

CANADA / JUDGMENT

Bains v. Bains

2024 BCSC 1760

COURT

Supreme Court of British Columbia

DECIDED

24 September 2024

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2024 BCSC 1760 Bains v. Bains

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bains v. Bains,

2024 BCSC 1760

Date: 20240924

Docket: E62233

Registry: New Westminster

Between:

Raeena Bains

Claimant

And:

Sawinder Singh Bains

Respondent

Before: The Honourable Justice D. MacDonald

Reasons for Judgment

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Places and Dates of Trial:

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Port Coquitlam, B.C.

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Overview

- [1] This is a family dispute between the claimant, Raeena Bains, and the respondent, Sawinder Singh Bains. The dispute resulted in a 15-day family trial which took place between December 4, 2023 and February 14, 2024. Both parties were represented by counsel. There was a significant amount of animosity between the parties at trial. Despite the animosity, the parties were able to settle a number of contentious issues prior to trial, including the issue of retroactive child support expenses, post-separation ownership of their vehicles, pension division, and retention of their personal bank accounts. I commend the parties and their counsel for reaching these agreements.
- [2] The outstanding issues relate to larger property division issues, as well as to child support, spousal support, and a few miscellaneous matters.

Background

- [3] The parties married on February 8, 1995 and separated 25 years later, on November 2, 2020. They have two sons, MB, born in 1999, and PB, born in 2005. PB is a child of the marriage under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). MB, by agreement of the parties, is no longer a child of the marriage.
- [4] Ms. Bains testified that she grew up in Punjab, India. She came to Canada in 1995 at the age of 17. She had to leave college to do so, at the insistence of her mother. Prior to coming to Canada, by an arranged marriage, she wed Mr. Bains.
- [5] Mr. Bains was born and raised in Canada. He is a conservative Sikh and had a very difficult childhood. At one point he lived in foster care.

- [6] Ms. Bains was aware of Mr. Bains' religious beliefs prior to the parties' marriage. Despite this knowledge, the parties had different expectations going into the marriage. Ms. Bains testified that once in Canada, she wanted to continue with her education. However, she could not ultimately do so because Mr. Bains was unemployed and in debt.
- [7] Ms. Bains found the beginning of the marriage to be very difficult. She testified that Mr. Bains was controlling. She was not allowed to wear makeup or to have male friends. The couple fought a lot.
- [8] In the late 1990s, the parties separated for approximately five months. Ms. Bains testified that, in traditional South Asian culture, there is a stigma regarding divorce.
- [9] The parties have owned several homes, the last of which was sold before trial. Ms. Bains also had a number of investments in Nevada, United States. One of the central issues in this case is whether the proceeds of those investments are family assets.
- [10] Mr. Bains works in a senior executive position as a regional director of health for the Correctional Services of Canada ("CSC"). Mr. Bains testified that his current base salary is \$166,340. If eligible, Mr. Bains receives a bonus each year, as set out in his tax returns. In November 2022, Mr. Bains received a bonus in the sum of \$7,393. Ms. Bains says his average salary is \$173,163.89, which includes his bonus.
- [11] Ms. Bains recently worked for Air Canada but was laid off due to the pandemic. She testified that in June 2021, she was recalled by Air Canada to resume working as a customer service specialist. She made an annual income of approximately \$40,000.
- [12] The claimant testified that she is currently unable to work full-time due to health issues. Ms. Bains explained that she does not want to disclose her medical issues to Mr. Bains to explain why she only works part-time. As a result, she says she is not seeking to have retroactive and prospective child and spousal support determined based on her actual income. Instead, she is prepared to have her income imputed at her full-time pay rate, except for when she was laid off from Air Canada.

Issues to which the Parties have Consented

- [13] The parties have agreed to issues as follows, the details of which are in the February 14, 2024 Consent Order (the "Consent Order"):
- MB is no longer a child of the marriage.
 - Mr. Bains will make a number of payments for retroactive s. 7 expenses for MB's university expenses.
 - Ms. Bains will make retroactive s. 7 payments for PB's health-related expenses. She shall pay 50% of PB's past health-related expenses upon proof of payment. Otherwise, the parties are not claiming retroactive s. 7 expenses.

- The collection of the parties' sports cards will be divided equally between them.
- That there be no equalization payment for the parties' vehicles. The Lexus registered in Mr. Bains' name will be sold and the proceeds will be divided equally between MB and PB.
- Each party is to retain their personal Canadian bank accounts, which does not include joint or US accounts, as their exclusive property.
- Each party is to keep their own travel and reward points as their exclusive property.
- Funds in the Raddison Investment account shall be used to pay any accounting or tax costs related to the Raddison Investment and the net remaining amount is to be divided equally between the parties, as will any debts relating to this account.
- The parties' pensions will be divided as set out in the Consent Order.
- Ms. Bains shall transfer one-half of the current value of her Questrade RRSP by way of a fax-free spousal roll over to a RRSP account of Mr. Bains.

[14] The exact terms of the Consent Order are attached as Appendix "A" to these reasons. To the extent there are any inconsistencies between my summary above and the Consent Order, the wording of the Consent Order governs.

Issues to be Resolved

[15] The following issues remain to be resolved:

1. Both parties have requested a divorce;
2. The income to be imputed to both parties for the purpose of determining child and spousal support;
3. The amount of child support to be calculated once the parties' incomes are determined;
4. The amount of educational and health-related expenses for MB and PB going forward, as well as what expenses are eligible under s. 7 expenses;
5. Whether the claimant is entitled to spousal support and, if so, how much;
6. With respect to the following properties or division of proceeds from the sale of the following properties:
 - a) the family home in Surrey, BC;
 - b) whether Mr. Bains jointly owns with his mother, Mohinder Kaur, the property on Manor Street in Vancouver, and, if so, what are the consequences; and
 - c) whether the two properties in Nevada, US, namely, the Alenga and Taranto Heights properties, are family assets as Mr. Bains claims.

[16] Further, the following bank accounts need to be divided unless they are excluded property:

1. Ms. Bains' Questrade Tax-Free Savings Account;
2. The Bank of America joint account;
3. Ms. Bains' Bank of America Revera Account;
4. Ms. Bains' Bank of America Wesbrook Account;
5. Mr. Bains' Bank Account in India; and
6. The Revera Investments and the Wesbrook Investments must be divided if they are not excluded property.

[17] Further, the Las Vegas Raiders Tickers and PSL need to be divided.

[18] The parties also have some outstanding debts. A significant issue is whether there was an agreement between the parties regarding the jointly-owned investment property located in Lloydminster, Alberta (the "Alberta property"). If not, there is an issue as to whether an agreement should be implied. The parties also need to divide a line of credit for a Kelowna property and the joint Scotiabank account;

[19] Both parties submitted a "Scott schedule" to the Court. Such schedules are intended to contain information regarding what are family assets or debt, the value of each family asset and debt at the date of separation, and the proposed method of asset valuation. The Scott schedule is not in a prescribed form but is created by litigants to guide the trial judge when navigating issues of family property and debt and any other matters before the court; and,

[20] The parties' Scott schedules are based on assumptions about which assets and debts they believe should be shared and which should be excluded. It also includes their views on child support and other issues. I have worked from both parties' Scott schedules and have incorporated information from each schedule under the relevant sections in these reasons.

Credibility

Legal Principles

[15] Credibility and reliability are distinct but related concepts. Credibility is an assessment of whether the witness is telling the truth. The assessment of a witness's credibility involves a consideration of the trustworthiness of the witness's testimony based on the sincerity of their evidence. Reliability is an assessment of a witness's ability to observe, recall, and recount the events in question. Both credibility and reliability affect a witness's testimony.

[16] In *Gichuru v. Smith*, 2013 BCSC 895, aff'd 2014 BCCA 414, Justice Adair articulated a number of factors that affect the assessment of a witness's evidence. These factors include:

- a) the witness's ability and opportunity to observe events;
- b) the firmness of the witness's memory;

- c) the witness's ability to resist the influence of interest to modify their recollection;
- d) whether the witness's evidence harmonizes with independent evidence that has been accepted if by the court;
- e) whether the witness changes their testimony during direct and cross-examination;
- f) whether the witness's testimony seems unreasonable, impossible, or unlikely;
- g) whether a witness has a motive to lie; and
- h) the demeanour of a witness generally.

Gichuru at para. 129.

[20] Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296. As stated in the leading case *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (BC CA) at para. 11, the test of the truth of a witness's testimony is its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances.

Analysis

[21] I am guided in my assessment of the parties' credibility by the factors summarized in *Bradshaw*, *Gichuru*, and *Faryna*. In family law cases, as in most litigation, each party has distinct interests from the other. In most family law cases, emotions run high. The parties tend to assert their own interests and often have trouble making any concessions regarding the other's point of view. Witnesses at times are unable to resist the temptation to modify their recollections in their favour. Unfortunately, I found both parties exhibited this behaviour.

[22] Given this finding, I must approach the evidence before me with caution. I must examine the evidence for its consistency with other evidence presented at trial. I accept the parties' evidence where it is consistent with the documentary evidence or other reliable evidence before me. Where there is a conflict on a material point, I have looked for and placed weight on evidence that is in harmony with the preponderance of probabilities that a practical and informed person would readily recognize as reasonable in the circumstances. Put simply, I must determine whether the evidence of each party accords with the probabilities affecting the case as a whole.

Divorce

- [21] Both parties want a divorce. I find that the parties separated on November 2, 2020 and have not lived together since then. It is clear to me that there is no possibility of reconciliation between Mr. Bains and Ms. Bains and that there has been no collusion between them. Consequently, Mr. Bains and Ms. Bains, who were married in Jarlandhar, Punjab, India, on February 8, 1995, are divorced from each other. The divorce is to take effect on the 31st day after the date of this Order.

Income Determination

Legal Principles

- [23] The methodology for determining income for child support and spousal support purposes are similar. The Federal Child Support Guidelines, SOR/97-175 [FCSG] have a comprehensive code for determining income, while the Spousal Support Advisory Guidelines [SSAG] do not. The authors of SSAG have confirmed that the FCSG for calculating income for the purposes of child support should be used for determining spousal support: SSAG, c. 6.1; R.M.S. v. F.P.C.S., 2011 BCCA 53 at para. 73; Megson v. Megson, 2014 BCSC 2467 at para. 165.
- [24] This court determines a spouse's annual income for child support purposes in accordance with ss. 15-20 of the FCSG. The FCSG state that the starting point for determining a spouse's available annual income for support purposes is to look at the party's total income. Where a party's annual income is derived from a salary,[1] it is determined using the T1 General form issued by the Canada Revenue Agency ("CRA"), as adjusted in accordance with Schedule III: FCSG, s. 16. Schedule III of the FCSG provides further deductions and additions to the total income of a spouse. These include capital gains, capital losses, and rental income.
- [25] This court is not bound to accept a party's declared income for income tax purposes as the income on which to determine support obligations. A party's tax statements may not be a true indication of their available income or the party may be underemployed. The "task of the court is to determine what money is fairly available to support the children of the marriage": Younger v. Younger, 2017 BCSC 363 at para. 25.

The Positions of the Parties

- [26] Prior to trial, on October 20, 2021, the income for both parties was set by Master Keighley without prejudice to any further applications to this court (the "Keighley Order"). Ms. Bains requests that the Keighley Order be varied between September 1, 2022 to February 29, 2023 to account for her not having any rental income from the Alenga property in Nevada. Ms. Bains is prepared to accept some US rental income imputed to her from a remaining property, the Taranto Heights property in Nevada. Based on the Keighley Order, Ms. Bains accepts that from September 1, 2022 until March 31, 2023, she had an annualized cash income of \$12,322 and that this amount be imputed to her for rental income of \$9,358 USD. With the past income of \$40,414 (based on full-time hours), her income should be imputed

at \$52,736 per annum.

[27] Ms. Bains testified that, on April 1, 2023, her hourly rate rose to \$23.41 and this translates to gross annual income of \$48,692. Upon deduction of her union dues of 4.89 percent, she accepts an imputation of income of \$46,312. As of April 1, 2023, the last property in Nevada was also sold so she drives no rental income from it. As a result, her income should be imputed at \$46,312 per annum.

[28] Mr. Bains argues that as a senior executive with the federal government, he cannot defer or hide any part of his salary or bonuses. Wages of all federal government workers are subject to a wage scale. Employees are unable to make separate arrangements or negotiate their salary or bonuses with their employer. His bonuses are reflected in his T4 income. He also provided his bonus letters and pension details to Ms. Bains. Mr. Bains acknowledges that he sometimes receives retroactive pay, and he has provided letters detailing the amounts of retroactive pay he received in 2023.

[29] Mr. Bains accepts that Ms. Bains will have full-time income imputed to her at trial. However, Mr. Bains wants information regarding not only her current income if she worked full-time but also future pay increases as if she was working full-time.

[30] Mr. Bains included a chart regarding his view on child and spousal support, which also shows his position with respect to Ms. Bains' income and his guideline income as follows:

Income

Year

Ms. Bains' Guideline Income

FCSG on Ms. Bains' Income

Mr. Bains' Guideline Income

FCSG on Mr. Bains' Income

Child Support set-off

Spousal Support

2021

63,004 total:

· \$16,414 (employment income);

· \$24,000

(Canada Emergency Response Benefits ("CERB"));

· \$10,268 CDN

(rental income of the Alenga property January to October 2021);

· \$12,322 CDN

(rental income of the Taranto Heights property);

· not including \$47,019 capital gains

\$597

164,764 total:

· \$164,763.82 (employ-ment income);

· not including \$47,019 capital gains

\$2,333

\$1,736

\$982

2022(Jan to Aug)

(Sept to Oct)

\$52,736 total:

· \$40,414 (employment income);

· \$12,322 (rental income from the Taranto Heights property)

\$52,736 total:

· \$40,414 (employment income);

· \$12,322 (Taranto Heights rent)

\$495

\$495

\$166,340 total:

· \$166,340 (employ-ment income)

\$166,340 total:

· \$166,340 (employ-ment income)

\$2,352

[MB] and [PB]

\$1,483

[PB] only

\$1,857

\$988

\$1,518

\$1,752

2023

\$68,357 total:

- \$46,312 (employment income);
- \$3,080.50 (Taranto Heights rent Jan to Mar 2023);
- \$12,000 (other income/
employment/ rental);
- \$5,000 (Air Canada travel benefits)

\$649

\$166,340 total:

- \$166,340 (employ-ment income)

\$1,483

\$834

\$1,523

2024

\$69,275 total:

- \$46,312 (employment income);
- \$3,080.50 (Taranto Heights rent Jan to Mar 2023);
- \$12,000 (other income/employ-ment/rental);
- \$5,000 (Air Canada travel benefits)

\$649

\$166,340

\$1,483

\$834

\$1,523

Child Support

Income

Year

Time Period

Child Support payable (based on above calculations)

Child support paid

Arrears/Overpayment by Mr. Bains

2021

Jan to Dec 2021

\$20,832 (\$1,736 x 12 - based on above calculations)

\$3,710 (\$1,855 per Keighley Order x 2)

\$17,122 (arrears)

2022

Jan to Aug 2022

Sept to Dec 2022

\$14,856 (\$1,857 x 8 - based on above calculations)

\$3,952 (\$988 x 4 - based on above calculations)

\$14,840 (\$1,855 per Keighley Order x 8)

\$7,420 (\$1,855 per Keighley Order x 4)

\$16 (arrears)

\$3,468 (overpayment)

2023

Jan to Dec 2023

\$10,008 (\$834 x 12 - based on above calculations)

\$22,260 (\$1,855 per Keighley Order x 12)

\$12,252 (overpayment)

2024

Jan to Feb 2024

\$1,668 (\$834 x 2 - based on above calculations)

\$3,710 (\$1,855 per Keighley Order x 2)

\$2,042 (overpayment)

Spousal Support

Income

Year

Time Period

Spousal Support payable (based on above calculations)

Spousal support paid

Arrears/Overpayment by Mr. Bains

2021

Jan to Dec 2021

\$11,784 (\$982 x 12 months)

\$2,886 (\$1,443 x 2 months)

\$8,898 (arrears)

2022

Jan to Aug 2022

Sept to Dec 2022

\$12,144 (\$1,518 x 8 months)

\$7,008 (\$1,752 x 4 months)

\$11,544 (\$1,443 x 8 months)

\$5,772 (\$1,443 x 4 months)

\$600 (arrears)

\$1,236 (arrears)

2023

Jan to Dec 2023

\$18,276 (\$1,523 x 12 months)

\$17,316 (\$1,443 x 12 months)

\$960 (arrears)

2024

Jan to Feb 2024

\$3,046 (\$1,523 x 2 months)

\$2,886 (\$1,443 x 2 months)

\$160 (arrears)

Analysis

[31] As noted, the Keighley Order that was made on October 20, 2021 for child and spousal support was by consent and without prejudice to a future application by either party. The Keighley Order set Ms. Bains' annual income at \$59,502 (based on full-time hours and including rental income) and Mr. Bains' annual income at \$171,823. Interim child support for MB and PB was \$1,855 per month based on PB's residency being shared by the parties and MB living with Ms. Bains. Spousal support was \$1,443 per month, which was just below the low end of SSAG. Support started November 1, 2021.

[32] The parties provided me with their 2023 tax returns. Mr. Bains' tax return includes several retroactive payments from other years, as follows:

2018

\$ 3,262.50

2019

\$ 7,270.70

2020

\$10,286.38

2021

\$12,772.37

2022

\$ 7,909.18

[33] I have deducted the total of \$41, 501.13 from Mr. Bains' 2023 tax return and, instead, distributed these amounts to their respective years' income.

[34] Therefore, Mr. Bains' pre-separation income was:

2018

\$144,263

2019

\$196,271

2020

\$178,286

[35] Mr. Bains' post-separation income was:

2021

\$177,536 (excluding capital gains)

2022

\$174,249

2023

\$172,839 (excluding capital gains and dividends from Raddison investments, but including other investment income of \$2,926.89).[2]

[36] Ms. Bains' pre-separation income, as shown on her tax returns, was as follows:

2018

\$29,822

2019

\$21,015

2020

\$40,647 (excluding capital gains tax)

[37] Ms. Bains' post-separation income is:

2021

January 1 to

May 31, 2021

\$42,088

2022

June 1 to

December 31, 2021

\$59,502

2022

\$52,736 (including rental income)[3]

2023

\$55,645 (\$46,312 imputed employment, excluding capital gains and dividends from Radisson Investments, but including other investment income of \$7,832.66[4], and with the addition of \$1,500 for travel benefits)

[38] I have adjusted Ms. Bains' income from January 1, 2021 to May 2021 downward from \$59,502 in the Keighley Order to \$42,088. The reduction is \$16,414.40, which is the difference from her full-time income of \$40,414.40 to her CERB income of \$24,000. For the remainder of the year, the Keighley Order numbers should apply.

[39] Mr. Bains had sought medical records from Ms. Bains' doctor related to her mental health issues. Ms. Bains accepts that but for a disability, she would be working full-time. She has not been prepared to disclose her medical information to Mr. Bains for the purposes of confirming her disability. Medical records would be relevant to establish that Ms. Bains can only work part-time due to health issues. However, Ms. Bains reasonably wishes to protect her privacy and is concerned that Mr. Bains may use her medical records for reasons other than this litigation. She concedes that her income may be based on a full-time salary.

[40] The values above are based on the total income found on line 15000 of the parties' respective income tax returns, with adjustments (including an adjustment to full-time income for Ms. Bains). I have rejected Mr. Bains' argument that additional income should be imputed to Ms. Bains because she will have significant family assets once the family property is divided, as the same is true for Mr. Bains. Moreover, Ms. Bains intends to purchase a residential property in which to live, so much of her money will likely be put toward that purchase. I have accepted that her travel benefits are part of her salary package and going forward attribute an extra \$1,500 per year as long as these benefits continue.

[41] The parties should exchange their income tax information no later than the 31st day of May in subsequent years for the purposes of calculating future child and spousal support.

Child Support

Legal Principles

- [42] Parents have a joint and ongoing legal obligation to support their children in a way that is commensurate to their income. Section 147(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] states that "[e]ach parent and guardian of a child has a duty to provide support for the child" subject to the exceptions in s. 147(1)(a) and (b). Section 147 codifies the case law respecting when child support obligations end. Neither party takes issue with these principles.
- [43] Section 150(1) of the FLA provides that child support orders must be determined in accordance with the FCSG. It is well established that the most current information regarding a party's income must be used when calculating support: FCSG, s. 2(3); *Fuzi v. Fuzi*, [1999] B.C.J. No. 2263, 1999 CanLII 4073 (SC). Section 150(1) of the FLA provides that the court must use the FCSG to determine the appropriate amount. Section 9 of the FCSG provides that where parenting time is shared equally, the amount of the child support order must take into account:
- (a) the amounts set out in the applicable tables for each of the spouses;
 - (b) the increased costs of shared parenting time arrangements; and
 - (c) the conditions, means, needs, and other circumstances of each spouse and of any child for whom support is sought.
- [44] Section 9(c) of the FCSG directs the court to consider the resources and needs of both the parents and the children. A goal of the FCSG is that children should not experience a significant variation in the standard of living as they move from one household to another: *Contino v. Leonelli-Contino*, 2005 SCC 63 at para. 51; *Hadjioannou v. Hadjioannou*, 2013 BCSC 43 at para. 140. The court is concerned with the standard of living of the children and the ability of each parent to absorb the costs required to maintain the appropriate standard of living for their children in the circumstances: *Contino* at paras. 68-70. In *Contino* at para. 69, Justice Bastarache for the Supreme Court of Canada endorsed the following factors to consider under s. 9(c) of the FCSG:
- [69] []
- 1. Actual spending patterns of the parents;
 - 2. Ability of each parent to bear the increased costs of shared custody (which entails consideration of assets, liabilities, income levels and income disparities); and
 - 3. Standard of living for the children in each household.
- [45] Orders with set-offs of child support must clearly state that both parties have an obligation to pay child support to ensure that both parties receive child tax benefits: *Latoria v. Canada*, 2015 TCC 221 at paras. 13-16.

Analysis

- [46] Here, there is no dispute that child support should be paid. It is only the date and amounts that are in issue. Ms. Bains is claiming child support from January 1, 2021 rather than the date of separation. There is outstanding retroactive child and spousal support from January 1, 2021 to October 31, 2021. According to Ms. Bains, this includes two distinct periods: first, the period from January 1, 2021 to May 2021, which covers five months while Ms. Bain was collecting CERB; and second, from June 2021 through October 2021, a further period of five months, when Ms. Bains was working part-time. Ms. Bains agrees that she can be assumed to have worked full-time through the latter period. She is prepared to forego child support for November and December 2020. However, by January 1, 2021, MB was living with her full-time. As per their agreement, child support for MB ceased on February 1, 2023. As a result, only child support for PB is an issue going forward.
- [47] I leave it to the parties to calculate the child support payments, and the set-off amounts, based on the income I have imputed to each party.
- [48] The quantum of child support shall be reviewed annually, with each party providing their tax information, with appropriate attachments, by the 31st day of May of each year and the revised child support and offsets shall commence the first day of July of each year.

Section 7 Expenses

Legal principles

- [49] Section 7 of the FCSG outlines what constitutes a special or extraordinary expense. I need not set out the legal principles regarding s. 7 expenses in detail because neither party disputes they should be paid.
- [50] For an expense to be considered an eligible extracurricular activity, it must meet the threshold of being necessary, reasonable, and affordable. The expense must be necessary as defined in relation to the child's best interest. It should also be reasonable as measured against the combined financial means of the parents at the material time, as well as family spending prior to separation: *S.H. v. L.H.*, 2016 BCSC 353 at para. 84.
- [51] The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 30; *S.H.* at para. 84.

Analysis

[52] The parties have come to an agreement with retroactive s. 7 expenses. Going forward, s. 7 expenses must be necessary, reasonable, and affordable and shared in proportion to each party's income. Only educational, medical, dental and any other expenses that were agreed to between the parties are to be included. This should include reasonable extra-curricular activities.

Spousal Support

The Positions of the Parties

[53] Ms. Bains takes the position that she is entitled to spousal support on compensatory grounds.

[54] In his submissions, Mr. Bains proposed two options for spousal support as follows:

264. The Respondent will pay monthly spousal support of \$1,509 based on his 2022 Income of \$166,340 and the Claimant's imputed income of \$59,275. As stated previously, there is no basis to estimate the Respondent's income, and base support on such numbers, the Respondent's most recent tax return income should be used for the reasons set out above.
265. The above-noted monthly spousal support will be payable commencing March 1, 2024 and continuing on the 1st of each month and every month thereafter.
266. The Respondent will pay the Spousal Support to the Claimant on an indefinite basis; provided however that the Respondent may apply for a review of the Spousal Support if:
 - a. He loses his employment and is unable to secure alternative employment that provides him with an income of at least \$150,000 annually within six months of his loss of employment;
 - b. He retires; provided however that the Claimant may not apply for a review if he retires earlier than him reaching the age of 65;
 - c. The Claimant lives in a marriage-like relationship with another person for a period of two years or greater.
267. As there are considerable funds held in trust, and assets of the parties, for ease and to bring finality to the matter, and given the Respondent's age is nearing retirement, the Respondent's second proposal is a lump sum payment of spousal support.

Sections 170 (a) and (c)

268. This calculation is calculated for a period of 11 years, which would take the Respondent to retirement age, but has been arrived at two-fold:
 - a. the first 3 years have been calculated with the "with child" formula and;

- b. the remaining 8 years have been calculated with the "without child" [formula] to take into account when it is estimated that [PB] will no longer be a child of the marriage (upon the completion of his undergraduate degree).

[55] Mr. Bains proposes \$215,428 for full and final settlement of spousal support.

Legal Principles

- [56] A marriage is regarded as a "joint endeavour": *Moge v. Moge* [1992] 3 S.C.R. 813 at 870, 1992 CanLII 25. The "longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge* at 870.
- [57] Entitlement is a threshold issue when determining spousal support. There are three separate bases for entitlement: compensatory, contractual, and needs-based.
- [58] Compensatory spousal support addresses the economic advantages enjoyed by one partner as a result of the other partner's efforts during the marriage. It also addresses the contributions of a spouse to the "marriage" and their losses upon its breakdown. Compensatory spousal support is based on the principle that spouses must share the economic consequences of a marital breakdown. This includes recognizing that one spouse may have foregone employment opportunities to care for the children. In such circumstances, an order for compensatory spousal support will generally be appropriate to compensate the spouse for the value they brought to the relationship, as well as the economic loss they suffered as a result of the relationship: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715. Spousal support awarded on compensatory grounds continues for a specified period of time whether or not the payee spouse has reached a degree of self-sufficiency: *Tedham v. Tedham*, 2005 BCCA 502 at para. 33.
- [59] Non-compensatory support is needs-based. It recognizes the economic hardship and loss of the marital standard of living that arises as a result of economic interdependency during the relationship. Non-compensatory support is based on the economic disadvantages generated by the dissolution of the marriage, not contributions made during the marriage: *Bracklow* at para. 41. Need alone may be sufficient to establish entitlement to spousal support: *Bracklow* at para. 43; *Chutter v. Chutter*, 2008 BCCA 507 at para. 54, leave to appeal to SCC ref'd, 33002 (28 May 2009). The degree to which non-compensatory principles apply will depend on a close examination of the means and needs of the parties. It also depends on the nature of the marital relationship: *Bracklow* at para. 53.
- [60] The doctrine of equitable sharing of the economic consequences of the relationship is the overarching principle that must be borne in mind. The parties shared the benefits of marriage and are to share the economic consequences on the breakdown of a marriage which included economic dependency: *Chutter* at para. 51; *Bracklow* at para. 34. However, economic self-sufficiency is, as far as is practical, to be promoted: *Divorce Act*, s. 15.2(6)(d).

- [61] Section 15.2(1) of the Divorce Act provides that a court may order a spouse to pay lump sum or periodic spousal support as the court thinks reasonable for the support of the other spouse. In *Davis v. Crawford*, 2011 ONCA 294, the Ontario Court of Appeal emphasized that "a lump sum award should not be made in the guise of support for the purpose of redistributing assets": at para. 60. The Court stated that in determining whether to make a lump sum spousal support award, it is important to consider "whether the payor has the ability to make a lump sum payment without undermining the payor's self-sufficiency": *Davis* at para. 63.
- [62] Most importantly, a court considering an award of lump sum spousal support must weigh the perceived advantages of making a lump sum award in the particular case against any disadvantages of making such an order. The Court in *Davis* goes on to list a variety of advantages and disadvantages: at paras. 67-68. The Court stated that lump sum spousal support awards are not limited to "very unusual circumstances", however, most spousal support orders will be in the form of periodic payments: *Davis* at para. 70. In the end, the Court held that "it is for the presiding judge to consider the factors relevant to making a spousal support award on the facts of the particular case and to exercise his or her discretion in determining whether a lump sum award is appropriate": *Davis* at para. 69.

Relevant Facts

- [63] The parties were married in February 1995 and separated 25 years later. Ms. Bains was 17 years of age when they married. She was born in the state of Punjab, India. She had an older sister and an older brother. Her father was an English professor and her mother was a principal. Ms. Bains was a good student and graduated secondary school at the age of 16. She attended one year of college in India.
- [64] The marriage was arranged by Ms. Bains' mother and aunt. Because Ms. Bains was only 17 years old, her father was against the marriage and preferred that Ms. Bains stay in India and become educated. Ms. Bains testified that Mr. Bains promised her parents that he would make sure she was educated in Canada. However, she testified when she arrived in Canada, she discovered that Mr. Bains had debt and was unemployed. As a result, there was no money for her to continue her education. Instead, Ms. Bains started working as a telemarketer and was paid on a commission basis. Fortunately, Ms. Bains' mother gave the couple \$5,000 which was used to pay off Mr. Bains' debts.
- [65] The company in which Ms. Bains worked ultimately closed and she found a job at Future Shop in 1997.
- [66] The parties' first child, MB, was born in July 1999. Ms. Bains began to work in the Appliance Department of Home Depot in 2002. She initially liked the job but found it monotonous over time. Mr. Bains' mother helped to look after MB so she could work.

- [67] Ms. Bains worked for Home Depot between 2002 and 2016. She worked part-time after the birth of the parties' youngest child in 2005 and continued working part-time until 2016 when she began working for Air Canada as a customer service specialist. Although she was hired full-time, she worked only part-time. Due to the pandemic, she was laid off by Air Canada in April 2020. She applied for the CERB and received six months of benefits. She then applied for Employment Insurance.
- [68] In 2001, Ms. Bains began an interior design diploma course at the British Columbia Institute of Technology. It was a four-year course, but she had to withdraw because it was causing too many arguments between the parties.
- [69] The parties' second child, PB, was born in February 2005. After the children were born, Ms. Bains largely worked part-time so that she could care for the children. She did not have computer skills or a degree and found it difficult to secure a good job.
- [70] Ms. Bains testified that the family did not need her income. She worked on weekends only, basically to give her husband a break from her. Mr. Bains ridiculed her job at Home Depot and was not supportive.
- [71] In approximately 2007, Ms. Bains' uncle, Harpal Lehal, a real estate agent, persuaded Ms. Bains to take the real estate course. Ms. Bains' father assisted with the tuition. She found the course difficult and Mr. Bains was unsupportive. Nevertheless, she obtained her real estate licence. After working on one project, she had a dispute with her uncle about commissions. She let her real estate licence lapse in 2009.
- [72] In March 2017, Air Canada was hiring, but only for full-time positions. Ms. Bains applied and took the position on the understanding that she could give away extra hours each week. She testified she never worked full-time for Air Canada. In April 2020, due to COVID, Ms. Bains was laid off. She did not return to Air Canada until June 5, 2021.
- [73] Ms. Bains returned to full-time work on June 5, 2021. Again, she did not work full-time. The children were now older but she was spending her time working on a new house that the parties were having built in Surrey.

Analysis

- [74] The parties had a long-term marriage. Ms. Bains only performed part-time work outside the home. The parties did not need the income after Mr. Bains began working for CSC. Ms. Bains was the primary parent and looked after most of the children's needs. Ms. Bains testified that she took care of the children throughout the relationship and provided her husband with unconditional support as he advanced in CSC. This freed up Mr. Bains to focus on his career, which flourished during the parties' relationship. Mr. Bains supported Ms. Bains working part-time so she could focus on the children during the parties' marriage.

- [75] During the parties' marriage, there was a significant disparity in the parties' earned incomes. Mr. Bains was the primary income earner.
- [76] Although Ms. Bains obtained her real estate licence during the marriage, real estate sales is a demanding job and it is not surprising that when she had a fallout with her uncle she did not pursue this career on her own. The parties' children were still young when her licence lapsed in 2009. Mr. Bains was not supportive of this career and he cannot now expect that she will return to it 15 years later.
- [77] I find that Ms. Bains has experienced both economic disadvantages and economic hardship arising out of the marriage breakdown. Although a very bright woman, evidenced by certain of her investment decisions in Nevada, her career prospects are limited given her lack of education (only one year of college in India many years ago) and limited work experience. Her career took a back seat to the career of Mr. Bains and she was the primary caregiver to the parties' children. In this way, she compromised her own career advancement.
- [78] Ms. Bains' economic disadvantage is directly due to the role she played in the parties' marriage. Although she continues to work, it is only part-time. While she will have some assets to draw upon, she is not in a position to ever make as high an income as Mr. Bains.
- [79] In these circumstances, the parties must equitably share the economic consequences of their marriage breakdown. Ms. Bains is entitled to spousal support on compensatory grounds. The parties' close economic union during their long marriage gives rise to a responsibility on Mr. Bains to support Ms. Bains to continue their marital standard of living.
- [80] Mr. Bains suggested a lump sum payment for spousal support. I do not think this is justified here. I think the better approach is to review the parties' relative economic positions when Mr. Bains retires.
- [81] Ms. Bains argues that the spousal support should be at high end. She was economically disadvantaged during the parties' marriage. That said, Ms. Bains is entitled to the proceeds from the Nevada properties and this will assist her economic position. For this reason, from January 1, 2024, I award spousal support at the mid-range of the SSAG while PB remains a child of the marriage. Once he is no longer a child of the marriage, this should be adjusted to the low-range of SAGG for an indefinite period of time. I grant this change because, although this was a long-term marriage, Ms. Bains is an intelligent business woman who I believe will do well for herself, especially once she no longer has responsibility for PB.
- [82] I leave it to the parties to calculate the spousal support payments, and the set-off amounts, based on the income I have imputed to each party and these reasons.
- [83] The quantum of spousal support shall be reviewed annually, with each party providing their tax information, with appropriate attachments, by the 31st day of May of each year and the revised child support and offsets shall commence on the first day July of each year.

Division of Property

Legal principles

[84] Property division is governed by the FLA. Family property is all real and personal property, other than excluded property, owned by one or both spouses at the date of separation: FLA, s. 84. Section 84(1)(a) provides:

84(1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
- (i) property that is owned by at least one spouse, or
- (ii) a beneficial interest of at least one spouse in property

[85] Upon separation, each spouse is presumptively entitled to an undivided one-half interest in all family property: FLA, s. 81. The court may order an unequal division of family property or debt, or both, if it would be "significantly unfair" to divide the asset(s) equally: FLA, s. 95(1). The party who seeks an unequal division bears the onus of demonstrating that the property should be divided unequally: FLA, s. 85(2). Oral evidence is acceptable, subject to an assessment of credibility.

[86] While the presumption is for equal division of family property and debts post-separation, this court may order an unequal division of family property and debt based on the criteria for reapportionment set out in s. 95(2) and (3) of the FLA. This includes, inter alia, the duration of the relationship and whether one spouse contributed to the other's career.

[87] Under the FLA, the "significant unfairness" threshold required to depart from an equal division of property is high: *V.J.F. v. S.K.W.*, 2016 BCCA 186. To justify an unequal distribution, the trial judge must "find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": *Jaszczewska v. Kostanski*, 2016 BCCA 286, at para. 41, citing *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44. Section 95(2) of the FLA provides that non-enumerated factors may be considered:

For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[88] Section 92 of the FLA provides:

Agreements respecting property division

92 Despite any provision of this Part but subject to section 93 [setting aside agreements respecting property division], spouses may make agreements respecting the division of property and debt, including agreements to do one or more of the following:

- (a) divide family property or family debt, or both, and do so equally or unequally;
- (b) include as family property or family debt items of property or debt that would not otherwise be included;
- (c) exclude as family property or family debt items of property or debt that would otherwise be included;
- (d) value family property or family debt differently than it would be valued under section 87 [valuing family property and family debt];
- (e) jointly own a companion animal;
- (f) share possession of a companion animal;
- (g) give exclusive ownership or possession of a companion animal to one of the spouses.

[89] Section 92 provides that, generally, spouses have the autonomy to depart from the assumption that family property is to be divided equally. Expectations may persuade the court that significant unfairness would arise if there was an equal division of property: *Singh v. Singh*, 2020 BCCA 21, at para. 138. The Court of Appeal has interpreted s. 95(2)(i) of the FLA to include the legitimate economic expectations of parties. As a result, agreements made between parties during their marriage can be properly considered under s. 95(2)(i), as well as explicitly under s. 95(2)(b).

[90] The value of the family property must be based on its fair market value at the date of trial, subject to agreement or as otherwise ordered: FLA, s. 87. Section 97(1)(b) of the FLA provides that this Court may make any order that is necessary, reasonable, or ancillary to give effect to a division of property or division of family debt.

[91] Section 85 of the FLA defines excluded property:

Excluded property

85(1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;

[]

- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[92] When some property is excluded, the family property will include the increase in value of the excluded property since the relationship between the spouses began or the excluded property was acquired, whichever was later: FLA, s. 84(2)(g).

- [93] The onus is on the party claiming property is excluded to establish, on a balance of probabilities, that it meets the test in s. 85 of the FLA.
- [94] The FLA does not demand precision or mathematical certainty when establishing a claim to excluded property as this would risk defeating legitimate claims. The challenge that confronts litigants is that in relationships of any significant length, documents may have been destroyed and memories decline over time. The proper test for establishing a claim to excluded property under s. 85 of the FLA is therefore on a balance of probabilities, based on clear and cogent evidence: *Shih v. Shih*, 2017 BCCA 37 at para. 42; *Pisarski v. Piesik*, 2019 BCCA 129 at para. 24. A trial judge may draw reasonable inferences from evidence that is less than precise in order to do justice between the parties: *Shih* at para. 44.
- [95] With these principles in mind, I address the various properties that are to be divided between the parties.

Legal Principles Regarding Debt

- [96] In terms of debt division, I repeat what Justice Griffin succinctly stated in *Zilic v. Zilic*, 2021 BCCA 107:
- [13] []
- a) As a starting position, spouses are entitled to equal division of family property and are equally responsible for family debt as at the time of separation, regardless of their relative contributions to the acquisition of the property: FLA, s. 81; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38.
 - b) Family property includes all real and personal property owned by at least one spouse on the date of separation: FLA, s. 84(1). It also includes property acquired by a spouse that is derived from family property and the value by which "excluded property" increased during the relationship: FLA, ss. 84(1)(b)(i), (2)(g).
 - c) Some property held by a spouse is excluded from family property. Excluded property is property acquired before the relationship, inheritances, property derived from excluded property, and some additional categories of property: FLA, s. 85. The onus of proof is on the spouse claiming that property is excluded property: FLA, s. 85(2).
 - d) Family debt includes all financial obligations "incurred by a spouse" during the period of the relationship before separation and debt incurred after separation if incurred for the purpose of maintaining family property: FLA, s. 86.
 - e) The presumptive date for determining the value of family property and family debt is as of the date of the hearing before the court respecting division: FLA, s. 87(b)(ii). There must be compelling evidence to depart from that valuation date: *Rudyak v. Bekturova*, 2018 BCCA 414 at para. 35; *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 59-60. Departing from the presumptive valuation date is akin to reapportionment of property, and it thus requires consideration of the factors that would support unequal division pursuant to s. 95 and a

finding that the presumptive valuation date would be significantly unfair: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; *Namdarpour* at para. 59.

- f) The value of family property must be based on its fair market value: FLA, s. 87(a).
- g) The court may order an unequal division of family property, family debt, or both if it would be "significantly unfair" to equally divide it: FLA, s. 95(1)(a). The words "significantly unfair" impose a higher threshold for the exercise of judicial discretion than under predecessor legislation: *Jaszczevska* at para. 41. Significant unfairness requires something objectively unjust, unreasonable or unfair in some important or substantial sense: *Jaszczevska* at para. 42; *Singh v. Singh*, 2020 BCCA 21 at para. 134.
- h) Numerous factors can be considered when determining whether equal division would be significantly unfair. One factor that may justify unequal division of family property, which is particularly relevant in this case, is where a spouse after separation caused a significant decrease in the value of family property beyond market trends: FLA, s. 95(2)(f). This factor does not require a finding of a lack of good faith. A similar factor requiring a lack of good faith is "that a spouse, other than a spouse acting in good faith, substantially reduced the value of family property, or disposed of, transferred or converted property that is or would have been family property causing the other spouse's interest in the family property to be defeated or adversely affected": FLA, s. 95(2)(g).
- i) The court is given wide powers to effect a division of family property or family debt, including making orders as to who owns an asset, transferring title, or requiring a spouse to pay compensation to the other: FLA, s. 97.

[Emphasis added.]

The Manor Home

The Positions of the Parties

- [97] One of the more contentious issues in this matter concerns a property located in Vancouver, BC at 4707 Manor Street (the "Manor House"). Ms. Bains concedes the Manor House is excluded. However, she claims a 50 percent interest of the increase in the value of the property since Mr. Bains was added to title as a tenant-in-common in 2014. The increase, she argues, qualifies as a family asset.
- [98] Mr. Bains argues that he has no equitable interest in the Manor House because he is a joint tenant with his mother, Ms. Kaur, and has no interest in the property until his mother dies. He submits that he was added to title in 2014 for his mother's estate planning purposes only.

Analysis

- [99] Section 85 of the FLA defines excluded property as including property acquired by way of gift or inheritance to one party to the relationship. A party claiming excluded property is responsible for establishing that the property is properly excluded.
- [100] When the parties were married in the spring of 2006, they moved into the Manor House which was owned by Ms. Kaur, Mr. Bains' mother. Ms. Kaur and Mr. Bains' sister also lived in the Manor House.
- [101] The Manor House was in Ms. Kaur's sole name until December 12, 2014, when she put Mr. Bains on title as a tenant-in-common with herself. Under this arrangement, Ms. Bains would presumptively be entitled to an equal division of the increase in the value of the property between 2014 and the date of trial: FLA, s. 84(2)(g).
- [102] The parties agreed to joint historical and current appraisals on this property. As of December 12, 2014, when the property was transferred into Mr. Bains' name, the property was worth \$790,000. As of January 26, 2022, it was worth \$1,600,000, an increase of \$810,000.
- [103] Mr. Bains argues that he was added to title for estate purposes only. Additionally, Mr. Bains was placed on title because of his experience with separate litigation related to a property on Duke Street in Vancouver (the "Duke Street property").
- [104] The Duke Street property was the subject of a lawsuit between Mr. Bains and his father. Mr. Bains claimed he had an equitable interest in the property and Mr. Bains' father took the opposite view. Both parties testified that the Duke Street property litigation gave rise to discussions about Ms. Kaur putting Mr. Bains on title to the Manor House.
- [105] Mr. Bains was evasive when giving testimony about his knowledge of the Duke Street property litigation, which he commenced. When taken to his petition in that matter, he claimed not to understand what was being asked for. Similarly, when Mr. Bains was taken to a trust agreement he created relating to ownership of a property in Kelowna in which he and Ms. Bains had invested, he refused to concede that if someone is not on title as legal owner, they could still have an equitable interest in the property. Although I do not know all the details relating to the Duke Street property litigation, I understand Mr. Bains was arguing just that in the litigation. In this circumstance, I find that Mr. Bains was unable to resist modifying his recollection to suit his narrative.
- [106] Ms. Bains testified that she was fully involved in the litigation over the Duke Street property. She testified that her mother-in-law did not want to have similar litigation about the Manor House and they discussed the possibility of putting Mr. Bains on title.
- [107] When the decision was made in 2014, Ms. Bains' uncle, Mr. Lehal, arranged for Michael Kendler, a conveyancing lawyer at McQuarrie Hunter LLP, to handle the real estate transaction. Mr. Bains was added to title as a tenant-in-common with his mother.

- [108] Ms. Bains was unable to subpoena Ms. Kaur and there were issues as to whether she would have been competent to testify. Mr. Bains did not call his mother to testify.
- [109] Mr. Kendler was subpoenaed by Ms. Bains and testified on December 12, 2023. He testified that he did not have authorization from Mr. Bains' mother to waive solicitor-client privilege, but he could identify the documents that he and his office prepared.
- [110] Mr. Kendler was asked what he would do if a client wished to place someone on title but did not want them to have an immediate beneficial interest. He said "the short answer is that you prepare a trust declaration [to establish that] you are holding the interest in trust for someone". This clearly implies that if Ms. Kaur had only intended to place her son on title for a future estate interest, and not a present interest, Mr. Kendler would have created a trust declaration to this effect. There was no trust declaration in Mr. Kendler's file. In addition, if one had been created, Mr. Kendler testified it would have been referenced in his final reporting letter. It was not. I do note, however, that an email dated November 5, 2014 from Mr. Bains to Mr. Kendler said as follows: "[a]lso, my mother asked if you could prepare a trust letter that identifies that she is putting me on title in a joint tenancy as a gift (with no conditions and cannot be revoked) that she could sign to ensure there is no conflict in the future".
- [111] Another compelling piece of evidence is the gift letter of December 10, 2014. This letter is signed by Ms. Kaur and explicitly states: "I wish to make a present gift to you of a one-half interest in the property. This letter will serve as evidence of my intentions" [emphasis added]. The paragraph immediately above it provides an explanation for the present gift. Mr. Kendler confirmed that his office created this gift letter and when asked if it was his normal practice to draft gift letters on behalf of clients, he answered: "yes, because it rebuts the presumption of resulting trust". This was a reference to the leading case of *Pecore v. Pecore*, 2007 SCC 17, regarding resulting trusts. In *Pecore*, the Supreme Court of Canada held that there is no presumption of advancement between a parent and an adult child.
- [112] Lastly, Mr. Bains gave evidence at his January 6, 2023 examination for discovery. He testified that Ms. Kaur said he would be put on title and receive half her money before her death. He agreed that the intent of adding him as a tenant-in-common on title to the Manor House in 2014 was to gift him a one-half interest in the Manor House.
- [113] After Mr. Bains' examination for discovery, he took his mother to a notary and she removed the tenancy-in-common ownership and, instead, registered the property as a joint tenancy with Mr. Bains. Not hearing directly from Ms. Kaur regarding the 2023 transaction, and given the suspicious timing of the transaction, I cannot assume she meant to withdraw the tenancy-in-common designation. This conclusion is buttressed by the testimony of Mr. Bains that his mother was not well enough to be called as a witness at trial. He testified that she has mentally deteriorated, she hallucinates, and the TV talks to her. This is all within a year of the title change. I therefore place no weight on this evidence of a change of title to the Manor House.

[114] Given the above evidence, I accept that Mr. Bains did in fact acquire an interest in the Manor House on December 12, 2014. As a result, 50 percent of the increase in value of the property since that date and the date of trial is family property.

[115] The increase in the value of the Manor House since 2014, when Mr. Bains went on title, is to be shared equally between the parties. Mr. Bains is to transfer to Ms. Bains \$216,525, which is one-half of the increase in value since 2014.

Family Home

The Parties' Positions

[116] The family home in Surrey, which the parties built on an empty lot, has been sold. Ms. Bains seek an unequal division of the family home.

[117] Pursuant to s. 95(2)(f) of the FLA, Ms. Bains seeks a \$45,000 compensation payment from the funds in the trust accounts for her unpaid labour in acting "almost as a general contractor which saved the parties the cost of hiring someone to do the work". Ms. Bains says she carried out the role of co-general contractor and her efforts increased the value of the house by more than \$45,000. Ms. Bains says she worked on average 160 hours per month and the work lasted from November 2020 to November 2021. At \$27.50 per hour, this adds up to \$48,400 (11 months multiplied by 160 hours).

[118] Mr. Bains opposes an unequal division. He argues that he kept up-to-date with respect to the paperwork aspect of the build and he sought to actively assist with the build. He reached out to Ms. Bains regarding tasks on numerous occasions. This is established by the number of text messages between the parties. He also stated in cross-examination that he advised Ms. Bains that he could take time off to help with the house.

Analysis

[119] Ms. Bains seeks an unequal division of a significant family asset, the proceeds from the family home in Surrey. Due to their separation, the house was sold before the parties moved in.

[120] By way of background, in 2019, the parties purchased a lot in a new subdivision located at 2962 165 Street, Surrey, to build their dream home. They paid approximately \$1,000,000 for the lot.

[121] Ms. Bains testified that the planning of the house started in January 2020 and construction commenced in April or May of 2020. The first contractor was a family friend who did not have the required level of experience to continue with the build. A house was being constructed next door and the builder, Gurpreet Sandhu, gave advice to the Bains about some of the problems they were experiencing. In approximately August of 2020, the parties hired Mr. Sandhu to complete the build. At that point, the house was about 25% complete. Mr. Sandhu began working on the house in November of 2020. Mr. Sandhu was called to

testify at trial.

- [122] Mr. Sandhu agreed to be paid a \$50,000 fee for his work. He testified his price was low because he asks homeowners to undertake a lot of the work themselves. According to Ms. Bains, Mr. Sandhu did not take on the full role of a general contractor. Both she and Mr. Sandhu testified that Mr. Sandhu recommended trades people and subcontractors, but left the actual hiring to Ms. Bains. Mr. Sandhu would give Ms. Bains lists of things to do. She was in charge of obtaining samples and purchasing materials. She handled all the payments for the trades and subcontractors and she often picked up materials. Mr. Sandhu testified that there were savings made by virtue of Ms. Bains purchasing materials, since different stores sell at different prices. Ms. Bains testified she was able to compare prices and save money by shopping around.
- [123] Mr. Sandhu testified that he worked approximately 90 percent with Ms. Bains and 10 percent with Mr. Bains. Ms. Bains made many final decisions. He said that both parties were easy to deal with but he heard very little from Mr. Bains after December 2020. The parties had separated in November 2020.
- [124] Ms. Bains testified she was on the site or working on various matters for the build a minimum of 30 hours per week. Mr. Sandhu guessed that Ms. Bains spent maybe 30 to 50 hours a week on the build. It is clear she was regularly on site. Mr. Sandhu testified that he dealt with Ms. Bains up to six times a day. Ms. Bains testified that if she could not attend the site she sent MB, who was paid \$2,000 for his work.
- [125] Mr. Sandhu testified that he would pay at least \$25 to \$30 per hour to a worker to undertake the work Ms. Bains was doing.
- [126] After completion of the construction of the home, the parties sold it on March 31, 2022 for \$2,857,047.62. After paying off two lines of credit, usual adjustments, real estate commissions and legal fees, the net sale proceeds came to \$2,194,114.90.
- [127] The parties agreed that each of their counsel holds in trust one-half of these amounts subject to further written agreement or court order. As a result, \$1,097,057.46 was paid into each of their counsel's trust accounts. By agreement, \$100,000 was released to both parties and a further \$11,519 was released to each to cover the shortfall on the sale of the Alberta property (\$23,038). There should be \$985,538.46 plus applicable interest remaining in the accounts of each counsel.
- [128] This is a quantum meruit claim. In *Jaszczewska*, the Court of Appeal upheld the finding of the trial judge that an unequal division of family property was appropriate, partially in consideration for the improvements of a property post-separation. Similarly, in *D.L.M. v. A.L.F.*, 2022 BCSC 1874, the court recognized the increase in the value of a house post-separation due to renovations, while also considering the relative brevity of the applicable relationship. The court ordered an unequal division of the property--a 70/30 split in favour of the claimant.

[129] I am persuaded that it would be significantly unfair to order an equal division of the family home given the amount of work Ms. Bains put into the build. Her efforts obviously increased the value of the home, likely significantly more than \$45,000. I find s. 95(2)(f) of the FLA applies. In my view, Ms. Bains' estimate of \$45,000 is fair compensation for her work.

Properties in the US

The Parties' Positions

[130] Ms. Bains has owned a number of properties in Nevada, US. In approximately 2011, Ms. Bains purchased two properties in her name, the Misty and Sunset properties. She registered them in Limited Liability Companies ("LLCs") which were also in her name. She contends the properties are excluded property because there was an implied agreement between the parties at the outset that the properties belonged to her and "she could deal with them as she pleased."

[131] Ms. Bains argues that the contracts for the US properties she purchased were made in Nevada and therefore Nevada law applies, unless it is contrary to public policy: *Greenshields Incorporated v. Johnston* (1981), D.L.R. (3d) 714, 1981 CanLII 1190 (AB KB). Claims to immovable property are governed by law where the properties are located: *Tezcan v. Tezcan* (1987), 46 D.L.R. (4th) 176, 1987 CanLII 157 (BC CA).

[132] In 2013, Ms. Bains decided to purchase a property on Bakewell Avenue in Nevada for \$178,895 ("Bakewell"). She contends she had borrowed \$100,000 from her mother, and used these funds towards the purchase.

[133] Ms. Bains also contends that Mr. Bains was asked to sign multiple quitclaim deeds relinquishing his rights to the properties. Ms. Bains takes the position that the Nevada properties were never owned by Mr. Bains; the quitclaim deeds simply confirmed her ownership.

[134] In the alternative, if this court finds the Nevada properties are family assets, Ms. Bains seeks an exclusion claim of \$100,000 from the sale proceeds of the one of the properties based on the loan from her mother.

[135] Mr. Bains argues that this court has jurisdiction to determine the status of the US properties because Ms. Bains has sought all remedies available from this court and has accepted the jurisdiction of this court. There is no action started in any court outside of BC. Mr. Bains argues this court has jurisdiction when dealing with foreign property to make appropriate compensation orders for property in Canada.

[136] Mr. Bains agrees that he did not assist Ms. Bains in managing the properties, but he argues that they were purchased with family money and are family assets. This includes the proceeds from the sale of the properties. Mr. Bains' position is that there is no money owing to Ms. Kaur, and any money paid to her since separation by Ms. Bains was family money used without his consent. He argues one-half of the \$100,000 should be returned to him.

Analysis

[137] Throughout the course of the parties' marriage, Ms. Bains purchased and sold a number of properties in Nevada. The instant dispute is with respect to the ownership of the properties, i.e., whether they were family property or excluded property.

[138] The general rule is that upon separation, each spouse is presumptively entitled to an undivided one-half interest in all family property: FLA, s. 81. However, s. 92 of the FLA provides that, subject to the court's limited ability to set aside a property agreement under s. 93, spouses have the autonomy to depart from the assumption that family property is to be divided equally, or to exclude as family property or family debt items of property or debt that would otherwise be included.

[139] In deciding whether the properties are excluded property, I must address several issues. First, I must determine what law applies to the division of these properties located in Nevada. To do so, I must determine whether, through an oral agreement, the signing of the quitclaim deeds, or a combination of both, the parties formed an agreement that the properties were excluded properties: s. 92 of the FLA. Next, if such an agreement exists, I must decide whether it should be enforced, considering any restriction that the proper law of the relationship places on the ability of spouses to determine the division of property or debt by agreement: s. 108(4). Finally, I must determine whether Ms. Bains' mother loaned Ms. Bains \$100,000 to purchase Bakewell or whether it was purchased using family money.

[140] Before I turn to the substantive issues, I briefly describe how Ms. Bains came to purchase properties in Nevada.

[141] Ms. Bains testified that in 2011, a friend of the Bains' suggested investing in properties in the Las Vegas/Henderson area of Nevada. She went to an investment seminar and then travelled to Las Vegas with her friend. Their husbands travelled with them, but Mr. Bains was not involved in the investment inquiries. Ms. Bains' evidence was that Mr. Bains wanted nothing to do with these properties. Mr. Bains was not interested in investing in the US because, according to Ms. Bains, he believed it was a scam. However, he did not stand in the way of Ms. Bains purchasing properties in Nevada. While he would travel to Nevada with her on a regular basis, she did all the managing of the properties.

- [142] Following the investment seminar in 2011, Ms. Bains purchased two properties, Misty and Sunset, in her name. Then, in early 2013, Ms. Bains decided to purchase Bakewell. Ms. Bains testified that she borrowed a \$100,000 from her mother, who had just sold a property in India, and used these funds towards the purchase of Bakewell. She argues this also establishes the properties belonged to her and not Mr. Bains.
- [143] To effectively manage the properties in Nevada, Ms. Bains set up Wesbrook Investments LLC ("Wesbrook") or Revera Investments LLC ("Revera"). Bakewell was sold and Ms. Bains purchased the Alenga property in 2018. The sale proceeds of Misty were used for the purchase of the Taranto Heights property, also in 2018. The Alenga property was in the name of Revera, and the Taranto Heights property was in the name of Wesbrook.
- [144] Ms. Bains purchased the Alenga and Taranto Heights properties from a construction company, K.B. Homes, which did not sell directly to Wesbrook and Revera. Therefore, the original contract for purchase was with Ms. Bains, who then transferred her properties into Wesbrook and Revera respectively. However, during the original transaction on September 28, 2018, Mr. Bains attended with Ms. Bains. The two were advised that under Nevada law, the properties had to be registered in both spouses' names. If Mr. Bains did not want to be an owner, he would need to sign quitclaim deeds. A notary who worked for the escrow agency handling the purchase of the properties, presented Mr. Bains with the quitclaim deeds which expressly waived his interest in the Alenga and Taranto properties. Ms. Bains testified that the notary explained to Mr. Bains that he was giving up all his rights to these properties now and in the future. He read the documents and understood them. Ms. Bains argues he signed the quitclaim deeds voluntarily waiving any and all future community of property rights.

Jurisdiction

- [145] First, I must consider whether Nevada law or BC law is to be applied to the Nevada properties under s. 108 of the FLA.
- [146] In *Jiang v Shi*, 2017 BCCA 276, the Court of Appeal explained the hierarchical application of s. 108 of the FLA with regards to choice of law:
- [31] Section 108 contains three choice of law rules that are to be applied in a hierarchical manner.
- [32] First, if the parties have made an agreement respecting the division of property, the substantive rights of the parties are governed by that agreement.
- [33] Second, if the parties have not made such an agreement, the judge must consider whether the spouses' "first common habitual residence" was in a jurisdiction where a regime of community of property applies. If so, property division must be made in accordance with that regime of community of property.

[34] If neither of these considerations applies, the substantive rights of the parties must be determined according to the proper law of the relationship, which is defined in s. 107.

[147] In this case, Ms. Bains alleges that there is an agreement between the parties with respect to the Nevada properties. I must therefore first determine whether there was an agreement regarding the division of the Nevada properties. If so, that agreement will govern the substantive rights of the parties under s. 108: Jiang.

Was there an enforceable oral agreement between the parties that the Nevada properties, and their proceeds, were excluded property?

[148] Ms. Bains claims there was an implied agreement between the parties that the Nevada properties belonged to her. Mr. Bains asserts this position is "absurd".

[149] I will first, briefly, refer to legal principles applicable to oral agreements. The Court of Appeal succinctly set out key such principles in *Voitchovsky v. Gibson*, 2022 BCCA 428:

[32] The following principles regarding oral agreements emerge from the jurisprudence. When the court is faced with an alleged oral agreement, it is necessary to look not only at the words used, but also at whether the parties' conduct is consistent with the oral agreement. The test for a binding and enforceable agreement is "whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract" (*Rudyak v. Bekturova*, 2018 BCCA 414, at para. 23 [*Rudyak*], citing *G.H.L. Fridman, The Law of Contract in Canada* (6th ed., 2011) at 15; see also *Berthin v. Berthin*, 2016 BCCA 104, at para. 46). In other words, courts must examine how the parties' conduct would appear to a reasonable person in the position of the other party (*Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22, at para. 35 [*Ethiopian Orthodox*]).

[33] The determination of the outward manifestation of the parties' intentions is contextual and takes into account the parties' communications as well as their conduct before and after the agreement is made (*Oswald v. Start Up SRL*, 2021 BCCA 352, at para. 34). The parties must have reached consensus on the essential terms of their agreement and failure to reach this "meeting of the minds" means the agreement will fail for lack of certainty (*Rudyak*, at para. 24). This inquiry is an objective one, such that the actual state of mind and personal knowledge of the parties is not relevant (*Hammerton v. MGM Ford-Lincoln Sales Ltd.*, 2007 BCCA 188, at para. 23, citing *S.M. Waddams, The Law of Contracts*, 5th ed. (Toronto: Canada Law Book Inc., 2005) at 103).

[150] An oral agreement may be considered in an application for an unequal division of family property: *Hopson v. Hannon*, 2022 BCCA 314 at paras. 98-99. In *C (J) v. W (A)*, 2016 BCSC 1012, for example, despite finding no evidence that the parties had discussed in any detail how they would divide their assets, the conduct of the parties confirmed they had agreed to keep their personal financial assets separate that would otherwise have been included in the definition of family property: at para. 109.

- [151] The onus of proof is on the party asserting the existence of an agreement and the standard of proof is on a balance of probabilities: *Kotyk v. Kotyk*, 2020 BCSC 1975 at para. 36. In the context of oral agreements, there is greater flexibility in the admission and consideration of evidence by the Court. As the Court of Appeal held in *Broer v. Multiguide GmbH*, 2023 BCCA 134:
- [53] In my view, there is no merit to the appellants' argument that the judge erred by considering the "surrounding circumstances" beyond this period of time. From a contractual interpretation standpoint, in the absence of any written agreement formalizing the parties' intentions, it was appropriate for the judge to consider the parties' subsequent negotiations. This Court in *De Cotiis v. Viam Holdings Ltd.*, 2010 BCCA 368, explained the flexibility a court has in considering evidence of surrounding circumstances, including post-contractual circumstances, when interpreting oral agreements:
- [21] As G.H.L. Fridman notes in *The Law of Contracts in Canada* (5th ed., 2006) "[i]n the case of a completely oral contract there is greater flexibility in the nature of the evidence that is admissible to prove the contents of the contract and the meaning of the language used by the parties." (At 440.) This flexibility follows intuitively from the recognition that oral contracts must often be construed without the key interpretive tool used to understand written contracts -- the words of the agreement.
- [152] The general rule is that upon separation, each spouse is presumptively entitled to an undivided one-half interest in all family property: FLA, s. 81. However, s. 92 of the FLA provides that, subject to the court's limited ability to set aside a property agreement under s. 94, spouses have the autonomy to depart from the assumption that family property is to be divided equally, or to exclude as family property or family debt items of property or debt that would otherwise be included.
- [153] Ms. Bains was the sole registered owner of the two LLCs, Wesbrook and Revera, which owned the Alenga and Taranto Heights properties, and had sole signing authority on the Bank of America accounts for the LLCs. However, both parties testified that they made numerous trips to Nevada together and that Mr. Bains was with Ms. Bains for many property viewings and purchase signings. Both parties gave evidence that they used the rental income from the Nevada properties for family expenses and for family vacations. Ms. Bains agreed in cross-examination the family used the rental funds for family purposes.
- [154] The fact that the parties had their finances intermingled, and used the proceeds of the US properties for family expenses, distinguishes this dispute from an authority relied on by the claimant, *Voitchovsky*. Moreover, in *Voitchovsky*, the parties were common law partners and most of the analysis was conducted under the Family Relations Act, R.S.B.C. 1996, c. 128, not the FLA. As a result, I do not find this authority to be particularly helpful, apart from the broader principles set out therein.

[155] I accept the Nevada properties were initially purchased using family funds derived from the parties' investments and their respective employment incomes. Yet, Ms. Bains testified that rental income from the Nevada properties and the sale proceeds of sold properties was used to purchase further Nevada properties. Mr. Bains was never on title to any property in Nevada and he did not have a legal interest in either Wesbrook or Revera. Mr. Bains acknowledged that he never had any access to the US bank account with the Bank of America. I also note that Mr. Bains has accepted that Ms. Bains properly claimed rental income from the Alenga and Taranto Heights properties post-separation as part of her income; he does not want to add it to his income as that will affect child support and more importantly spousal support.

[156] Based on both parties' testimony and conduct, I find, on a balance of probabilities, the parties made a verbal agreement that Mr. Bains did not want anything to do with the properties and that Ms. Bains would handle them. Ms. Bains did the purchasing, managing, and selling of all the properties and kept separate accounts for the properties. The quitclaim deeds, which I discuss further below, and the claiming of rental income post-separation by Ms. Bains support such an oral agreement.

[157] These factors are important but not alone sufficient to conclude that the parties agreed that the properties were excluded property. Importantly, the agreement was not in writing and the properties were purchased with family money, except the \$100,000 that Ms. Bains' mother lent to Ms. Bains for the purchase of Bakewell. Given there is some ambiguity regarding the presence of an oral agreement, I will consider the parties' subsequent conduct through the signing of the Quitclaim deeds: *Wade v. Duck*, 2018 BCCA 176[5].

Did the Quitclaim deeds form an agreement between the parties that the Nevada properties, and their proceeds, were excluded property?

[158] On September 28, 2018, Mr. Bains signed two quitclaim deeds relinquishing his interests in the Alenga and Taranto Heights properties. The quitclaim deeds state: "[t]he purpose of this Quitclaim document is to relinquish any possible community interest that grantor [Mr. Bains] may have or may acquire in the future". A third Quitclaim deed was signed on November 7, 2018, with respect to Bakewell.

[159] Ms. Bains admitted that the quitclaim deeds were 'surprises' but she maintains the properties were hers and this just confirmed their earlier agreement. Mr. Bains argues that he signed the deeds because they were necessary to facilitate the sale of the properties. The signing of the quitclaim deeds was not planned or contemplated by the parties. Mr. Bains argues there was no meeting of the minds regarding the deeds.

[160] The parties separated several years after the quitclaim deeds were signed.

[161] The question here is whether, between the oral agreement that I have already found and the quitclaim deeds, there was an agreement between the parties that the properties should constitute excluded property. If not, because they were purchased with family money, they

would be family property: s. 84 of the FLA. If Mr. Bains had not signed the quitclaim deeds, I would have no hesitation in finding that the oral agreement between the parties was not enough to treat the US properties as excluded because those exact words, or words to that effect, were not used. Moreover, as stated in *Doell v. Prentice*, 2018 BCSC 1115, where an agreement is not in writing, and was not witnessed, s. 93 does not apply and the dispute should be resolved under s. 95(2)(b) of the FLA.

- [162] I find that, on a balance of probabilities, through the combination of the quitclaim deeds and the oral agreement, the parties agreed that the Nevada properties were to be excluded property.
- [163] I find that there was a "meeting of the minds", or consensus ad idem on the properties being excluded property. The test for determining whether such a meeting of the minds or a exists is objective; "whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract"; it is 'whether a reasonable... [person] in the situation of that party would have believed and understood that the other party was consenting to the identical term': *Salminen v. Garvie*, 2011 BCSC 339 at para. 27.
- [164] Mr. Bains signed multiple quitclaim deeds that clearly stated--not in the fine print--that he was giving up his legal rights to each property. This is consistent with the testimony of Ms. Bains that the agreement from the outset was that she alone owned the properties. There was no persuasive explanation as to why Mr. Bains signed the quitclaim deeds as opposed to having his name simply put on the properties. The signing of the quitclaim deeds would not have been required had he just signed the paperwork for the purchases.
- [165] Mr. Bains explained that that there were tax implications related to Nevada properties. Having the Nevada properties under both parties' names would require both filing income tax returns in the US, something the parties wanted to avoid. I find this argument to be disingenuous. Ms. Bains was expected to file a tax return showing her US income. Having Mr. Bains' name on the properties should not change that legal obligation and presumably they could have divided the tax liabilities between them. In addition, there was no evidence of a discussion between the parties regarding taxes and no other document was signed by the parties. The only documents before me are unequivocal that Mr. Bains is relinquishing his rights to the properties, and the terms upon which he does so.
- [166] Ultimately, on a balance of probabilities, I conclude that the parties indicated, to the objective reasonable bystander, their agreement that the Nevada properties were excluded property: *Salminen* at para. 27.

Should the agreement be enforced?

- [167] As stated in s. 108 of the FLA, if spouses make an agreement respecting the division of property, "the substantive rights of the spouses are determined by the agreement".

- [168] Having concluded that there is an agreement respecting the division of property, s. 108(4) of the FLA requires that this agreement be subject to any restrictions of the "proper law of the relationship". Section 107 of the FLA states that the proper law of the relationship between the spouses for the purposes of s. 108 is the internal law of the jurisdiction in which the spouses had their most recent common habitual residence.
- [169] Here the most recent--and only--common habitual residence of the parties was BC. Based on the parties' residency, I conclude that BC law applies to the parties' relationship for the purpose of s. 108. Therefore, I must consider whether, under BC law, this agreement is enforceable. Particularly relevant are the comments in *Miglin v. Miglin*, 2003 SCC 24, that judicial intervention is justified where agreements are found to be procedurally and substantively flawed.
- [170] The Supreme Court of Canada has, however, stressed that "a statute-specific approach must be taken when considering [domestic] contracts": *Anderson v Anderson* 2023 SCC 13 at para 25. The general principles in *Miglin* may inform the analysis, but the statutory scheme should govern, particularly for issues of property division, as is the case here. Therefore, I apply the broad considerations in *Miglin*, but also consider the provincial legislative context.
- [171] Another leading case on agreements between parties is *Rick v. Brandsema*, 2009 SCC 10. *Rick* addressed a separation agreement, not an agreement made by the parties during their marriage. As a result, its comments about the heightened vulnerability of parties due to it happening during "one of the most emotionally charged junctures of their relationship--when it unravels" carry less weight. Nevertheless, the ultimate question of whether the agreement was "significantly unfair" applies. Considering the procedural integrity of the agreement is a fact-specific inquiry regarding the relative vulnerabilities of the parties and the amount of information they had about each other's financial affairs: *Rick*. Here, the parties were aware of each other's financial situation since they were intermingled. There was no evidence Mr. Bains was under any duress to sign the quitclaim deeds or that Ms. Bains had a controlling influence over him.
- [172] Further, I agree with Ms. Bains that Mr. Bains is sophisticated and would have known what he was signing. He had his name on other investments (e.g., a Kelowna property, an Alberta property, and Mr. Bains was a 50 percent shareholder of Raddison Investments Ltd., which owned a commercial property). Further, Mr. Bains had been in a lawsuit with his father over the issue of real property and whether he was on title to the Manor House. I find it difficult to believe Mr. Bains did not know what he was signing.
- [173] Lastly, there was no evidence that Mr. Bains was vulnerable. Had there been such evidence before me, I would have come to a different conclusion. It is easy to see how one spouse could take advantage of the other in such financial situations, but that was not the case here. Ms. Bains was not in a position to coerce Mr. Bains. This may be the reason he did not request a s. 93 FLA variation of the agreement.

[174] In considering the substantive fairness of the agreement, I consider the overarching goals of the FLA: Anderson. A significant departure from the objectives of the relevant legislation will warrant judicial intervention: Rick at para. 49. The particular values that the FLA highlights to determine what is "fair and equitable" for an agreement respecting property division include the following (FLA, s. 93(5)):

- a) the length of time that has passed since the agreement was made;
- b) the intention of the spouses, in making the agreement, to achieve certainty; and
- c) the degree to which the spouses relied on the terms of the agreement.

[175] I do not find that any of these factors make the agreement substantially unfair in this case. Mr. Bains signed the quitclaim deeds in September 2018; this length of time is not sufficient to render the agreement unfair in the context of this case. The very purpose of the signing of the quitclaim deeds was to achieve certainty between the parties over the ownership of these properties. There is also evidence that both parties relied on the terms of the agreement. Ms. Bains set up two LLCs, Wesbrook and Revera, in exclusively her name to facilitate her ownership of the properties and solely took on the responsibility of managing the properties. Mr. Bains has made it clear that he does not wish to add the rental income from the properties to his income.

[176] In conclusion, I find that Mr. Bains, with full knowledge of what he was doing, agreed the US properties belonged to Ms. Bains. As a result, the proceeds of the Nevada properties belong to Ms. Bains.

Should I make an adjustment because the properties were initially purchased with family money?

[177] That there was an agreement with respect to the properties in Nevada, however, is not the end of the matter. Despite my finding that Mr. Bains agreed that the proceeds from the Nevada properties were Ms. Bains' excluded property, there is no dispute that the original properties were purchased with family property except the \$100,000 Ms. Bains' mother loaned to Ms. Bains to purchase Bakewell (which I accept she did). I do not have evidence of a written agreement between the parties regarding an earlier agreement that Mr. Bains was relinquishing his claim to one-half of the family funds used to purchase these properties.

[178] In these unique circumstances, the fairest way to handle this situation is to have Ms. Bains pay Mr. Bains back 50% of the initial purchase price of the two original properties, Misty and Sunset. In terms of Bakewell, Ms. Bains should pay Mr. Bains back 50% of the \$78,895 used to purchase Bakewell. I have removed the amount Ms. Bains' mother lent[6] to Ms. Bains to purchase Bakewell. It will be Ms. Bains' responsibility to repay her mother the loan amount.

Alberta Property

Background and the Parties' Positions

[179] The parties jointly owned the Alberta property as an investment property. It was purchased at the suggestion of Ms. Bains after hearing about the property from an acquaintance. The parties had never actually visited the Alberta property. On November 29, 2021, after the parties' separation, they hired an appraiser who provided a value of the property of \$160,000. On December 2, 2021, the parties exchanged texts in which Ms. Bains suggested that the property was probably only worth around \$150,000 and either Mr. Bains or she could take it over. She said she was "ok" with \$140,000 by which I assume she meant was the value that should be attributed to the property. Mr. Bains replied: "you can rent and take over if you want".

[180] On February 20, 2022, Ms. Bains' counsel wrote to Mr. Bains counsel. He stated that Ms. Bains agreed to purchase Mr. Bains' one-half interest in the Alberta property for \$25,300. The letter stated the following:

Regarding the Alberta property of our clients, I confirm that our clients have agreed that this property is worth \$140,000. The mortgage against it is \$89,398, which leaves equity of \$50,601.

Our Clients have agreed that my client (the Claimant) will purchase your client's (the Respondent's) interest. Therefore, your client will be entitled to a credit or a compensation payment of \$25,300.00.

[181] The matter is complicated by the fact that Mr. Bains' counsel wrote to Ms. Bains' counsel on March 21, 2022. In that letter, Mr. Bains stated: "[i]n relation to the financial matters, we have yet to receive a settlement offer as set out in your letter of February 20, 2022". Ms. Bains argues this establishes there was no agreement. She also says there was no binding agreement in late 2021 or early 2022 because Mr. Bains chose not to transfer his interest to her within a reasonable period of time. Lastly, she argues, the parties were operating under a common mistake about its true value (the value of the property dropped from \$160,000 to \$140,000 and then to \$67,500 in February 2023). Ms. Bains argues it would be unconscionable to enforce the contract given the common mistake. Alternatively, the contract should be rescinded.

[182] Mr. Bains argues the comments in his March 21, 2022 letter were in response to a portion of the February 20, 2022 letter regarding the other financial matters; it was not the Alberta property.

[183] No money was exchanged to complete the sale and the title was not transferred to Ms. Bains. However, Ms. Bains subsequently changed the mortgage payments to be withdrawn from her sole account suggesting that she assumed she owned the property or was about to own the property. She also rented out the property to new tenants and retained the proceeds. Mr. Bain was not involved in these steps.

- [184] Ms. Bains testified that she communicated with Mr. Bains in the spring of 2022 to see a notary to transfer title of the Alberta property to her. She suggests he refused to transfer title. Mr. Bains emphasizes that Ms. Bains has not been able to produce any proof of this supposed meeting setup, either through emails or text messages between the parties. She has not produced any correspondence with the notary. When asked why not during her cross-examination, Ms. Bains stated she lost the text messages on her phone.
- [185] There are emails between the parties about the Alberta property after the letters that were exchanged in February and March 2022. In May 2022, there was an email from Ms. Bains discussing how the Alberta tenant cannot make his payment on time. A June 30, 2022 text exchange shows that Ms. Bains wants to sell the Alberta property. This email suggests that Ms. Bains does not believe that there is a binding agreement between them. She was surprised when she read his text back saying that he had relinquished his interest in the Alberta property. This was the first clear communication from Mr. Bains on the property since the letter in March 2022. Mr. Bains says that he will discuss his obligations with his lawyer, but he takes no further action and his lawyer did not communicate with Ms. Bains.
- [186] Ms. Bains argues that, in her mind, the buyout was conditional on a quick comprehensive settlement being reached. She emphasizes there was no response by Mr. Bains' counsel to the buyout agreement for a full year, until February 2023, when there was an urgency to sell the property.
- [187] The history of the listing and the attempted sales are set out in Ms. Bosch's email of February 10, 2023, Ex. E, tab. 12. Ms. Bosch describes the numerous deficiencies with the Alberta property; she states it is worth no more \$75,000 and likely less.
- [188] The Alberta property was subsequently sold for \$67,500 in March 2023, but with the real estate commission and the outstanding mortgage there was a deficit on the sale of \$23,038.42. The property was therefore sold for a loss of about \$23,038. On a without prejudice basis, the parties used the Surrey Property sale proceeds held in trust by their respective counsel to cover the shortfall on the sale of the Alberta property. Mr. Bains was still on title to the property at the time of the sale.
- [189] Mr. Bains now seeks compensation for payments he made on the property and for the loss when it was sold. His total claim is \$39,103.61.

Analysis

- [190] Mr. Bains bears the burden to prove that the parties reached an agreement in 2021 that Ms. Bains would buy his portion of the Alberta property. I find that he has not proven that such a contract existed.

- [191] It appears that in text communications on December 2, 2021, Ms. Bains made what could be considered an offer: "[i]f you don't want it I can take it at" \$140,000. The next communication by Mr. Bains on this matter is on December 6, 2021, where he stated "[y]ou can rent and take over if you want".
- [192] This acceptance, if it can be viewed as such, of Ms. Bains' offer is non-committal and conditional. It does not meet the aforementioned test for determining whether such a consensus exists: "whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract"; it is 'whether a reasonable... [person] in the situation of that party would have believed and understood that the other party was consenting to the identical term': *Salminen v. Garvie*, 2011 BCSC 339 at para. 27.
- [193] The ambiguity of Mr. Bains' acceptance means that it does not meet the standard that a "reasonable bystander" would have concluded that the parties indicated their intention to contract at this point. It is true that Mr. Bains' counsel's February 2022 correspondence indicated that Mr. Bains understood there to be a contract formed in December 2021. However, the test remains objective; Mr. Bains' subjective thoughts about the forming of the contract at this point are not determinative.
- [194] In addition, real estate transactions must have clear terms of sale. The contract alleged by Mr. Bains lacks certainty on essential terms namely, the price for which Ms. Bains would purchase Mr. Bains' share of the Alberta property. The absence of this term also distinguishes this situation from the Nevada quitclaim deeds, under which the price was clear (Mr. Bains agreed to give up his claim to the properties for no consideration).
- [195] While the record demonstrates that the parties discussed the valuation of the Alberta property, there is no agreement of a price for the buyout. Ms. Bains' counsel suggested a price in their February 20, 2022 email, but Mr. Bains never expressed his agreement to this price. In fact, his counsel's subsequent email on March 21, 2022, states "we have yet to receive a settlement offer." This militates in favour of there being no meeting of the minds.
- [196] Given the ambiguity surrounding this contract, subsequent conduct of the parties may also be considered: *Wade* at para. 28. The subsequent actions of the parties are inconsistent with the existence of a contract. Most importantly, Mr. Bains did not transfer his interest to Ms. Bains by removing himself from title and no money was exchanged.
- [197] Given these deficiencies, on a balance of probabilities, Mr. Bains has not established that the parties indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract: *Salminen* at para. 27.

Personal Seat Licences

- [198] During the parties' relationship, four personal seat licences ("PSLs") were purchased in Nevada in the parties' names. Ms. Bains' uncle, Mr. Lehal, paid for two of these PSLs, or at least the majority of the price for two of them. He therefore had a beneficial interest in the PSLs.
- [199] At issue is the value of the four PSLs and what do with them. There is also a dispute about what seats belong to the parties and which seat are beneficially owned by Mr. Lehal. Mr. Bains says they own seats 1 and 2, but Ms. Bains points out that only seats 3 and 4 are in his name. However, Ms. Bains has advised the Court that she does not care if Mr. Bains ends up with seats 1 and 2 as long as he pays the transfer costs.
- [200] After the separation, Ms. Bains bought the beneficial interest in the two PSLs from Mr. Lehal for what she testified was the fair market value at the time, namely \$37,789.27 USD. It was the parties' and uncle's sons who determined this price.
- [201] The parties cannot agree on the values of the PSLs and there is no reliable evidence before the Court about their value, except that there has been an increase from the time of purchase and that the value fluctuates.
- [202] To resolve this dispute, Mr. Lehal has agreed with Ms. Bains to pay back \$37,789.27 USD in consideration for having full legal and beneficial ownership of two PSLs. He is agreeable to having seats 3 and 4, and leaving seats 1 and 2 with Mr. and Ms. Bains.
- [203] The two PSLs have not yet been transferred to Mr. Lehal, but he has provided a money order for this amount to Ms. Bains and expects the PSLs to be transferred to him.
- [204] Ms. Bains proposed the following, in her preferred order of preference. She states that if Mr. Bains elects not pick any of these options by the end of the trial, which he did not, she seeks the following order:
1. The monies received from Mr. Lehal be divided evenly between the parties.
 2. One PSL is [to be] transferred to MB and the other to PB (who will be 19 shortly), and if Mr. Bains indicates his opposition to this, then
- Mr. Bains will have the option of purchasing Ms. Bains' PSL for \$15,000 USD;
- or
3. Alternatively, Ms. Bains shall purchase Mr. Bains' PSL for the same amount; or of he indicates that he is still opposed to this, then
 4. Both PSLs be listed at \$15,000 USD each on the STR Market Place.com preferred by Raiders with joint conduct of sale, and the sale proceeds divided evenly.

[205] Mr. Bains argues that Ms. Bains has unnecessarily complicated matters by having her uncle attempt to purchase the PSLs post-separation knowing they were a matter before the courts. She did this without consulting him, inflating the price and involving their older son. The remedy he seeks with respect to the PSLs is as follows[7]:

- a) Within 45 days, Mr. Bains will transfer PSL Seats 1 and 2 held by Ms. Bains and [they will] become the exclusive property of Mr. Bains. Mr. Bains will pay Ms. Bains an amount of \$9,900.00, which is one-half of the value arrived at by Mr. Bains;
- b) Ms. Bains will indemnify Mr. Bains from any claims made against him by Harpal Lehal in regards to Las Vegas Raiders PSL's arising from this matter;
- c) Within 45 days, PSL Seats 3-4 will be transferred to Ms. Bains by Mr. Bains or to [Mr. Lehal] at the written request of Ms. Bains;
- d) Ms. Bains will be liable for all applicable transfer fees for the PSL as set out above;
- e) Ms. Bains is to provide Mr. Bains one-half of the \$37,798.26 USD family funds withdrawn by her early in the separation without his knowledge or consent.

[206] This is the type of dispute that should not be before the Court. It took up an inordinate amount of time, when the parties could simply have agreed to split the seats. In my view, the solution proposed by Ms. Bains is a reasonable solution and I order this process to address for the remaining PSLs.

Debts

Legal Principles

[207] In terms of debt division, I repeat what Justice Griffin succinctly stated in Zilic:

[13] []

- a) As a starting position, spouses are entitled to equal division of family property and are equally responsible for family debt as at the time of separation, regardless of their relative contributions to the acquisition of the property: FLA, s. 81; Jaszczewska v. Kostanski, 2016 BCCA 286 at para. 38.
- b) Family property includes all real and personal property owned by at least one spouse on the date of separation: FLA, s. 84(1). It also includes property acquired by a spouse that is derived from family property and the value by which "excluded property" increased during the relationship: FLA, ss. 84(1)(b)(i), (2)(g).
- c) Some property held by a spouse is excluded from family property. Excluded property is property acquired before the relationship, inheritances, property derived from excluded property, and some additional categories of property: FLA, s. 85. The onus of proof is on the spouse claiming that property is excluded property: FLA, s. 85(2).

- d) Family debt includes all financial obligations "incurred by a spouse" during the period of the relationship before separation and debt incurred after separation if incurred for the purpose of maintaining family property: FLA, s. 86.
- e) The presumptive date for determining the value of family property and family debt is as of the date of the hearing before the court respecting division: FLA, s. 87(b)(ii). There must be compelling evidence to depart from that valuation date: *Rudyak v. Bekturova*, 2018 BCCA 414 at para. 35; *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 59-60. Departing from the presumptive valuation date is akin to reapportionment of property, and it thus requires consideration of the factors that would support unequal division pursuant to s. 95 and a finding that the presumptive valuation date would be significantly unfair: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; *Namdarpour* at para. 59.
- f) The value of family property must be based on its fair market value: FLA, s. 87(a).
- g) The court may order an unequal division of family property, family debt, or both if it would be "significantly unfair" to equally divide it: FLA, s. 95(1)(a). The words "significantly unfair" impose a higher threshold for the exercise of judicial discretion than under predecessor legislation: *Jaszczywska* at para. 41. Significant unfairness requires something objectively unjust, unreasonable or unfair in some important or substantial sense: *Jaszczywska* at para. 42; *Singh v. Singh*, 2020 BCCA 21 at para. 134.
- h) Numerous factors can be considered when determining whether equal division would be significantly unfair. One factor that may justify unequal division of family property, which is particularly relevant in this case, is where a spouse after separation caused a significant decrease in the value of family property beyond market trends: FLA, s. 95(2)(f). This factor does not require a finding of a lack of good faith. A similar factor requiring a lack of good faith is "that a spouse, other than a spouse acting in good faith, substantially reduced the value of family property, or disposed of, transferred or converted property that is or would have been family property causing the other spouse's interest in the family property to be defeated or adversely affected": FLA, s. 95(2)(g).
- i) The court is given wide powers to effect a division of family property or family debt, including making orders as to who owns an asset, transferring title, or requiring a spouse to pay compensation to the other: FLA, s. 97.

[Emphasis added.]

The \$165,000 Line of Credit and Alleged Loans

[208] The parties owned a property in Kelowna, BC at the time of their separation. They took out a \$165,000 line of credit toward the property shortly after separation. The property was later sold, the line of credit and other associated liabilities paid off, and the net proceeds shared equally between the parties.

[209] Mr. Bains testified that Ms. Bains took certain sums from the line of credit for her personal use. He argues he should be reimbursed 50% of this amount. The sums he claims are:

- a) payment of \$46,608.95 to Ms. Bains' mother;
- b) payment of \$50,000 to Ms. Bains' uncle, Mr. Lehal; and,
- c) \$26,000 into a personal bank account.

[210] In terms of the \$45,609 that was taken from the parties' joint account post-separation, Ms. Bains testified that it was withdrawn to reimburse her mother for money she had earlier "loaned" to her. Ms. Bains testified that, in 2016, her parents moved to Kelowna to live with her sister, Anupum. Her mother was concerned about the sister's ability to handle money as she had often asked for financial help. In order to claim that she did not have any money to give, funds were transferred to Ms. Bains. It was understood that these monies were essentially there for safekeeping and would be returned as needed by Ms. Bains' mother.

[211] Ms. Bains' mother testified and corroborated her daughter's evidence. She stated that in April 2016, she loaned money to her other daughter, Anupum, but she was unable to pay it back. In 2018, she made a third-party deposit into the parties' joint Scotiabank account so her other daughter would not see how much money she had in her accounts.

[212] Post-separation, Ms. Bains withdrew the money from the line of credit and placed it into an account that had not been used by the parties since 2018. She testified that she put it in this dormant account because it was a savings account and she wanted to make a return for the parties. Mr. Bains testified the money was placed into an account opened by Ms. Bains using his signature without his knowledge. From this account, Ms. Bains transferred the money back to her mother.

[213] Ms. Bains' mother testified that she did not share her bank account information with anyone. She agreed in cross-examination that her other daughter did not know how much money she had. I also note that Ms. Bains was unable to provide the interest she made by placing the \$45,609 into this account. Ms. Bains suggests that she paid back the money on December 1, 2020 after Mr. Bains suggested that doing so was her burden, not his.

[214] I do not accept the explanation of Ms. Bains. As I said earlier, Ms. Bains was at times unable to resist the temptation to modify her recollections in her financial favour. Here, it defies common sense that Ms. Bains' mother would need to hide money in the parties' accounts when her other daughter had no knowledge of how much money she had in her accounts. In addition, there was no indication when the money was first given to Ms. Bains that it was a loan and there was not clear evidence of this prospect. I find this money was gifted to the parties, not loaned. Since no argument was made that this money was excluded, I find it to be a family asset.

[215] Ms. Bains must pay Mr. Bains for one-half of the \$45,609 she paid to her mother.

- [216] Similarly, Ms. Bains testified that her uncle, Mr. Lehal, lent her \$50,000 in approximately October 2020, for which a back-dated promissory note was the only corroborating evidence. Both she and Mr. Lehal testified that it would be helpful because it was cash and the parties were building a house. Mr. Bains argued if the money was indeed transferred to the parties, which is unlikely,[8] it was so Mr. Lehal could hide money from his spouse who he had separated from the year before. Ms. Bains denied this was the reason but in cross-examination stated she signed the back-dated promissory note (which is the only document at trial that verified the \$50,000 transfer) to protect her uncle.
- [217] Ms. Bains testified the \$50,000 was an interest-free loan and that Mr. Bains knew about it. She testified that she used the money to pay cash to subcontractors and trades. She did take the Court to some withdrawals in her bank statements, but I cannot discern exactly what they were used for. It is troubling that in her discovery evidence Ms. Bains testified that the loan was for \$30,000 whereas, at trial, based on what her uncle told her, it was \$50,000. This was allegedly a relatively recent loan, for which she had signed a promissory note. I find it difficult to accept that she would forget about \$20,000.
- [218] Even if these withdrawals were for payments to subcontractors and trades, no plausible explanation was given why the parties could not just use their own cash. The only justification Ms. Bains gave was if someone was willing to give her an interest free loan she would take it.
- [219] Having not met her burden, I find that Ms. Bains must pay Mr. Bains 50 percent of the \$50,000 to reimburse him for his one-half of this family money that she paid to her uncle.
- [220] Lastly, Mr. Bains alleges that Ms. Bains withdrew \$26,000 from the line of credit for herself post-separation. She deposited the money first in a dormant account and then into her personal bank account. Ms. Bains testified that she used the money to set up a new household because it was Mr. Bains who staying in the family home. In direct examination, she testified that she left all the furniture in the house.
- [221] Mr. Bains argues that she emptied the house while he was in the hospital for a urinary tract infection. Ms. Bains admitted in cross-examination that she only took her clothes, shoes, a couch, one coffee table, and MB's wardrobe as he was living with her.
- [222] Mr. Bains testified that Ms. Bains took some chairs and side tables, MB's bedroom suite, utensils from the garage, an iron, and a blender. I do not view that as emptying the house. Obviously, Ms. Bains would have had to set up a new household which, in light of the economy in 2020 and 2021, would be costly. Moreover, half of the withdrawal belonged to her.

[223] Ms. Bains is not claiming her 50 percent share of the Scotiabank joint account #1387 (\$3,006) in acknowledgement of her withdrawal of the \$26,000 post-separation. Taking this into account, Ms. Bains withdrew approximately \$10,000 post-separation to set up her new household. In my view this amount is reasonable to compensate Ms. Bains for the loss of most of the household goods she left behind after 25 years of marriage.

[224] I decline to order that half of the \$26,000 be paid to Mr. Bains.

American Bank Accounts

[225] Mr. Bains claims he is entitled to half of the \$14,841 that was in the Bank of America Westbrook account at the date of separation. This was before the Alenga and Taranto properties were sold. The Alenga property was sold on November 9, 2021 and the Taranto Heights property was sold on March 29, 2023. Capital gains were paid on the sale of the Alenga property but have not yet been paid on the sale of the Taranto Heights property. Mr. Bains also claims half of the \$26,328 Bank of America Revera account, \$13,164. Again, he is not seeking rental income of the properties post-separation because it is to be imputed to Ms. Bains' income for support purposes.

[226] I have already determined that due to the parties' oral agreement and the quitclaim deeds Mr. Bains signed, he is not entitled to these amounts.

[227] There was also a Bank of America Joint account with \$18,950 at the time of separation. He seeks 50 percent which is \$9,475. This was a joint account. As a result, Mr. Bains is entitled to 50 percent. I therefore order Ms. Bains to pay \$9,475 to Mr. Bains.

[228] Lastly, Ms. Bains concedes she used \$3,332 on the Scotiabank Visa for personal expenses post-separation. Ms. Bains is to compensate Mr. Bains \$1,666 for his 50 percent contribution to these expenses.

Post-trial Application

[229] Mr. Bains seeks further disclosure in respect of a Prospera account. Ms. Bains has already provided an authorization but apparently that authorization post-dates the account being closed. Therefore, I order that within ten days of this judgement, Ms. Bains will provide another authorization to the respondent to cover the period from January 1, 2018 to the date that the account was closed.

[230] Mr. Bains seeks Ms. Bains' travel history from the date of separation, including dates of hotel stays. Ms. Bains says this is motivated by Mr. Bains' obsession with her alleged affair with another man. The issues before the Court for trial appear to be spousal support, child support, and division of property. I do not find this information to be relevant to those issues, and therefore, that application is dismissed.

- [231] Mr. Bains says Ms. Bains has not been truthful about why she went part-time at Air Canada. As recently as the trial management conference, Ms. Bains said it was due to mental health issues but now says it may have been a personal choice. Mr. Bains says these records can be used to attack her credibility and the respondent is also prepared to agree to an order in the Halliday format.
- [232] In *Ellis v. Ellis*, 2018 BCSC 510, the wife sought production of documents related to the husband's union solely for the purpose of attacking his credibility. The court, in following other decisions of this court, determined that documents sought solely to prove or disprove collateral facts related to credibility was not a basis to order document production. While Ms. Bains' medical records would be relevant if a claimant was arguing at trial that she is unable to work full time, they are no longer relevant given her admission.
- [233] Having said that, it appears that the respondent will have fodder available to him for the cross-examination of the claimant on the issues of credibility, given statements that she has made to the court at both her discovery and at the trial management conference. However, based on the authorities as set out in *Ellis*, I am dismissing paragraphs 1(b) and (c) of Mr. Bains' application.

Costs and Miscellaneous

- [234] The general rule in civil cases, including family law, is that costs[9] follow the event unless otherwise ordered. This is embodied in the case law and Rule 16-1(7) of the Supreme Court Family Rules, which states: "[s]ubject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders". Costs are awarded to the prevailing party after judgment has been given: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 at para. 20.
- [235] In family law, a party is successful when they have achieved "substantial success", which has been equated to mean an approximately 75% success rate on disputed issues: *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 45, leave to appeal ref'd, 2002 BCCA 454. In this case, I find that Ms. Bains achieved substantial success. As a result, Ms. Bains is entitled to costs at Scale B, barring reasons to the contrary of which I am unaware. If there are issues related to costs arising from this award, the parties may, within 45 days of these Reasons, apply to Supreme Court Scheduling to speak to them.
- [236] If I have made any errors with regards to numerical figures or calculations that are material to the calculation of spousal, child support, or other matters, or there are issues with respect to implementation of any order, the parties have leave to apply for further directions. The parties may arrange this through Supreme Court Scheduling.

"D. MacDonald J."

Appendix "A"

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- [1] Income disparity alone does not necessarily mean entitlement. As opposed to, for example, business dividends or a salary determined by the party when the party owns their own business.
- [2] The capital gains are from a joint investment account owned by both parties. The parties have agreed in their Consent Order that these funds shall be used to pay any accounting or tax costs related to the Raddison Investment and the net remaining amount will be divided equally between the parties. In light of this, I am not including these capital gains and dividends in their income. The amounts are also identical for both spouses, so it would not make a difference to include them. I am including Mr. Bains' other investment income from Prospera Credit Union and CIBC.
- [3] In her original submissions, Ms. Bains states her 2022 income was \$24,436, including rental income of \$12,322. However, in her Rebuttal submissions she accepts the Respondent's submission and his chart.
- [4] The other investments were from Tangerine Bank, the Bank of Nova Scotia, Canadian Western Bank, and Vancity Savings Credit Union.
- [5] Subsequent conduct may only be admitted "if the contract is found to be ambiguous after one has considered its text and the factual matrix surrounding the creation of the contract": Wade at para. 28.
- [6] I do not believe it would be fair to consider the \$100,000 a family debt as Mr. Bains did not share in the proceeds from Bakewell and it may well be that Ms. Bains will not be required to pay her mother back.
- [7] I have removed the editorial comments of the Respondent.
- [8] Mr. Bains testified he was only aware of a \$5,000 in cash gifted by Mr. Lehal to the parties, which was a separate issue.
- [9] Costs describe an order that an unsuccessful party in the litigation pay the successful party some amount in order to indemnify allowable expenses and services incurred that are relevant to the trial.
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