

CANADA / JUDGMENT

Blake v. Marining

2022 BCSC 1529

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1529 Blake v. Marining

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Blake v. Marining,

2022 BCSC 1529

Date: 20220831

Docket: E191270

Registry: Williams Lake

Between:

Chris Suzanne Blake

Claimant

And

Rodney Edward Marining

Respondent

Before: The Honourable Madam Justice Tucker

Corrected Judgement: The text of this judgement was corrected at paragraphs 4, 13, 20, 27, 43, 53, 68, 73, 76, 77, 84, 86, 93 and 94 on September 9, 2022.

Reasons for Judgment

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Place and Dates of Trial:

Williams Lake, B.C.

March 22-25, 28-29, 2022

Place and Date of Judgment:

Williams Lake, B.C.

August 31, 2022

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I. Introduction

[1] The claimant seeks a division of property under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The respondent denies the parties were ever spouses for purposes of the FLA and, in the alternative, seeks an unequal distribution in his favour.

II. Facts

A. General

- [2] The claimant and the respondent, both age 72 at trial, met in October 2002. The claimant says the relationship was marriage-like soon after its inception and, in any event, as of September 2007. The respondent concedes a lengthy romantic relationship, but denies it was ever marriage-like. Whatever the nature of the relationship, the parties agree it ended on November 18, 2018.
- [3] The claimant is a dedicated user of daily planners. Her planner entries show time spent together, including on birthdays, holidays, special events (e.g., weddings), and also record certain expenses and payments. Using her past planners and a collection of photographs, the claimant assembled a historical timeline of the relationship.
- [4] There is no material dispute about the timeline, and very little dispute in respect of the concrete events that populate it. While the parties do differ on a few hard facts, their fundamental disagreement relates to the inferences that should be drawn about the nature of their relationship.
- [5] The parties met at an environmental meeting. They were then, and are now, both seriously involved in environmental organizations and causes.
- [6] When the parties met, the claimant was living in 150 Mile House. She had been married and divorced twice, and had three adult children: June, Fawn and Roan. She owned a residential property ("Rodeo House") outright, and had other assets as well. She was retired, but doing some part-time book-keeping for a non-profit organization. Prior to retirement, the claimant had done some company management work and some book-keeping.
- [7] In October 2002, the respondent worked for the BC Ministry of Environment. He would retire shortly thereafter, in early 2004. He owned a house in North Vancouver ("NV House"), with a substantial mortgage against it. He had an interest in a rural property (Ruby Lake), with a ramshackle cabin. The Ruby Lake property was not of any significant value.
- [8] The NV House was split into suites. The respondent lived in the lower suite (the "Suite") and rented the upper suite to tenants. After his retirement in 2004, the respondent had a small government pension.
- [9] The respondent had been married. His wife had brain cancer and divorced him against his wishes late in her illness. He tends to identify as widowed, rather than divorced. He has two adult daughters from his marriage, Mirissa and Tess.
- [10] The parties developed a romantic relationship soon after meeting. On the claimant's evidence, it was essentially one consistent relationship. On the respondent's evidence, the parties broke up for periods in 2004 and again in 2010, and he had significant relationships with others during those breaks. The respondent's evidence about these other relationships went challenged, although the claimant testified that she was not aware of them.

- [11] The timeline indicates that over the course of the relationship, the parties generally spent at least part of most major holidays (e.g., Easter, Christmas) together, often celebrated their birthdays together, attended their respective children's weddings, and met one another's parents.
- [12] During the periods of time the parties spent together - whether at the Rodeo House, the Suite, or on a trip - they would share expenses (e.g., groceries, food, gas, hotel rooms) equally. This was achieved by creating a kitty, collecting receipts and performing formal reconciliations.
- [13] The parties routinely spent at least some time travelling together each year, whether as a vacation, to attend environmental conferences or events, or as a combination of those. The majority of their within-BC vacation trips involved visiting and staying with one or the other's family or friends. They also took a road trip across Canada, culminating in a visit with the claimant's family in Nova Scotia. For the cross-Canada road trip, they bought and insured a sleeper van, each paying one-half of the cost. The sleeper van was thereafter often used by them on their local trips.
- [14] The respondent estimates that the parties spent 40-110 days a year together over the course of the relationship. The claimant's estimate is that they were together or were travelling together "most of the days of most of the months" over the last 10 years.
- [15] The respondent regularly went travelling without the claimant, including on trips to Brazil, Chile, Malibu, New Zealand and Australia, and the Antarctic. One of the respondent's daughters is a commercial airline pilot, a relationship that allows the respondent to get his personal flights at a deep family discount.
- [16] The respondent also went out to sea on the Greenpeace vessel "Sea Shepherd" three times during the relationship. He was aboard the Sea Shepherd from late 2006 through March 2007, from November 15 through December 31, 2008, and from November 2013 through March 24, 2014.
- [17] The claimant also regularly travelled without the respondent, including on trips to Thailand, Cuba, Belize, Nevada and Florida.
- [18] The year 2013 was a rocky year in the relationship. The claimant discovered the respondent emailing another woman, the claimant's father died and she spent a good deal of time in Nova Scotia, and the parties had a significant disagreement over the respondent's decision to go out on the Sea Shepherd again.
- [19] In 2014, the claimant bought a tenanted condominium in Williams Lake as an investment property. The respondent was not involved in that purchase beyond his observing that it appeared to be a good investment for the claimant.
- [20] There is evidence that the respondent sometimes went to see a doctor or dentist in Williams Lake and had prescriptions that were filled locally.

B. Rodeo House

- [21] In 2004, after retiring, the respondent resolved to write a memoir. He set an office up at Rodeo House on the basis that it was rural and quiet there and it would be akin to writing in a "cabin in the woods".
- [22] The parties agreed the respondent would pay the claimant \$300 a month (on top of the usual expense-sharing arrangement) to stay at Rodeo House. That amount was onerous for the respondent, and later renegotiated down to \$200. Making these payments when he stayed at Rodeo House became a practice carried into the future. The respondent describes these payments as "rent", a term the claimant does not accept. The claimant does, however, agree that these payments were compensation for his staying at Rodeo House. She describes the payments as an effort to be "fair".
- [23] The respondent testified that in 2007/2008, he and the claimant discussed possibly living together in the future. He says the claimant expressed concern that while she owned Rodeo House and had no debt, he had significant debt and a net worth of only about \$300,000. He says the claimant said that if they were ever to live together, assets would be an issue as combining their assets would increase his net worth and decrease hers.
- [24] The claimant testified that while they "may have talked about it" in 2007/2008, the respondent's debt was not of particular concern to her as she knew the value of the NV House was more than the mortgage.
- [25] In September 2007, the respondent removed most of his personal possessions from the Suite and allowed his daughter Mirissa and her husband to live there for a time. During this period, the respondent stayed primarily, but not exclusively, at Rodeo House. As part of this process, the respondent rented a trailer and drove the possessions removed from the Suite up to Rodeo House. He bought a storage shed, the shed was put on the Rodeo House property, and he unloaded the trailer into the shed. The respondent also signed up for a postal box in 150 Mile House, got a land line telephone account in his own name at Rodeo House, and got his own internet account for his use at Rodeo House.
- [26] The claimant contends the storage of possessions and the respondent's taking up of these services demonstrates that he was living at Rodeo House as of September 2007.
- [27] The respondent says the use of the storage shed, his getting his own service accounts and his making a monthly payment to stay at Rodeo House show that the arrangement was more akin to a tenancy than a joint household. The respondent stresses that the parties never had a joint account - financial or utility - at any time.
- [28] The respondent says he wanted a mail box for security, as his mail to the Suite often got mixed in with the tenants, and that while getting a mail box would cost him \$30 a month in North Vancouver, he was able to get one for free in 150 Mile House because there is no door to door delivery. He said he needed his own phone line because the available internet was still dial up and also so he could make environmental calls without any interruption. He said

he got his own internet account because he needed high-speed internet and the claimant only had basic.

- [29] While the date was not specified, Mirissa only stayed in the Suite for a few months and the respondent returned to living in the Suite after she moved out. When the respondent did so, he left some of his possessions in the storage shed, and they remained there until the relationship ended.
- [30] There is a dispute as to whether the respondent had more than some clothes and basic personal items at Rodeo House at the time of the break-up. It is evident that there were at least some documents remaining in the desk that he used when he was at Rodeo House. The claimant testified that he also had books in a book shelf inside Rodeo House at the time of the break-up. I find that he had certain personal possessions and documents inside the Rodeo House at the time of the break-up, but far from the bulk of his possessions and documents.

C. NV House

- [31] When the respondent was away, the claimant attended to some NV House and tenant matters. When the respondent went out on the Sea Shepherd, he gave his bank a limited authorization that enabled the claimant to deposit his tenant's rent cheques into his account. When the tenant vacated and a new tenant needed to be taken on while the respondent was out at sea, the claimant cleaned the upper suite and helped find and select new tenants.
- [32] The respondent says he paid the claimant to look after the NV House and tenant issues when he was away, that she kept track of her hours, and that he paid her \$25 an hour and reimbursed her expenses. The claimant denies being "paid" for her time, but concedes that there was an understanding that she was to be compensated in some way. Further, the claimant's daily planners do contain entries reflecting when she went to the NV House and a note that she "worked" nine hours cleaning the upper suite.
- [33] The NV House is on an irregular block with mixed zoning. Starting in at least 2007, the respondent and his residential neighbours sought to get their block properties rezoned so the properties could be sold to a developer on a land assembly basis ("Assembly Sale Process"). These efforts would seemingly progress, but then fall apart. The respondent was represented by a string of different real estate agents over the course of the Assembly Sale Process.
- [34] The claimant was looped into the email correspondence relating to the Assembly Sale Process. At times, she composed response emails for the respondent to send out in his name. When the respondent was away on trips, the claimant attended some related meetings on his behalf and kept an eye on the correspondence.

- [35] The claimant says she did these things because the NV House was "their" property and she was involved in selling "their" property. The respondent says she was involved because the efforts were a big part of what was going on in his life, he found the Sale Assembly Process very frustrating, and she was supporting him as his girlfriend.
- [36] In the Spring of 2016, a municipal works project caused significant flood damage to the Suite. The respondent lived out of the Suite for several months during repairs, staying in a rental apartment in North Vancouver paid for by his insurance. The claimant helped deal with contractors and insurers regarding the Suite repairs.
- [37] At some point in 2017, the claimant's daughter, Fawn, began acting as the respondent's real estate agent in the Sale Assembly Process. The respondent says the claimant pressured him to give Fawn the opportunity. A sale contract was entered while Fawn was acting, but the deal subsequently fell apart. Fawn wanted the respondent to agree to an addendum to keep the deal alive, but the respondent would not. The respondent did not relist with Fawn once her listing expired.
- [38] A dispute arose as to whether commission was payable under Fawn's listing contract. The respondent obtained legal advice that it was not, and stuck firm to that position. This would become a point of ongoing friction between the parties.
- [39] The sale of NV House under the Assembly Sale Process eventually completed with a different real estate agent. The final NV House sale contract, like all prior versions acceptable to the respondent, had a term entitling the respondent to rent the Suite until the NV House was to be demolished.

D. Late 2018 Events

- [40] At some point in mid to late 2018, the parties began discussing the idea of the respondent moving into Rodeo House.
- [41] The respondent testified that these discussions were detailed and that the claimant wrote a set of notes. He says they discussed getting a cohabitation agreement, his buying into Rodeo House, and what would happen with Rodeo House if either died or if they broke up. He says the discussion resulted in a basic agreement on the following terms. He would pay her 50% of Rodeo House's value and they would be on title as tenants in common, but subject to an agreement that if one died, the survivor could live there for life. When the survivor died, their interests would go to their respective children. If they broke up, they would each be entitled to 50% of Rodeo House's then value.
- [42] The claimant agrees they discussed the possibility of getting a cohabitation agreement. She denies making notes. She agrees there was a plan to have Rodeo House valued after the NV House sold, and for the respondent to pay 50% of the value to come on the title. She agrees that they discussed whether they should be on title as tenants in common.

- [43] She denies any conclusion was reached as to how ownership would be on the title or about what would happen if there was a death or a break up. She says no "final" agreement was reached as the details were not "nailed down". She denies having agreed that the respondent would get a draft cohabitation agreement.
- [44] At some point after the Rodeo House discussion and before November 16, 2018, the respondent went to a lawyer and got a very rough draft cohabitation agreement. The draft agreement establishes schedules of separate property. The draft schedule listing the respondent's separate property lists the anticipated NV House net sale proceeds.
- [45] As the NV House's December 2018 completion date neared, the parties' disagreements about the situation with Fawn escalated.
- [46] On November 16, 2018, the respondent told the claimant he had the draft cohabitation agreement. The claimant says she refused to look at the draft as she was upset that he had gotten it on his own. She said she expected that they would deal with any cohabitation agreement together.
- [47] On November 17, 2018, the claimant says she told the respondent that he had to resolve the issue with Fawn before he could move into Rodeo House, as she would not have her children refusing to come to visit.
- [48] On November 18, 2018, the claimant says she told the respondent that if he wasn't going to resolve the issue with Fawn, he should leave. He did.
- [49] The respondent later retrieved his personal items from the Rodeo House and his possessions from the storage shed.
- [50] The claimant had no personal items to retrieve from the Suite.
- [51] The respondent was still a tenant in the Suite as of trial.

E. Documents

- [52] The claimant testified that she has carried an undated handwritten card in her wallet since about 2006. It records the respondent's medications as of February 2006 and again as of January 2011. Over the respondent's signature, the card reads:

Chris Blake has any health related decisions that concern my health, over and above my relatives, should I be unable to make these decisions.

- [53] The claimant has a will that leaves her entire estate to her children and does not mention the respondent. (She vaguely testified that getting a new will was on her "to do" list, but did not say why she considered one was needed nor what any replacement would say.)
- [54] The claimant testified that the respondent named her as his beneficiary on a \$2000 Canadian Tire travel insurance policy.

[55] The claimant relies on a series of email messages exchanged while the respondent was aboard the Sea Shepherd in 2013/2014 (the "Sea Shepherd emails"). In them, he states that he loves her and is happy in their relationship. He also wrote: "I promise I will be spending the rest of my life with you" and "I do have faith, now than ever that we will grow old together" and "I am happy for Roan and as I told you, 2014 is a year I am willing to make a life long commitment also."

[56] The respondent had a will dated August 21, 2003 appointing his daughters as his executors and giving them his estate. The claimant was not mentioned (although she is witness to the will).

[57] The respondent made a new will on June 14, 2018. It also appoints his daughters as executors and gives them the residue of his estate. The 2018 will further introduces the following provisions:

2. .

In the event that a conflict should arise between my Executors which they cannot resolve then my Executors shall consult with my girlfriend, CHRIS SUZANNE BLAKE, who will mediate and assist in resolving such conflict.

4. I direct my Trustee to hold that property on the following trusts:

b. TO PAY ONE HUNDRED THOUSAND (\$100,000) to my girlfriend, CHRIS SUZANNE BLAKE, if she is alive on the date that is 30 days after the date of my death[.]

[58] The draft cohabitation agreement obtained by the respondent in late 2018 includes the following recital (with a hand drawn strike-out):

· The parties do not currently co-habit and do not currently anticipate doing so.

[59] Neither party has ever indicated having common law relationship status when filling out tax or other government forms. The claimant frequently placed a "not applicable" strike line through questions on forms about common law status.

F. Collateral Witnesses

[60] The claimant called two collateral witnesses: her best friend and her son, Roan. The tenor of their combined evidence was that the parties presented themselves as a loving couple whenever they were together. Roan described the respondent as a "stepfather-like" figure, but in the context of the respondent's relationship with the claimant's grandchildren.

III. Legal Framework

[61] Under FLA, s. 3, a spouse is a person who has lived with another in a marriage-like relationship for a continuous period of at least two years.

- [62] "Marriage-like" is an amorphous concept. As marriage can be structured in an infinite variety of ways, there can be no checklist to determine whether a given relationship is "marriage-like": *Jones v. Davidson*, 2022 BCCA 31 at para. 21. The Court must consider the parties' intentions during the relationship and the objective evidence of their lifestyle and interactions: *Weber v. Leclerc*, 2015 BCCA 492 at paras. 23-24.
- [63] A helpful overview of the guiding principles is found in *McDowell v. Andrews*, 2018 BCSC 2216:
- [22] In *Weber v. Leclerc*, 2015 BCCA 492, the Court of Appeal confirmed that the approach to this issue should be a holistic view of the evidence, taking all relevant matters into account and weighing the factors, rather than a checklist approach of factors considered in other cases. In reaching this conclusion, the Court of Appeal referred to *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264 (C.A.); *Takacs v. Gallo* (1998), 48 B.C.L.R. (3d) 265 (C.A.), leave to appeal ref'd [1998] S.C.C.A. No. 238; and *Austin v. Goerz*, 2007 BCCA 586, stating as follows:
- [17] First, while *Gostlin* had suggested that economic dependence is a key element of a marriage-like relationship, the majority in *Takacs* explicitly recognized that the intention to live in a marriage-like relationship need not include an intention to be financially interdependent. Second, *Takacs* holds that the intention that is critical is not the intention to be bound by a statutory regime of mutual support, but rather the intention to enter into a relationship similar to marriage. In the context of *Takacs*, the court saw the issue as one of whether the parties' intentions in cohabiting were similar to those that might be expected in a relationship of marriage. The key question was whether the couple saw their relationship as one of indeterminate, lengthy duration. While the majority of this Court accepted that the couple saw eventual marriage as a possibility, it was of the view that they considered their existing relations to be transitory.
- [22] *Austin* establishes that the question of whether a cohabiting couple are in a "marriage-like relationship" is a question of mixed fact and law that requires a broad approach
- [23] The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".
- [31] The weighing of these various factors was for the judge. She considered all of them, and was entitled to conclude, as she did, that the relationship was marriage-like.

- [23] Despite that a check-list approach is to be avoided, it is helpful to set out the factors that may be relevant in determining if two parties are spouses:
- a) the parties' intentions, particularly that the relationship will be of lengthy, indeterminate duration;
 - b) whether there is financial interdependence;
 - c) whether the parties resided together and if so, whether they did so in the nature of roommates or in the nature of a couple;
 - d) objective evidence of the parties' lifestyle and interactions; and
 - e) whether the parties engaged in sexual relations and were intimate in the sense of fidelity and sharing personal information.
- [24] This Court has referred with approval to a detailed list of indicia pertaining to shelter, sexual and personal behaviour, household services, social/societal behaviour, and economic support. These indicia are set out and discussed in *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.) at para. 16; *Gostlin* at paras. 11-12; *Takacs* at paras. 46 and 53; *Fowler v. Fowler*, 68 A.C.W.S. (3d) 909 (B.C.S.C.) at para. 8; and *Kneller v. Greenwood*, 2015 BCSC 1410 at paras. 98-100.
- [25] These indicia may be present in varying degrees: *Austin* at para. 57, citing *M. v. H.*, [1999] 2 S.C.R. 3 at para. 59. For example, in some marriage-like relationships, there is a complete blending of finances and property while, in others, spouses keep their property and finances totally separate: *Austin* at para. 58. Although a party may subjectively believe that he or she is not in a marriage-like relationship, the reality may be otherwise: *Takacs* at para. 53.
- [26] In *Dey v. Blackett*, 2018 BCSC 244 at para. 235, Mr. Justice Schultes summarized the approach to rationalizing the subjective evidence of the parties' intentions with objective evidence:
- [235] While an intention to enter into a relationship similar to marriage - of an indeterminate, lengthy duration - is the essential requirement for finding a marriage-like relationship, a consideration of objective indicators are helpful as a means of testing the parties' professed intentions (or lack of intentions) in that regard, and may also form the basis of inferences as to what their intentions were. Put another way, while intention is the key, a partner who claims or disavows such an intention may not be believed if all of the surrounding circumstances strongly imply the contrary. All of that said, *Takacs* offers the reminder that relationships can fulfill many of the accepted indicators without the couple "intending or in fact entering the kind of psychological and emotional union that one associates with marriage."

- [64] A person need not live under one roof in order to "live with" another in the relevant sense: *Campbell v. Campbell*, 2011 BCSC 1491 at paras. 49-51, rev'd on other grounds, 2013 BCCA 109; *Coupar v. Roh*, 2014 BCSC 1392 at paras. 67-68; *Yake v. Chamberlain*, 2014 BCSC 1582 at paras. 13, 50-52; *Roach v. Dutra*, 2010 BCCA 264 at para. 17; *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at para. 41.
- [65] Finally, the onus of establishing that the parties are spouses for purposes of the FLA lies on the party asserting it - here, the claimant.

IV. Analysis

- [66] In *Jones*, the Court of Appeal observed:
- [24] The upshot of these cases, as explained in *Austin and Weber*, is that the characterization of a relationship as marriage-like is contextual. It involves the subjective intentions of the parties and objective evidence, and the subjective intentions, where there is evidence of such, may be tested by reference to the objective evidence. In turn, that objective evidence may address a wide assortment of characteristics or indicia for which there is no definitive classification system to determine the ultimate characterization of the relationship. That answer must be given by the judge, understanding the concept and fully considering the evidence.
- [67] The parties met in their 50s. They each had adult children, elderly parents and their own house. For the vast majority of the relationship, both parties were retired. They both had modest retirement incomes and both were frugal. They both invested significant time on environmental matters and events. The amount and type of time the parties spent together has to be viewed through this contextual lens.
- [68] Aside from a used camper van of minimal value, the parties did not own or hold anything jointly. They did not blend their finances. I consider the fact that the respondent, on one occasion and with respect to a \$2000 benefit, named the claimant as his travel insurance beneficiary to be insignificant.
- [69] The parties went out of their way to ensure that neither was financially supporting the other. Their longstanding arrangement was that neither would or should underwrite the other's cost of living. They adhered to that arrangement consistently. For example, when the respondent wanted to watch sports at Rodeo House, they agreed to add \$10 to the monthly \$200 payment so that he alone was covering the cost for a sports channel. Similarly, as the respondent had a deep family flight discount and the claimant did not, the respondent travelled with others instead.
- [70] Further, underlying that arrangement, as illustrated by all three wills, was an understanding that their personal wealth would go to their respective children. The fact that the respondent added a limited gift to the claimant in his June 2018 will only emphasizes that fact and shows that the understanding continued in place as of that date.

- [71] With regard to their adult children and elderly parents, much of the parties' local travel consisted of driving and staying with one or the other's family or friends. I do not consider this evidence of blended family relationships. Rather, the parties were sociable people who liked to travel and who had far more spare time than they had spare money. Travelling this way was an affordable amusement. The evidence does not indicate that either party had a close or independent relationship with the other's children or parents. (If anything, the issues regarding Fawn highlight that they did not.)
- [72] The parties were genuinely fond of one another's grandchildren. That said, the fondness was subject to a hierarchy: in testimony, the claimant was unsure when his grandchildren were born; as of 2013, the respondent was unsure how her grandchildren's names should be spelled. It is also apparent that the respondent is generally fond of small children. Finally, with regard to the Sea Shepherd emails, there the respondent appears to use "our grandchildren" rhetorically to illustrate the importance of his going aboard the Sea Shepherd to benefit the future generation.
- [73] The parties presented themselves as a couple, but that is neutral here given that the alternative to "marriage-like" is longterm "boyfriend-girlfriend". The claimant says they called one another "partners". That is also neutral here. While my "partner" can mean my spouse, it is also a modern, inclusive equivalent to boyfriend or girlfriend.
- [74] What I do consider significant is that in the respondent's June 2018 will, which is a formal legal document and was drawn up while the relationship was continuing, the respondent expressly labelled the claimant as his "girlfriend".
- [75] The claimant contends that her conduct at and about the NV House was that of a spouse regarding a shared property. I disagree. On the evidence, she was a welcome and frequent visitor at the Suite, but a visitor nonetheless. She kept no personal possessions at the NV House and had literally nothing to retrieve after the break-up. Her evidence is that some bits of furniture and an art piece in the Suite were given to them jointly. These were gifts made by the respondent's mother from her own belongings. While no doubt politely presented, I am satisfied these were gifts from mother to son.
- [76] I also find that the claimant's dealings with NV House matters - the tenants, flood repairs, the Sale Assembly Process - amounted to her assisting the respondent in his looking after his house. Her significant assistance took place in the respondent's absence from home. Further, by whatever form, the claimant expected to be "compensated" for her assistance. Compensation is consistent with her doing favours for the respondent, not with having shared responsibility for the NV House. The respondent providing her with compensation for her assistance is also consistent with the ensuring that neither was underwriting the other's position.

- [77] The claimant also assisted the respondent in the Sale Assembly Process and the Suite insurance repairs when the respondent was not away from home. She did so when he became frustrated with the process. I am satisfied that this too amounts to the claimant assisting the respondent with his problems.
- [78] The claimant contends that the parties viewed Rodeo House as a shared property, stressing that he stored things there and stayed for months at a time in 2004 and in 2007. She also points to his taking a post box, getting a phone line and having an internet account at Rodeo House.
- [79] In 2004, the respondent stayed at Rodeo House in order to focus on writing a memoir. He described it as his version of writing in a cabin in the woods. Using Rodeo House as a writing retreat is the opposite of living there. A "retreat" is a retreat from regular life, which is what he lived in North Vancouver.
- [80] The 2007 period also lacked any real sense of "moving in". The respondent brought possessions up to Rodeo House in a trailer, but he had moved them out of the Suite to make room for his daughter. He did not take those possessions up to 150 Mile House so he could use them at Rodeo House, but rather to put them into a storage shed on the back of the Rodeo House property.
- [81] I accept the respondent's explanation for why he got a postal box and utility accounts at the Rodeo House. Taking those matters together with the monthly payment to stay at Rodeo House, I agree that those arrangements resemble a tenancy more than they do a joint household.
- [82] The respondent also did not demonstrate any commitment to staying at Rodeo House. He did not stay there exclusively while his daughter was in the Suite and, after she left, he went back to the Suite. Later, when the Suite seriously flooded and he had to move out for months, he did not go stay at Rodeo House, but rather stayed in a rental apartment in North Vancouver.
- [83] While the respondent did leave possessions in a storage shed at Rodeo House after he went back to the Suite, he had paid for the shed and the presence of the shed was no particular inconvenience to the claimant. I conclude that he left his possessions in the shed because it was free storage, not because of any sense or understanding that his things "belonged" at the Rodeo property.
- [84] With regard to the respondent obtaining healthcare related services in Williams Lake, the nature and extent of the evidence indicates he occasionally, as opposed to exclusively or even regularly, obtained services there. Further, although serious practical discussions about the possibility of the respondent moving into the Rodeo House took place in 2018, there appears to have been an earlier understanding that the parties might eventually live together, and the respondent's making some healthcare contacts in the local region would be sensible in light of that possibility.

- [85] The amount of time the parties spent apart was substantial. Moreover, it included time spent on separate vacations. The respondent estimated they were together, at most, 110 days in any given year. The claimant said it was most days of the month in most months of the year. The low end of that as a calculation would also produce about 110 days a year ((16 days) x (7 months) = 112 days)). Both estimates include time spent attending the same environmental events. On my review of the evidence, it is difficult to see them exceeding 120 days in a year (i.e., 1/3 of a year).
- [86] Notably, the time the parties spent together was limited by choice. The way they lived was neither a temporary fix, a way to accommodate employment-related responsibilities, nor caused by the dynamics among other household members: see, for comparison, the separate residences line of authorities cited above.
- [87] With regard to the Sea Shepherd emails, I note in particular that the respondent wrote that: "2014 is a year I am willing to make a life long commitment". That statement not only denies prior commitment, but also prior willingness.
- [88] The Sea Shepherd emails were conciliatory emails written with respect to improvement in the future. However, there is no evidence of any meaningful advancement, objective or subjective, in the parties' relationship or living arrangements following the respondent's return from the Sea Shepherd trip. The year 2014 was a better year in the relationship than 2013, but effectively as a successful return to the 2012 status quo. There was no actual move forward.
- [89] Finally, there are the 2007/2008 and 2018 discussions about the possibility of forming a single household. The claimant's evidence on cross-examination about these conversations was far less than satisfactory. She repeatedly attempted to evade questions posed by providing non-responsive answers.
- [90] I am satisfied that the 2007/2008 discussion took place essentially as described by the respondent. The issue is not whether the claimant was concerned about the respondent's mortgage debt in the abstract. What is significant is her expressed resistance to the idea of combining households without protecting her separate property. That stated resistance is entirely consistent with her long-standing insistence that matters be arranged so as to avoid any transfer of wealth between the parties.
- [91] In 2018, when the NV House sale was going to actually close, the parties again had express conversations. The starting point in those conversations was the point made in the 2007/2008 discussions: i.e., before changing their status quo the parties needed to reach an agreement regarding separate property. Thus, the discussion about getting a cohabitation agreement. Thus, the agreement that Rodeo House had to be valued and the respondent had to pay up front to come on to the title. Thus, the insistence on having the details "nailed down".

- [92] The point is not that the parties did (or did not) form an accurate (or inaccurate) opinion as to how the FLA property regime would apply if the respondent moved into Rodeo House. Rather, it is that both parties understood living together at Rodeo House would amount a new and different level of "union". In short, the respondent's moving into Rodeo House would have entailed making the sort of "life long" commitment the respondent described as a future possibility in the Sea Shepherd emails.
- [93] In my view, the objective facts and subjective intentions alike lead to the conclusion that this was not a marriage-like relationship. One fact weighing in the opposite direction is the health authorization card the respondent signed in favour of the claimant. However, seen in the overall context, including the fact that the card existed as early as 2006, the health authorization is not significant.
- [94] The parties, in fact, had a lengthy romantic relationship. But neither party had, during that relationship, an expectation that the relationship would be indeterminate. Moreover, both accepted that the level of commitment required to ground that sort of expectation was something they had not achieved to date.
- [95] Finally, the respondent submitted that a finding that the parties had never "lived with" one another for purposes of FLA, s. 3, would be, in and of itself, sufficient to dismiss the claim: Jones at paras. 16-20. It is unnecessary to determine the point as the finding that the parties' was not a "marriage-like" relationship is dispositive in any event.

V. Disposition

[96] The parties are not "spouses" within the meaning of the FLA.

[97] The notice of family claim is dismissed.

"Tucker J."

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