
CANADA / JUDGMENT

Brebric v. Brebric

2013 BCSC 1960

COURT

Supreme Court of British Columbia

DECIDED

29 October 2013

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2013 BCSC 1960 Brebric v. Brebric

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Brebric v. Brebric,

2013 BCSC 1960

Date: 20131029

Docket: E71853

Registry: Kelowna

Between:

Imbro Brebric

Claimant

And

Mary Brebric

Respondent

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Counsel for the Claimant:

H. Taylor

P. Johnson

Counsel for the Respondent:

L.H. Wyatt

Place and Dates of Trial:

Kelowna, B.C.

September 17-21 & 24-27, 2012

Place and Date of Judgment:

Kelowna, B.C.

October 29, 2013

Introduction

- [1] This family law action deals with the disputed entitlement to assets owned by the parties. There is one other issue, that is with respect to a divorce. Both parties agree that such an order should be made.

Background

- [2] The circumstances of this action are somewhat unusual. The parties are both somewhat advanced in age. The claimant husband, Imbro Brebric, is 72 years old; the age of respondent wife Mary Brebric is the subject of some dispute and uncertainty. I conclude that she was born in 1934 and is 78 or 79 years of age.
- [3] The actual history of the marriage is also out of the ordinary.
- [4] In setting out the events leading up to the culmination of the dispute, my description will be somewhat general. Not surprisingly, there are disputes and disagreements between the litigants as to the specifics and details. Those will be dealt with as necessary in the discussion component of these reasons.
- [5] Both parties immigrated to Canada from their native Croatia in 1962 as young adults. Each came separately; they did not know one another prior to their arrival in this country. Each was living in Calgary in 1962; both were working at the same job site. They met and settled into something of a relationship.
- [6] There were times that the claimant left Calgary and went elsewhere to work, but they continued to be in touch.
- [7] In January of 1966, the couple married and moved to Thompson, Manitoba where the claimant had employment. It turns out the respondent was not happy there and so they returned to Calgary. The respondent's brother, Steve, was living there. Together with him, the parties purchased certain properties, including two duplexes. My understanding is that these were not grand nor were they especially expensive. Repairs and renovations were needed, but that was done and the parties were thus able to generate some rental income. There was some subsequent buying and selling of properties.

- [8] By 1967-1968, the parties had acquired a home of their own and were living there. They had a mortgage debt of approximately \$8,000 owing with respect to that property.
- [9] In early 1968, a son, Ivan, was born. Shortly after, in fact only a matter of weeks later, the claimant announced that he was no longer prepared to continue in the marriage. He said that he had been quite unhappy in the relationship and found the respondent a difficult person with whom to live. In March of 1968, he left and moved to Ontario. He took with him \$55 and their car.
- [10] Upon arriving in Ontario, he found work and eventually established a long-term common-law relationship with a woman he met. They were together from 1975 until 1992, and had two sons, born in 1976 and 1980. The evidence satisfies me that he fully established his life there and remained in Ontario until at least 1994 and likely later, as will be explained later in these reasons. By that time, his relationship with his common-law spouse had come to an end. During his time in Ontario, he earned his livelihood in a number of ways, including the operation of a drilling business, farming, and later operating a pizza restaurant in Windsor. Additionally, he loaned money from time to time and earned income in that way as well.
- [11] When the claimant left in 1968, the respondent was left to manage on her own. She found work as a house cleaner and doing some gardening; she also found work in a bakery and continued there until she sustained a serious injury in a workplace accident. That ended her employment. As a consequence of the injury, she qualified to receive a relatively modest disability payment. She managed to sustain herself and her son on the money she earned and, latterly, the disability benefits. She also received a government family allowance. Finally, there was some suggestion that she may have earned some rental income from the duplex she had, although that is not clear.
- [12] The claimant testified that he sent support payments for a time. He said that he sent cheques in the amount of \$100 per month, but that after a while, the respondent stopped cashing those cheques. He says he made contact with her, and she told him that she did not want his help. His testimony is that he had occasional and sporadic contact with his wife and son.
- [13] The respondent generally denies that the claimant provided any support. She says there was not much contact from him at all and that she fended for herself and their son.
- [14] In 1975 the respondent appears to have decided that she was going to relocate and move to Kelowna, as was her brother Steve and his family. Together with Steve, arrangements were made to acquire a commercial building located on the corner of Grove and Pandosy (the "Pandosy Property") in Kelowna. The details of the purchase are somewhat unclear, but my understanding is that the respondent traded her equity in the Calgary duplex as her share of the down payment and presumably her brother found a way to fund his share of the deal. In the result, by those means and by taking a significant mortgage, they were able to secure the commercial building and moved to Kelowna. Apparently there were suites in that building. She lived in one of them, and by renting space to others, the property was able to generate some rental income.

- [15] Over those early years in Kelowna, the respondent raised the parties' son on her own. It is compellingly apparent from the evidence that Ivan was very much the focus of her energy and industry. Ivan did all of his schooling in Kelowna, with the exception of an interval when he went to Ontario to live with his father's family. The duration of that interlude is in dispute; the claimant says it was two years, the respondent says it was one. Based on the evidence at trial, I find it was more likely in the order of one year.
- [16] Following his graduation from high school in Kelowna in 1986, Ivan worked at fixing up properties that he and his mother had acquired. For two winter seasons, he went to Alberta and found work as a seismic technician in the oil field industry. Those seasons were in 1989-1990 and 1990-1991.
- [17] In the course of their time in Kelowna, the respondent and Ivan were, while living at the Pandosy Property, able to acquire other properties. In 1988 they bought an older house on a large lot at 464 West Avenue. Some renovations and repairs were made to this property and it was rented out. Its ownership was by way of joint tenancy between the respondent and her son.
- [18] In 1990, the two of them acquired another property in Kelowna. This was a similar situation, this time at 454 West Avenue, adjacent to the other West Avenue property. Again, the property was rented. I will refer to both these properties as the "West Avenue Properties".
- [19] My understanding is that, for each of these transactions, a down payment was made and a mortgage was arranged to fund the balance.
- [20] In 1993, the respondent and Ivan purchased a fire-damaged home located on KLO Road in Kelowna (the "KLO Property"). The property needed considerable work to make it habitable. That was done and it was subsequently rented to tenants.
- [21] The purchase of the KLO Property was funded by a mortgage on that property, and with money that was raised through borrowing against the equity on the West Avenue Properties.
- [22] While he was working in Alberta, Ivan purchased a house in Calgary. That was done through a private company he owned and title was registered in that corporation's name.
- [23] In September of 1993, Ivan died suddenly and unexpectedly in an accident.
- [24] That was a devastating event for the respondent. It is abundantly clear that the relationship between this mother and her son was exceptionally close. As one witness observed, she "lived for him and he lived for her". She was quite dependent upon him for everyday needs, such as transport. They were never apart for long. She catered to his every need and he in turn was enormously devoted to her. That closeness extended to their financial matters. For the most part, their financial dealings and activities were fully bound-up together.

- [25] At the time of Ivan's death, there were three properties owned by the respondent and Ivan: the two West Avenue Properties and the KLO Property. As each had been owned in joint tenancy, upon Ivan's death, title passed to the respondent. The mortgages which had been taken to make those purchases were life insured and, as a result, the debts against those properties were paid out. The respondent ended up with clear title to all three.
- [26] Ivan died without a will.
- [27] As the arrangements were being made for his funeral, the claimant arrived in Kelowna. He helped out with some of the matters that needed to be dealt with and subsequently returned to Ontario.
- [28] In the spring of 1994, there were concerns with Ivan's Calgary house which needed to be resolved. The property was financed and the payments were falling behind. As a consequence, it had to be sold. The parties arranged to go to Calgary to deal with the situation. They cleaned the property up and it was sold. After that had been done, both of them came back to Kelowna. The claimant says that he spent some time there, tending to maintenance and repairs at the KLO Property and the West Avenue Properties. His testimony is that he then had to return to Ontario in order to deal with problems that had arisen there, namely legal action which had been commenced by his former common-law spouse.
- [29] Based upon my understanding of the evidence, it appears that, at that time, the claimant owned a house in Windsor, Ontario; that was transferred to his former common-law spouse as part of the resolution of their dispute. He also owned another property located in a development called The Villages, which he sold and from which he realized \$69,000. As well, he owned a property in Florida which was ultimately sold and from which he realized proceeds of \$96,500 US. That sale and the receipt of funds occurred sometime later, in 2005.
- [30] In 1995, the claimant went back to Kelowna. He arrived in the summer and brought with him a headstone in honour of Ivan, which he installed. He then returned to Ontario.
- [31] In 1996, the claimant again travelled to Kelowna. His testimony is that he had been contacted by the respondent. She had surgery scheduled and asked him to come because she needed his assistance. He agreed to do that, and thus he moved to Kelowna.
- [32] That same year, 1996, around the time that the respondent was going through her convalescence, arrangements were made to purchase a house on Ayrshire Court in Kelowna (the "Ayrshire Property"). The property was chosen by the claimant. Shortly after, they both moved into that home and lived there.
- [33] When the Ayrshire Property was first purchased, the title was registered in joint tenancy. The purchase price was \$232,000. The bulk of the funds were provided by the respondent, obtained by taking out mortgages on the KLO Property and one of the West Avenue Properties. The balance came from a joint bank account and the proceeds of GICs which the parties held. In late 1997, the mortgage was paid off with funds from the parties' joint

accounts. In February of 1998, title to the Ayrshire Property was transferred from joint tenancy to the claimant's name alone.

- [34] Although there is some dispute as to this, the two of them lived there, nominally at least, until 2006, at which time the respondent left and moved to West Avenue. The respondent is quite insistent that she lived for a time in an apartment at the Pandosy Property. The claimant says that is not so.
- [35] The nature of the parties' relationship while they lived together for that approximate ten year period is an issue of some controversy in this litigation. I will deal with that later in these reasons.
- [36] Before Ivan's death, he and Ms. Brebric had often discussed a plan they had to develop the West Avenue Property parcel as a condominium project. Later, after Ivan's passing, there were also discussions between the respondent and the claimant about that. Evidently, the claimant's view was that such a development would not be able to proceed for at least a number of years, believing that the necessary municipal approval would not be attainable until some time had passed.
- [37] In 2004, steps were taken to get that project underway. I conclude that was what the parties agreed should be done. As a practical matter, the claimant became the point man for the endeavour, dealing with the many tasks that were entailed, including the retaining of an architect, Mr. Bevanda, whose role was to design the project and to deal with the City with respect to zoning permits and other related matters.
- [38] Although the project was time-intensive and met with its share of challenges, ultimately, it appears that it was moving forward successfully. One of the requirements entailed a fairly narrow piece of property being dedicated for a lane. This was an issue of some consternation for the respondent; she was quite resistant to acceding to the City's demands. In the end, it appeared that problem could be satisfactorily overcome. However, there were in fact larger problems afoot.
- [39] The respondent clearly felt that she was not being properly involved in the process. It seemed to her that the claimant was deliberately excluding her from everything that was going on. One day, correspondence related to the project arrived in the mail. It was directed to the claimant -- there was no mention of her. Evidently that was, for her, the final straw, confirming her view that he had taken control of the entire matter and had pushed her out. She found that to be unacceptable and so she announced to the claimant that the project was not going forward. She refused to proceed further with the development and the process was terminated in August 2005.
- [40] It was around this time that it became evident that this relationship was broken. From the respondent's perspective, she apparently felt she was no longer able to trust the claimant. She took steps to transfer assets from the joint funds they had.

- [41] In 2006, the claimant commenced these present proceedings.
- [42] Subsequently, the respondent left the Ayrshire Property and moved to 454 West Avenue where she currently resides. She says that she left the Ayrshire Property because the claimant asked her to do so. As at the date of trial, the claimant continues to live at the Ayrshire Property. The property at 464 West Avenue is vacant; there are maintenance issues and as a consequence no insurance is available.

Positions of the Parties

- [43] In essence, the claimant seeks half of the assets held by the respondent, including the properties she owned (or, with respect to the Pandosy Property and the KLO Property, the proceeds of their disposition) and the money she had when he arrived. His position is that they are married and lived together for a substantial time. He says that she never worked after 1973, and takes the view that in actual fact, it was Ivan who contributed substantially to the acquisition of the assets. It is the claimant's position that any time his son needed money, "he turned to me". He contends that much of what Ivan acquired was because of help that he received from his father, the claimant. In his submission, the respondent simply did not contribute very much to the acquisition of those assets.
- [44] The claimant says that although it was unusual, this was a marriage of some duration. Initially, the parties were married and together between 1966 and 1968, when they separated. He says that there was then a resumption of the marriage in 1994 and that that continued until the separation in 2006. He says that the majority of the parties' wealth was acquired in that time, substantially due to real estate values increasing. He says that from time to time between 1976 and 1994, he travelled to Kelowna to help the respondent with properties she and Ivan owned. He says that she then, following Ivan's death, asked him to come to look after her and he did so. He says that he returned in 1993 on a part-time basis and permanently in 1996, and that he brought with him financial assets. He says that he drove the respondent to her appointments, that they lived together and dined together and, most importantly, he points to the fact that they pooled their significant resources.
- [45] The claimant says that he managed their properties, collecting rents and dealing with all of the practical matters that revenue property ownership entails. The claimant says that the parties were united in their goal, fulfilling Ivan's dream and developing the West Avenue Property. He says he spent considerable time and money moving that development forward.
- [46] In all the circumstances, he says that the proper outcome is to make a finding that the Ayrshire Property, the West Avenue Properties and the investments are family assets and that they should be equally divided between the parties.
- [47] The respondent disputes the claimant's claim. Her position is that the assets she acquired -- her properties, the investments and the liquid assets -- were entirely the fruits of her own industry and frugality, and that of her late son, and that the claimant had no role in that. In fact, she says that she was effectively deserted when her son was but three weeks old, and

that the claimant did nothing to support her or Ivan, except for the time that Ivan spent at school in Ontario. Rather, she says the claimant showed up, late in the day, by which time she had accumulated certain assets and that he now seeks to share in that bounty.

- [48] The respondent's position is that the assets to be dealt with as family assets and subject to division are limited to the two properties on West Avenue, the home on Ayrshire Court and the fund of \$150,000 that the claimant removed from the parties' Edward Jones account in August 2005, less the sum paid to Mr. Bevanda, the architect, in the amount of \$25,916.29.
- [49] The respondent takes the position that these assets ought to be reapportioned in her favour, as to divide them equally would be unfair. She says that the criteria set out in s. 65 of the Family Relations Act, R.S.B.C. 1996, c. 128 justify that outcome, and especially having regard to the duration of the marriage, the duration of the period during which the spouses lived separate and apart, the date when the property was acquired or disposed of and "any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse".
- [50] The respondent says that this was in fact a two-year marriage and that there was a separation for a period of 28 years up until 1996. She says as well, that the true nature of the parties' relationship between 1996 and 2005 is not consistent with the resumption of a marriage. She says they were not a couple in the sense that marriage entails.

Discussion and Analysis

- [51] The task at hand is, stated in a simplistic way, a straightforward one. The Court is required to determine what assets are properly characterizable as family assets and then decide how those should be allocated, taking into account the provisions of s. 65 of the Family Relations Act. That said, this is a case where it can be truly said that "the devil is in the details". There are many details and many dimensions of the matter which are complicated and quite vehemently disputed.
- [52] The manner in which I have elected to approach the task is to proceed step-by-step, dealing with the following issues:
1. Examining the background circumstances of the family assets in this case. That will involve a consideration of the relevant history, including the contributions that the claimant says he made to the "family" prior to his arrival in 1996 (including his assertion that on one occasion he advanced \$95,000 to the respondent, another time he gave her \$25,000 and, as well, his claim that he paid the sum of \$12,500, the proceeds of a sale of a horse to Ivan and the respondent). This will also require taking into account what significance should be attached to the equity in the Calgary duplex that the respondent used to make her initial property acquisition in Kelowna in 1968. It will also entail examining the respondent's financial circumstances at the time the claimant arrived on the scene in Kelowna and considering what he brought with him when he arrived in Kelowna, when he says the marital relationship resumed. Those considerations are particularly important in fully

understanding the nature of the jointly held funds.

2. Characterizing the relationship in terms of whether it actually constitutes a marriage. The dispute between the parties, post-1994, is noted above.
 3. It will be necessary to take into account the removal of assets by the claimant from the jointly held funds in the latter stages of the relationship (and, relatedly, payments she made to her friend Ana Mihala and to her friend Mr. Johnstone) as well as the removal of financial assets by the claimant from the jointly held funds, particularly the removal of \$150,000 which he subsequent deposited into his account at First Valley.
 4. Finally, it will be necessary to consider how the family assets claimed by Mr. Brebric should be apportioned, taking into account the specifics of the matter and the criteria enumerated in s. 65 of the Family Relations Act.
- [53] Before commencing those particular inquiries, I wish to say something about the credibility of the parties.
- [54] Both testified at trial. Both were carefully cross-examined. In the course of those cross-examinations, references were made to previous testimony at the examination for discovery and extensive references were made to documents in evidence.
- [55] In my view, there is a proper basis to have reservations about the credibility of each of these parties. Sometimes, differences can be attributed to innocent mistake with the passage of much time and the fact that events may be seen from a certain perspective. Often those discrepancies are of no particular importance.
- [56] In the matter at bar, there were a number of instances in which quite significant credibility concerns have arisen, often with respect to important matters. Acceptable innocent explanations have not been provided. I will provide one specific example with respect to each of the litigants.
- [57] The respondent was confronted with a document in which she appears to acknowledge that she received a substantial sum of money (\$95,000) from the claimant, by way of loan. There is no question that her signature appears on the document and that the document is a receipt. She has made a note on the document which seems, to my mind, to support the conclusion that the funds were received. She insists that there was no such loan or payment to her and offers the explanation that this document was a "joke". I have examined the matter carefully, and find this explanation perplexing and unconvincing. In short, it is an example of a situation where I find myself unable to accept the truthfulness of her testimony.
- [58] On other occasions, she took positions that seemed at best difficult to accept as likely or entirely truthful, and then clung doggedly to those positions, notwithstanding their quite patent unreasonableness.

- [59] On the other hand, the claimant was asked about the financial assets which he claims to have brought and contributed to the parties' joint financial pool. His description at trial of the specifics of his contributions is at marked variance with his sworn testimony given in the examination for discovery. When asked to explain the difference, the thrust of his response as I understood it was that he had not considered it necessary to have been particularly truthful on the occasion of the examination for discovery. That, to my mind, is a troubling state of affairs. I should note as well that the documentary evidence with respect to this issue is not supportive of his trial testimony.
- [60] There is also the matter of his relationship with a girlfriend. When asked as to whether they had been intimate, he seemed to regard the question and the obligation to answer honestly with palpable disdain.
- [61] These are two examples. In fact, there was much about the testimony of each of the parties that was disconcerting. In assessing their testimony, I accept that the dispute between them is bitter and entrenched. I also accept that, particularly with respect to the respondent, that there may be some difficulty in terms of translation, in that she testified at trial through the medium of an interpreter. Nevertheless, I wish to make clear that I have reservations concerning the veracity of each of them.

Determination of the family assets

- [62] The parties seem agreed that the West Avenue Properties and the Ayrshire Property are to be treated as family assets. However, there is another category of assets over which there is real dispute. That is a rather amorphous matter, one to which I have already adverted, and which I have described as the jointly held funds. Essentially, the reference is to the financial holdings and assets of the parties over the time they were together. In the facts of the case, that "asset" was highly fluid. I will return to this in a moment.
- [63] It is important to note that the claimant does not seek an order with respect to the funds at large. Rather, apart from the specific properties I have mentioned, West Avenue and Ayrshire, he asks this Court to find that specific sums of money plus the proceeds of a certain mortgage were improperly appropriated by the respondent, and he asks the Court to order that he be compensated for half the value of those assets because they are family assets. He also accepts that there is an offset to be made in that regard; I will describe this in further detail later in these reasons.
- [64] First, however, something must be said about two significant assets that the respondent had when the claimant arrived on the scene in 1994, as they subsequently acted to put their affairs together, in addition to the West Avenue Properties. The first was the KLO Property. It will be recalled that she and Ivan had purchased that property before Ivan's death; upon his demise, a life insurance policy had paid out the outstanding balance owing on the mortgage. By reason of the joint tenancy, she thus held clear title to the property herself. As well, she was in the partnership venture with her brother Steve. By that arrangement, they owned a

commercial building, the Pandosy Property.

- [65] Over the course of time, the KLO Property was sold and the proceeds came to the respondent. By the terms of the sale, there was an initial down payment received from the purchaser; there was also a vendor "take-back" mortgage. Payments were received on that for a time, and then the balance of the mortgage was paid out. As well, the partnership venture with her brother became quite acrimonious. Legal action ensued and ultimately was resolved. The funds she received in settlement were paid to her and found their way into the jointly held funds.
- [66] I return now to the jointly held funds. In my view, to properly understand the claims at bar, it is necessary to know the background of the parties' dealings. That includes some idea of the respondent's situation, beginning shortly after her arrival in Kelowna. Ms. Brebric appears to have demonstrated a quite remarkable ability to save and scrimp and accumulate funds and assets. All the details of that are not clear. I assume that the Pandosy Property generated some revenue which accounts for part of the accumulations that followed. As well, she received a disability pension from the Workers Compensation authority in Alberta as a consequence of her accident there. The amount of those payments was never disclosed at trial, although it is my understanding that the pension payments continued from the time of the accident (or shortly thereafter) up to the present. It is interesting that the respondent never held a job or actively earned an income at any time after her arrival in Kelowna. It is noteworthy as well that, at one point, for a period of at least one year, she was in receipt of welfare benefits.
- [67] From a fairly early time, the respondent and Ivan worked together in terms of their property acquisition activities and the financial dimensions of those involved. To the best of my ability to discern, with two exceptions, their ownership of the subject properties and the operation of their financial affairs were quite intertwined and bound-up, one with the other. The exceptions to which I avert are the house which Ivan purchased in Calgary, sometime prior to his death, and a home which he shared with a common-law spouse at the time of his death. Also, I note that Ivan was apparently not involved in any ownership capacity with respect to the Pandosy Property.
- [68] The claimant contends that he made real contributions to the "family" well before his arrival in Kelowna in 1994. Specifically, he takes the position that the duplex which was in the respondent's name when he left Calgary in May 1968 is a factor which must be taken into consideration in the analysis. Effectively, he says that was a family asset and he was presumptively the owner of one-half of it. He takes the position that the respondent appropriated all of the equity in that property in order to acquire her stake in the commercial building on Pandosy. He also suggests that she may well have had the benefit of revenue generated by that duplex before her disposition of it. Accordingly, as I understand it, he says that there are dimensions of that time and transaction which should be taken into account in the analysis at bar.

- [69] As noted, the claimant also says that he regularly sent support payments in the amount of \$100 per month to the respondent but that, after a time, she stopped cashing those cheques and so nothing more was sent. He claims as well that he sent cards and gifts to Ivan from time to time.
- [70] The claimant testified that after Ivan had come to live with him in Ontario for a period of time, there was a horse which had been acquired presumably for Ivan's benefit. The claimant's evidence is that at some point, he sold that horse and that he gave the proceeds of the sale, some \$12,500 to Ivan. As I understand his testimony, he does not seek to rely upon that as evidence as a financial contribution per se, and accepts that it was in the nature of a gift.
- [71] Of greater relevance, the claimant says that on two separate occasions, he made substantial financial payments for the benefit of the respondent. The first of these is his claim that he advanced funds in the approximate amount of \$95,000 to the respondent and Ivan. His testimony is that that he may have sent \$3,000 sometime earlier, but that he paid the bulk, \$92,000, in June 1991. His evidence is that he had been contacted by Ivan, who explained that he needed money to buy another property. The claimant says that, as a consequence, he visited Kelowna and at that time, he paid the \$92,000. He relies upon a receipt which is in evidence, whereby the respondent appears to acknowledge receipt of that payment.
- [72] Ms. Brebric vehemently denies this claim by the claimant. She insists that there was no such payment received from him and contends that the receipt is not an accurate reflection of the actual transaction.
- [73] I have examined the testimony of each with respect to this matter. I have also taken into account the receipt. There are discrepancies and inconsistencies in the descriptions the claimant has given concerning this transaction. Those make me suspicious. However, after having considered the matter carefully, I conclude, on a balance of probabilities, that he provided funds to Ivan and the respondent in approximately that amount. In arriving at my finding, my analysis is informed by the fact that the respondent has not been able to provide a credible explanation for the receipt; I also take into account that it is logical to believe that the respondent and Ivan probably were in need of financial support at the relevant time, considering the financial endeavours they were embarking upon.
- [74] The final extraordinary contribution which the claimant claims he made and which he contends is relevant to the discussion is the sum of \$25,000 which he says he advanced in 1994. He testified that he was asked by the respondent to provide that money, as it was required with respect to the KLO Property. He also acknowledges that \$20,000 of this sum was repaid in 1995. In the result, and not understanding this to be disputed, I conclude that, the net value of the contribution was \$5,000.
- [75] It is also necessary to examine the respondent's financial circumstances at the time the claimant arrived in Kelowna and when he says that their marital relationship was resuming.

- [76] This is not a straightforward endeavour. At the relevant time, the respondent maintained bank accounts in at least two different banks. The evidence also discloses a history of purchasing and subsequently rolling over investment instruments, primarily savings bonds and certificates of deposits. Because of the revolving nature of those holdings, it is difficult to quantify with any reliable clarity what her actual assets were at the time the claimant arrived in Kelowna. As well, I cannot be blind to the backdrop of the common sense of the matter: this was a single parent who had no job which afforded her an income; her only visible means of support was a disability pension (probably not large), presumably the government family allowance, and some rental income from the Pandosy Property (the amount of which I do not know). For her to have been able to find a way to acquire other properties and accumulate savings at the same time is at least a little unusual and curious.
- [77] However, to the best of my ability to discern, I find she had the following:
1. She owned clear title to both of the West Avenue Properties.
 2. She owned clear title to the KLO Property.
 3. She owned half of the Pandosy Property (together with her brother Steve).
 4. She had a CIBC bank account.
 5. She had an RBC bank account.
 6. She had an investment account at Edward Jones.
- [78] In short, I know that there were at least two bank accounts and an Edward Jones account that were initially held by the respondent in her name and that these were significant investment holdings in those accounts. After she had invited the claimant to join her, she seems to have quite unreservedly set about making her assets theirs; the first steps in that direction began in 1994, when there was a joint bank account. In time, the bank accounts and the Edward Jones account were changed from sole to joint status with the claimant. As her bonds and GICs came up for renewal, they too were registered in their names jointly.
- [79] The fact of the matter is that the actual value of the holdings of the accounts has proven difficult to ascertain with precision, due to the inevitable confusion that follows when there are multiple accounts and many transactions ongoing -- bonds being rolled over, mortgages being paid, and a host of other activities, the many records involved and because the financial activities were dynamic.
- [80] It is also necessary to examine the evidence to assess the contribution that the claimant brought to the newly reformulated family unit. Specifically, what portion of the jointly held funds came from him?

- [81] In 1994, following Ivan's passing, the claimant had in hand sale proceeds from a property he had owned in Windsor, Ontario; that sum was in the order of \$69,000. He also had a property in Florida, but that was not sold until August 2005. He realized net sale proceeds from that of \$96,571 US. He also claimed to have receivables in the form of private mortgages in the approximate amount of \$120,000 and cash with an approximate value of \$200,000.
- [82] I have examined the evidence with great care to determine what his actual contribution was to the combined asset pool. Frankly, I cannot say that I have been able to find what I consider to be an acceptable conclusion. There really is no hard evidence of identifiable funds being transferred into the accounts in any significant amounts.
- [83] That is not to say that he brought or contributed nothing. I do not believe the situation is that dire. However, his evidence on the issue is not clear. There are discrepancies in the various assertions he has offered. Apparently his practice was to deal primarily in cash, and so the usual bank records one might expect to find do not provide the necessary assistance.
- [84] I am left to make a finding on the evidence, as it is. I conclude that he did make some contribution, but my best estimate is that, at most, it was in the order of \$75,000 to \$100,000. It must be emphasized, that is a rough approximation, but it is all the evidence provides any support for. As well, I find that he contributed \$95,000, as discussed earlier.

This marriage

- [85] As noted at the outset, and as the parties acknowledge, this is not a typical marriage. Initially, the parties were together for only a short time, some two years. The claimant is quite straightforward in his testimony that he was not happy in the marriage and so he left and went to Ontario.
- [86] There is some dispute as to what involvement or contribution he might have made over the following years. My conclusion is that his involvement was quite minimal. Whether it was because the respondent did not want to depend upon him or whether it was for some other reason, his financial contributions were minimal. There were occasional visits but, for all intents and purposes, it could fairly be said that the separation was complete. The respondent took responsibility for herself and Ivan and appears to have managed reasonably well.
- [87] There is of course the matter of Ivan having moved to Ontario for a period of time to attend school. Evidently, he was having some difficulty with school in Kelowna and the decision was made that he would go live with his father for a period of time. While that is inconsistent with a complete and utter break, it is, in my view, not a factor that materially impacts the assessment of the nature of the marriage.
- [88] In short, the conclusion is clear that the parties were separated and lived completely apart from one another between 1968 and sometime after Ivan's death.

- [89] The rekindling of the relationship is not an entirely typical situation. To my mind, it is apparent that the respondent had an enormous dependence upon Ivan and she saw their lives as being one. When he passed away, she was devastated emotionally and was quite at sea as to what her future held. She was not then and is not now, by nature, a person with a great deal of determination to be on her own. As an example, she has never driven and so she relies on others to help her get around. She has some difficulty with English, and her health was not good and, quite frankly, she appears to have quite desperately wanted to have someone upon whom she could rely to look after her in the years ahead. Thus it was when the claimant initially arrived on the scene following Ivan's death and in the times that followed, she decided in fairly short order that she was prepared to reach out and have that relationship with him. Her testimony is that she in effect, invited him into her life at a time of need -- she was about to go for a serious surgery -- and she was prepared to have a relationship with him if he would "look after her". In short, her reasons were not the stuff of which romantic stories are made; they were practical.
- [90] In furtherance of that new arrangement, the parties agreed that they would purchase a home. At the time, she was living in a small upstairs apartment in the Pandosy Property, and so it was that the Ayrshire Property was purchased. While they were about to share a home, it was unlikely that this relationship was going to be a warm and loving one. There really was not a great deal of true fondness between the two. It could be said that they had each spoken to that many years earlier when they went their separate ways.
- [91] While the claimant takes the position that he was generous and supportive of her and assisting in so many ways, I find the evidence does not really support that conclusion in any robust way. My sense is that, while he took the necessary interest in their property endeavours and assorted other practical things he maintained a good measure of independence. He claims to have worked hard at the demands that the properties and the tenancies imposed. I accept that he attended to those things. Whether it was an enormously demanding task is less clear. I believe it was not, but accept that he did what the circumstances required. He also took responsibility for the West Avenue project. As well, he appears to have arranged at least one situation whereby funds were loaned to a third party (the Nobles) and a mortgage taken back -- obviously a venture intended to make a profit for them.
- [92] In terms of being a caring and supporting partner for the respondent in other ways, apart from the sense I have just explained, the clear conclusion that emerges is that he was not especially ardent. Evidently he found time to spend with his "other family" in Eastern Canada, even when the respondent was dealing with significant health concerns and had real need of his assistance. I am also satisfied that, from a romantic perspective, his interests did not lie with the respondent. It is clear that he had a fairly active social life, apart from her. At one point, he was the president (he says on a temporary basis) of the Kelowna Single's Club. It is also evident that he had a girlfriend with whom he spent substantial quality time.

- [93] There is no evidence that would cause me to conclude that there was anything like a warm and loving relationship between Mr. and Mrs. Brebric during the time they were together in Kelowna.
- [94] A number of witnesses testified as to the observations they made of this couple. A number of those witnesses were called by the respondent and were clearly supportive of her. They described a situation where two people were living quite independently at Ayrshire Court, mostly in separate parts of the house. One witness called by the claimant testified that it seemed to him that they were something of a couple. The claimant describes a situation of considerably greater closeness than does the respondent.
- [95] For her part, I am quite convinced that the respondent did not aspire to have a full and romantic life with the claimant. She was principally concerned with having someone to assist her with her practical physical needs.
- [96] Based upon all of the evidence, I am not persuaded that the claimant provided that.
- [97] A principal concern of the respondent was the matter of the property development at West Avenue. She saw that as Ivan's dream, a dream in which the respondent shared. Seeing it fulfilled was enormously important to her as a means of honoring his memory. It also seems that the claimant subscribed to this aspiration.
- [98] It was in furtherance of that goal that Mr. Bevanda, the architect, became involved. As described earlier, matters came to a crisis: the respondent decided that she was not prepared to continue. The project terminated, and not long after, the claimant commenced his action. Although the parties remained in the same house at Ayrshire for a time, any semblance of a functioning marital relationship was finished.
- [99] With that background, it is for this Court to determine whether the period of time following the claimant's return to Kelowna, up to the point he initiated legal action seeking a divorce, is properly characterizable as a resumption and a continuation of the marriage. The claimant says it is; the respondent says it is not.
- [100] I have been referred to a number of authorities which have dealt with the sometimes thorny issue of when fractured and damaged relationships between spouses are properly determined to be marriages, and when they are not. Those include the decision of the Court of Appeal in *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264 (C.A.); *Steele v. Steele*, 2011 BCSC 478; and *Rose v Guiguet*, 2008 BCSC 1225.
- [101] From those authorities, I conclude that the framework for the analysis will include consideration of the following:
1. whether the parties felt committed to life-long financial and moral support of the other partner;

2. whether one of the partners surrendered their financial independence and became economically dependent on the other in accordance with a mutual arrangement;
3. whether the parties referred to themselves, when talking to friends and family, as spouses in a way that recognized a long-term commitment;
4. whether they shared legal rights to their accommodation;
5. whether they shared property;
6. whether they shared their finances, including bank accounts and expenses; and
7. whether they shared vacations.

Other factors to consider include: living arrangements, shopping and eating together, entertaining together, intimate relations, and the perception that they were a couple to the outside world.

[102] In this case, while the conclusion is not a clear or easy one to reach, it is my finding that the time these parties were together between 1996 and 2006 is properly characterized as a continuation of their marriage. Between 1994, after Ivan's passing, and the summer of 1996, they were in the process of re-establishing their relationship. By the summer of 1996, I find that they had reached the decision to be together and were in fact living with one another in a marriage.

[103] In so deciding, I have taken into account that the respondent appears to have made a deliberate decision that she wanted to have the support and security that she had lost when Ivan died. To achieve that, she invited the claimant back into her life. She made her intentions quite clear. In furtherance of that, they began to share a home. She took steps to make him part of her financial self. She made a new will in which she named the claimant as her executor and sole beneficiary. She looked to him for his help in caring for her after her hospitalization; she looked to him for help in a whole variety of ways with the properties. While I am not persuaded that the workload was as onerous as the claimant suggests, it was not insignificant. He provided assistance that she very much needed. As far as the soft and tender aspects of a relationship were concerned, that really was not any part of what ensued. From what I can discern, the respondent was not minded to have that. The greatest thing in her life had been Ivan and he was gone. With respect to the claimant, her demands of him were not especially great. She was, I believe, certainly initially, sufficiently satisfied with the arrangement.

[104] In time, matters deteriorated. The claimant really never had a great deal of enthusiasm about his personal relations with the respondent and, as far as I can tell, after some time had passed, did not put much energy into pretending otherwise. His interest in the singles group and his girlfriend attest to that.

- [105] All that said, the arrangements these two persons made for themselves, in the context of the fact that they were married, was for them a marriage. It was workable for a while, but in time, certainly from the respondent's perspective, it turned out to be unacceptable. I suspect she realized more and more that the man she wanted to care for her was less and less available, less and less interested. In order to visit Ivan's grave, she found herself having to look to others, friends who would help her. She realized that the claimant was not really going to support her as she had initially expected, and, with respect to the West Avenue development, she concluded that he was marginalizing her financially. Whether that was what was actually taking place, I am not sure. But she believed it to be so, and concluded that the marriage, such as it was, was done. Significantly, it would seem that the claimant had reached a similar conclusion, and so the separation came about.
- [106] I should note that the claimant insists that they enjoyed conjugal relations, dating back to the time they went to Calgary to deal with Ivan's house, and continuing, including the time they were sharing the home at Ayrshire. The respondent is quite adamant that there were no relations between them. I am unable to decide whether or not there were, although I would certainly have grave reservations about accepting the description that the claimant offers. However, to my mind, that aspect of the matter is not determinative.
- [107] In short, these two persons, who had been married and subsequently separated for a long time, but who remained married, decided, each for their own reasons, to resume what was something like a marriage. That it was not of a storybook quality does not decide the issue. The fact is, they were living together in a home they owned. They had substantially amalgamated their financial affairs. They were, for the world to see, spouses.
- [108] In conclusion, I find that this was a marriage of two years, followed by a virtually complete separation, and a resumption of ten years, at which time a final separation took place.

The application of Part 5 of the F.R.A.

- [109] The basic principle governing the division of family assets upon marriage breakup is found at s. 56 of the Family Relations Act. It provides that each spouse is entitled to an undivided half interest in the assets as a tenant in common.
- [110] The respondent seeks to invoke s. 65 of the Act, which permits the court to reapportion assets on the basis of fairness. It provides as follows:

65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,

- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

- (2) Additionally or alternatively, the court may order that other property not covered by section 56, Part 6 or the marriage agreement, as the case may be, of one spouse be vested in the other spouse.
- (3) If the division of a pension under Part 6 would be unfair having regard to the exclusion from division of the portion of a pension earned before the marriage and it is inconvenient to adjust the division by reapportioning entitlement to another asset, the Supreme Court, on application, may divide the excluded portion between the spouse and member into shares fixed by the court.

[111] Following from the discussion that I have set out above, I propose to approach the matter in this way:

- 1. I will accept that the parties were married and cohabitated for a relatively brief time between 1966 and 1968; that they were separated from 1968 through 1996; and that they reconciled and were in a marriage-like relationship between that date and August 2005. I will deal with it as a ten year marriage.
- 2. The family assets which will be considered as subject to division are the following:
 - 1. The West Avenue Properties;
 - 2. The Ayrshire Property;
 - 3. Certain specific sums of money or, in one case, the value of a particular financial instrument.

[112] In light of all of the surrounding circumstances, it is my conclusion that to order an equal division of all those assets would be unfair. In fact, in my view it would be quite profoundly unfair. I base that conclusion upon a number of important facts:

- 1. This was, in fact, not a long marriage. It was a total of approximately twelve years: the initial two years, after which the claimant left the respondent and Ivan to make another life, and the ten years together in Kelowna from 1996 to 2006. The time apart was substantially longer than the time together. In that interval, the respondent was on her own and quite without meaningful support from the claimant. I recognize that he likely sent some support payments in the early time, but those didn't really amount to much. I accept as well that the equity in the Calgary property that she used to make her move to Kelowna is characterizable as a family asset that he had a presumptive 50% claim upon. However, in the greater scheme

of events, it is difficult to accept that as giving him any substantial traction in the analysis. Accordingly, it is, for the purpose of this analysis, a ten year marriage.

2. When they came together after Ivan's death, the respondent brought a much greater part of the combined family assets to the marriage than did the claimant. Her contributions had been acquired, almost entirely by her own determined thrift and industry (and that of Ivan) during the time the parties were apart. On the other hand, I find that the claimant's contributions (allowing for the payment of \$95,000 and what he may have brought after 1994) were considerably less.
 3. The analysis must of course include a recognition that the claimant was with the respondent for those ten years, and that he spent his energies in a number of ways that benefited both of them and their material circumstances. He looked after and made necessary repairs and improvements to the properties they had; he helped with some household duties and chores; I expect he was the motivating force behind the venture to loan money for profit (the Noble loan); he spent time and energy trying to put the West Avenue project together.
 4. The analysis must also recognize that the respondent deliberately took steps to share the ownership of many of the assets with the claimant by naming him as a joint account holder or, with properties, by making him a joint owner. Indeed, for the Ayrshire property, she made him the sole owner on title.
 5. I expect that the claimant may believe it relevant that a portion of what the respondent had accumulated came to her in the aftermath of Ivan's death, and it therefore might arguably be characterized as Ivan's, with some presumption that both his parents may have considered themselves to have some claim to it. I have given thought to that, but conclude it is not a factor in the analysis. Ivan and the respondent were partners in those ventures. They made their arrangements, including the joint tenancies and the life insurance provisions. The claimant was simply not part of that.
- [113] I have borne in mind the fundamental proposition that, presumptively, the parties should share equally in the family assets unless to so order would be unfair. I have also taken into account the particular features of this matter, as set out in the previous paragraph.
- [114] I have approached this in a holistic way, having in mind the factors that apply to the analysis. I have not allowed myself to deal with the issue in a way that effectively traces the funds or seeks to unwind what the parties did.
- [115] In the result, I have concluded that fairness requires there be an order for reapportionment in favour of the respondent Mary Brebric.
- [116] In my view, the appropriate manner of dealing with the division of assets is to deal with them as three separate entities as described earlier: the Ayrshire property, the West Avenue properties, and the financial component.

- [117] As for the Ayrshire Property, presently in the claimant's name solely, it was bought largely with funds that the respondent had or obtained by pledging the security of other property she owned. Both of them lived there for a considerable time. Since the respondent left in 2006, the claimant has had exclusive use of it. I see no reason to deviate from the presumptive even division and order that its value will be apportioned equally between the parties. I will address the issue of value momentarily.
- [118] With respect to the West Avenue Properties, currently in the names of both parties, it is my view that the history of these assets, that they were owned and used by the respondent and Ivan as investment holdings well before the claimant came to Kelowna, and that they were brought to the relationship by the respondent free of any debt, are factors that would make an equal division unfair. The value of these properties will be apportioned in her favour. She will receive 65% of the value; the claimant will receive 35%. Again, I will speak to the value which is to be assigned shortly.
- [119] Finally, there are the financial assets. The claimant seeks an order granting him 50% of certain assets. Because the parties have already taken possession of these funds or items, he says that the proper remedy is a compensation order.
- [120] The financial assets in which he seeks a half-interest are the following:
1. The sum of \$220,000, which the respondent transferred from the joint Edward Jones account in November 2005, comprised of certain GICs and an initial payment which had been received for the sale of the KLO Property.
 2. The sum of \$306,000, which the respondent transferred from the Edward Jones account in December 2006. The claimant says these funds include the proceeds were received from the settlement on the Pandosy Property matter.
 3. The sum of \$182,000 which the claimant says represents the value of a mortgage which was received from the purchaser of the KLO Property, and which the respondent took for herself in June 2007.
 4. The sum of approximately \$125,000, which the claimant withdrew from the joint Edward Jones account in September 2005. In fact, the sum taken was approximately \$150,000, but the parties appear to be agreed that \$25,916 of that sum was paid to the architect Mr. Bevanda and should not be counted as having been received by the claimant.

In the result, the claimant says that the respondent took \$708,000 of assets which were theirs jointly, and he acknowledges that he took the sum of \$124,084 in a similar way. In his submission, all of those funds ought to be considered family assets and subject to an equal division.

- [121] Before dealing with the merits of the matter, there is something that must be said with respect to the fact that the parties, and I refer here particularly to the respondent, saw fit to unilaterally remove or take for herself, assets that were held jointly. The Court cannot for a moment condone or approve of the steps that the respondent took when she transferred

money into her own accounts or when she paid money to third parties. While one might have some measure of understanding for what she did, it was wrong and there should be no misunderstanding about that whatsoever. It was a clumsy and ill-conceived act of what I believe she saw as protecting what was hers from a man she had come to conclude was acting in his own interests and not hers. While she may have honestly thought that he was not acting in the spirit of full sharing, as she had, she took steps that were improper. As to the ultimate disposition of those funds, there is some doubt as to whether they are recoverable. I do not know what Mr. Johnstone's position in the matter is, whether he is minded to return to money to the respondent, or not. The same applies with respect to the funds transferred to Ana Mihala, the respondent's friend who, at the respondent's request or direction, transmitted them to the respondent's kin in Croatia to whom the monies were reportedly ultimately paid. However, that is of no relevance to the issue this Court has to decide. If the funds cannot be retrieved, that will, regrettably, be the respondent's problem to bear.

[122] Turning now with the substance of the matter, I am of the view that to apportion this "package" of assets equally between the parties would constitute a significantly unfair outcome. The fact that these funds or the vast majority of them emanated from holdings that the respondent had prior to reuniting with the claimant is a critically important factor. For example, I have concluded that the GICs that the parties held jointly largely originated with holdings that the respondent had prior to the decision to merge their financial affairs. The KLO Property was something that she and Ivan had purchased. As a consequence of Ivan's death and the insurance that was there, the respondent came to own clear title to that property herself. I accept that the claimant did some work with respect to maintaining and repairing that property, but the fact of the ownership is quite compelling. As for the Pandosy Property, that too was an asset that the respondent had acquired long before the claimant arrived in Kelowna; she had managed to put together resources to fund a joint purchase together with her brother Steve. The funds at issue, as they were in the Edward Jones account, represented in part the proceeds of the settlement which she had made in the dispute with Steve. There is nothing in the evidence to support the view that the claimant made any meaningful contribution to that asset or its acquisition. As regards the KLO Property mortgage, that too represented the proceeds of the KLO Property. My earlier comments apply to this asset as well. Finally, there is the matter of the proceeds of the Carion Road Property sale. As I understand, the Carion Road was a property that the parties received in satisfaction of funds that they had jointly loaned to the Nobles. My general observation that the bulk of the jointly held funds (from which the Noble loan would have been funded), were brought to the enterprise by the respondent.

- [123] In the final analysis, it is my conclusion that the matter of apportioning these financial assets must necessarily be informed in a meaningful way by the considerations I have attempted to set out earlier. Most specifically, it is my view that these items emanate from assets that were owned by the respondent and which she brought to the arrangement. In the circumstances, it would not be fair to apportion these equally.
- [124] It is my view that these funds should properly be reapportioned in the respondent's favour. I find that a proper reapportionment will provide her with 65% and the claimant with 35%. In the result, there is a total sum at stake in the amount of \$832,084. The respondent is entitled to \$540,855; she has in fact received \$708,000. Accordingly, she is required to pay the claimant the sum of \$167,145. That will result in him having a total of \$291,229.
- [125] Earlier I made mention of the values to be attributed to the two real estate assets.
- [126] Dealing first with the matter of the Ayrshire Property, there are two appraisals of its value in evidence. One was prepared in March of 2010 by Mr. Attree. His opinion is that the property has a value of \$545,000. There is also an appraisal in evidence prepared by Mr. Cherrille of North County Appraisals Ltd. His valuation is dated August 2012; his opinion is that the value of the property is \$470,000.
- [127] I have examined each of those. The Attree opinion is quite dated, and that is a consideration; otherwise I see nothing about it that enable me to say it is wrong. The Cherrille appraisal is more current. Taking both into account, it is my view that the value to be assigned for the purpose of the present order is \$500,000.
- [128] I turn now to the valuation of the West Avenue Properties. There are two quite different appraisals in evidence. Mr. Attree has prepared and submits two separate appraisals, one for each of the properties. His opinions, which are dated March 2010, attribute a value of \$356,000 to 454 West Avenue and \$351,000 to 464 West Avenue. There is a second appraisal in evidence, that of Mr. Chambers, of A1 Appraisals Ltd. The date of that is October 19, 2011. Mr. Chambers' appraisal is substantially higher; he values the properties together at \$1,170,000.
- [129] The disparity between these two appraisals is quite striking. In order to address that, I have examined the appraisals carefully, and have also had reference to an appraisal review which has been received in evidence. It was authored by Dennis Parkhill of the firm Kent-Macpherson. That document is dated November 18, 2011.
- [130] In Mr. Parkhill's view, there are deficiencies in the Chambers appraisal. He is of the view that the Chambers appraisal is unrealistically high.
- [131] I have read carefully the appraisal reports and the evaluation provided by Mr. Parkhill. I have concluded that the Attree values are not realistic. Mr. Attree has examined each of the properties individually, without consideration of the fact that they are effectively available as a parcel. He has not valued them on the basis of highest and best use, but rather on the basis of their present use. To my mind, that is not, in the circumstances of the matter,

especially reasonable. The reality is that the parties at bar clearly recognize these two properties are a developable package, and that is the long range intention. It is clear that any sale of these properties would be informed by that important feature.

[132] All that having been said, I am also of the view that the appraisal provided by Mr. Chambers is somewhat optimistic in its view of the matter. The specifics of its deficiencies are discussed by Mr. Parkhill. Notable among those is the fact that the Chambers appraisal appears to be predicated upon an optimistic view of the development market that may not completely accord with reality and that it seems to minimize the costs and risks that would be associated with utilizing the property as a development site.

[133] In the final result, it is my view that the proper value to be assigned to these two properties for the purpose of this litigation is \$1,050,000.

Divorce

[134] Both parties seek an order of divorce. I am satisfied that the necessary conditions have been proven, and accordingly there will be an order that the parties will be divorced, effective 31 days from today's date.

Summary

[135] The conclusions of this Court are as follows:

- i. The parties were spouses in a marital relationship for the purpose of this application, between 1996 and 2006 - ten years.
- ii. With respect to the division of family assets at issue, an equal division would be unfair; accordingly, the reapportionment is as follows:
 - The value of the Ayrshire Property, \$500,000, is apportioned equally between the parties.
 - The value of the West Avenue Properties, \$1,050,000, is apportioned in the respondent's favour. She will receive 65% of the value; the claimant will receive 35%.
 - The specific financial assets at issue, comprising four elements, will be apportioned in the respondent's favour. She will receive 65% of the value; the claimant will receive 35%.
- iii. There will be an order divorcing the parties, effective 31 days from today's date.

Costs

[136] The claimant has achieved a reasonable measure of success in this action, although not complete. Of course, the general rule is that the successful litigant is entitled to have his or her costs from the party who has not succeeded. My initial thought is that would govern the outcome here, unless there are relevant circumstances of which I am unaware. Presumably that will inform the costs issue. If counsel are unable to reach an agreement with respect to costs, arrangements may be made to have the matter brought back before me. If that is

necessary, I would ask counsel to make arrangements through the trial scheduling manager in Kelowna.

[137] In a related vein, if counsel require further direction with respect to measures necessary to implement these orders, I will make myself available to hear them.

"The Honourable Mr. Justice Williams"

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