
CANADA / JUDGMENT

Baquero v. Forero

2021 BCSC 257

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 257 Baquero v. Forero

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Baquero v. Forero,

2021 BCSC 257

Date: 20210219

Docket: E183012

Registry: Vancouver

Between:

Diana Marcela Baquero

Claimant

And

Oscar Augusto Forero

Respondent

Before: The Honourable Mr. Justice Groves

Reasons for Judgment

Counsel for the Claimant:

I.I. Turaglio

Appearing on his own behalf:

O.A. Forero

Place and Date of Trial:

Vancouver, B.C.

July 7-10, 2020 and

January 20-22, 2021

Place and Date of Judgment:

Vancouver, B.C.

February 19, 2021

- [1] In this family law dispute, the claimant, Diana Marcela Baquero, and the respondent, Oscar Augusto Forero, raise before the court a number of issues resulting from their relatively short-term relationship.
- [2] The trial began for four days July 7-10, 2020 and continued on January 20-22, 2021. The claimant was represented by experienced and capable counsel, Ms. Turaglio, and the respondent, although apparently represented by counsel earlier on, was self-represented at trial.
- [3] Before the court are the usual issues in dispute between parties who were married and have children. The issues related to parenting time and childcare are before the Provincial Court and were not litigated before me in this matter.
- [4] The issues that were in dispute was a claim for child support and spousal support, both retroactive and ongoing and, in regards to spousal support specifically, a claim for a modest lump sum payment. As is usual in the consideration of these financial issues, the court is required to determine the parties' respective income and that in this case presents a number of challenges with respect to both parties.
- [5] Additionally, there is a complicated dispute in regards to property, though the property upon reflection is relatively modest.
- [6] The issues of property in this matter are complicated by two factors - one being the geographic location of the various assets, and the second being an ability because of that to determine their value and, in regards to one specific asset, its actual ownership.
- [7] There are only two witnesses in this case - Ms. Baquero and Mr. Forero.
- [8] While no disrespect is intended to either party, and both of whom are fluent in English, I could not help but sense that some of the nuances of language created some difficulties for the parties, particularly for Mr. Forero. His ability to communicate in English is somewhat less than was Ms. Baquero's. That fact and the fact that he did not have the assistance of counsel, raised a concern that he might not have fully appreciated some questions and some directions from the court. In that respect, and to a limited degree, Mr. Forero was handicapped in this litigation.

- [9] That being said, Mr. Forero's position in this litigation, from the time of discovery to the time trial occurred, seems to have changed significantly, particularly as it relates to an asset which I will refer to in these reasons as the "Florida Condo". This was not related to any language difficulties, but the movement appeared to be a calculation to gain maximum advantage. This detracted from the veracity of his evidence.
- [10] For that and other reasons that will become clear, when there is a dispute about the evidence, I prefer the evidence of Ms. Baquero over that of Mr. Forero.

Factual Background

- [11] Both Ms. Baquero and Mr. Forero were born and educated in Colombia, South America. At the beginning of the trial, Ms. Baquero was 40 years of age and Mr. Forero was 55 years of age. At the beginning of trial, their two daughters were Nataly, age six, and Emily, age four. Nataly was born February 9, 2014 and Emily was born on June 22, 2016.
- [12] Ms. Baquero came to Canada in 1999 and met Mr. Forero at a Latin festival in July 2010. For a period of time, from October 2010 to August 2011, they resided together in his condominium on Skeena Street in Vancouver. This was a condominium he had purchased in about 2009. There is no claim made in this litigation in regards to the few months that the parties cohabited together until August 2011.
- [13] The parties' relationship began again, I find, in or about March 2013. There is some dispute of this date by Mr. Forero, but I accept Ms. Baquero's evidence in this regard. Modest documentary evidence related to addresses support this position. The parties married in September 2013. They separated in April 2017. The totality of their relationship is, therefore, just over four years.
- [14] When the parties began living together for the second time, Mr. Forero still resided in his condominium on Skeena Street. Approximately one and a half year later, through what can only be described as creative financing, the parties were able to purchase their family home at 3445 William Street, Vancouver (the "family home") in November 2014.
- [15] The family home was heavily indebted by way of initially a first mortgage and a subsequent second mortgage, as of July 2016. The parties borrowed on various personal financial instruments, as well as from family, in order to scrape together the down payment to purchase the home. Even by doing so, the first mortgage had a principal of \$523,080, monthly payments of approximately \$2,400, and was no doubt a considerable strain on this couple. It is fair to conclude that the parties' incomes are modest and, it would appear that throughout most of their marriage, a large portion of their net income was used to maintain the mortgages on the family home. Though unstated, that may very well have been some tension which led to the breakdown of the marriage.

- [16] I am satisfied on the evidence that when Mr. Forero's Skeena Street condo sold he netted \$74,000. The claimant advances that \$60,000 of this should be considered a pre-existing asset of Mr. Forero, based on an analysis that the parties jointly occupied this residence from March 2013 to November of 2014. Mr. Forero did not seem to dispute this.
- [17] Although the parties separated in April 2017, they continued to reside in the family home until November 2019. Initially, Mr. Forero slept on the couch, but eventually he moved into what was described in the evidence as a shed on the property that was converted into a bedroom. He still used the main part of the house for its bathroom and kitchen.
- [18] At the time the parties' relationship began, Mr. Forero was working in the technology industry for the Insurance Corporation of British Columbia ("ICBC"). He lost his job in December 2017 and began to be self-employed as of that time. His self-employment was through a company referred to in this litigation as "Croaesus". It is not alleged this company has any value, it is simply how he operated his consulting services. Through Croaesus, the respondent testifies, evidence that I accept, at least until the recent pandemic, Mr. Forero earned approximately \$56,000 annually.
- [19] The parties appear to have had an agreement, or perhaps an understanding, or perhaps they simply did this and did not complain, that each party would pay one-half of the mortgage payments on the family home post-separation. This continued until November 2019, when Mr. Forero began to pay child support only in an amount agreed to, seemingly based on his income of \$56,000, and shortly thereafter he left the family residence.
- [20] As a result of the financial crunch which Ms. Baquero experienced once Mr. Forero had stopped paying one-half of the mortgages (the total mortgage payments appear to be approximately \$3,100 per month, or \$37,200 per year), the mortgages fell into default and as a result an order for the interim sale of the family home was obtained.
- [21] As a result of the sale of the family home, there remains in trust sale proceeds of \$281,707.63. The mortgages were paid out, as were various other expenses that the parties agreed to pay, including a payment to Mr. Forero's brother, for money advanced to purchase the home in the amount of \$12,000. Additionally, prior to the monies being placed in trust with claimant's counsel, \$9,000 was advanced to Ms. Baquero. It was part of the agreement related to sale of the home that Ms. Baquero would be allowed to remain in the home for a period of time. Her rent for that period of time was the \$9,000 advanced to her from the sale proceeds.
- [22] Also, prior to the monies being placed in trust, certain funds were advanced to Mr. Forero. Two general advances, \$5,000 and \$1,500 were made. Finally, \$2,000 from Mr. Forero's share of the sale proceeds was advanced to him to pay an earlier court ordered cost order. This totals \$8,500.
- [23] In addition to the family home, now funds in trust, there are a number of other pieces of real property which add an unusual level of difficulty to this litigation.

- [24] Ms. Baquero and Mr. Forero each own a condominium in Colombia. Based on the evidence before me, the current value of Ms. Baquero's condominium in Colombia is \$53,000 CDN. Its value in 2013, when the relationship began, based on the appraisal evidence ordered by the court at a trial management conference, was \$38,876.22 CDN.
- [25] Mr. Forero also has a condominium in Colombia. Its value for trial purposes was \$104,600 CDN and, based on the appraisal evidence before the court, the value of that condominium in 2013 was \$76,181 CDN.
- [26] It is important to note that there is no believable suggestion that either of these condominiums increased in value by way of contributions during the marriage. The increases are only inflationary and reflections of market value forces. Mr. Forero seems to argue he received funds from his mother during the relationship that he used to pay indebtedness on his Colombian condo and for other purposes. This is disputed by Ms. Baquero, noting as she does that throughout the relationship Mr. Forero in fact sent money to his mother for her support and maintenance. Nothing turns on that as it relates to his Colombian condo, but it is another example of implausible or unlikely evidence
- [27] The most complex issue in this litigation relates to the last piece of real estate which is the Florida Condo in Orlando, Florida, USA.
- [28] According to the evidence of Ms. Baquero, during the marriage Mr. Forero came up with the idea of purchasing an investment property in Florida. She was initially reluctant, but agreed to do so. For that purpose, the parties obtained a second mortgage on the family home from a private lender. Funds were advanced under this mortgage, which totalled approximately \$126,000 CDN or thereabouts, and the Florida Condo was purchased for \$80,000 USD. The modest balance of the loan appeared to be used for closing costs or general household purposes.
- [29] Prior to its purchase, however, Ms. Baquero became aware that the corporate vehicle being used to purchase this condo, a Florida company named OFDB LLC, appeared from documents she saw was only in the name of Mr. Forero. Ms. Baquero questioned Mr. Forero about this and expressed her reluctance to agree to remortgage the family home to purchase a condominium in a company that was only in his name. Apparently, Mr. Forero immediately agreed to change the nature of the ownership of OFDB LLC to ensure that they were both equal owners of OFDB LLC. Mr. Forero seemed to agree in evidence that this discussion took place (Of note, OFDB are the initials of Mr. Forero and Ms. Baquero).
- [30] The Florida Condo was purchased and it has been rented since the time of its purchase. The evidence suggests that the rental proceeds have been payable to Mr. Forero. This money was used it appeared at least in part to pay the mortgage on the Williams Street family home until it was sold.

- [31] In his initial financial disclosure in this proceeding, Mr. Forero listed the Florida Condo and the ownership of OFDB LLC as an asset jointly held by him and Ms. Baquero. It was only around the time of the trial management conference or thereafter that Mr. Forero's position as to ownership of OFDB LLC, thus the Florida Condo, and the existence of a second LLC, an apparent successor to OFBD LLC, became apparent.
- [32] Without getting into all the details of Mr. Forero's clearly changing and conflicting evidence in regards to the Florida Condo, his position at trial appears to be this. Prior to the parties' relationship beginning, Mr. Forero borrowed funds for some purpose from a cousin of his in Colombia. This was initially \$20,000 CDN. His way of paying the cousin back was to pay approximately \$80,000 USD to buy the Florida Condo for the cousin. He stated when asked that the debt grew in the significant way due to inflation. As such, it was Mr. Forero's position at trial that he held in trust his ownership of OFDB LLC, and the subsequent corporation CMFO LLC, not for himself and Ms. Baquero, who he says are only the managers of the corporation and not the true owners, but for the true owner of the Florida Condo, his cousin in Colombia. Mr. Forero claims in his evidence to have transferred the Florida Condo from OFDB LLC to CMFO LLC post-separation.
- [33] During the interruption of the trial and by direction of the court, documents related to these two LLC's were forwarded to a lawyer in Florida, Charles J. Zimmerer, to provide an opinion to the court as an expert as to the ownership of the Florida Condo. That expert opinion is in evidence as exhibits 12 and 13. Based on that, as well as on the evidence of Ms. Baquero that I accept, and the evidence of Mr. Forero which I specifically reject, I am satisfied that the Florida Condo is in fact owned by OFDB LLC, and that Mr. Forero and Ms. Baquero are both joint owners of OFDB LLC. I note that the entirety of the purchase price for the Florida Condo came from the proceeds of the second mortgage on the family home, a home owned by Mr. Forero and Ms. Baquero. Although this corporation, OFBD LLC is currently in default of its taxation obligations in the U.S.A., Mr. Forero filed American tax returns in the past as if he was owner of OFDB LLC.
- [34] It remains uncertain to me what the whole basis is of Mr. Forero's claim that the Florida Condo, which was clearly purchased with joint funds from refinancing of the family home, is somehow the asset of his cousin in Colombia. It is of note that this cousin did not testify in this proceeding. It is of note that there is no documentary evidence to advance this claim. Unfortunately, this claim had the effect of completely derailing, for lack of a better term, the court proceedings and necessitated substantial additional court time and additional cost. Absent this dispute, it is hard to know how this matter would have occupied more than one or two days of the court's time because, generally speaking, the remaining assets in dispute between the parties are of a modest nature. Their values and claims for pre-existing ownership are clear. The parties appear to agree on the law. Mr. Forero's flight of fantasy about the ownership of the Florida Condo does not speak well of Mr. Forero's approach to litigation. I conclude that OFBD LLC is a joint asset. Its value is that of the Florida Condo, which the appraisal evidence suggests is now worth \$143,000 USD or \$180,000 CND.

- [35] In terms of other assets, Mr. Forero and Ms. Baquero have Colombian pensions from their time working in Colombia. Mr. Forero's, it is argued, is worth substantially more than Ms. Baquero's. Neither party contributed to these pensions during the course of the relationship. They have not been valued. Their values, both at the beginning of their relationship and at the end, is sufficiently uncertain to me that it is impossible for me to consider these assets in the ultimate division of family assets and debts. There is no evidence about potential tax treatment of these funds. They sound from the limited evidence to be similar to RRSP's. Even if the Court was to accept this "best guess" evidence of growth during the relationship, the growth is allegedly modest. As growth is estimated and allegedly modest, it is in my view not proven. I will make no orders or adjustments as to this uncertain asset.
- [36] In the area of pensions, however, Mr. Forero also had a Canadian RRSP resulting from a payout at the time he was let go from ICBC in December 2017. Ms. Baquero suggests that the current value of the RRSP at trial is \$55,600, and she estimates that Mr. Forero's contribution to these RRSPs that existed prior to the relationship would be approximately \$51,500. That is not seriously disputed. This asset needs to be modestly adjusted for tax.
- [37] In terms of the remaining minor assets, Mr. Forero had a number of shipping containers in Colombia which appear to have been purchased by him prior to the relationship and rented out as storage units. According to his evidence, they had a value at the time of separation of approximately \$2,000 CDN. This is disputed. However, in terms of the parties' ultimate division of property, I note that there is no evidence that these containers increased in value during the relationship, and they were purchased by Mr. Forero prior to the relationship. As such, I am not considering any value claimed by Mr. Forero in any division of family assets.
- [38] Ms. Baquero has a vehicle which she has valued in the evidence at \$10,000. It is of note that at the time the family home was sold, the cost to pay out the loan on this vehicle was in the \$20,000 range. At the time of separation, Mr. Forero had a vehicle which he has subsequently traded in. I accept his evidence that he received \$2,000 as a trade-in for the vehicle he took when the relationship ended.
- [39] To complete the circle of assets and liabilities and, not surprisingly, the parties have both left the relationship with a significant amount of debt. In regards to Ms. Baquero, an amount of debt significantly higher than when the relationship began.
- [40] As noted earlier in these reasons, the parties are of modest financial means. Their mortgage costs alone were approximately \$3,100 per month. Since the separation, both parties have had to find alternate accommodation. Particularly, Ms. Baquero has borne the lion's share of the financial responsibility for the parties' debts. Of note, Mr. Forero ceased contributing to the mortgages in November 2019, and he then only paid child support. I accept Ms. Baquero's evidence that she leaves the relationship with an additional \$53,000 in consumer debt, excluding her current mortgage obligation for her condominium in Colombia.

- [41] In regards to Mr. Forero, I am sympathetic to him in his assertion that his debt has also increased. I am however mindful of the fact that Mr. Forero has, for the most part, refused to comply with orders for complete disclosure of his financial circumstances. As such, he has not proven some of the debt that he may likely in fact have.
- [42] I accept that at the time the relationship began, Mr. Forero's debt was approximately \$43,000.
- [43] Based on the evidence before me, I accept that when the trial began Mr. Forero had debt on a Toronto Dominion line of credit of \$14,712. On a Simplii credit card he owed \$16,245. On an MNBA credit card he owed \$16,207. On a Colombia Scotiabank Visa of \$853. He owed, through his corporation referred to a Croaesus, GST of \$4,700 and tax of \$4,900. This totals \$57,617.
- [44] Additionally, Mr. Forero alleges the following debts: \$19,000 on a TD Visa with the last four numbers being 8103; \$14,000 or thereabouts on a USA Toronto Dominion Visa; and a further \$5,000 on a Bank of Nova Scotia Colombia Visa card. There is modest, minimal evidence of these debts. He has sworn to their existence in his property and financial statements over the course of the litigation, including account numbers, but at trial did not produce documents. He could clearly have done more to prove them, although again I noted the limited language skills and the fact he is self-represented. On a balance of probabilities, I can accept he has other debt. The exact amount is anything but clear. I would allow a further claim for debt of \$10,000, bringing his total debt to \$67,617. As a result, I accept that Mr. Forero's debt has increased by \$24,617 since the relationship began.
- [45] Two final thoughts on the debt. Mr. Forero says he still owes his brother for money that was advanced to the parties to purchase the Williams Street home. I do not accept this. Funds were paid to the brother from the sale proceeds to apparently satisfy this debt. If additional monies were owed to the brother, that was the time to raise that issue, not now. Finally, Mr. Forero also claims indebtedness to his brother of \$12,100 for his car. This car was purchased post-separation. He has that asset and it is not subject to this family claim. That debt as such is also not part of this family claim.

Legal Framework

- [46] This was very much a fact-driven case. The closing arguments centred on issues of credibility of the witnesses, particularly Mr. Forero and what facts the court should draw from the evidence. Throughout these reasons, I comment on the evidence of the parties that I accept and the evidence I reject. As a result of the respondent's changing evidence over the course of litigation, particularly as it relates to the Florida Condo, much of the time in both evidence and in closing submissions centred around the believability, or lack thereof, of Mr. Forero's evidence.

- [47] I note again that Mr. Forero is a self-represented litigant. Despite this, he clearly understood the most significant legal issue in this case as it relates to property and that is the concept of excluded assets.
- [48] I should deal with that concept in a summary way in these reasons. The Family Law Act, S.B.C. 2011, c. 25 [FLA] is a change from the previous Family Relations Act, R.S.B.C. 1996, c. 128, when one considers the approach directed by the legislation to the court in terms of dealing with property. Under the provisions of the FLA, parties are entitled to exclude the value of assets that they brought into the relationship determined at the date the relationship began, from the ultimate and presumed equal division of assets at trial. That is a broad over-simplification but it is the basic concept of the FLA that both the claimant through counsel and the respondent on his own seem familiar with. Both sides were able to focus their evidence and their submissions, limited as they were from Mr. Forero, around this concept.
- [49] On the issue of support, both child and spousal, the key issue is the determination of the parties' incomes. As noted, the court should be concerned about the ability of a self-represented litigant to call evidence supportive of his position and make argument in support of his position. I am satisfied that Mr. Forero was aware of both the issue of his income needing to be determined, and the issue of Ms. Baquero's income needing to be determined.
- [50] One concept in the area of support and the determination of income that is germane to these reasons is the court's obligation to determine income beyond what is declared for tax purposes. This raises the issue of inputted income. Courts do not just accept income based on what is reported. It is open to any side to argue that a party's ability to earn income is not represented by what they report for tax purposes. The courts need to take a more holistic or global approach to the concept of income. They need to look at ability to earn income, not just what was actually earned. This is particularly true with self-employed individuals like the two parties here. Self-employed persons have the ability, through legitimate taxation mechanisms, to reduce their taxable income to some degree, and certainly more so than someone who relies on an employer. The court can impute income to a party where the court is satisfied that the party's reported or declared income is not consistent with their overall economic ability to earn. That concept is very much in play in these reasons resulting from the evidence heard at trial.

Income Determination and Support Orders

- [51] Turning to the issue of the parties' respective incomes. Having heard and considered all the evidence, I have determined that there is significant difficulty in assessing both parties' actual current levels of income.

- [52] In regards to Ms. Baquero, early on in the relationship, she incorporated a company which she has used for the purposes of generating income as a bookkeeper or tax preparer. She was employed and educated in Colombia as an accountant. When she came to Canada in 2010, it was her desire to become certified as an accountant here and work as an accountant here. That did not come to fruition in part at least as a result of her relationship with Mr. Forero and the birth of her first child in February 2014.
- [53] Since establishing herself as a bookkeeper and tax preparer, working through her incorporated company for that purpose, she now employs herself, another part-time and another full-time employee, or so the evidence suggests, and also provides a modest amount of work, approximately four hours a day, for her father. Parenthetically, her parents came to Canada because of being sponsored by Mr. Forero and Ms. Baquero when they were in a marital relationship. Her father has some experience as a bookkeeper from Colombia. One of the side benefits of the parents living in Canada is that they have assisted considerably with the parties' finances, as well as with the care of the parties' infant children. As a result of the respective schedules between Ms. Baquero and her father and Ms. Baquero's mother being in Canada, there is not a claim advanced, in this court at least, for any childcare costs for these infant children.
- [54] Ms. Baquero's income that she declares for tax purposes in her company is most modest. It is, generally speaking, in the low \$20,000 range, a range of income that one would earn working minimum wage on a full-time basis. It may very well be the case that Ms. Baquero is, to some degree, splitting income with her father. That was put to her, she denied it, but it is nonetheless a possibility in light of the modest income she is able to earn and the fact that it appears that, while earning a modest income, she still employs others. In my view, this is an appropriate circumstance to attribute a modest amount of income to Ms. Baquero. She clearly has significant skills as a tax preparer and bookkeeper and has sufficient business contacts to provide employment, at least on a part-time basis, for herself, her father and two others
- [55] I accept that her income to the date of trial was approximately \$22,000 annually. Now that this litigation is behind her, she can certainly focus on building her business and will have more time generally to work. While I recognize that she bears the lion's share of responsibilities for the parties' children who are young, the expectation of her working a 40-hour week or longer is not realistic in light of the children's age. However, working 30 hours a week at \$25 an hour, for 48 weeks of the year, would result in her having an earned income of \$36,000. That is modest in light of her considerable skill and business acumen.
- [56] Based on what I have noted above, I impute income to Ms. Baquero in the amount of \$36,000 annually going forward from June 1, 2021, a date at which, with litigation behind her, she should be able to earn that income.

- [57] A determination of Mr. Forero's income is more difficult. Clearly in the past he has been able to earn \$56,000 annually. Since he left work with the IT department at ICBC, and perhaps even prior, he was offering his services as an IT professional through his company, Croaesus. He has failed to disclose in these proceedings any significant amount of detail as to his recent Croaesus income. He has admitted in court that his income is approximately \$56,000 annually. He does, however, say that in the past year, 2020, as a result of the global pandemic, he was unemployed for a period of time and was forced to rely on the government CERB program for a monthly income. Since November 2020, he has been on Employment Insurance receiving approximately \$900 every two weeks.
- [58] Mr. Forero's income disclosure is completely unsatisfactory. As noted, based on my determination as to ownership, he has the ability to earn income through the rental of property in Florida, which no longer has a mortgage associated with it. Some documents in evidence suggest that this may generate as much as \$800 to \$1,000 per month in income.
- [59] Based primarily on Mr. Forero's submission and based on my determination that, even in light of the global pandemic and his reduced income, when one considers the rental income available from the Florida Condo, it is not unreasonable at this point to fix his income at \$56,000 annually, and I do so. That results in a requirement that he pay child support in the amount of \$869 per month. I make such a direction effective February 1, 2021.
- [60] In regards to future income disclosure and support review, these parties need to take a break from litigation. I direct that, as of July 1, 2022, the parties are to exchange their 2020, 2021 and 2022 T1 Canadian tax returns, as well as their corporate tax returns for both Ms. Baquero's bookkeeping company and Mr. Forero's IT company, Croaesus.
- [61] After this exchange in July 2022, application can be brought on, should the parties not agree, to fix a level of child support based on the parties' then determined income.
- [62] Based on my review of the Spousal Support Advisory Guidelines [SSAG] with Mr. Forero having an income of \$56,000 and Ms. Baquero having an income of \$36,000 annually there is no spousal support payable ongoing. This is in large part due to the respondent's significantly larger tax obligation and child support obligation, and the receipt by the claimant of approximately \$1,400 a month in governmental benefits. I make no order for ongoing spousal support.
- [63] There remains an issue about arrears of child support and arrears of spousal support, perhaps better put, retroactive child support and spousal support. The respondent's income to date has been around \$22,000 annually. As noted going forward, I am imputing income to her of \$36,000 but that does not eliminate the fact that while this matter was being litigated, she was not fully able to earn income and her income was less.

- [64] The parties separated in April 2017. The evidence I accept is that the respondent left his employment with ICBC in December 2017 and there was likely a modest transition or interruption in his income. The parties had an arrangement between themselves, that while they shared the same home they would share the expenses of the home. This was in effect until November 2019. As noted earlier, that is the time at which Mr. Forero started paying child support, but paid no spousal support.
- [65] I have not heard evidence that this arrangement for shared expenses was forced upon Ms. Baquero. She appears to have been represented by counsel at the time and, if the circumstances were so unsatisfactory, she could have taken action. As such, the balance of the evidence suggests that the parties had an agreed arrangement until November 2019. I will not make any retroactive order for child or spousal support prior to that date.
- [66] However, I recognize that Ms. Baquero was forced by Mr. Forero, as of November 1, 2019, to deal with the parties' joint financial obligations on her own. This caused her a loss, in addition to resulting in higher mortgage payouts with penalties and the like. As of November 2019, Mr. Forero received all rental income from the Florida Condo without paying the mortgage associated with the Florida Condo. Despite the SSAG suggesting that with his income of \$56,000 and her's of \$22,000 there is no spousal support payable, I find in all the circumstances there is an entitlement. She has suffered a loss related to his actions. It is appropriate for this court to order a lump sum amount of retroactive spousal support to compensate her from the economic disruption he forced upon her during period of time.
- [67] In all the circumstances, and considering that spousal support on a lump sum basis is not tax-deductible or tax-included, I am ordering lump sum retroactive spousal support in the amount \$6,500.

Property Determination, Allocation for Debt, Excluded Property

- [68] Based on all the evidence and considering as the court should the tax consequences related to the disposition of some of these assets, I have determined the following values of the parties' joint property, and have allocated the ownership of these assets as noted below.
- [69] First off, after payment of some debts, some joint litigation expenses, and some modest advances to both parties, the net proceeds of sale of the family home is \$281,708.
- [70] The Florida Condo is appraised at \$180,000 but it is a rental property and in Canada at least the gain in value on that rental property is taxable. To realize its value would require its sale, which would likely involve commission. There is no evidence before me of these obvious considerations related to the value of the Florida Condo. If Mr. Forero had counsel, I am sure this concern would have been advanced. Fairness suggests that there be a modest adjustment to its value to consider these potentials and, as such, I determine the Florida Condo to be valued for division purposes at \$170,000.

- [71] Each party has a Colombian condominium. They have been appraised. The respondent's Colombian condominium is valued at \$104,600 and the claimant's Colombian condominium is valued at \$53,000.
- [72] Each party took advances from the sale of the family home for their own purposes. The claimant was advanced \$9,000 and the respondent was advanced \$8,500.
- [73] The respondent's RRSP is currently valued at \$56,000 but it has tax consequences attached to it. The lowest real marginal tax rate in British Columbia for 2021, for income over \$13,809 but up to \$42,184 is 20.06%. Applying a 20% reduction to the \$56,000 for tax nets the RRSP at \$44,800.
- [74] The respondent had a car which he sold which, when sold, was valued at \$2,000. The claimant's vehicle is valued at \$10,000.
- [75] I am directing that the claimant keep the sale proceeds of the family home, her Colombian condominium, the money advanced to her, and her car. These assets, now her sole property, have a total value of \$353,708.
- [76] I am directing that the respondent keep the Florida Condo at the adjusted value, his Colombian condominium, his RRSP at the adjusted value, the money advanced to him, and the value of his car. These assets, now his sole property, have a value of \$329,900.
- [77] Deductions need to be made to each party's total to reflect the value of assets at the beginning of the relationship which are excluded property, and for their subsequent increase in debt arising out of the relationship or the maintenance of the assets after separation.
- [78] In regards to the claimant, the value of her Colombian condominium at the beginning of the relationship was \$38,876. She has new debt arising from the relationship or the separation totalling \$53,000. As such, there is \$91,876 which needs to be deducted from the value of her sole property. That would value her sole property at \$261,832 ($\$353,708 - \$91,876 = \$261,832$).
- [79] In regards to the respondent, the value of his Colombian condominium at the beginning of the relationship was \$76,188. His RRSP at the beginning of the relationship was \$51,500 with a 20% tax reduction indicates a pre-existing value of \$41,200. I have determined that he has additional debt in the amount of \$24,617. It is conceded that when the relationship began theirs was exempt value in the Skeena Street condominium that was transferred to the Williams Street property. I accept the submissions of counsel for the claimant that this should be determined at \$60,000. As such, there is \$202,005 which needs to be deducted from the value of his sole property. That would value his sole property at \$127,895 ($\$329,900 - \$202,005 = \$127,895$).

- [80] The total value of the property divided is therefore \$389,727 (For her, \$261,832 and for him \$127,895 = \$389,727). One half of that, as it is conceded that the remaining value in property should be divided equally between the parties, is \$194,863. To create equal division would require the claimant to pay to the respondent the sum of \$66,969.
- [81] I have determined that Mr. Forero owes Ms. Baquero the sum of \$6,500 for retroactive spousal support. That reduces the sum required to be paid to \$60,469.
- [82] I now turn to the issue of costs. It was argued that special costs should be awarded against the respondent in light of his changing evidence over the course of trial. I note again that Mr. Forero was self-represented. His conduct and changing position clearly extended this trial beyond the usual parameters as I have noted earlier. I do not believe his behaviour however rises to the threshold of being reprehensible, such that it would attract an order for special costs.
- [83] I have determined that the claimant is entitled to her costs of the trial plus modest additional preparation costs associated with the respondent's changing legal position, and the time that was associated with that unsuccessful litigation venture by the respondent.
- [84] In light of a desire to end this litigation, and in light of a desire to allow these parties to get on with their life, and recognizing that Mr. Forero is self-represented, I have determined that this is an appropriate circumstance for the court to summarily determine costs.
- [85] The principle I am applying in regards to costs is this. Cost should be payable by Mr. Forero to Ms. Baquero from the time of the trial management conference to the end of the trial. Additionally, in light of the extra work associated with Mr. Forero's changing legal position, some allocation for general preparation over and above the actual trial time period is appropriate.
- [86] I have reviewed appendix B costs from the Supreme Court Family Rules, B.C. Reg. 169/2009. I order costs under tariff item 1, correspondence, instructions investigation etc. at a rate of ordinary difficulty, of \$3,000. I order cost under tariff item 4 of \$1000 for the required contested chambers application of November 3, 2020 related to the Florida Condo. I order costs under tariff item 6, for the attendance at the trial management conference, of \$500. I award under tariff item 7, five days of trial at \$2,000, and two days of trial at \$3,000, as this was a seven-day trial, and that is how the tariff is set up, for total of \$16,000 under tariff item 7. Those tariff items total \$ 20,500. I would add an additional \$1,500 for disbursements making the total cost award payable by Mr. Forero to Ms. Baquero in the amount of \$21,000.
- [87] Deducting the \$22,000 from the \$60,469 still owing leaves a total owing of \$38,469.
- [88] From that, I am directing as I will explain further, the sum of \$15,469 is to be retained in the trust account of the claimant's solicitor, pending a resolution of the tax situation associated with the Florida Condo. For reasons which are uncertain, reasons which added to the complexity and difficulty of this case, the respondent has failed to file a number of tax returns for the Florida Condo. As the legal opinion before the court suggests, the evidence is

that Ms. Baquero has a potential tax liability for this condominium until such time as Mr. Forero takes the necessary steps to pay taxes owing. Only then would it be appropriate for the Florida Condo to be transferred into his name. Until Mr. Forero does this, this money is to be held in trust.

[89] The balance of \$23,000 is to be paid to Mr. Forero upon the entry of a court order.

[90] It of course goes without saying that if the net sale proceeds in trust of \$281,708 are in fact more than that due to interest accruing, that additional interest is to be divided equally between the parties. It may not be the case that there is interest in light of current economic conditions.

Ancillary Orders

[91] As requested by the claimant, in regards to the Florida Condo, I am making the following orders to hopefully ensure that the condominium becomes the sole property of the respondent, and that the claimant is released of any liability or potential liability resulting from their joint ownership and the respondent's failure to file tax returns. These are the provisions requested by claimant's counsel although slightly modified as to IRS penalties for 2018, which should be paid only by the respondent. I agree that this type of order is necessary to achieve some finality and certainty regarding the obligations that currently could fall to both parties resulting from their joint ownership of the Florida Condo.

[92] Those orders are as follows:

- a) Once the claimant receives the IRS tax number (called EIN) for CMFO LLC, she will arrange for the accountant to prepare CMFO LLC's 2020 tax return, and the respondent shall execute same within seven days of it being provided to him, via email;
- b) The parties shall each be responsible for 50% of any IRS penalties related to OFDB LLC for 2017 and the respondent shall be responsible for any penalties for OFDB LLC for taxation years after that date, if any;
- c) Except as noted above, the respondent shall be responsible for any and all liabilities respecting OFBD LLC and CMFO LLC, including but not limited to tax liabilities, late filing or other penalties since the inception of the LLC's;
- d) If the claimant becomes liable for any payment respecting OFDB LLC and CMFO LLC, including but not limited to IRS liabilities, the claimant can pay these liabilities out of funds that may remain in trust for the respondent or can collect these liabilities from the respondent; and
- e) Once the respondent signs the 2020 tax returns, the claimant shall sign the transfer of CMFO LLC, OFBD LLC, and the Florida Condo, if applicable, to ensure that the respondent is then the sole owner of the Florida Condo. The respondent shall pay, or the funds in trust shall be used, to pay all legal costs associated with any necessary transfers.

[93] If the parties need further clarification or direction to assist them in bringing to fruition the principles and orders set out in these reasons, there is liberty of either party to apply through the Manager of Supreme Court Scheduling for time in front of me for that purpose.

"J.R. Groves J."

GROVES J.

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