lamond.
- [10] The main issue is the division of the parties' family property, which consists of financial assets, Australian government pensions, Canada Pension Plan ("CPP") credits, jointly owned real estate in North Vancouver and Calgary, and a jointly owned corporation, Anderson Resource Development Ltd. ("ARD").
- [11] Ms. Anderson also seeks to obtain payment of Mr. Anderson's existing arrears and security for Mr. Anderson's future support payments out of the division of family property.
- [12] There are two significant complicating factors. The first is that Mr. Anderson has not been cooperative in managing and/or dividing the parties' property. The second is that Ms. Anderson did not adduce expert evidence to establish the current market value of the properties owned personally by the parties, properties owned by ARD or of ARD itself.
- [13] Having no reason to think that Mr. Anderson will cooperate with Ms. Anderson in the future, any division of assets must minimize or eliminate the need for Mr. Anderson to take any action. Facing some unknowns, any division of assets must be crafted to ensure fairness to both of the parties. I hope to achieve both of these goals by allocating certain family assets to each of the parties, transferring ARD to Ms. Anderson on certain conditions, giving Ms. Anderson conduct of sale of rental properties in Calgary and North Vancouver on certain conditions, and requiring that Ms. Anderson return to court within six months with certain information in order to finalize an equal division of family assets.

Credibility and Reliability of Ms. Anderson

- [14] At the outset of the trial, Mr. Anderson applied to adjourn the trial. Mr. Anderson did not make a formal written application supported by affidavit evidence. He also declined to speak. Instead, he handed me a type-written request for an adjournment, the doctor's note, the PWD letter from the Ministry and a number of handwritten notes.
- [15] I dismissed Mr. Anderson's adjournment application on the basis that:
- the parties have significant assets that, after four years of separation, need to be divided;
 - the trial had been adjourned twice previously, with the most recent adjournment being peremptory on Mr. Anderson;

- Mr. Anderson had been given six months since the last adjournment to prepare his case for trial and had not adequately explained why he had failed to do so;
- Mr. Anderson had apparently been misinformed by Supreme Court Scheduling that the trial would not be proceeding but was corrected first by Ms. Anderson and then by Supreme Court Scheduling. Mr. Anderson did not explain how he was prejudiced by being temporarily misinformed;
- Mr. Anderson sought to adjourn the trial generally, with no explanation as to how his situation would improve in the future to enable him to participate. Mr. Anderson gave me no reason to think that he would not continue to delay the inevitable;
- Any concerns Mr. Anderson had regarding non-disclosure by Ms. Anderson could be dealt with appropriately; and
- From what I could see, the issues appeared to be straightforward.

[16] When I dismissed Mr. Anderson's application to adjourn the trial, he handed me a handwritten note indicating his objection to proceeding prior to having a Legal Aid lawyer assigned to him and politely excused himself. As a result, I received only one side of the story. In these circumstances, I consider it appropriate to make a few comments about the credibility and reliability of Ms. Anderson's testimony.

[17] I found Ms. Anderson to be a credible, reliable and impressive witness.

[18] Ms. Anderson is bright, articulate, organized and careful. Her testimony was detailed, internally consistent and well supported by relevant documents. Ms. Anderson was responsive to my many questions. She indicated when she did not know an answer, often returning to court after an adjournment with additional documents to give an accurate answer.

[19] Ms. Anderson was fair and did not exaggerate her testimony or claims. For example, she explained the difficulties presented by Mr. Anderson's lack of cooperation without ever "bashing" him. She acknowledged her need to account to Mr. Anderson for certain money she took out of the parties' joint assets. She acknowledged that Mr. Anderson did not keep money he unilaterally withdrew from a joint account for himself. She did not seek an unequal division of assets on the basis that she has been almost exclusively responsible for managing the family assets since the parties' separation.

[20] It would have been preferable for Mr. Anderson to have participated in the trial but I have the utmost confidence in the evidence provided by Ms. Anderson.

The Division of Family Assets

Legal Principles

- [21] The parties were married soon after they had completed bachelor's degrees. Neither had any pre-relationship assets. In fact, they had student loans. During the relationship, the only significant financial gift they received was from Ms. Anderson's grandparents. This money was used for various family expenses and cannot now be traced directly to any particular family asset. Ms. Anderson does not seek to have the gift excluded from the division of the parties' family assets.
- [22] During the marriage, the parties earned employment, self-employment and/or rental income, contributed to pension plans in Australia and Canada, made various investments, and acquired various rental properties personally or through ARD. Since the parties separated their financial affairs in July 2016, Ms. Anderson has used the parties' joint savings and rental income to maintain their rental properties.
- [23] In these circumstances, the legal principles associated with the division of the parties' assets is straightforward.
- [24] Under s. 84 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the parties' family property consists of all of the real and personal property owned by at least one of them on the date they separated, including the parties' shares in ARD, money with financial institutions and entitlements to pension benefits.
- [25] In the absence of any agreement or order otherwise, under s. 87 of the FLA, the value of the parties' family property must be based on its fair market value as of the date of the hearing before me.
- [26] Finally, under s. 97(1) of the FLA, the court has broad powers to determine any matter respecting the division of family property and make any necessary, reasonable or ancillary order to give effect to the division. Under s. 97(2)(c) of the FLA, this includes the power to order that one spouse pay the other compensation " for the purpose of dividing the property".
- [27] In cases where, for one reason or another, a final division of family assets cannot be made, this court has taken a variety of principled approaches to ensure fairness and finality within a reasonably short period of time.
- [28] One example arose in *Tratch v. Tratch* (1981), 30 B.C.L.R. 98, where McLachlin L.J.S.C. (as she then was) adjourned the division of family assets under predecessor legislation pending an agreement on valuation or the submission of further evidence on the value of the assets. McLachlin L.J.S.C. did not wish to assign Ms. Tratch a percentage interest in Mr. Tratch's business assets nor require Mr. Tratch to liquidate them. Assigning Ms. Tratch a percentage interest in Mr. Tratch's business assets would not secure Ms. Tratch's economic independence, and liquidating Mr. Tratch's business assets might have been detrimental to both parties. Following agreement or valuation, McLachlin L.J.S.C. held that the best solution would be to divide the family assets themselves, supplemented if necessary by an

order for payment of money.

- [29] In *Oleksiewicz v. Oleksiewicz*, 2017 BCSC 228, the parties disagreed on the fair market value of a vintage car and did not adduce admissible evidence on the value of other vehicles. Armstrong J. declined to order a public auction of the vehicles, although he acknowledged the possibility of doing so. Instead, Armstrong J. ordered the parties to submit sealed bids as a mechanism for determining the value of and which party should retain the vintage car. He also divided the remaining vehicles between the parties.
- [30] In *Kariminia v. Nasser*, 2018 BCSC 695, there was no admissible evidence to determine the fair market value of the parties' home in Iran. Forth J. ordered the claimant to pay the respondent "compensation in an amount to be determined" and granted leave to the respondent to adduce expert evidence on the value of the home.

Approach to Dividing the Parties' Family Assets

- [31] Following the parties' physical separation, they jointly managed their financial affairs until July 2016. Since then, Mr. Anderson has largely demonstrated an inability to participate in or cooperate on even the most straightforward matters.
- [32] For example, the parties had a number of investments with Commonwealth Securities Ltd. ("CommSec") in Australia. Mr. Anderson informed CommSec of the parties' separation, which resulted in CommSec suspending their trading account. Mr. Anderson subsequently agreed that the account could be "unsuspended" to allow for the sale of the securities owned by the parties and an equal division of the sale proceeds. After Ms. Anderson acted on the parties' agreement to sell their securities, Mr. Anderson reneged on the agreement and the CommSec account was again suspended. As a result, CommSec holds sale proceeds pending further direction of the parties or order of the court.
- [33] As another example, the parties are equal shareholders in ARD. In June 2017, Mr. Anderson was supportive of a "butterfly" transaction in which assets owned by ARD could be divided by the parties in a tax efficient manner. Since then, however, Mr. Anderson has been largely unresponsive to Ms. Anderson's repeated emails and suggestions to fairly divide the family assets.
- [34] As a final example, Ms. Anderson wanted to obtain appraisals of the rental properties owned by the parties or ARD but Mr. Anderson would not agree to release joint funds to do so. As a result, Ms. Anderson did not pursue obtaining appraisals any further.
- [35] Given Mr. Anderson's apparent inability to act on dividing the parties' assets, as a first step, I have determined that it will be best to allocate certain family assets to each of them. In particular, I will order that each party keep their own Australian Government Commonwealth Superannuation Corporation pensions. As Mr. Anderson's Australian pension greatly exceeds the value of Ms. Anderson's Australian pension, I will make up some of the difference by allocating to Ms. Anderson all of the sale proceeds held by

CommSec, all of the funds in a joint Commonwealth Bank of Australia ("CommBank") account and all of the funds in a TD Canada Trust chequing account maintained by Ms. Anderson to financially manage the parties' and ARD's rental properties.

- [36] Given that the parties' CPP credits are not equal and that one party can be empowered to make an application to equally divide the credits without the cooperation of the other, as a second step, I will require Ms. Anderson to file the necessary application with CPP.
- [37] Given that it is unworkable for the parties to either maintain their equal shareholdings in ARD or complete a "butterfly" transaction[1], as a third step, I have determined that Mr. Anderson must transfer his shares in ARD to Ms. Anderson.
- [38] Given that the parties own rental properties in Calgary and North Vancouver, as a fourth step, I have determined that these properties must be sold with the proceeds being used to equalize the division of family assets. As Mr. Anderson appears to be incapable of acting on the division of the family assets, Ms. Anderson must be given exclusive conduct of sale. The proceeds must be held in trust pending a final division of family assets, either by agreement of the parties or further court order.
- [39] Given that I do not know the value of ARD, as a final step, Ms. Anderson must wind up ARD or return to court within six months with admissible evidence of the value of ARD.
- [40] ARD owns rental properties in Calgary. Ms. Anderson adduced evidence to demonstrate that the real estate market and rents are down in Calgary, while strata fees and insurance costs are up. In these circumstances, it may be best for Ms. Anderson to sell the properties owned by ARD and wind up the company. If she chooses to do so, the net proceeds after the winding up will be divided equally. If she chooses not to do so, she will have to obtain appraisals of the Calgary properties and an expert valuation of ARD's shares.
- [41] Normally, the costs associated with valuing family property are shared equally by the parties or sought as a recoverable disbursement. I will take into account any expenses incurred by Ms. Anderson in dealing with ARD when finalizing the division of family property.

The Value of Family Property Allocated to the Parties

- [42] As of July 24, 2016, Mr. Anderson's equity in his Australian pension was \$234,011.33 AUD. At current exchange rates, this equals approximately \$212,700 CDN. I accept Ms. Anderson's testimony that all or virtually all of Mr. Anderson's equity in his Australian pension was earned during the parties' marriage.
- [43] As of July 24, 2016, Ms. Anderson's equity in her Australian pension was \$109,088.87 AUD. At current exchange rates, this equals approximately \$99,200 CDN. I also accept her testimony that all of her equity in her Australian pension was earned during the parties' marriage.

- [44] I am not familiar with the administration of Australian government pensions. As a result, even though the parties have not made further contributions to their Australian pensions since July 2016, I do not know whether the parties' equity in their Australian pensions may have changed since that time. To ensure fairness to the parties, I will require that Ms. Anderson obtain an update of the equity in her Australian pension from the pension plan's administrators. I can use the amount of any change in Ms. Anderson's equity to estimate a corresponding change in Mr. Anderson's equity prior to finalizing the division of family assets.
- [45] Since October 2018, CommSec has been holding \$64,363.86 AUD for the parties as the result of the sale of the parties' securities. These proceeds will be allocated entirely to Ms. Anderson. At current exchange rates, this equals approximately \$58,512.60 CDN.
- [46] The parties currently hold \$3,542.28 AUD in a joint CommBank account in Australia. In January 2018, Ms. Anderson received a transfer of \$3,000 AUD from this account and used an additional \$75.37 AUD to pay an account fee that was of no benefit to Mr. Anderson. All of the CommBank amounts will be allocated to Ms. Anderson. At current exchange rates, this equals approximately \$6,000 CDN[2].
- [47] As of October 2, 2019, Ms. Anderson held \$12,385.07 in a TD Canada Trust chequing account. Ms. Anderson set up this account to financially manage the rental properties owned by the parties and by ARD.
- [48] On the release of my judgment, Ms. Anderson will be the sole beneficial owner of ARD, including its corporate bank account. She will, therefore, be in a position and expected to financially manage ARD's rental properties through ARD's corporate bank account, not the TD Canada Trust chequing account in her name. Ms. Anderson can continue to use the TD Canada Trust chequing account she set up to manage the jointly owned properties in North Vancouver and Calgary until they are sold. After that, she can retain the balance of the funds in that account for her own use exclusively.

The Value of ARD

- [49] Each of the parties owns one-half of the issued shares in ARD. If the parties had an equal number of shares in a publicly traded corporation, each could simply keep their own. In this case, for the reasons I have already outlined, having the parties keep their shares in ARD is simply not workable. As a result, I have determined that Mr. Anderson must transfer all of his shares in ARD. To ensure that a fair process is put in place to equally divide the family property, I must give some consideration to the value of ARD.
- [50] At one time, ARD derived most of its income from international contract work performed by Mr. Anderson. Since April 2016, that is no longer the case. Presently, ARD's only source of income is three rental properties in Calgary. Collectively, ARD's rental properties appear to be losing money.

- [51] Ms. Anderson introduced property tax documents for the three rental properties owned by ARD in Calgary in 2018 and 2019. The documents included the assessed value of the properties as of July 1, 2017 and 2018. The assessed value of all three properties declined over that time frame. Though Ms. Anderson did not adduce expert evidence to establish that the trend has continued, she believes that to be the case.
- [52] Though I do not have any admissible evidence to establish the current fair market value of ARD's rental properties in Calgary, their assessed values on July 1, 2018 were:
- #31 - 111 Tarawood Lane NE - \$254,500
 - #207 - 3 Somervale View SW - \$174,000
 - #307 - 3 Somervale View SW - \$178,000
- [53] At the end of October 2019, the outstanding principal on mortgages registered against the title to each of ARD's rental properties were:
- #31 - 111 Tarawood Lane NE - \$162,214
 - #207 - 3 Somervale View SW - \$143,388
 - #307 - 3 Somervale View SW - \$154,847
- [54] ARD also has money in a corporate bank account with TD Canada Trust. As of October 22, 2019, the balance in the corporate bank account was \$22,112.79.
- [55] Based on this information, it is apparent that ARD has some value. Without appraisals of the current fair market value of ARD's rental properties and an expert valuation of ARD's shares, the best I can say is that the fair market value of ARD's shares must be quite a bit less than \$170,000[3].
- [56] As will be seen, the equity in the rental properties owned by the parties outside of ARD is likely quite a bit more than this. As a result, an appropriate allocation of the proceeds from sale of the parties' other rental properties will ensure that an equal division of family property can eventually be achieved.

The Value of the Parties' Rental Properties

- [57] The parties jointly own rental properties at #202 - 252 West 2nd Avenue in North Vancouver and #310 - 15 Somervale View SW in Calgary. While Ms. Anderson did not adduce admissible evidence to establish the current fair market value of these properties, she adduced evidence of the assessed values as of July 1, 2018 and of the outstanding principal on mortgages registered against the titles to the properties as of the end of October 2019.
- [58] The assessed values of the jointly owned rental properties as of July 1, 2018 were:
- #202 - 252 West 2nd Avenue - \$403,500

· #310 - 15 Somervale View SW - \$176,500

[59] At the end of October 2019, the outstanding principals on mortgages registered against the titles to the jointly owned rental properties were:

· #202 - 252 West 2nd Avenue - \$131,443

· #310 - 15 Somervale View SW - \$144,760

[60] Though there have likely been real estate market fluctuations in Calgary and North Vancouver since July 1, 2018, the net proceeds from sales of the parties' jointly owned rental properties will clearly be more than enough to achieve an equal final division of family property.

Other Issues

Payment of Arrears and Costs

[61] Ms. Anderson adduced reliable evidence to establish that Mr. Anderson's current arrears of child support, spousal support, and special or extraordinary expenses to the date of trial total \$26,470.49. Ms. Anderson also adduced evidence that Mr. Anderson owes her costs in the assessed amount of \$9,052.40 in relation to prior proceedings. Ms. Anderson asked that these amounts be paid out of the division of the parties' family assets.

[62] Ms. Anderson's request seems very sensible but I have two concerns. The first is that I am not satisfied that Mr. Anderson was aware that Ms. Anderson would be advancing these arguments when he decided not to participate in the trial. The second is that Mr. Anderson's income appears to have declined significantly since the orders that resulted in the arrears were made.

[63] Given my concerns, I am not prepared to make specific findings regarding the amount of arrears owed by Mr. Anderson nor require that Mr. Anderson pay his arrears and costs on the final division of family assets. Instead, I will adjourn these issues over for six months. That will give Mr. Anderson time to pursue any variation of the support orders that may be warranted given his apparently changed circumstances and to appear in court in six months' time to make submissions on Ms. Anderson's requests.

[64] If Mr. Anderson does neither, I am putting him on notice that I intend to determine his arrears, and ensure that his arrears and the costs he owes to Ms. Anderson are paid out of his share of the net proceeds from the sale of the parties' jointly owned properties.

Security for Future Support Payments

[65] Given Mr. Anderson's recent history of not paying support to Ms. Anderson, Ms. Anderson has asked that some of Mr. Anderson's share of the net proceeds from the sale of the parties' jointly owned properties be held in trust to secure the future payment of support.

- [66] Again, Ms. Anderson's request seems sensible but raises the same concerns about a lack of notice to Mr. Anderson and the apparent change in Mr. Anderson's circumstances. As a result, I will adjourn this issue for six months to give Mr. Anderson an opportunity to pursue a variation application and to appear before me to make submissions in relation to Ms. Anderson's request.
- [67] If Mr. Anderson does neither, I am putting him on notice that I will consider Ms. Anderson's request in six months' time and could very well order that some of his share of the net proceeds from the sale of the parties' jointly owned properties be held in trust to secure his future support payments.

Issues Raised by Mr. Anderson

- [68] Even though Mr. Anderson did not participate in the trial, I canvassed the two property-related issues he alluded to in his Counterclaim and other issues he raised in the type-written note he handed me at the beginning of the trial.
- [69] As mentioned previously, in his Counterclaim, Mr. Anderson sought an equal division of family property, except perhaps his Australian pension. He also mentioned "an outstanding matter of breach of fiduciary duty relating to the family corporation." In his type-written note, he alleged that Ms. Anderson had not responded to requests for information about unauthorized transactions, including one in which Ms. Anderson closed a British pound account containing approximately \$50,000 CDN.
- [70] Ms. Anderson has no idea why Mr. Anderson's Counterclaim appears to oppose an equal division of Mr. Anderson's Australian pension. Based on Ms. Anderson's evidence, which I accept, all or virtually all of Mr. Anderson's equity in his Australian pension was earned when Mr. Anderson worked for the public service in Australia during the parties' marriage. Ms. Anderson was not sure whether Mr. Anderson may have earned some equity in his Australian pension when he worked part-time for the public service while the parties were dating. If he did, I accept Ms. Anderson's evidence that the impact of any associated pension contributions would be negligible. On the evidence, there is simply no basis to exclude Mr. Anderson's pension from the equal division of the family property or to make a compensation order in his favour in relation to it.
- [71] Ms. Anderson believes that the breach of fiduciary duty claim mentioned in Mr. Anderson's Counterclaim relates to the payment of dividends by ARD following Mr. Anderson's return to Canada in April 2016. I accept Ms. Anderson's testimony about what happened.
- [72] When Mr. Anderson returned to Canada, ARD paid a dividend to him to assist him in setting up a separate residence for himself in Canada. No equivalent amount was paid to Ms. Anderson. ARD's accountant subsequently reported that the company could not pay unequal dividends to its equal shareholders and suggested how the issue could be resolved. Ms. Anderson gave Mr. Anderson the options and he agreed, in writing, that Ms. Anderson should take an equivalent dividend for herself, which she did. Mr. Anderson later objected

and claimed that Ms. Anderson had breached a fiduciary duty in taking the equivalent dividend.

- [73] Ms. Anderson has adduced the email from ARD's accountant dated February 10, 2017 that set out the steps the parties could take to deal with the unequal payment of dividends to the parties in 2016. She also adduced the email from Mr. Anderson to her on the same date in which Mr. Anderson agreed that Ms. Anderson should take an additional dividend. Finally, Ms. Anderson adduced T5s issued by ARD to the parties for the 2016 tax year showing that each received equal dividends that year.
- [74] To Ms. Anderson's knowledge, Mr. Anderson has not taken any steps to pursue the alleged breach of fiduciary duty claim.
- [75] I conclude that Mr. Anderson's breach of fiduciary duty claim is utterly without merit. There is no basis to make a compensation award in his favour in relation to any alleged breach of fiduciary duty.
- [76] Mr. Anderson's suggestion that Ms. Anderson has not been forthcoming with requested information is also utterly without merit.
- [77] Ms. Anderson adduced copies of numerous emails between the parties in which she endeavoured to respond to concerns raised by Mr. Anderson and to advance the division of the parties' assets. Mr. Anderson was largely unresponsive, made it difficult for Ms. Anderson to deliver documents to him (including denying his receipt of certain documents) and even reacted negatively when Ms. Anderson took steps to serve him via process server.
- [78] I am satisfied that Ms. Anderson has not improperly withheld any documents from Mr. Anderson and that she has adduced the necessary relevant documents to enable me to equally divide the parties' family property.
- [79] Finally, I am satisfied that nothing untoward has occurred with respect to the British pound account that was closed by Ms. Anderson.
- [80] I accept Ms. Anderson's testimony that ARD was paid in British pounds for Mr. Anderson's international work and that deposits were made into a TD Canada Trust foreign currency (British pound) account held by ARD. Mr. Anderson's international work stopped in April 2016. As a result, deposits were no longer being made into the foreign currency account.
- [81] In March 2018, TD Canada Trust announced that it would be introducing a monthly fee for foreign currency accounts. At the same time, the value of the British pound had dropped. To avoid paying the monthly fee and to take advantage of the favourable exchange rate, the parties verbally agreed to close ARD's foreign currency account and transfer all of the money in that account to ARD's business account. Ms. Anderson introduced a bank statement from April 30, 2018 showing that \$42,312 CDN from ARD's foreign currency account was deposited into ARD's business account on April 17, 2018.

- [82] While Ms. Anderson did not introduce copies of every ARD bank statement since the parties separated, I have absolutely no reason to think that she did anything untoward with any of ARD's money, including the money from ARD's foreign currency account.
- [83] In this regard, I note that Mr. Anderson has had full access to all of ARD's bank accounts and banking records, yet he has not particularized any allegations, or even referred to any specific suspicious transactions. I also note that Mr. Anderson has virtually completely abdicated his responsibility to assist in the management of the parties' financial affairs and Ms. Anderson has admirably carried the load. Aware of Mr. Anderson's concerns, changing positions and lack of cooperation, Ms. Anderson has been especially careful to manage the parties' joint assets carefully, fairly and transparently.

Conclusion and Order

- [84] For all of these reasons, I make the following order:
1. Subject to s. 12 of the Divorce Act, Elizabeth Margaret Anderson and Christopher John Anderson who were married at Canberra, Australia on February 11, 1995, are divorced from each other. The divorce takes effect on the 31st day after the date of this order.
 2. Under s. 5(3) of the Name Act, effective immediately, Elizabeth Margaret Anderson shall be known as Elizabeth Margaret Lamond.
 3. Mr. Anderson shall retain 100% of the equity in his Australian government pension administered by the Commonwealth Superannuation Corporation. For greater certainty, Mr. Anderson's Australian government pension is not divisible.
 4. Ms. Anderson shall retain 100% of the equity in her Australian government pension administered by the Commonwealth Superannuation Corporation. For greater certainty, Ms. Anderson's Australian government pension is not divisible.
 5. Within 60 days, Ms. Anderson shall make the necessary application to equally divide the parties' Canada Pension Plan credits earned between the dates of the parties' marriage on February 11, 1995 and their separation on August 4, 2015.
 6. Ms. Anderson is declared to be the exclusive beneficial owner of the following family property:
 - a. all shares in Anderson Resource Development Ltd.;
 - b. all holdings with Commonwealth Securities Ltd. in Australia;
 - c. all holdings in the parties' joint Commonwealth Bank of Australia account in Australia; and
 - d. all holdings in Ms. Anderson's TD Canada Trust chequing account.
 7. For greater certainty, from the date of this order, Ms. Anderson is exclusively entitled to deal with the family property identified in paragraph 6 of this order.

8. Mr. Anderson shall immediately transfer his shares in ARD to Ms. Anderson. For greater certainty, even if he does not, Ms. Anderson is exclusively entitled to manage ARD's assets and business, including the following assets:
 - a. The rental property owned by ARD at #31 - 111 Tarawood Lane NE in Calgary, Alberta;
 - b. The rental property owned by ARD at #207 - 3 Somervale View SW in Calgary, Alberta;
 - c. The rental property owned by ARD #307 - 3 Somervale View SW at in Calgary, Alberta; and
 - d. ARD's corporate bank account with TD Canada Trust.
9. The following family property will be promptly listed for sale:
 - a. #202 - 252 West 2nd Avenue in North Vancouver, British Columbia; and
 - b. #310 - 15 Somervale View SW in Calgary, Alberta.
10. Ms. Anderson has sole conduct of the sale of the properties listed in paragraph 9 of this order.
11. The proceeds of sale from the sale of the properties listed in paragraph 9 of this order shall be used to:
 - a. Pay any mortgages registered against the titles to the properties;
 - b. Pay any encumbrances registered against the titles to the properties;
 - c. Pay real estate commissions;
 - d. Pay the usual closing adjustments; and
 - e. Pay any other closing costs, including legal fees.
12. The net proceeds from the sale of the properties listed in paragraph 9 of this order shall be held in trust by the conveyancing solicitor retained by Ms. Anderson pending written agreement of the parties or further order of the court.
13. To finalize the equal division of the parties' family property, Ms. Anderson shall return to court in not less than six months' time with the following information:
 - a. A letter from the Australian Government Superannuation Corporation indicating her total equity in her Australian government pension as of November 4, 2019, or the next nearest possible date;
 - b. Documentation to establish that she has applied to equally divide the parties' Canada Pension Plan credits;
 - c. If ARD has been wound up, documentation to establish the total financial benefit to Ms. Anderson from the winding up;

- d. If ARD has not been wound up, an expert valuation of the fair market value of ARD's shares, as of November 4, 2019; and
 - e. Documentation to establish the amount of the net sale proceeds from the sale of the parties' jointly owned properties listed in paragraph 9 of this order.
14. The need for Mr. Anderson to approve the form of this order is dispensed with.
- [85] Given her success on all issues, Ms. Anderson shall have her costs at the scale for matters of ordinary difficulty.

"L.S. Marchand J."

MARCHAND J.

- [1] Mr. Anderson does not appear to be in a position to assume or guarantee any mortgages registered against properties owned by ARD as would be required to complete a butterfly transaction.
- [2] $\$3,542.28 + \$3,000 + \$75.37 = \$6,617.65 \text{ AUD} / 1.1 = \$6,016.05 \text{ CDN}$
- [3] The total of the assessed values of the three rental properties plus the corporate bank balance less the total outstanding on the three mortgages equals \$168,163.79. This total excludes various considerations that would surely be taken into account in estimating the fair market value of the shares, including tax considerations and costs associated with a sale of the rental properties.

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