

CANADA / JUDGMENT

Chapman v. Chapman

2020 BCSC 1029

COURT

Supreme Court of British Columbia

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2020 BCSC 1029 Chapman v. Chapman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chapman v. Chapman,

2020 BCSC 1029

Date: 20200710

Docket: E150548

Registry: Vancouver

Between:

Janet Sarah Chapman

Claimant

And

Edward James Chapman, Osborne Holdings Ltd., Page Ponsford Bros Ltd., 454740 B.C. Ltd.,
Chapy's Stores Ltd. Edward Chapman Ltd., and Edward Chapman Limited

Respondents

Before: The Honourable Madam Justice Jackson

Reasons for Judgment

Counsel for Claimant:

T.R. Bell

C. Baltazar, Articled Student

Counsel for Defendants:

D. Marzban, Q.C.

J. Reid

C. Heit

Place and Date of Trial:

Vancouver, B.C.

June 3-7, 10-14, 17-21, 24-28, 2019

August 2, 26, 2019

September 23-27, 30, 2019

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November 18-22, 2019

Place and Date of Judgment:

Vancouver, B.C.

July 10, 2020

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I. INTRODUCTION

- [1] The long-term marriage of the claimant Janet Chapman and the respondent Edward (Ted) Chapman has ended with an unfortunate amount of discord. The couple's two children are now adults, although one remains a child of the marriage. The issues for determination involve the financial consequences of their marriage breakdown: child support and property division.
- [2] The parties' positions on child support are not that far apart. The same cannot be said for property division. The parties' positions on whether and to what extent property is excluded, the value of family property, and how property should be divided, including who should retain certain property and whether certain items should be sold, differ significantly.
- [3] In addition to the traditional family law relief sought in this case, the claimant advances unjust enrichment claims and seeks equitable remedies against the corporate respondents. For clarity, I will refer to Ted Chapman as the "respondent". Any references to the "parties" in these reasons exclude the corporate respondents.
- [4] As many of the relevant individuals share a surname, to avoid confusion at times I will refer to them by their first names, without meaning any disrespect in doing so.

II. BACKGROUND

- [5] I will begin by setting out some of the facts as I have found them.

A. The Early Years

- [6] The respondent was 60 years old and the claimant 56 years old at the time of trial. The parties met in 1990. At the time, the respondent was living in a house on Cypress Street in Vancouver (the "Cypress Property") which was gifted to him by his parents, Hubert and Joan Chapman. He was working with and held shares in his family's companies. The claimant was living in a rented apartment in Vancouver ("Shannon Mews") and had a clothing business, first representing various clothing lines and then establishing her own line of clothing. The claimant initially worked full-time at her business, which steadily grew over the next several years to employ a seamstress and various sales staff. At first the business was operated out of the claimant's home. Later she rented a temporary business space and eventually, in 1994, she acquired a permanent space on West 4th Avenue in Kitsilano.

- [7] The couple became engaged on June 21, 1991. The respondent presented the claimant with a proposed marriage agreement but it was never signed. Nonetheless, in their discussions about the financial consequences of their marriage the respondent told the claimant his intention was that they would share everything equally after they had been married for ten years. The claimant understood the respondent's intention in that regard remained constant throughout their relationship and relied on that understanding. In November 1992 the claimant change the address on her driver's license to the Cypress Property address and the parties began living together at the Cypress Property around that time. In late 1992 the parties purchased a recreational property located on Little Lane in Sechelt, BC (the "Little Lane Property") for \$36,000 and took possession in January 1993. Each of the parties paid \$18,000 cash towards the purchase price. The Little Lane Property consisted of a lot with an old shack and was never used by the parties or their children during the marriage.
- [8] The parties married on December 21, 1995. They have two children. Their eldest child, Sarah, was born in September 1996. At the time of trial she was 23, had graduated from Harvard University, and was living and working in San Francisco, California. The parties' youngest child, Edward, was born prematurely in January 1999. At the time of trial he was attending full-time studies at McGill University.
- [9] In September 1996, around the same time Sarah was born, the respondent entered law school but withdrew within a few weeks of the start of term. The claimant returned to work at her business shortly after Sarah was born, setting up a swing in her shop so Sarah could be with her.
- [10] After several years, the couple decided to sell the Cypress Property and moved to Adera Street in Vancouver (the "Adera Family Residence"). The Adera Family Residence, and all furniture, was purchased on July 16, 2003 for \$1,125,000 and the parties took possession during the fall of that year. The Adera Family Residence was registered solely in the respondent's name.
- [11] The parties acquired other real property during their marriage, including a commercial property on Ontario Street in Vancouver (the "Ontario Street Property"). In October 2007 they purchased a recreational property on Point Road in Gibsons, BC (the "Point Road Property") for \$905,000. The Point Road Property was registered solely in the respondent's name.
- [12] During their marriage the claimant bore primary responsibility for the maintenance and management of the household and the care of the couple's children. The respondent managed all the family finances and had exclusive signing authority on all bank accounts and credit cards, with the exception of one credit card issued to the claimant. She was required to account to the respondent for even the smallest expenditure by providing receipts.

- [13] The respondent exerted his control over the claimant's freedom during their marriage in other ways as well. The claimant was not provided with keys to the pool house at the Adera Family Residence, the Palm Desert Property (defined later in these reasons), the Point Road Property, or the Ontario Street Property. The respondent had the family's mail redirected to the Ontario Street Property.

B. The Chapman Family and its Companies

- [14] In 1890 the respondent's great-grandfather came to Vancouver and bought into a retail business which he eventually took over and later incorporated as Edward Chapman, Ltd. ("ECL"). He was succeeded in ECL by the respondent's grandfather, and thereafter by the respondent's father, Hubert Chapman, who ran ECL until his death.
- [15] During Hubert Chapman's reign, ECL sold a variety of items including luxury vehicles, boats, antiques, and clothing. ECL's retail store (the "Chapman Store") was originally located on Hastings Street in Vancouver, then moved to Granville Street. When the Granville location was expropriated to permit construction of the Pacific Centre, the Chapman Store moved to a new location on West Pender Avenue (the "Pender Property") where it remained until it closed its doors in February 2017.
- [16] In addition to ECL, Hubert had other corporate holdings, including the respondent Osborne Holding Ltd. ("Osborne"), which held the Pender Property. In the mid-80s, Hubert caused Osborne to acquire another commercial property located on West 3rd Avenue in Vancouver, BC (the "West 3rd Property"). The corporate respondents Page Ponsford Bros. Ltd. ("Page Ponsford") and 454740 B.C. Ltd. ("454") were additional holding companies and there was some suggestion they may have held some of the real property at various times. Their incorporation is addressed later in these reasons. I will refer to the corporate respondents (as they existed at various points) collectively as the "Family Business Corporations", although ECL[1] was the only operating company.
- [17] The respondent is the youngest of three siblings (the "Chapman Children"). He is estranged from his sisters Wendy and Elizabeth (Liz) Chapman. Both Wendy and Liz testified for the respondent at trial. All of the Chapman Children worked for ECL. The respondent began working in the Chapman Store part-time as a teenager. After graduating from high school in the late-70s, he attended Langara College for two years but did not obtain a degree or diploma. He then briefly returned to ECL but by the late-80s became bored and registered for courses in the Faculty of Commerce at UBC. He left after one year. The respondent pursued various undertakings in the following years, including renovating a house and restoring a boat. Throughout this time, the respondent's sisters worked at ECL.
- [18] In 1990 the respondent again returned to work at ECL. In doing so he was under the impression all the Chapman Children would be on equal footing vis-à-vis the running of ECL. However, by the fall of 1991 problems between the Chapman Children developed and the respondent ceased working at ECL that same year. After his departure from ECL the

respondent worked for Osborne as a personal assistant to Hubert, who travelled frequently. His healthy salary continued to be paid through ECL. At this time, most of the cash was in ECL but the real property was held by Osborne.

- [19] Although ECL and Osborne were legally different entities, the respondent viewed them as a unified operation, indistinguishable from each other or himself. It was a pattern that would continue.

C. The Chapman Estate

- [20] Effective in 1966, Hubert Chapman settled a discretionary family trust in which two shares in Osborne were held in trust for the benefit of each of the Chapman Children, to be distributed 25 years later (the "Chapman Family Trust").
- [21] Sometime around 1982, the respondent acquired a Class A voting share in the respondent Chapy's Stores Ltd. ("Chapy's").
- [22] Effective in 1987, Hubert reorganized the capital of ECL and as part of that reorganization each of the Chapman Children received 30 Class B shares in ECL, for which they paid ECL \$30, and were gifted 28 Class A shares in ECL by Hubert. Hubert retained the remainder of the 950 issued and outstanding shares of ECL. On March 17, 1987, the Chapman Children entered into an agreement with ECL and Hubert for valuable consideration (the "ECL Share Transfer Agreement"). The ECL Share Transfer Agreement included the following term under the heading "Transfer of Shares to a Holding Company":

No shareholder shall sell, assign or transfer his or her shares in [ECL] to any corporation whatsoever.

- [23] In September 1991 the Chapman Family Trust was distributed to the Chapman Children with each ultimately receiving 100 Class A shares in Osborne for which they paid \$10, in full satisfaction of the trust. Hubert held 300 Class B shares in Osborne.
- [24] Hubert Chapman died on January 17, 1993, leaving a will dated February 16, 1978 and four codicils, dated February 16, 1978, September 3, 1986, September 7 or 17, 1986, and November 6, 1991 (collectively "Hubert's Will"). The respondent was initially appointed as one of three executors under his father's will along with both his sisters, however he was removed as an executor through the November 6, 1991 codicil and replaced with Douglas Walker, Hubert's personal and corporate accountant.
- [25] Under Hubert's Will each of the Chapman Children received a testamentary gift of \$50,000 and his wife, Joan Chapman, received all furniture and household effects and articles of domestic or personal use or ornament, including any automobiles belonging to him. Hubert's remaining assets were placed in a spousal trust for Joan's benefit during her lifetime, and following her death were to be distributed in equal shares between the Chapman Children. At the time he died Hubert held 666 Class A shares, 10 Class B shares, and 100 Class C shares in ECL and 300 Class B shares in Osborne.

- [26] In an effort to minimize estate tax, in the fall of 1993 the trustees of Hubert's estate, with the consent of the respondent, caused the respondent 454 to be incorporated and all of the estate's shares in ECL to be sold in exchange for shares in 454. The overall transaction included an assignment to 454 of bank deposits and indebtedness owed by Osborne to ECL.
- [27] Joan Chapman died on October 29, 1994. At the time of her death, her assets included the home she had shared with Hubert on Angus Drive in Vancouver (the "Angus Property") and the chattels left to her by Hubert. In addition to shares in the Family Business Corporations, Hubert and Joan's estates included the Angus Property and its contents, and two vacation properties--one located on the Sunshine Coast ("Hopkins Landing") and one located at Sandpiper in Palm Desert, California (the "Palm Desert Property"). The Angus Property was sold and each of the Chapman Children received an equal share (approximately \$400,000) of the proceeds of sale sometime around May 1996 (the "Angus Proceeds").
- [28] None of the beneficiaries contested or sought variation of either Hubert's Will or Joan's will.
- [29] After their parents died, the rift between the respondent and his sisters intensified and the distribution of the estate among the Chapman Children did not go smoothly. There were still disputes about who would get various chattels from the Angus Property twelve years after their mother's death, and the respondent was still complaining about differences as small as \$5 in distributions of the estate among the Chapman Children. Although the respondent's evidence was his sisters were at fault for acting unreasonably during the distribution of the estate, when asked he could not provide any specifics about their alleged unreasonable behaviour.
- [30] An auction of Hopkins Landing and the Palm Desert Property took place among the Chapman Children in August 1999 (the "Sibling Auction"). The respondent's sisters won Hopkins Landing with a bid of \$800,000, resulting in approximately \$267,000 CAD for the respondent's one third interest (the "Hopkins Inheritance Proceeds"). The respondent won the Palm Desert Property with a bid of \$115,000 USD. The respondent concedes the prices paid for the properties were above their fair market value arising from the Chapman Children's sentimental attachment to both properties.
- [31] Once again there was conflict among the Chapman Children over the contents of Hopkins Landing and the Palm Desert Property, which continued for years after the Sibling Auction.
- [32] After Hubert died the respondent was effectively a minority shareholder, as his sisters cooperatively ran ECL and did not want him involved. The respondent stopped receiving a salary. Eventually he reached an agreement with his sisters that involved a much more limited role in ECL and a much smaller salary than what he had received while Hubert was alive. From that point forward, until the end of 1996, the respondent's role was limited to keeping ECL's vintage cars operable, doing payroll and picking up rent cheques from the West 3rd Property once a month, putting up the Christmas decorations on the roof at the Pender Property each Christmas, and doing odd jobs and maintenance. The respondent had no other employment outside of ECL.

- [33] All of this was unsatisfactory to the respondent and he wanted to receive his share of money out of the Family Business Corporations. In June 1996 the respondent initiated litigation alleging he was an oppressed minority shareholder whose sisters were unwilling to buy him out.

D. Acquisition of the Family Business Corporations

- [34] By letter dated September 18, 1996, the respondent's sisters presented him with a shotgun offer that included two alternatives (the "Shotgun Offer"). Under option one of the Shotgun Offer, the respondent's sisters would purchase the respondent's shares in ECL, Osborne, and 454 for \$949,725, a value they arrived at based on a professional valuation by Deloitte & Touche and appraisals of both the West 3rd Property and the Pender Property. Under option two, the respondent would purchase his sisters' interests for \$1,899,450.
- [35] The respondent, in consultation with the claimant, chose option two. By way of a share purchase agreement dated December 23, 1996, Page Ponsford (incorporated by the respondent for this purpose) purchased his sisters' interests in ECL, 454, Osborne, and Chapy's (the "Family Business Acquisition"). The claimant was not a signatory to the share purchase agreement. The Family Business Acquisition was financed with a \$1.4 million non-revolving loan, guaranteed by Osborne and supported by a mortgage on and assignment of rents from the West 3rd Property, guarantees by 454 and the respondent personally, and a mortgage in excess of \$600,000 on the Cypress Property for which the claimant was required to sign as covenantor. Everything located at a business location, including at the Pender Property, was considered a business asset. The respondent prepared a complete photo inventory of the contents of the Pender Property before the Family Business Acquisition closed.
- [36] When the Family Business Corporations were acquired in 1996, ECL operated Chapman Stores on Pender Avenue, and in Kerrisdale, Oakridge, and the Westin Bayshore. Between 1996 and 2001, the claimant worked full-time at ECL while simultaneously trying to keep her own business afloat, including the period following Edward's premature birth. She worked at the various store locations and went on buying trips, yet received almost no income for her work. She continued to have primary responsibility for the parties' home and their children. In 2001 the claimant closed her business on West 4th Avenue and focussed 100% on ECL.

E. Financing

- [37] Although additional Chapman Stores were later opened, ECL's revenues dropped and expenses increased dramatically almost consistently after the Family Business Acquisition closed. One by one the Chapman Stores were closed due to increasing losses. One location (the Granville store) was subleased because it was more profitable to do so.

- [38] In addition, over the course of their marriage the parties consistently lived beyond their means. Their children attended private schools and there were various clubs, lessons, vacations, and other expenses. More money was always needed to cover the expenses associated with running the home as well as the Family Business Corporations.
- [39] To make matters worse, ECL became involved in litigation in the early 2000s. This led to significant legal fees being incurred for an unsuccessful trial and appeal.
- [40] To stem the tide of unmet expenses (both family and corporate) and growing debt, there was a perpetual series of financing and refinancing to access equity accruing in the Cypress Property, the Adera Family Residence, the Palm Desert Property, the Little Lane Property, and the Point Road Property. The respondent also provided \$2,000,000 in personally guaranteed promissory notes. The increase in value of the Adera Family Residence and the Point Road Property permitted the mortgage amounts on those properties to be increased, with the proceeds being used to service the Family Business Corporations' expenses and protect the corporate assets. The respondent also arranged for and began taking cash advances on numerous personal credit cards with low introductory rates of interest because he viewed it as the cheapest way of borrowing money.
- [41] At his examination for discovery the respondent conceded funds advanced from the Adera Family Residence were used to preserve and maintain the Family Business Corporations, including for purposes of paying property taxes on the corporately held properties and making mortgage payments on the commercial loans.
- [42] The respondent's approach was to harness equity from family property and take on family debt, instead of accessing the equity available through the Family Business Corporations. The corporate and family finances and assets became inextricably interwoven. The respondent drained much of the equity in the family property and took on family debt to prop up the corporate interests registered exclusively in his name.

F. The Parties Separate

- [43] The parties separated in March 2014 but remained living in the same house until September 2015.
- [44] Following the separation, the respondent obtained cash advances of approximately \$60,000 on the claimant's MBNA credit card.
- [45] By virtue of a consent order dated July 15, 2015, the respondent was to list the Point Road Property and the Little Lane Property for sale. By April 2016, he had still not done so. As a result, on April 12, 2016, Justice Loo ordered the claimant to have sole conduct of sale of the Little Lane Property and the Point Road Property. The Point Road Property sold on May 30, 2016. The Little Lane Property sold in February 2017.

- [46] After separation the parties agreed to sell the Adera Family Residence. By an order of Justice Russell made September 3, 2015, the parties were to agree on household contents each of them would retain before the Adera Family Residence sold. All household contents that remained in dispute (the "Disputed Items") were to be removed from the Adera Family Residence and placed into storage units. Keys to the storage units were to be held by parties' counsel on their undertakings not to release the keys to their clients except by mutual consent or court order. The parties were ordered to cooperate on the removal and storage of the items from the Adera Family Residence. Fees for moving and storing the Disputed Items were to be paid from the net sale proceeds. It is clear that Russell J.'s order regarding the payment of storage fees was premised on an understanding that there would be compliance with the remainder of her order, including that the Disputed Items would be removed from the Adera Family Residence and stored under the terms she directed. That did not happen.
- [47] Although the claimant agreed to retain whatever moving company the respondent wished, the respondent would not permit the Disputed Items to be removed from the Adera Family Residence. Possession of Adera Family Residence was to be relinquished on September 15, 2015. Without the claimant's knowledge or consent, the respondent unilaterally rented the Adera Family Residence from the purchaser. The Disputed Items were not removed and stored as Russell J. had ordered. The Adera Family Residence has been used by the respondent as a storage facility for the Disputed Items ever since. He also spends a great deal of time there, including sleeping there. Photographs tendered at trial show a well-stocked refrigerator. The cost of maintaining the Adera Family Residence to store the Disputed Items has been \$200 per day, or roughly \$6,000 per month, plus other household expenses including utilities. Since at least December 31, 2015, the respondent has had exclusive access to the Adera Family Residence and the contents stored there.
- [48] A similar situation unfolded with the Pender Property, which sold for approximately \$19,000,000. The claimant sought transparency with respect to the sale, but the respondent completely excluded her from the process and refused to share information with her. Although vacant possession of the Pender Property was to be delivered to the new owners in February 2017, by that date the massive amount of chattels housed there had not yet been removed. Vacant possession of the Pender Property was not delivered until August 2017.
- [49] Eventually the respondent arranged for the contents of Pender Property to be moved to the Adera Family Residence, the Ontario Street Property, and a storage space on Granville Street (the "Granville Storage"), which the respondent rented without discussing it with the claimant or seeking her consent. The Granville Storage cost was \$3,500 plus GST per month for the first year, beginning in February 2017 and \$5,000 per month plus GST thereafter. The Pender Property contents apparently remain spread across these three locations as at the time of trial. The chattels belonging to ECL[2] and those belonging to the family have been irreversibly intermingled.

- [50] During his testimony about these storage rental agreements I asked the respondent who had rented these properties, to which he responded "me". In response to my further question about whether he had personally contracted to rent these properties, he indicated that in fact "the company" had entered into the lease agreements for both the Granville Storage and the Adera Family Residence. In response to my seeking further clarification regarding which company, the respondent's evidence was that he "thought it would be" ECL.
- [51] The respondent has been the sole key holder for the Palm Desert Property since at least September 2015 and the claimant has not been permitted to attend there except for very limited periods under the strictest of conditions, as insisted on by the respondent.
- [52] The respondent is the sole registered shareholder of both ECL, which owns the West 3rd Property and Ontario Street Property, and Chapy's, which has no discernible assets based on the evidence led at trial.
- [53] There have been several interim distributions to the parties under various court orders. Approximately \$4,798,571 remains and is currently held in in trust with the respondent's counsel, consisting of:
- the remaining proceeds of the sale of the Point Road Property (\$494,031) ("the Point Road Proceeds");
 - the remaining proceeds of the sale of the Little Lane Property (\$53,098) (the "Little Lane Proceeds");
 - the remaining proceeds of the sale of the Adera Family Residence (\$640,049) (the "Adera Proceeds");
 - the corporate Tax Refund (defined later in these reasons) (\$444,910.05);
 - interest earned on the Tax Refund (\$5,250); and
 - the remaining proceeds of sale of the Pender Property (\$3,161,233).

III. CREDIBILITY

- [54] The parties' version of various facts and events differ widely, including their respective testimony involving what constitutes family property and the claimant's contributions to the Family Business Corporations. Therefore, I must consider the reliability and credibility of the claimant's and the respondent's evidence in order to resolve conflicts in the evidence on those critical points.

A. Applicable Legal Principles

- [55] Both parties allege the evidence of the other on critical points is not credible.

- [56] Reliability and credibility are related but distinct concepts. Credibility considers the truthfulness of a witness' testimony; reliability considers its accuracy. If a witness' evidence on a point is not credible, it follows it is unreliable: *United States v. Bennett*, 2014 BCCA 145 at para. 23, citing *Doherty J.A. in R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526A (C.A.).
- [57] Factors to consider in assessing a witness' credibility include the firmness of their memory, whether the witness' evidence harmonizes with independent evidence that is accepted, whether the witness changes their testimony between direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and, with caution, their demeanour: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.
- [58] The credibility of a witness must be assessed for its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable": *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357 (B.C.C.A.).

B. The Claimant's Testimony

[59] The respondent argues the claimant's evidence lacks credibility for the following reasons:

- the claimant's evidence was internally inconsistent on one point, namely during her direct examination she testified she had never hit the respondent, but agreed during cross-examination that she had slapped the respondent across the face in front of witnesses at a family dinner;
- the claimant's testimony on one point is uncorroborated, namely her evidence that the respondent used the line of credit secured against the Cypress Property to fund the purchase of his sisters' interest in the Family Business Corporations;
- the claimant's evidence that she had no bank account of her own during most of their marriage is unreasonable in light of the fact the claimant did not pursue interim spousal support and appealed an interim distribution order;
- the claimant's evidence that she signed both a credit card application that included false information about her income and a cheque, without realizing the import of doing so, is unreasonable in light of the fact the claimant otherwise presented as an astute businesswoman;
- the claimant should be taken as being complicit in the respondent's deceptions regarding his personal and corporate finances; and
- the claimant's evidence that the respondent physically abused her during their marriage was denied by the respondent and is inconsistent with her testimony regarding her own behaviour during an event that took place on September 28, 2018.

[60] The evidence of the parties conflicts with respect to the events of September 28, 2018. According to the claimant she was out for dinner with a man she had been seeing and afterwards they returned to his home. Her evidence is while she was inside the house, she looked up and saw the respondent looking at her through a window that had no blind. The

claimant testified she opened the front door and the respondent fled and hid in the bushes further up the street when the claimant pursued him. Her evidence is that eventually the respondent emerged and said "we're still married". The claimant's evidence was that the respondent appeared very unstable. The claimant had never provided her boyfriend's address to the respondent.

- [61] The respondent admits he intentionally drove to the home of the man he knew the claimant was dating at the time, parked far away, got out of his car and approached the house. However, he says he remained on the sidewalk and denies he looked in the window or hid in the bushes. He says his statement, that the couple remained married, was taken out of context.
- [62] The respondent argues I should infer the claimant lied about being physically abused by him during their marriage because her pursuit of him on September 28 demonstrates she did not fear him.
- [63] First, on the balance of probabilities I find the claimant's version of events is more plausible and is to be preferred. Second, I do not view the claimant's pursuit of the respondent that night to be a reliable indicator that she was not physically abused by the respondent during their marriage. The claimant's evidence was that over the course of their marriage, on several occasions, the police were called by either the claimant or the couple's daughter Sarah when the respondent was physically violent towards her. The respondent did not call Sarah to refute that evidence. Given that at trial the claimant sought an extension of the protection order issued by Master Muir on October 16, 2018[3], such evidence would not have been collateral.
- [64] The claimant candidly acknowledges her evidence was not perfect in all respects, but argues her evidence harmonizes with other evidence which is either not contested or which I should accept and was not deficient in any significant respect. I agree.
- [65] Although the claimant certainly had a narrative which she was interested in putting forward consistently during her testimony, I find her evidence is reasonable and reliable. She did not appear to harbour any resentment towards the respondent and was candid in her admission he was a kind and loving father to their children. She spoke of the breakdown of their marriage as a point of sadness rather than with anger. When presented with the suggestion she had slapped the respondent once at a family dinner, she readily conceded she had. Her evidence overall hung together and harmonized with other evidence including the testimony of collateral witnesses who had no personal stake in the outcome of the trial. I decline the respondent's invitation to infer the claimant was complicit in the respondent's financial deceptions because doing so would require pure speculation.

- [66] The claimant was recalled to give evidence on several specific points. That portion of her testimony was not without its flaws. She was reluctant to answer a question involving what she understood when she signed a particular cheque. But her reluctance supports her overall credibility in my view; while she tried to avoid giving a direct answer, she was not willing to give a false one.
- [67] I find the claimant's evidence was not manipulated or fabricated in an effort to support her claim. I find the claimant's evidence to be credible.

C. The Respondent's Testimony

- [68] The claimant argues the respondent's evidence is rife with deficiencies that ought to lead me to reject his evidence almost in its entirety. She submits the respondent's evidence is internally inconsistent, unreasonable, and does not harmonize with the preponderance of other evidence which I should accept. She submits the respondent's previous deceitful behavior undertaken for his own financial advantage, his refusal to make reasonable concessions, and his demeanor at trial are all reasons to reject his evidence.
- [69] The respondent's submissions did not focus on endeavouring to support his own credibility.
- [70] A number of factors have negatively influenced my assessment of the respondent's credibility, and correspondingly have undermined the reliability of his evidence and the weight I can place on it.
1. The Events of October 15-16, 2018
- [71] At some point the claimant had a security camera system installed in the home she was renting in 2018. Between 11:00 pm on October 16 and 4:00 am on October 17, 2018, the respondent attended the claimant's residence multiple times. His attendance was captured on the claimant's security surveillance camera. He did not knock. He did not try to get the claimant's attention. Instead, he snuck around her home, peering into the windows and taking photographs with his mobile phone. One of these attendances lasted approximately 40 minutes, during which the respondent pulled his sleeve over his hand and attempted to open the door of the claimant's residence. At some point the claimant became aware the alarm had been triggered and called 911. The video surveillance shows the respondent moving off the claimant's front porch and around a corner as the police arrive.
- [72] The respondent does not dispute the events, and he acknowledges his attendances were a lapse in judgement. However, he gave inconsistent evidence about whether and why he believed the claimant was not home. The video reflects he had tiptoed and covered his hand with his sleeve when trying to enter, and I find he did so in order to conceal his presence and avoid detection. This is deceitful behavior. Although he testified he did not take steps to evade the police when they arrived, I find his evidence on that point unpersuasive. Finally, the video reveals he took many photos but only a few were disclosed. I find his explanation that he deleted them to be inconsistent with his life-long pattern of never getting rid of

anything.

2. The Respondent's Demeanour and Attitude

[73] There was a stark contrast between the respondent's demeanour during his direct and cross-examination. On direct examination he appeared calm, mild-mannered, and quiet. However, during his cross-examination he was frequently agitated and his acute anger bubbled to the surface on several occasions. His testimony about the claimant was delivered with seething, barely controlled disdain. His testimony revealed a clear and visceral animosity towards her. He referred to the claimant as having "a malicious, vindictive attitude". His evidence was that he believes she wants to sell everything just to spite him.

[74] The claimant disclosed no ill will towards the respondent during the trial. Despite the respondent's position to the contrary, at the outset of the litigation the claimant took the position the chattels should be divided in a way that allowed the respondent to receive those things that are important to him.

[75] The respondent's strong, negative emotions towards the claimant make me doubt the objectivity of his evidence.

3. The Respondent's Delay in Particularizing His Excluded Property Claim

[76] Since at least April 2016, the claimant has been asking the respondent to identify what property he claims as his excluded property. The respondent did not particularize his excluded property claim until the second day of his closing submissions. This delay gives me concern that either the basis for the respondent's excluded property claim was unknown or uncertain until that time, or the respondent intentionally withheld the information in an effort to prejudice the claimant's ability to respond. If the former, it suggests the foundation of the excluded property claim was weak. If the latter, it suggests improper motives.

4. Post-CPL Mortgage

[77] When the claimant filed her notice of family claim in February 2015, she also caused a CPL to be registered against title of the Adera Family Residence to protect her asserted interest. After the parties separated, the respondent asked the claimant to lift the CPL in order to allow him to access equity in the Adera Family Residence by registering a mortgage. When he could not reach an agreement with the claimant, rather than making an application to the court, the respondent proceeded to register a private \$700,000 mortgage against the Adera Family Residence behind the CPL without the claimant's knowledge or consent.

[78] The respondent subverted the claimant's wishes and encumbered property in which he acknowledges the claimant has a beneficial interest, because doing so furthered his financial goals. I am concerned his evidence at trial was tailored to favour those same objectives at the expense of the truth.

5. Fabricated and Otherwise Unreliable Financial Statements and False Representations to Financial Institutions

- [79] On multiple occasions, over span of many years, the respondent presented financing applications containing information about his assets and income which he knew to be false, for the purpose of securing financial benefit. He did so in 2005 with respect to a mortgage from Washington Mutual Bank in the amount of \$230,750 USD in relation to the Palm Desert Property. He represented that his monthly income was \$20,000 and he held the Pender Property personally, neither of which was true. He did so in 2010 with respect to financing from People's Trust Company in the amount of \$4,450,000 borrowed by Osborne and the respondent personally, secured against the Pender Property.
- [80] There is evidence that the respondent made notes of conversations he had with CIBC, which I find were intended to serve as an aide-memoire to keep track of the false information he had provided to them. The respondent also submitted a credit card application which he knew contained false information. The respondent characterized some of the false information he provided as "notional representations".
- [81] People can change. However, rather than being ashamed or at least regretful of his past fraudulent actions, at trial the respondent testified he continues to believe the financial gain justified his deceit:

Yeah, unfortunately I felt at the time I had to do this to retain our properties and to do what I did and thankfully I did do it. Crucify me now for it, but the end result was remarkable and I did it for my family, I didn't do it for me, I didn't do it for personal gain for me, I did it for my family, I did it for Janet, and I did it for my children, not just for me.

- [82] The financial statements relied on by the respondent are unreliable. All are unaudited, some are missing the actual notes to reader, and most were prepared after the parties separated. There are debts shown as owing to and from 454 and Osborne and significant reductions in 'due to shareholder' accounts which the respondent could not explain. Some statements were prepared by the respondent himself and contained significant false information, but he nonetheless presented them to financial lenders for the purpose of gaining financial benefit. Others were prepared by accountants, mostly post-separation, relying on information provided solely by the respondent.
- [83] The respondent's ongoing attitude that deceit is warranted where his financial interests are at stake, and that the ends justify those means, lead me to doubt the truth of his evidence where his financial interests are at risk. The respondent's financial interests are at the heart of the dispute in this case.
6. The Respondent's Exaggeration of his Role in ECL
- [84] During his testimony the respondent was prone to exaggerate his role in the operation of ECL throughout the course of the couple's marriage, while simultaneously minimizing the claimant's contribution. Because of the claimant's claim for an entitlement to spousal

support and her trust claims, evidence on this point is important. The respondent's evidence at trial was that after acquiring his sisters' shares of the Family Business Corporations, he largely ran things alone. The respondent's testimony is inconsistent with the evidence of the claimant, the claimant's brother, the respondent's sisters, other collateral witnesses, and his own examination for discovery evidence during which he admitted both he and the claimant were working full time with ECL in 1997 and that the claimant's involvement continued thereafter. I reject his trial evidence on this point completely.

7. The Respondent's Involvement in the Collins/Timeline Reports

[85] Michael Collins of Timeline Asset Services was retained by the parties to provide an expert appraisal of chattels stored at the Adera Family Residence (following the lease back of that property by the respondent), as well as items located at the Pender Property and the Granville Storage. The respondent was in exclusive control of the household items which Mr. Collins was to appraise and he controlled the appraisal process. In doing so the respondent directed Mr. Collins with respect to what property was family property, the respondent's own property, and the claimant's own property, if any. The respondent's description of his own property included items that predated his relationship with the claimant, were clearly her personal property, and that the claimant had never gifted to him, including a photograph of her on a bicycle at Expo 1963 taken by her mother who is now deceased. The respondent paid additional, undisclosed fees to Mr. Collins in order to be able to have access to the boxes of chattels. In addition, there were communications between the respondent, his counsel, and Mr. Collins, which the respondent refused to disclose to the claimant. Mr. Collins prepared two draft reports, one with respect to the Adera Family Residence and one for the items at the Pender Property and the Granville Storage (the "Timelines Reports"). Master Taylor dismissed the respondent's application for an order finalizing the Timelines Reports on April 9, 2019 because the respondent's actions had resulted in a valuation process, and draft reports, that were unfair to the claimant.

8. Undisclosed Tax Refund

[86] By order pronounced by Justice Silverman on October 11, 2016, the net proceeds of the sale of the Pender Property were to be held in trust with the respondent's counsel's firm. However, in January 2019 the respondent received a \$444,910.05 corporate tax refund related to the Pender Property on behalf of ECL (the "Tax Refund"), which he deposited into ECL's bank account and then invested. The respondent did not disclose the refund documents in a timely way, either to the claimant or to Patti Daum of Blair Mackay Mynett, who was retained to value the corporate shares by orders of Loo J. dated February 14 and 27, 2018, despite the fact the Tax Refund was relevant to the share valuation. He did not provide the documents until late April 2019, on the eve of a scheduled mediation between the parties. I wish to make clear there is no suggestion counsel for the respondent had been previously aware of the Tax Refund. Fortunately, the claimant's counsel was able to review the documents before the mediation, became aware of the refund, and brought it to the attention of the respondent's counsel. The respondent then withdrew the Tax Refund

amount from the GIC and provided it to his counsel's firm along with the interest which had accrued by that date.

[87] This was one of multiple examples of the respondent failing to make complete or timely disclosure as required by the Supreme Court Family Rules [Rules].

9. Undisclosed Pender Penalty

[88] The respondent's evidence at trial was that no demand had been made for any payment arising out of the failure to deliver vacant possession of the Pender Property on time. However, the documents produced by the respondent very late in the day tell a different story. Approximately five months after this trial began and after the claimant had closed her case, claimant's counsel was provided with documents reflecting that the developer is seeking \$301,457 as indemnification for losses incurred due to the late delivery of the Pender Property in vacant condition. The documents also reflect that between March and September 2017, the developer delivered invoices to the respondent for unpaid rent and contribution to other expenses and issued demand letters for payment of rent, interest, and that the respondent leave the premises. The respondent offered no satisfactory explanation for the discrepancy between his testimony and the documents. I find the respondent was aware of the developer's demand for payment at the time the invoices were delivered in 2017.

10. Further Failures by the Respondent to Provide Disclosure

[89] The sale of the Pender Property included a bonus payable to the vendor if the developer was able to achieve a certain density (the "Density Bonus"). The requisite density was later achieved and the respondent was so advised prior to the start of trial. However, the respondent did not disclose ECL's entitlement to the Density Bonus and the claimant did not learn of it until after she had closed her case. Patti Daum was also not advised, despite the information being relevant to the valuation of the ECL shares.

[90] As early as November 2016 the claimant was taking steps through the litigation process to determine the extent of the capital dividend account ("CDA") in ECL. A letter from the CRA to the respondent dated May 30, 2018, confirms ECL had maintained a corporate dividend account since 2006, and that it contained \$3,274,516.00 at that time. The respondent did not disclose the information about this significant tax shelter to the claimant until ordered to do so by Master Taylor in April 2019 following a two-day contested hearing. Thereafter, Patti Daum was able to account for the benefit of the CDA in her share valuation, which prevented the entire benefit being left to the respondent had he simply compensated the claimant in cash.

[91] The respondent took steps in this litigation to maintain exclusive control of all documents kept in the corporate offices at the Pender Property. By order of Justice Loo dated April 12, 2016 following a contested application, the claimant was permitted to attend at the Pender Property, accompanied by a lawyer or articled student from her lawyer's firm, to inspect its

contents. The inspection was limited to no more than six hours per day for a maximum of two days. The condition of the property and the chaos of the contents was known to the respondent and he would have known the time allotted to the claimant was woefully insufficient to allow her to make any reasonable assessment of the contents, much less to enable her to identify all of her personal items and her other excluded property. The order also specified that the claimant was not permitted to inspect any documents. By further order of Loo J. dated November 24, 2016, the respondent was ordered to preserve all documents related to these proceedings including those stored at the Pender Property.

- [92] After his parents died, the respondent prepared a set of photographs documenting the entire contents of the Angus Property. Similarly, when the Family Business Acquisition took place in 1996, the respondent prepared a complete photo inventory of everything that was included. After the Family Business Acquisition closed the respondent went through everything and relied on those photographs to assess whether everything had been received. This photographic record was in addition to inventory documents which were regularly prepared for ECL. Those photographs were stored in a safe at the Pender Property to which only the respondent had access. None of those two sets of photographs, or the inventory documents, were disclosed to the claimant during the litigation or produced at trial, despite the fact they would have been the easiest and most reliable means of identifying the source and timing of the acquisition of the various chattels.
- [93] The corporate financial statements, mortgages, and leases were all stored in an office at the Pender Property, the contents of which the respondent ultimately moved without the claimant's involvement. These documents were also not disclosed by the respondent as part of his disclosure. At his examination for discovery the respondent's evidence was that he had not been able to find them.
- [94] The respondent's evidence that he could not locate various documents because there was no system for doing so is at odds with something that happened during the trial. In less than 24 hours, the respondent was able to locate and photograph a silver dish he understood John Richter had been referring to during his testimony. The silver dish did not appear in any photograph that had been disclosed. During the trial, the respondent also produced financial statements from the claimant's business, which she had been unable to locate, and which the respondent had not produced as part of his pretrial disclosure. I find the respondent's evidence that he has been unable to locate the missing documents to be improbable.

11. Conclusion on the Respondent's Credibility

- [95] Beyond all of the circumstances I have described above, there were also numerous internal inconsistencies in the respondent's evidence, both between his direct and cross-examination and between his trial and discovery testimony. By agreement between the parties, some of the respondent's examination for discovery evidence was read in, not for the truth, but to establish the respondent had made previous sworn statements inconsistent with his evidence at trial.
- [96] The respondent denied suggestions which were inconsistent with his narrative, but when challenged would admit he had no actual memory of the underlying facts.
- [97] The respondent has repeatedly demonstrated he will engage in deceitful behavior when he believes it is in his financial interest to do so. This trial has pitted his financial interests against the claimant's. He has motive to lie.
- [98] For all the reasons given, I find the respondent's evidence touching on financial matters, including his income, the nature and extent of his excluded property, and the value of family property, is not credible. Where his evidence conflicts with that of the claimant, I accept her version of events without hesitation. Where his evidence related to his excluded property claim is unsupported by documents or collateral witnesses, I reject it because it is neither clear nor cogent.

IV. CHILD SUPPORT

- [99] Although custody, guardianship, parenting arrangements, and parenting responsibilities were initially part of the claim, they are no longer live issues due to the age of the children. However, the claimant seeks retroactive child support for Sarah and Edward and ongoing child support for Edward while he remains a child of the marriage.

A. Which Statute Applies - the Divorce Act or the Family Law Act?

- [100] The claimant seeks child support under both the Divorce Act, R.S.C. 1985, c. 3 (2nd. Supp.) [DA], and the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Section 15 of the DA and Part 7 of the FLA both deal with child support obligations. Section 146 of the FLA defines "child" to include "a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians". Section 2 of the DA defines "child of the marriage" in similar terms.
- [101] Where the court makes an order respecting child support under the DA, the amount of child support must be determined in accordance with the child support guidelines established by regulation: DA, ss. 15.1(3) and 26.1; Federal Child Support Guidelines, SOR/97-175 [Guidelines]. Similarly, where the court makes an order respecting child support under the FLA, the amount of child support must be determined in accordance with the child support guidelines established under that statute: FLA, ss. 150(1) and 247. The Family Law Act Regulation, B.C. Reg. 347/2012 [FLA Regulation], adopts the federal Guidelines for all intents and purposes: FLA Regulation, ss. 8 and 9.

[102] In essence, child support obligations are equivalent under the DA and the FLA. Although the DA is the paramount statute as between the two, neither party argues there is any operational conflict between DA and the FLA in the circumstances of this family law case, and I conclude there is none. During the trial neither party aligned themselves with one statute or the other in referencing the child support claim. However, previous orders of this Court relating to the guardianship of the children and parenting responsibilities were made under the FLA. For the sake of continuity, I will conduct my analysis referencing the FLA. If I conducted my analysis under the DA, only the terminology would change.

B. Ongoing Child Support for Edward

1. Applicable Legal Principles

[103] Each parent and guardian of a child has a duty to provide support for the child: FLA, s. 147(1).

[104] Income for purposes of determining child support ("Guideline Income") is to be determined in accordance with ss. 15-20 of the Guidelines.

[105] The starting point for determining a spouse's Guideline Income is their Line 150 income from their tax return: Guidelines, s. 16. If the court is of the opinion that a determination under s. 16 would be unfair, it may consider the spouse's income over the past three years: Guidelines, s. 17. If a spouse is the shareholder, director, or officer of a corporation, the court may consider the pre-tax income of the corporation: Guidelines, s. 18.

[106] The court may impute income in various circumstances where it considers it appropriate, including where the spouse is intentionally under-employed or unemployed, or the spouse derives a significant portion of income from dividends, capital gains, or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax: Guidelines, s. 19(1)(a) and (h). The reasonableness of an expense deduction is not solely governed by whether the deduction is permitted for income tax purposes: Guidelines, s. 19(2).

[107] Unless the court considers it inappropriate, the presumptive rule is that the amount of child support payable, including for an adult child, is the amount set out in the applicable table of the Guidelines: Guidelines s. 3(2).

[108] Parents have an obligation to earn as much as they are capable of earning to meet their obligation to support their children: P.K.C. v. J.R.R., 2014 BCSC 932 at para. 99. The court has broad discretion to impute income to either or both spouses for the purposes of both child and spousal support; however, the party seeking to have income imputed to the other bears the onus of establishing the evidentiary foundation to ground such a finding: Marquez v. Zapiola, 2013 BCCA 433 at para. 36. The test for imputing income for intentional under-employment or unemployment is "one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability": Marquez at para. 37.

2. The Claimant's Position

[109] The claimant seeks to impute income to the respondent on the basis of an earning capacity of \$75,000 plus a fixed 2.5% return on investment of the \$3,000,000 interim distribution the respondent received (an additional \$75,000), resulting in an imputed income of \$150,000 per year, subject to a further adjustment based on a fixed 2.5% return of investment income arising as a consequence of these reasons for judgment.

[110] The claimant concedes that it is fair to impute income to her on the same basis, however her income is relevant only for the purpose of determining the parties' respective contributions towards s. 7 expenses since Edward does not reside with the respondent at all.

3. The Respondent's Position

[111] The respondent concedes Edward continues to be a child of the marriage and that he has an obligation to pay ongoing child support for him in accordance with the Guidelines. He also acknowledges that s. 18 of the Guidelines is applicable to him as a shareholder. However, he argues the financial statements of the companies all reflect there was no available pre-tax corporate income that could be included in the respondent's total income prior to the amalgamation in 2016. He argues the financial statements of ECL after the amalgamation reflect the same situation.

[112] The respondent argues that income should be imputed to both parties but limited to an amount equivalent to a fixed 2.5% return on investment of the \$3,000,000 interim distribution both received, resulting in an imputed income of \$75,000. He submits an appropriate child support order is for him to pay \$716 per month in child support for Edward on the 1st of each month for so long as Edward is a child of the marriage, or until further order. Once each university semester, Ms. Chapman will provide proof to Mr. Chapman of Edward's enrolment in full-time studies and will have the obligation of immediately notifying Mr. Chapman if he is no longer attending full-time school.

4. Analysis and Conclusion

[113] I agree with the claimant that income should be imputed to both parties based on both an earning capacity and a fixed 2.5% return on investment of the \$3,000,000 interim distribution, with the adjustment for future contingencies as advocated by the claimant. Neither of the parties has a medical condition that prevents them from working, and both, even at their ages, remain capable of making workplace contributions. However, I think an earning capacity of \$75,000 is too high given their respective skills, education, and experience. I find it is reasonable to impute a total income of \$125,000 to each of the parties.

[114] I see no reason to depart from the Guidelines amount while Edward is living at home during the summer. However, when Edward is away at university, some of the claimant's actual expenses will be less and child support should be reduced accordingly: *Catallo v. Catallo*, 2015 BCSC 1276 at paras. 38-39. Based on a Guideline Income of \$125,000, the respondent

shall pay the claimant \$1,154 per month for support for Edward during the months Edward is living at home (May to August inclusive) and \$954 per month for support for Edward during the months Edward is away at university (September to April inclusive). These amounts are subject to the adjustment advocated for by the claimant which I endorse as part of my order. Child support is payable on the 1st day of the month, via e-transfer, until further order of the Court or written agreement of the parties.

C. Retroactive Child Support

1. Applicable Legal Principles

[115] The discretion to make an order for retroactive child support is found in s. 170(b) of the FLA. In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada addressed the circumstances in which retroactive child support may be awarded. The Court directed trial judges to adopt a broad and holistic approach in the application of four factors (summarized at para. 133), none of which is determinative on its own:

- a) Is there a reasonable excuse for why support was not sought earlier?
- b) Was there any blameworthy conduct on the part of the payor parent?
- c) Is a retroactive award appropriate in light of the child's past and present circumstances?
- d) Will a retroactive award cause hardship to the payor parent or to his or her other children?

[116] The commencement date for a retroactive child support should generally be the date the payor parent was given notice of the claim: *D.B.S.* at para. 134.

2. The Claimant's Position

[117] The claimant argues she gave effective notice that she was seeking child support in 2015 when these proceedings were filed and thus is entitled to seek a retroactive accounting back to the date of the claim.

[118] She seeks retroactive support for both children from September 2015, when she moved out of the Adera Family Residence, through to June of 2018, both months inclusive. She seeks retroactive support only for Edward from July 2018 onward, given that Sarah graduated from Harvard University in May 2018, spent the summer in Vancouver with her mother and then moved to Boston at the beginning of August.

3. The Respondent's Position

[119] The respondent concedes he has an obligation to pay retroactive child support for Sarah and Edward while they remained children of the marriage. However, he argues he should only pay child support for the months the children actually resided with the claimant, not for the months they were away at university. There was no argument advanced that a retroactive award would cause hardship to the respondent.

4. Analysis and Conclusion

[120] When the parties physically separated in September 2015, Edward was in high school and Sarah was living in Boston completing her first year of college at Harvard University. Edward continued to reside with the claimant until he left for McGill University in September 2017. Both children returned to Vancouver and resided with the claimant during summers and holidays.

[121] The claimant maintained a furnished bedroom for each of the children in her home. She provided all their food and other necessities when they were at home and covered many of their out of pocket expenses while they were at university. The claimant provided stability for the children and endeavoured to maintain a lifestyle for them similar to the one they enjoyed prior to the breakdown of the parties' marriage.

[122] I find the retroactive award is appropriate in the circumstances. Based on the respondent's Guideline Income of \$125,000, child support is \$1,845 per month for two children and \$1,154 per month for one. Many of the costs associated with the claimant providing shelter, care, and maintenance of the children were fixed and did not disappear while the children were away at university, although some were reduced. As I did with ongoing child support, for the months when the children were away at university, I find the child support amount should be reduced by \$200 for each child.

[123] I calculate the retroactive child support award (the "Retroactive Award") as follows:

Year

Details

Amount

2015

4 months for 2 children, less \$800 when Sarah was at university

\$6,580

2016

12 months for 2 children, less \$1,600 when Sarah was at university

\$20,540

2017

12 months for 2 children, less \$1,600 when Sarah was at university, less \$800 when Edward was at university

\$19,740

2018

6 months for 2 children, less \$800 when Sarah was at university, less \$800 when Edward was at university

6 months for 1 child, less \$800 when Edward was at university

\$9,470

\$6,124

2019

12 months for 1 child, less \$1,600 when Edward was at university

\$12,248

2020

7 months for 1 child, less \$800 when Edward was at university

\$7,278

Total Retroactive Award

\$81,980

[124] The respondent paid \$36,000 in child support pursuant to the interim order of Justice Loo dated April 12, 2016. That amount is to be deducted from the Retroactive Award.

D. Section 7 Expenses

1. Applicable Legal Principles

[125] Under s. 7 of the Guidelines the court may provide for an amount to cover special and extraordinary expenses, which include health expenses and expenses for post-secondary education ("Section 7 Expenses"). Barring exceptional circumstances, parents contribute to special and extraordinary expenses in proportion to their respective incomes: Guidelines, s. 7(2); *Ferreira v. Ferreira*, 2002 BCSC 1153 at para. 24.

[126] Section 7 expenses must be both necessary, based on the child's best interests, and reasonable, which is assessed relative to the parents' spending pattern before separation and their financial means: *J.D.G. v. J.J.V.*, 2016 BCSC 2389 at para. 325.

2. The Claimant's Position

[127] The claimant seeks an order that the respondent pay the claimant for the children's expenses she submits are properly categorized as Section 7 Expenses (the "Claimed Section 7 Expenses") and which she calculates at approximately \$172,000. The claimant argues that the cost of Section 7 Expenses should be split unequally, with the respondent paying 75% and her paying 25%, resulting in a payment of approximately \$130,000 by the respondent. The claimant argues this would prevent her from being prejudiced financially because the Guidelines child support amount does not cover the children's actual costs.

3. The Respondent's Position

[128] The respondent concedes most of the Claimed Section 7 Expenses are properly characterized as special or extraordinary expenses. However, he argues food while the children were at university does not properly constitute a special expense and the \$54 per month for tennis club membership dues and an Adobe computer program subscription, both for Edward, and the \$4 expense for Sarah's New York Times subscription, are not extraordinary. The respondent also concedes he has an obligation to pay for some retroactive and prospective Section 7 Expenses, but argues he should only pay 50% of reasonable retroactive Section 7 Expenses. He argues some of the expenses claimed by the claimant are not reasonable. He proposes a lump sum payment of \$75,000 for retroactive contribution to Section 7 Expenses.

4. Analysis and Conclusion

[129] Although the respondent conceded most of the Claimed Section 7 Expenses are properly characterized as special or extraordinary expenses, the claimant was cross-examined extensively on the amounts claimed, even though no foundation for suggesting the claimant had exaggerated these claims was put forward. All of the receipts underlying the Claimed Section 7 Expenses were available to the respondent before trial. It is unclear why the respondent could not have taken steps to satisfy himself that the amounts claimed were properly supported before trial. As a result much court time was allocated to examining negligible expenses incurred by the claimant for the benefit of the children. The result of the cross-examination was a determination the claimant had missed several expenses, cheating herself out of seeking a contribution towards several thousand dollars of expenses.

[130] A university meal plan is considered to be a special Section 7 Expense: *Beissner v. Matheusik*, 2014 BCSC 1785 at paras. 58-63; *Esperson v. Esperson*, 2017 BCSC 1206 at paras. 12 and 29. I have reduced the child support amount to account for the fact the children were not eating at home while at university. I see no basis to categorize a meal allowance any differently when the child is living in private accommodations while at university: *Esperson* at para. 13. As for the tennis membership, the evidence was that Edward was trying out for the McGill tennis team and this membership was to support that level of play, which I find to be extraordinary. Similarly, the evidence was that Edward required the Adobe subscription for his educational program at McGill. I find it to be an extraordinary expense. I agree with the respondent that the cost of the New York Times subscription for Sarah is not an extraordinary expense.

[131] As for the parties' proportionate contributions to the Section 7 Expenses past and future, I find the fact that the Guidelines child support amount may not cover the actual costs associated with the care and maintenance of a child is not an exceptional circumstance warranting a disproportionate contribution by a payor parent towards Section 7 Expenses. Accordingly, I order the parties to equally contribute (50/50) to all of the Section 7 Expenses claimed by the claimant with the exception of Sarah's New York Times subscription.

V. PROPERTY DIVISION

A. Applicable Legal Principles

[132] The relevant provisions of the FLA are contained in Part 5, Property Division.

1. Family Property

[133] Upon separation, each spouse is entitled to a presumptive one-half interest in all family property as a tenant in common and is equally responsible for family debt: FLA, s. 81.

[134] Family property includes all real and personal property a spouse owns or has a beneficial interest in at the date of separation, as well as property derived from family property: FLA, s. 84(1). Generally, the value of family property must be based on its fair market value as of the date of the trial: FLA, s. 87. Fair market value is not defined in the FLA, but is generally understood to mean the highest price between a willing and informed seller and a willing and informed purchaser, acting at arm's length: *Grimes v. The Queen*, 2016 TCC 280 at para. 178; *Scurry Rainbow Oil Ltd. v. Lamoureux*, 1985 CarswellBC 722 at para. 5.

[135] Family debt is debt incurred during the period beginning when the spouses' relationship began and ending when the spouses separate, as well as debt incurred post-separation for the purpose of maintaining family property: FLA, s. 86.

[136] Despite the presumption of equal division, the court may order an unequal division of family property if it would be significantly unfair to divide family property equally: FLA, s. 95(1). Significant unfairness requires something objectively unjust, unreasonable, or unfair in some important or substantial sense having regard to the factors set out in s. 95(2) of the FLA: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 41 and 42.

[137] A two-stage analysis is used to determine whether an equal division of family property would be significantly unfair: *Polard v. Polard*, 2017 BCSC 1963 at para. 19. First, the court must determine the extent of family property in accordance with ss. 84-86 of the FLA and undertake the notional exercise of dividing the property (and any family debt) equally. Second, the court must determine whether the equal division would be significantly unfair, taking into account the factors set out in s. 95(2) of the FLA.

[138] Generally, property division is to be determined before considering spousal support: *Hartshorne v. Hartshorne*, 2004 SCC 22 at para. 86; *Wells v. Campbell*, 2015 BCSC 3 at para. 18; *A.M.D. v. K.R.J.*, 2015 BCSC 1539 at para. 47. However, where a party seeks an unequal division of family property under s. 95(3) of the FLA, the court may consider the "extent to

which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met". Therefore, I will consider the issue of spousal support when I address reapportionment: *Parton v. Parton*, 2016 BCSC 1528 at para. 18, varied in part 2018 BCCA 273.

2. Excluded Property

- [139] Property that is excluded from family property includes property acquired before the relationship began, inheritances, gifts from third parties, and property derived from excluded property: FLA, s. 85(1). However, the growth in value of excluded property during the marriage is considered family property: FLA, s. 84(2)(g).
- [140] A spouse who advances a claim that property is excluded property is responsible for demonstrating, on a balance of probabilities, the basis for and extent of the exclusion, based on "clear and cogent evidence": FLA, s. 85(2); *Shih v. Shih*, 2017 BCCA 37 at para. 43. However, in balancing the evidence as a whole, a trial judge is permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Shih* at para. 44.
- [141] To establish an exclusion a party must prove the value of the exclusion and, if property is derived from that exclusion, that the exclusion can be traced into property that existed at the date of separation: FLA, s. 85(1)(g). Where a spouse seeks to have any increase in the value of the excluded property included in family property, however, they have the onus of establishing the value of the increase: *J.S.F. v. W.W.F.*, 2015 BCSC 2375 at para. 161; *Kumagai v. Campbell Estate*, 2016 BCSC 450 at para. 70, rev'd on other grounds 2018 BCCA 24. The approach involves first determining the net fair market value of the property at the time the spouses' relationship began or the time it was otherwise acquired, followed by a determination of its fair market value at the date of trial, and subtracting the former from the latter: *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at paras. 69-71.
- [142] When one spouse has excluded property that is real property, the other spouse has a monetary claim and entitlement to an undivided half interest in the increased value of the property and not an undivided half interest in a real estate asset itself: *Johnson v. Korol*, 2019 BCSC 111 at paras. 45-46.
- [143] The FLA dictates that the court must not order a division of excluded property unless family property located outside British Columbia cannot practically be divided or, having regard to the duration of the spouses' relationship and a spouse's direct contribution to the preservation, maintenance, improvement, operation, or management of excluded property, it would be "significantly unfair" not to divide the excluded property: FLA, s. 96. The threshold of unfairness required to warrant a division of excluded property is even higher than the level of unfairness necessary to support dividing family property unequally and the factors that can be considered are limited to those set out in s. 96 of the FLA: *Parton*

at para. 36-37.

3. The Trust Claims

[144] The claimant has also advanced a claim of unjust enrichment. She claims that during the marriage she provided direct and indirect contributions to the assets of the corporate respondents, and provided labour, resources, and contributions towards the creation of increased value of investment and real property interests held by the corporate respondents, by which the corporate respondents were enriched and she was deprived for no juristic reason.

[145] The basis of an unjust enrichment in the family law context is the retention of an inappropriately disproportionate amount of wealth by one party even though both parties have been engaged in a joint family venture and a clear link exists between those contributions to that joint venture and the accumulation of wealth: *Kerr v. Baranow*, 2011 SCC 10 at para. 81. In such circumstances, the court will calculate a monetary award based on the share of the accumulated wealth proportionate to a claimant's contributions: *Kerr* at para. 87.

[146] In *Kerr* at para. 89, Justice Cromwell suggested the evidence in an unjust enrichment claim could be examined under four main headings: mutual effort, economic integration, actual intent, and priority of the family.

[147] At paras. 90-99, Justice Cromwell reviewed factors that may be relevant in considering the four headings he had described. According to Justice Cromwell, the following factors may indicate mutual effort:

- a) whether the parties worked collaboratively towards common goals;
- b) the pooling of effort and team work;
- c) the decision to have and raise children together;
- d) a lengthy relationship;
- e) joint contributions, or contributions to a common pool;
- f) the use of parties' funds entirely for family purposes; and
- g) one spouse taking on all, or a greater proportion, of the domestic labour, freeing the other spouse from those responsibilities and enabling him or her to pursue activities in the paid workforce.

[148] Similarly, Justice Cromwell viewed the following as being potential indicia of economic integration:

- a) the existence of a joint bank account that was used as a "common purse";
- b) the operation of a family business by the family unit;

- c) the sharing of expenses;
- d) the amassing of a common pool of savings; and
- e) the parties' conduct reflecting a sense of collectivity, mutuality, and prioritization of the overall welfare of the family unit over the individual interests of the individual members.

[149] With respect to intent, Justice Cromwell observed the court's quest is for the actual intent of the parties, either expressed or inferred, rather than what the court might view as what reasonable parties ought to have intended in the circumstances. Justice Cromwell also noted that where title is registered in the name of only one of the parties, an intention that "wealth will be shared may be evident from other aspects of the parties' conduct." Testamentary intentions and verbal commitments may also reflect "that the parties saw one another as domestic and economic partners."

[150] Finally, with respect to the priority of the family, Justice Cromwell stated:

[98] A relevant question is whether there has been in some sense detrimental reliance on the relationship, by one or both of the parties, for the sake of the family. As Professor McCamus puts it, the question is whether the parties have been "[p]roceeding on the basis of understandings or assumptions about a shared future which may or may not be articulated" (p. 365). The focus is on contributions to the domestic and financial partnership, and particularly financial sacrifices made by the parties for the welfare of the collective or family unit. Whether the roles of the parties fall into the traditional wage earner/homemaker division, or whether both parties are employed and share domestic responsibilities, it is frequently the case that one party relies on the success and stability of the relationship for future economic security, to his or her own economic detriment (Parkinson, at p. 243). This may occur in a number of ways including: leaving the workforce for a period of time to raise children; relocating for the benefit of the other party's career (and giving up employment and employment-related networks as a result); foregoing career or educational advancement for the benefit of the family or relationship; and accepting underemployment in order to balance the financial and domestic needs of the family unit.

4. Available Remedies

[151] The court's power to make orders to effect property division is broad; the court may determine any matter respecting the ownership, right of possession, or division of the property or family debt, but excluded property must only be divided in accordance with s. 96 of the FLA: FLA, s. 97.

[152] The claimant seeks an order declaring the corporate respondents hold a portion of their assets in trust for her benefit, declaring her to have an ownership interest and right of possession to assets of the corporate respondents, and an order that the corporate respondents and the respondent transfer assets held in trust to her through a butterfly transaction.

[153] The respondent submits there is authority for the court to enforce a butterfly transaction where both parties have consented to such an arrangement: *Racz v. Rudolph*, 1998 CanLII 17796 (YKCA). Insofar as the respondent's submission is intended to suggest the court lacks jurisdiction to order a butterfly transaction unless both parties' consent, I disagree. In my view, s. 97(2)(b) of the FLA provides the court with jurisdiction to make such an order. Where such an order facilitates the division of family property with as little disruption as possible, while still securing a party their rightful interest, such an order may be entirely appropriate: *Tratch v. Tratch*, 1981 CanLII 774 (BC SC) at paras. 56-61; *Blackett v. Blackett*, 1989 CanLII 239 (BC CA) at p. 9; *T.E.A. v. R.L.H.C.*, 2019 BCSC 1042 at paras. 305-306.

B. Start of the Parties' Marriage-like Relationship

1. Applicable Legal Principles

[154] Property acquired before the beginning of the spouses' relationship is excluded property. Because the respondent relies on this category of exemption, I must determine the start date of the parties' marriage-like relationship.

[155] A relationship between spouses begins on the date on which they begin to live together in a marriage-like relationship or the date of their marriage, whichever is earlier: FLA, s. 3(3). Both parties agree they began to live together in a marriage-like relationship before the date of their marriage, but they disagree on when.

[156] The determination of whether a relationship is marriage-like requires a holistic approach that considers all the relevant factors and weighs them: *Dey v. Blackett*, 2018 BCSC 244 at para. 192. Although a checklist approach is not appropriate, courts often refer to the indicia of a marriage-like relationship from *Molodowich v. Penttinen*, 1980 CanLII 1537 (ON SC) at para. 16.

2. The Respondent's Position

[157] The respondent submits their marriage-like relationship began in July 1993, which, according to his testimony, is when the claimant moved from Shannon Mews to the Cypress Property. The respondent's evidence is that the parties began dating in December 1990 but that he did not start spending time at the claimant's apartment in Shannon Mews until 1991. His evidence is he slept at her apartment about three days per week but he did not shower or keep clothes there.

3. The Claimant's Position

[158] The claimant argues she spent time with the Chapman family and they treated her like a spouse long before 1993. Her evidence was that the parties began their marriage-like relationship on December 21, 1990. At that time the respondent was spending the majority of his time living with her at Shannon Mews. The claimant testified the respondent moved into her home because his was "essentially unlivable". She argues that, at the very latest, the parties were living together in November 1992 when she changed the address on her

driver's license from Shannon Mews to the respondent's house (the Cypress Property). It was also in 1992 that the respondent advised the claimant he had made a will which left everything to her.

4. Analysis and Conclusion

[159] I find the parties began their marriage-like relationship in December 1990.

[160] There are several factors that reflect the parties' committed, marriage-like relationship began before the fall of 1993 (as the respondent contends). The claimant changed her address on her driver's license, the parties purchased real property together in the fall of 1992, the parties had been having sexual relations for approximately two years by that time, and the respondent advised the claimant he had decided to leave everything to her in his will, as well as other factors indicating they had woven their lives together.

[161] I find the parties began living together at Shannon Mews in December 1990. They spent 100% of their time there, the respondent kept clothes and toiletries there, they ate all their meals together there, and entertained there together. In the spring of 1991 the claimant had a dispute with her mother, a staunch Baptist, about the fact that she and the respondent were living together. The claimant's brother, John Richter, testified that the parties told him about the argument. Mr. Richter was not cross-examined on any of his evidence.

[162] The claimant's evidence, which I accept, was that the number 21 was their special number, which the respondent often recognized by sending her flowers on the 21st of the month. The couple became engaged on the summer solstice--June 21, 1991--and shared the news with the respondent's sister, Liz, in July of that year. I find their engagement was a further step in what had already become a long-term commitment to each other. While living together the couple comingled their incomes and began to acquire household items, including items they purchased at auction. They married on December 21, 1995. I accept the claimant's evidence that both parties viewed December 21, 1990 as the beginning of their committed long-term relationship.

C. Date of Separation

[163] Under s. 81(b) of the FLA, on separation each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt. The parties agree, and I find, they separated in March 2014 ("Date of Separation"), although they continued to reside in the same residence until their physical separation on September 13, 2015.

D. Determination and Division of Property

[164] This is the heart of the case.

[165] The issues for determination are what constitutes the respondent's excluded property and how the family property should be divided.

[166] During their relationship, the parties amassed an unusually large amount of chattels. The chattels at issue in this proceeding are currently located in several places: the Adera Family Residence, the Ontario Street Property, the Granville Storage, another storage facility arranged by the claimant (the "Point Road Contents"), and the Palm Desert Property. There are also corporate shares and proceeds of sale at issue.

[167] The parties agree, and I find, there is no remaining family debt.

1. Claimant's Position

[168] The claimant concedes the respondent came to their relationship with some property and that he inherited several cars and other chattels, partial interests in the Palm Desert Property and Hopkins Landing, and some shares. However, she argues that for the most part the respondent has been unable to either trace those pre-existing or inherited interests to property held at the Date of Separation or establish the value of those interests at the time they were acquired. The claimant submits that where the uncorroborated evidence of the respondent is the only evidence of the basis or extent of the respondent's excluded property claim, the court should decline to accept his evidence. As a result, she argues the bulk of the respondent's excluded property claim must fail. She further argues the family property should be reapportioned in her favour.

[169] In the alternative, the claimant argues both that the family property should be reapportioned in her favour and, with limited exceptions, the respondent's excluded property should be divided for various reasons including but not limited to post-separation wasting, the respondent's failure to disclose all property subject to division, and the claimant's need to be as equally self-sufficient as the respondent.

[170] As a further alternative, if the respondent's excluded property claim succeeds, the claimant argues family property should be reapportioned in her favour to an even greater degree to account for the respondent's excluded property.

[171] With respect to the division of property, the claimant makes the following submissions.

a. Vehicles

[172] There are numerous vehicles at issue in this family law case. The claimant concedes the 1955 American Motors Metropolitan, 1981 Honda XL 185S Motorcycle, and 1972 Mercedes-Benz are all the respondent's excluded property. She makes no claim with respect to any increase in value of the Metropolitan.

[173] Many of the vehicles were appraised, however the appraiser refused to make himself available for trial. By agreement between the parties his report was received as "some evidence of value", but not as expert opinion evidence. As part of the same agreement, information from the Hagerty Insurance Agency website, a database of classic car information and values, and Hemmings Motor News, another online vehicle marketplace, were also provided as "some evidence of value" with respect to some of the vehicles. The

claimant argues the lack of quality evidence with respect to the value of the various vehicles makes it impossible for me to determine the past or current fair market value of the vehicles for the purposes of allowing me to determine monetary compensation as between the parties with respect to any of the vehicles. As a result, the claimant submits the appropriate means of dividing this family property would be to order sealed bids, with a compensation payment to equalize distribution, subject to the claimant's ongoing submission for reapportionment.

b. Vessels

[174] Again, there are numerous vessels at issue in this proceeding. The current value of the vessels was the subject of expert opinion evidence by Mr. Chris Small, who prepared a report (the "Small Report") and testified at trial. With reference to the Small Report, the claimant concedes V11, V15, V18, and V19 are the respondent's excluded property. She submits the remaining vessels should be divided by alternating selection, with the respondent calling a coin toss to determine who will make the first selection. She further submits division of the vessels by this method should occur within 30 days after the reasons for judgement are issued, and that the party who is required to move vessels make arrangements to move them within seven days of the division. She proposes that the values set out in the Small Report be used to determine whether an adjustment payment is due by one party to the other.

c. Artwork

[175] The claimant agrees certain works (referred to in the Langman Reports as defined below as pieces 14, 15, 16, 17 and 18) were inherited from Hubert, and this is confirmed by one of the estate documents dating from 1980. She agrees they are respondent's excluded property and should be retained by him.

[176] However, the claimant argues the expert opinion of Ms. Jeannette Langmann with respect to the appraised values of 56 artworks, set out in two reports (the "Langmann Reports[4]"), is significantly deficient and unreliable. The claimant has no confidence all of the pieces were included, given she was not permitted to participate in the valuation process and the respondent decided what items to include. The claimant argues the deficiencies in the process leading to production of the reports adversely affect the accuracy of the opinion on valuation.

[177] She submits the appropriate resolution with respect to all artwork described in photographs contained in three cerlox binders provided to Ms. Langmann, other than those she concedes are the respondent's excluded property, is an order that they be gathered at one location and divided by alternating selection, with the claimant calling a coin toss to determine who will make the first selection. Any artworks not reflected in the photographs referred to in the Langmann Reports should be treated in the same way as the other remaining chattels, as set out below.

d. The Remaining Chattels

[178] The claimant recognizes that a grand piano, grandfather clock, and coin collection are the respondent's excluded property and does not claim any portion of any increase in their value over the marriage. I find these items are fully the respondent's excluded property.

[179] With respect to the remainder of the chattels (the "Remaining Chattels"), for the most part the claimant seeks their liquidation. She submits the fact that the parties have failed to resolve the distribution of the chattels during the five years this litigation has been ongoing is evidence "there is no world in which the claimant and the respondent will work this out". She submits the respondent has had exclusive control of the chattels over the last five years, and was the keeper of the inventory and other documents that would have enabled an efficient, reliable determination of what chattels are the respondent's excluded property. The respondent did not produce the documents and he did not protect the ability to distinguish between the chattels. She argues the current state of the storage of the chattels renders it impossible to proceed in any way other than liquidation. She seeks a one-time opportunity to collect her children's items and then an order that she act as the parties' receiver to deal with the Remaining Chattels.

[180] The claimant excepts the Point Road Contents from her liquidation proposal because they have been stored separately since the sale of Point Road. The distribution of those chattels is the subject of an order by Loo J. made in December 2016, but distribution has not yet taken place. The claimant submits the Point Road Contents should be distributed by the method Loo J. directed, namely alternating picks following a coin toss.

e. Palm Desert

[181] With respect to the Palm Desert Property, the claimant argues she has an interest in the increase in its value over the course of the marriage. She would like to receive Palm Desert to maintain it for and enjoy it with the children. She argues the respondent did not enjoy Palm Desert despite the fact he and his family have a lengthy history there.

[182] The claimant argues a binding sealed bid process is the fairest way to resolve the parties' respective claims with respect to Palm Desert. She submits that in the event her bid is successful, the respondent be required to take all steps necessary to affect the transfer of Palm Desert to the claimant without triggering capital gains if permitted under California state or United States federal law, and that he take all steps necessary to ensure that the claimant shall continue to reap the tax benefits of Proposition 13, again if permitted under California state law. If the respondent is the successful bidder, the claimant seeks an order that compensation be paid to her in US funds. This will require a determination of the current net fair market value of Palm Desert, including latent taxes. She submits that if the parties are not able to resolve that calculation on their own, the matter could either be returnable before the Court or referred to the Registrar pursuant to Rule 18-1 of the Rules.

f. ECL Shares

[183] The claimant does not make any claim to the respondent's shares in Chapy's. She does however advance a claim that the entire value of the shares in ECL registered in the respondent's name are family property. In addition, the claimant has asserted a trust claim against the companies and seeks an order that she receive a proprietary remedy in the form of an award of the West 3rd Property. She argues the respondent has no personal attachment to the West 3rd Property, and given the respondent wishes to retain a large number of chattels and will need a place to store them, and that the West 3rd Property is tenanted, it makes sense for him to receive the Ontario Street Property. She proposes an order whereby she receives the West 3rd Property based on the valuation of Patti Daum. The claimant proposes her beneficial interest in the shares should be realized by dividing the assets of ECL through a butterfly transaction.

[184] The claimant asks for an order that the respondent personally indemnify her for any liability associated with Chapy's or ECL, or any of its predecessor entities no matter when incurred or attributed.

g. Remaining Proceeds of Sale

[185] The claimant argues the Little Lane Proceeds and the Point Road Proceeds should be divided equally. The respondent agrees.

[186] The claimant argues the Adera Proceeds should be divided equally, after an accounting (the "First Accounting").

[187] The claimant also seeks a further accounting (the "Second Accounting") related to the respondent's use of joint funds.

[188] The claimant submits that if the court agrees with her position with respect to the respondent's excluded property claim, and she receives credit for the accountings she has requested, there is no need for reapportionment. However, if the court agrees with the respondent's position with respect to his excluded property, the claimant seeks reapportionment so that she is placed on an even financial ground with the respondent given the length of their marriage and to account for improvident wasting post-separation through the incurring of extensive storage fees.

2. Respondent's Position

[189] In his closing submissions, the respondent abandoned any excluded property claim with respect to the Adera Family Residence or its proceeds but continued to argue significant assets are his excluded property.

[190] The respondent seeks an order that the value of what remains as family property be divided equally and that both parties retain all debts in their respective names. He disagrees with the claimant's argument that family property should be reapportioned in her favour for the following reasons: the parties did not have an agreement about family property and there is no evidence of one; the claimant did not contribute to the respondent's career because he never had a career; and he did not unilaterally waste family property after separation.

a. Chattels

[191] The respondent attached multiple schedules (Schedules D, E, and F) to his closing submissions in which he listed chattels he claims are his excluded property and the basis of the exclusion. These include various furnishings and household effects, as well as numerous vehicles, vessels, and artwork. With respect to those chattels he proposes the following:

§ Schedule D Chattels - With respect to the vehicles, artwork, and general chattels set out in Schedule D, the respondent proposes to keep the Schedule D chattels, and compensate the claimant for 50% of the growth in value of over the course of their marriage.

§ Schedule E Chattels - With respect to the vehicles, vessels, and artwork set out in Schedule E, because no evidence was led with respect to their value at the time of acquisition, the respondent concedes a determination of the increase in value of these assets over the life of the marriage is impossible. Because of this, the respondent proposes that he keep the Schedule E chattels and compensate the claimant for 50% of the current fair market value.

§ Schedule F Chattels - With respect to the artwork and general chattels set out in Schedule F, the respondent concedes no evidence was led with respect to the value of those assets, either at time of acquisition, nor at the Date of Separation. Beyond his submissions that these items are his excluded property, and that he wishes to keep them, the respondent made no submissions on what orders should be made with respect to Schedule F chattels.

[192] He also attached a list which he argues is family property (Schedule G). However, the chattels described in Schedules D, E, F, and G are not an exhaustive list of the chattels which have been amassed over the course of the parties' relationship, and which remain in storage.

i. Vehicles

[193] With respect to the vehicles, the respondent submits the report of Rudiger G. von Koniczek (the "Koniczek Report") is reliable evidence of value of the eight vintage vehicles listed (the "Vintage Vehicles"). He argues the value evidence provided by the claimant should be rejected. Based on the Koniczek Report values, the respondent proposes to pay the claimant a compensation payment of one half the increase in value of the 1971 Mercedes-Benz 280 SL and the 1972 Mercedes-Benz 350 SL, but not the Metropolitan.

- [194] The respondent acknowledges I have no value of either the current or historical value of the 1981 Honda XL motorcycle, which the parties agree is his excluded property.
- [195] The respondent also claims the 1965 Rolls-Royce Silver Cloud was purchased "partially" using his inherited funds, but acknowledges the 1985 Mercedes-Benz 190E and the 1995 Mercedes-Benz A320 are family property. The respondent proposes that he retain all three of those vehicles and provide the claimant with a compensation payment of \$53,900, representing 50% of the current fair market value of \$107,800 based on the Koniczek Report, in essence abandoning any claim for an excluded property value.
- [196] The respondent proposes the remaining Vintage Vehicles be divided using an alternating pick method, with an equalization payment being made to ensure each of the parties receives 50% of the value of the Vintage Vehicles, again based on the Koniczek Report valuations.
- [197] There remain two 2011 Dodge Grand Caravans, a 2006 Lexus GX 470, a 2005 Toyota Matrix, a 1992 Toyota Camry, and a 1996 Ford E350 (the "Remaining Vehicles"). Only the Lexus is in operable condition. The respondent proposes he retain the Remaining Vehicles in exchange for a compensation payment of \$12,500. However, the respondent recognizes there is no evidence before the Court, or any agreement between the parties, as to the values of the Remaining Vehicles. As an alternative, the responding proposes alternating picks, on certain conditions.

ii. Vessels

- [198] The respondent claims many of the vessels valued by Mr. Chris Small are his excluded property. In reference to the Small Report, the respondent claims he bought vessels 1 and 2 using some of the Hopkins Inheritance Proceeds. He also testified vessels 11, 15, 18, 19, and 27 were his property prior to his relationship with the claimant. The respondent seeks an order that he retain all of the vessels and make a compensation payment to the claimant of \$30,938, representing midpoint between the appraised fair market value and liquidation value of all vessels according to the Small Report, which he testified most fairly represented the value of each vessel if they were not marketed openly. Again, the respondent's position effectively abandons any claim for an excluded property value.

iii. Artwork

- [199] The respondent argues a number of artworks, beyond those agreed to by the claimant, were inherited from his parents and are his excluded property. These were set out in Schedule D to the respondent's closing submissions. These were paintings described as "The Border Raider", "Sunset", "Autumn", "Lamorna Valley, Cornwall", "Goose Patrol", and "Ellemere Island". He proposes to retain all of the artwork appraised by Ms. Langmann and pay Ms. Chapman a compensation payment in the amount based on 50% of the growth in value of the artwork, as valued in the Langmann Reports. Jeanette Langmann was qualified to provide expert opinion evidence on the value of 17th to mid-20th century paintings.

iv. The Remaining Chattels

- [200] The respondent opposes liquidation of the Remaining Chattels. He argues an estate auction company would need to go through all of the chattels to determine what is saleable, and anyone purchasing the Remaining Chattels would need to identify what they are buying.
- [201] With the exception of some specific items, the respondent proposes to retain all of the Remaining Chattels for \$200,000, on strict conditions. These conditions include the claimant's attendance at each of the former Adera Family Residence, the Ontario Street Property, and the Granville Storage be restricted to a maximum of four hours, and that she must be accompanied by her counsel. During that time the claimant would be required to mark, list, and photograph items that are family property she would like to retain, which would be restricted to sentimental items with nominal value. The respondent proposes he would then review the list and, if he does not agree on the claimant taking any of those items, the dispute would come back before me.
- [202] The respondent agrees with the claimant that the Point Road Contents should be distributed in the manner ordered by Loo J., and asks that I order that process be completed within 60 days of the reasons for judgement.

b. Palm Desert

- [203] The respondent inherited a one third interest in the Palm Desert Property from his parents. He argues the value of his inherited interest is \$38,833.33 USD, being one third of his successful \$115,000 USD bid for the property at the Sibling Auction in 1999, which is at least three years after the date of inheritance. The respondent claims he used \$114,760.59 USD (\$151,607.92 CAD) of inherited funds to purchase the Palm Desert Property from his parents' estate. Therefore, he claims a total excluded value in the Palm Desert Property of \$114,760.59 USD (or \$151,607.92 CAD).
- [204] The parties were unable to secure an appraisal of current fair market value of the Palm Desert Property, as no appraiser was prepared to agree to travel to Vancouver to give evidence at trial. Therefore, the respondent seeks an order that the parties jointly retain an appraiser, agreed to by the parties' counsel, to determine the current fair market value. Within 30 days of the current fair market value of the Palm Desert Property being established, the respondent proposes to compensate the claimant for half the current fair market value less his claimed exclusion of \$114,760.59 USD (\$151,607.92 CAD).
- [205] The respondent seeks to retain the Palm Desert Property and compensate the claimant for half the value of the family property portion of the property.

c. ECL Shares

- [206] The respondent concedes the claimant has an interest in the shares of Edward Chapman, Limited. He proposes to acquire her interest based on a payment of the mid-point value of the share valuation less an exclusion (which he claims is valued at \$1,349,725). The

respondent's evidence is that he and his two siblings received shares in the Family Business Corporations, both before their parents' deaths and from their father's estate in 1996. At the end of 1996, he bought out his two sisters' shares in the Family Business Corporations for \$1,899,450, being two thirds of the value of the companies from a Deloitte & Touche valuation dated January 1, 1996. The transaction was funded primarily with loans, but the respondent argues he personally contributed \$400,000 that was a distribution from his mother's estate. Thus, the respondent argues the value of his excluded shares in ECL is \$949,725 (one third the value of the shares of the Family Business Corporations in 1996) plus \$400,000.

[207] The respondent seeks an order that he purchase the claimant's interest in ECL at the midpoint of the fair market value based on Patti Daum's report, less the value of his exclusion. Initially, as an alternative, the respondent proposed to retain his shares in ECL and the West 3rd Property, with the claimant retaining the Ontario Street Property through a butterfly transaction, but he resiled from that position during closing submissions. The only other alternative he advanced, which everyone recognizes is unworkable, is that the shares in ECL be divided equally between the parties.

[208] The respondent also seeks to retain as his sole property "his interests in Osborne and Page Ponsford, as well as Chapy's." I understand the respondent's submission on this point to be referring to two companies the respondent incorporated in 2017 (also apparently named Osborne Holdings Ltd. and Page Ponsford Brothers Ltd.), of which he is the sole shareholder, and neither of which holds any assets.

d. Proceeds of Sale

[209] The respondent agrees the proceeds of sale of the Point Road Property, the Little Lane Property, and the Adera Family Residence should be divided equally.

[210] The respondent also seeks reimbursement from the claimant for:

- a. half of the capital gains tax in the amount of \$34,019.41 on the sale of the Point Road Property, which is family property; and
- b. \$20,000 for the \$40,000 he received as part of an interim personal distribution and used toward joint expenses.

3. Analysis and Conclusion

a. Has the Respondent Proven a Basis for an Excluded Property Claim?

[211] As the party advancing a claim of excluded property, the respondent has the onus to establish both the basis for and the extent of the exclusion claimed based on "clear and cogent evidence": FLA, s. 85(2); Shih at para. 43.

- [212] Where the respondent's excluded property claims are not supported by documentary evidence or conceded by the claimant, and he relies on his own testimony setting out his recollection of the acquisition of assets in dispute, I must scrutinize his evidence for credibility: Shih at para. 43.
- [213] The respondent has repeatedly provided lenders with information about the nature and financial value of his assets and income which he knew was incorrect where he felt it was in his best interests to do so. I find his testimony regarding what property he inherited or owned prior to his relationship with the claimant lacks credibility. I also find his testimony regarding the value of such property lacks credibility. Overall, his credibility is such that, even without significant scrutiny, I cannot rely on anything he says without corroboration.
- [214] I also find the evidence of Liz Chapman regarding which items were the respondent's inheritances to be unreliable. She had no recollection of many matters, despite some of them being significant. Her evidence differed from that of her sister Wendy with respect to whether items stored at the Pender Property were or were not the property of ECL. Therefore, where Liz's evidence was that an artwork was either stored at ECL or at Hubert and Joan's home, but was distributed out of the parents' estate, I do not find her evidence reliable. Wendy's memory was likewise compromised. It is not surprising that given the passage of time their memories have been adversely affected, but in the result I find their testimony on matters touching on how and when the respondent purportedly acquired various items, most of which was alleged to have occurred more than 25 years ago, to be largely unreliable.

i. Art

- [215] I find the five paintings referred to in the estate document (those assigned numbers 14, 15, 16, 17 and 18 in the Langmann Reports) are the respondent's excluded property. At trial the respondent provided Liz with a cerlox containing photocopies of several photographs of artworks which she identified as originating from her parents' estate. However, not all of these paintings were appraised in the Langmann Reports and it is unclear to me where they are now. No submissions were made on this point. For the reasons set out above, I do not find Liz' evidence on this point to be sufficiently reliable on its own to establish all the paintings Liz identified were inherited by the respondent. However, Liz's evidence is corroborated by estate documents with respect to the pieces referred to in the Langmann Reports as numbers 9, 10, 11, 12, 13, 24, 30, 32, and 35, and I find those works to be the respondent's excluded property. I find the respondent has failed to establish, based on clear and cogent evidence, any further artworks are his excluded property.

ii. Vehicles

- [216] The claimant testified she and the respondent purchased the 1965 Rolls- Royce Silver Cloud in 1995 and went to the Stanley Park Teahouse in it. Her evidence was that the 1955 Rolls- Royce Silver Wraith and the 1927 Rolls-Royce 20 HP were both owned by ECL and acquired as part of the Family Business Acquisition. The claimant's testimony was that the 1995

Mercedes-Benz E320 was purchased during the marriage. Both agree the 1985 Mercedes-Benz 190E is family property. The claimant's evidence was she thought the 1971 Mercedes-Benz 350 SL was likely one that was acquired by the respondent prior to their marriage.

[217] Between 1993 and 1996 the respondent was paid by ECL to keep ECL's vintage cars operable. I find that evidence is further support for the claimant's evidence the cars the respondent claims as excluded property were not personally owned by Hubert and Joan and therefore could not be inheritances.

[218] The respondent's testimony that further vehicles are his excluded property is not supported by documentary evidence. With the exception of the vehicles the claimant concedes are the respondent's excluded property to which I have already referred, and the 1971 Mercedes-Benz 350 SL which I find was acquired by the respondent prior to the marriage and is excluded property, I find the respondent has failed to establish, based on clear and cogent evidence, any further vehicles are his excluded property.

iii. Vessels

[219] There are several vessels in dispute and I will address them based on the vessel number assigned to them in the Small Report. The claimant testified Vessels #1 and #2 were acquired during the marriage. The respondent concedes they were acquired during the marriage but testified he thought he used some of the Hopkins Inheritance Proceeds to finance the purchase. I find the respondent has failed to establish, based on clear and cogent evidence, Vessels #1 or #2 are his excluded property.

[220] The claimant testified that Vessel #11 was at Hopkins Landing and that the respondent took it from there at some point during their marriage. The respondent testified that he and his father acquired it in the early 80s (although the respondent does not suggest he personally paid anything towards its purchase) and that his father took it to Hopkins Landing. His evidence was that after his parents passed away he "took it from there". He testified that his sisters questioned him about it because they viewed it as a family boat, but the respondent told them it had been a gift to him from his father. I find the respondent has failed to establish, based on clear and cogent evidence, Vessel #11 is his excluded property.

[221] The claimant testified that Vessels #15, #19, and #27 were all acquired during the marriage. The respondent's evidence was that he purchased Vessel #15 in 1991 or 1992, which, on his theory, was prior to the beginning of the parties' marriage-like relationship. Similarly, he testified he purchased Vessel #19 prior to the parties' marriage-like relationship, but he was not sure of the date. The respondent also said he acquired Vessel #27 prior to the marriage. I find the respondent has failed to establish, based on clear and cogent evidence, Vessels #15, #19, or #27 are his excluded property.

[222] The claimant conceded Vessel #18 is the respondent's excluded property.

[223] With the exception of the Vessel #18, I find the respondent has failed to establish, based on clear and cogent evidence, any further vessels are his excluded property.

iv. Remaining Chattels

[224] With the exception of the chattels to which I have already referred, I find the respondent has failed to establish, based on clear and cogent evidence, any further chattels are his excluded property.

[225] Throughout this case, the respondent took steps to maintain exclusive control over access to the Pender Property and its contents and the chattels accumulated by the parties over the course of their marriage. While the respondent has been in exclusive possession and control of the chattels, he has moved them to various locations, co-mingled family chattels with corporate chattels, and packed items in boxes without any ascertainable cataloguing or labelling system. Many of these chattels hold no particular sentimental value for the respondent, nor do they hold much financial worth individually; items include an old rusted Jerry can and a box of dirty old Tupperware. However, the number of these chattels is so enormous (they fill the former Adera Family Residence, the Ontario Street Property warehouse and the Granville Storage) that collectively, they have some financial value.

[226] The respondent denies he is a hoarder or that he has an unhealthy attachment to chattels. Nonetheless, the respondent's behaviour during the settlement of his parents' estate, and his behaviour with respect to the chattels in this case, reflect that his attachment to 'things' is deep enough to have significantly affected his judgement and has caused him to make willful and destructive decisions involving those chattels throughout this litigation.

[227] The respondent's actions, in demanding that he be solely in control of the chattels, and then electing to mingle the chattels of ECL and the family without, according to him, any detectable system that would make them accessible to both parties, has resulted in the complete inability of the claimant to salvage any of her own excluded property or allow any meaningful differentiation between corporate and family chattels.

v. Palm Desert Property

[228] The respondent inherited a one third interest in the Palm Desert Property and a one third interest in Hopkins Landing following the death of his parents. At the Sibling Auction, one of his sisters had the successful bid for the Hopkins Landing property and the respondent received payment for his one third interest (the Hopkins Inheritance Proceeds). The respondent outbid his sisters on the Palm Desert Property at the Sibling Auction. As a result, in 1999 the respondent acquired the Palm Desert Property from his parents' estate for a total price of \$114,760.59 USD. The respondent argues the Palm Desert Property is his excluded property based on his testimony that he funded the acquisition of his sisters' interests using his Hopkins Inheritance Proceeds.

- [229] I find the respondent has established he inherited a one third interest in the Palm Desert Property in 1996. As for the respondent's claim that he used the Hopkins Inheritance Proceeds to acquire his sisters' interest in Palm Desert Property, while the respondent endeavoured to support that claim by referencing documents, I find those documents unpersuasive.
- [230] The respondent was entitled to \$268,128.69 as the Hopkins Inheritance Proceeds. However, in attempt to establish his Hopkins Inheritance Proceeds were used to purchase his sisters' interest in Palm Desert, he relies on a July 21, 1999 deposit of \$184,426.02 into one of his bank accounts, received from his then law firm McLellan & Herbert, which is less than his Hopkins Inheritance Proceeds. The respondent's evidence was that the reason the amounts did not match up was because the executors wanted to hold back some of the sale proceeds. That evidence is not corroborated. Wendy (one of the executors) was not questioned on that point and I was not taken to any evidence showing the remainder of the sale proceeds were later distributed. As a result the only evidence before me that the \$184,426.02 deposit was the Hopkins Inheritance Proceeds is the respondent's testimony. For reasons earlier described, I find that is insufficient.
- [231] Although title to the Palm Desert Property is registered only in the name of the respondent, I find the claimant is entitled to half of the increase in value of the respondent's inherited one third interest in the Palm Desert Property over the course of their marriage and to half of the remaining two thirds interest that was acquired in 1999.

vi. ECL Shares

- [232] The corporate amalgamation into ECL was a consummation of the respondent's consistent view and treatment of the Family Business Corporations as "one global thing". As noted earlier, the respondent concedes the claimant has an interest in the post-amalgamation ECL shares and proposes to buy her out at half their mid-point value, less his excluded property claim.
- [233] The respondent's evidence on his purported \$400,000 contribution of inherited funds towards the Family Business Acquisition was vague. At one point he admitted he was not really sure how the financing was structured. For these reasons and for the reasons relating to the respondent's overall credibility, I find he has failed to establish, based on clear and cogent evidence, that he contributed \$400,000 of inheritance monies to the Family Business Acquisition.
- [234] The respondent's claim that he inherited one third of the ECL shares, is supported by documents and the testimony of other witnesses and I find they were his excluded property. While I acknowledge the form of the shares changed over time and that the Share Transfer Agreement precluded the transfer of the shares to a holding company, after Hubert's death, it was open to the remaining parties to the Share Transfer Agreement, in concert with the trustees of Hubert's estate, to proceed with the transactions they did. I find those transactions did not abrogate the potential of the respondent's inheritance and

previously held shares being excluded property.

[235] The documentary evidence supports the conclusion that the shares held by the respondent prior to the Family Business Acquisition (being one third of the shares in the Family Business Corporations) were property derived from property, or the disposition of property, acquired by him before his relationship with the claimant began and are excluded property.

b. Has the Respondent Proven the Extent of his Excluded Property Claim?

[236] The Court of Appeal has stated the FLA does not demand "precision" or "mathematical certainty" in the standard of proof for establishing a claim to excluded property: Shih at para. 40. However, the burden is on the respondent to establish the extent of his exclusion based on "clear and cogent evidence": Shih at para. 43. This is logical since it is the party who acquires the property that has the best opportunity to preserve or obtain evidence of its historical value. Without that baseline value, the amount of the increase in value, which is family property, cannot be determined. Allowing a spouse claiming property is excluded to defeat the other spouse's family property claim by failing to provide evidence of the property's historical value, cannot be the legislative intent behind the FLA's family property regime.

i. Art

[237] Although I have found that artworks 9 through 18, 24, 30, 32, and 35 are either inheritances or property belonging to the respondent before his marriage to the claimant, no evidence of the historical value was led with respect to pieces 9, 12, 16, 24, 30, 32, and 35. I appreciate that mathematical certainty is not required in order to establish an excluded property claim, but clear and cogent evidence is required. Therefore I find their entire value is family property.

[238] With respect to the remaining artworks I have found to be the respondent's excluded property, I also find the quality of the expert opinion evidence of both historical and current value to be deficient and unreliable. The Langmann Reports contain very little analysis of how she arrived at her opinions on value. During her evidence Ms. Langmann could not recall which comparables she used to value the pieces, and admitted she had relied on and incorporated other people's opinions in developing her own opinion without disclosing that she had done so. There was no reliable way for me to independently assess her opinion because she did not articulate the foundation upon which it was based. In addition, her evidence bled into areas in which she was not qualified to give expert opinion evidence. Finally, she did not personally view some of the pieces, including a Picasso limited edition print, before valuing them. Her opinion on the historical fair market values differs, in some cases significantly, from the fair market value attributed to them during the distribution of Joan and Hubert's estates. As a result of all these deficiencies I do not feel I can place any weight on Ms. Langmann's opinion and thus have no way means of valuing the historical (or current) fair market value of the art. Therefore I find their entire value is

also family property.

ii. Vehicles

- [239] I have found the 1955 American Motors Metropolitan, 1981 Honda XL 185S Motorcycle, 1971 Mercedes-Benz 280 SL, and 1972 Mercedes-Benz 350 SL are either inheritances or property acquired prior to the parties' relationship. However, the evidence regarding the extent of the respondent's exclusion is less than ideal. Although Mr. Konieczek was retained to value the vehicles, he would not make himself available to be cross-examined on his report. The Konieczek Report does not provide any detailed explanation of how he arrived at his "current value" determinations except that they were based on "numerous discussions regarding the values of the vehicles with prominent members of the classic car community and peers, as well as analysis of the Hagerty Insurance evaluation databank".
- [240] By agreement of the parties, the Konieczek Report was tendered as "some evidence" of value but not expert evidence of value. That agreement was conditional on further documents taken from the Hagerty Insurance database also being tendered by the claimant as some evidence of value of the various vehicles.
- [241] Although the respondent argues the Hagerty documents tendered by the claimant are not reliable indications of value, as I have noted, Mr. Konieczek relied on that database to some degree in determining current value, and the historical values of several of the Vintage Vehicles are also stated to be derived from the Hagerty Insurance evaluation database, presumably because it is considered a reliable source of information.
- [242] I find the historical values set out in the Konieczek Report are reliable because they are reported as originating from the Hagerty database. The Konieczek Report does not provide any detail of the discussions Mr. Konieczek relied on to determine his opinion regarding current value. I find the evidence in the Konieczek Report regarding current value is unreliable. I find the Hagerty documents tendered by the claimant to be the most reliable evidence of the current value of the vehicles. It was not clear to me whether the current average values contained in the Hagerty documents were expressed in USD or CAD. I have assumed they are expressed in Canadian dollars, but if I am wrong and they are expressed in American dollars the amounts below should be calculated using the daily exchange rate published by the Bank of Canada for the opening date of trial.
- [243] I find the following to be the value of the respondent's excluded property claim and the value of the family property interest in the vintage vehicles referred to in the Konieczek Report:

1971 Mercedes-Benz 280 SL

Excluded value: \$25,000

Value at trial: \$57,900

Family property value: \$32,900

1972 Mercedes-Benz 350 SL

Excluded value: \$15,000

Value at trial: \$12,000

Family property value: Nil.

1955 American Motors Metropolitan

Excluded value: \$5,000

Value at trial: \$8,100

Family property value: The claimant has foregone any claim to the increase in value of the Metropolitan.

[244] The respondent shall be entitled to retain the 1971 Mercedes-Benz 280 SL and the 1972 Mercedes-Benz 350 SL as his excluded property, and shall pay the claimant \$16,450 to compensate her for half the increase in the value of these two vehicles over the course of the marriage. The respondent shall be entitled to retain the 1955 American Motors Metropolitan and based on the claimant's consent, no compensation for any increase in its value over the course of the marriage is payable.

iii. Vessels

[245] I have found that Vessel #18 was acquired by the respondent before the marriage, however the Small Report does not provide any evidence of historical value. I conclude the entire value of Vessel #18 is family property.

iv. Remaining Chattels

[246] I have already noted that Michael Collins prepared two draft Timelines Reports dealing with the contents of the former Adera Family Residence and the contents of the Pender Property. In undertaking his work, Mr. Collins did not examine the contents of each box, but instead simply took the respondent at his word regarding what some boxes contained. For that reason alone, I consider the reports to be seriously flawed.

[247] As noted earlier in these reasons, Master Taylor refused to make an order to finalize the draft Timeline Reports because the respondent's actions had resulted in a valuation process, and draft reports, that were unfair to the claimant.

[248] In the end, I have no evidence I find to be reliable regarding the fair market value of the Remaining Chattels at the date of trial.

v. Palm Desert

- [249] I have found the respondent has established he inherited a one third interest in the Palm Desert Property. The respondent values the extent of his inherited interest in Palm Desert at \$38,833.33 USD, being one third of his successful \$115,000 USD bid for Palm Desert at the Sibling Auction in 1999. Although the Chapman Children's historical attachment to the property played some role in influencing their respective bids, I nonetheless agree the winning bid amount is a reasonable basis upon which to determine the historical value of the respondent's inherited one third interest in the Palm Desert Property. I find the extent of the respondent's excluded property interest in the Palm Desert Property is \$38,833.33 USD.
- [250] Through no fault of either party, I have no admissible reliable evidence regarding fair market value of the Palm Desert Property as at the date of trial. An appraisal done in April 1997, but that evidence is too dated to be of assistance in determining current fair market value. The respondent testified he had contacted realtors around the time of trial and been advised the value of the Palm Desert Property had increased to approximately \$135,000 USD. However, that evidence is hearsay and its unreliability is underscored by my finding that the respondent's evidence on all financial matters is not credible. To further complicate the issue of the current fair market value of Palm Desert Property, the parties advise me that whoever takes the Palm Desert Property will benefit from favourable property tax treatment based on the laws of California.
- [251] The Palm Desert Property is situated outside of BC. I find the family property interest in the Palm Desert Property cannot practically be divided. Because the extent of the respondent's inherited interest constitutes less than a half interest in the asset, and that there is no reliable admissible evidence of the fair market value of the Palm Desert Property at the time of trial, I find it is appropriate to order the division of the respondent's inherited interest in the Palm Desert Property. That division is to be achieved in accordance with the process I have outlined below for the dividing of property, with the respondent receiving credit in the overall equal division of family property for his \$38,833.33 USD exclusion.

vi. ECL Shares

- [252] I have found the respondent inherited what became one third of the shares in the Family Business Corporations. He received those shares in 1996. However, the claimant submits the respondent is only entitled to an exclusion of their value in 1993, when Joan died and the respondent became entitled to his inheritance.
- [253] In Parton at para. 51, Justice Butler held that excluded inheritances are to be valued as of the date a spouse receives the inheritance. That specific issue was not commented on by the Court of Appeal. Under the doctrine of judicial comity, I am to follow the decisions of other judges of this Court unless subsequent decisions have affected their validity, it is demonstrated that some binding authority was not considered by the court in passing judgment, or the judgment was unconsidered, in that an immediate judgment was required to be given without opportunity to fully consult authority: *Re Hansard Spruce Mills*

Limited, [1954] 4 D.L.R. 590 at 592 (B.C.S.C.).

- [254] The claimant urges me to reconsider Butler J.'s judgment arguing it was unconsidered and did not take into account circumstances such as those in this case. The claimant submits that upon Hubert's death the respondent acquired a beneficial interest in one third of the assets of the estate. She argues this beneficial interest should be treated the same as a vested interest of a beneficiary of a trust, where the increase in value of the trust assets would be divisible between the spouses at separation.
- [255] The respondent advocates for the analysis of Butler J. He refers also to the decision of Justice Brundrett in *M.F.W. v. M.A.H.*, 2019 BCSC 588, which left the rule articulated by Butler J. undisturbed.
- [256] The claimant's position overlooks that upon his death, the real property in Hubert's estate vested in his personal representatives, not the beneficiaries: Estate Administration Act, R.S.B.C. 1996, c. 122, s. 77(1). While the respondent acquired certain rights vis-à-vis the trustees upon Hubert's death, the respondent did not acquire an interest in the estate's assets until they were distributed, which for the most part was in 1996.
- [257] I am alive to the claimant's argument that such an interpretation may permit an unscrupulous spouse who is both a beneficiary and an executor under a will to delay receipt of their distribution in an effort to frustrate their spouse's right to benefit in the increased value of the estate. I make two comments in response. First, there is no evidence those were the circumstances in this case. Second, no argument was made with respect to whether an executor owes fiduciary duties to the spouse of a beneficiary. Where trustees of an estate act in a manner intended to defeat a spouse's claim to family property in the form of an increase in an inherited asset, it may be that equity will provide that spouse with a remedy. That is a matter for another day.
- [258] In my view, the reasoning underpinning Butler J.'s conclusion in *Parton* is sound:
- [51] Before an inheritance can be excluded property, it must be received by the beneficiary. If that were not the case, the court would have to explore the administration of the estate to value the assets and liabilities as of the date of death and consider the likely estate expenses. This would prolong and complicate property division claims and would produce an illusory value for the exclusion.
- [259] The Family Business Acquisition included ECL's inventory, artwork, and furnishings, as well as the real property held by the other Chapman companies.
- [260] I find the price paid to acquire the respondent's sisters' shares in the Family Business Corporations in 1996 is a sound basis upon which to determine the value of the respondent's exclusion represented in the ECL shares. Where both parties have sufficient business acumen and familiarity with the business or asset involved, a shotgun clause typically generates a fair price since it reflects both what the offering party is willing to pay or receive. Based on the shotgun clause I find the value of the respondent's excluded

property in the ECL shares to be \$949,725.

- [261] Patti Daum was qualified to provide expert opinion evidence in business valuation. The parties retained Ms. Daum in the spring of 2018 to prepare a current valuation of the Family Business Corporations, as well as historical valuations for each of the dates of cohabitation the parties advanced, as well as December 1996 (when the respondent inherited some of the shares and the Family Business Acquisition took place), and December 1, 2016 (the date of the ECL amalgamation). However Ms. Daum was only able to provide a current valuation of the ECL shares because the respondent did not produce the information needed for the earlier valuation dates.
- [262] Using the adjusted net book value technique for share valuation, Ms. Daum's opinion was that the en bloc fair market value of the issued and outstanding shares of ECL was as low as \$12,807,000, as high as \$13,127,000, making the midpoint fair market value \$12,967,000. In forming her opinion Ms. Daum relied on appraisals done as recently as April 30, 2019 for the West 3rd Property and the Ontario Street Property. Those appraisals determined the fair market value of the Ontario Street property to be \$4,900,000 fair market value of the West 3rd Property to be \$5,752,500.
- [263] In forming her opinion, Ms. Daum also relied on unaudited financial statements of the Family Business Corporations which all post-dated the parties' separation, as well as corporate income tax returns for the Family Business Corporations, many of which postdated the couple's separation. As I stated earlier in these reasons, I find the financial statements unreliable. In the report which set out her opinion, Ms. Daum attributed no value to the Chapman name, although she agreed it may have a value. Her opinion also took into account the costs, which she estimated to be 3% or \$320,000, associated with the sale of the underlying real properties. Those costs would likely be avoided in a related party transfer, or if the properties were not sold.
- [264] Ms. Daum noted that ECL has a balance in its capital dividend account in the amount of \$3,274,516, which would allow it to pay tax-free dividends to shareholders in that amount. While the capital dividend account does not increase the value of the company, it is a benefit to ECL's shareholders, currently only the respondent.
- [265] Ms. Daum provided an update of her opinion in November 2019, to account for the \$700,000 density bonus to which ECL was entitled, which had not been previously disclosed by the respondent.

c. The Trust Claims

- [266] As noted earlier in these reasons, the claimant advanced claims of unjust enrichment against the corporate respondents, now against ECL alone post-amalgamation, and seeks a remedy that allows her to access ECL's real property. I must consider whether the consequence of the marriage breakdown is the retention of an inappropriately disproportionate amount of wealth by the respondent when the parties have been engaged

in a joint family venture to which the claimant directly contributed thus contributing to the accumulation of wealth. The claims are relevant to the ECL shares, which are registered solely in the respondent's name.

[267] In undertaking this analysis, I will examine the evidence within the rubric of the four headings described by Justice Cromwell in *Kerr*: mutual effort, economic integration, actual intent, and priority of the family.

i. Mutual Effort

[268] Throughout their long-term relationship, the parties jointly determined their mutual goals and worked as a team to accomplish those goals and provide for their family's present and future. They decided to and did raise children together, although the claimant bore the primary responsibility for their care, maintaining the home, and domestic chores. Together, they decided to undertake the Family Business Acquisition.

[269] The claimant's equal participation in ECL is supported by the testimony of several witnesses and the documentary evidence, including the business plan, which the respondent conceded was jointly developed by the claimant and the respondent with the assistance of Hay & Watson accountants. The business plan was prepared to assist in obtaining financing to complete the Family Business Acquisition. There were also emails confirming the claimant's involvement in ECL and her role in supporting the commercial properties held by the Family Business Corporations.

[270] Beyond the claimant's own evidence on this point, which I accept, the collateral witnesses confirmed the claimant had extensive involvement in ECL. John Richter observed her to be in charge of staff, as well as taking the lead on the buying. Sylvia Rayer, who worked for the claimant both in her business and later in ECL, testified the claimant attended each of the Chapman stores every day to check in, see how things were going, and provide any assistance needed by the staff. Ms. Rayer's evidence was echoed by Joanna Pallister, who also worked at ECL after the parties had taken over the Family Business Corporations. Ms. Pallister testified the claimant was extensively involved in work of ECL, including scheduling, buying, and direct client service on the sales floor. Ms. Pallister was not cross-examined on any of her evidence. Nahid Pourtaghi, who operated a clothing store across from the Chapman Store on Pender between 2001 and 2003, also testified that the claimant was highly involved in the operation of ECL. Ms. Pourtaghi observed the claimant involved in various management activities, as well as doing merchandising. When Ms. Pourtaghi decided to close her business in 2003, she approached the claimant about a consignment arrangement with ECL that continued between 2004 and 2008. Over the course of the consignment relationship Ms. Pourtaghi visited the various Chapman stores on average twice a month and observed the claimant to have a very hands-on role at all of the Chapman locations. In all of the years Ms. Pourtaghi had dealings with ECL she never once saw the respondent. The claimant was the only one with whom she ever dealt.

- [271] Both parties contributed effort by working full time with ECL, and money earned, generated, and borrowed was put towards achieving their common goals, including preserving the assets of the Family Business Corporations. Both assumed financial risk in doing so. The respondent very reluctantly admitted that the equity in the seven properties at issue was "built together" with the claimant.
- [272] The increase in the value of the real property now owned by ECL was the result of market forces. However, the respondent did not take on the risk of such investing alone. The claimant took on risk in the Family Business Corporations as she was equally responsible for all debt guaranteed by the respondent, or secured against family property by either of them during their marriage: FLA, s. 81; Xie v. Yuan, 2018 BCSC 941 at para. 183; Boman v. Boman, 2009 BCSC 1435 at para. 180; Ye v. Shi, 2019 BCSC 204 at para. 82.
- [273] I find the growth in the family and corporate property was the result of their mutual effort.

ii. Economic Integration

- [274] Although the respondent grew up in ECL, he stopped working there after his parents died as a result of the conflict with his sisters. While he returned to work as a result of a settlement reached with his sisters, he was not involved in running ECL in those years. After the Family Business Acquisition both parties operated ECL collectively. Throughout the parties' marriage there was no distinction between money used to service personal debt and money used to service corporate debt. Although almost all of the credit cards and bank accounts were in the respondent's name, they were used as a common purse for expenses incurred by both parties. Money earned was invested into the Family Business Corporations and family property was leveraged to support the Family Business Corporations. The respondent took on significant family debt, for which the claimant was also responsible, through constant refinancing of property in which the claimant had a beneficial interest and by borrowing from Bruce Reid, in order to breathe money into the companies and sustain the family's standard of living. As a result of their collective efforts and mutual risk, it was possible to avoid selling either of the main assets held by the Family Business Corporations while real estate values increased significantly. The increase in value of the ECL shares between 1996 and the trial was largely due to market forces rather than any particular skill exercised exclusively by the respondent. As the respondent testified, everything was done for the present and future benefit of the family unit. I accept his evidence on that point.

iii. Actual Intent

- [275] The respondent acknowledges he presented a proposed marriage agreement to the claimant around the time of their engagement. Although the agreement was never signed, in their discussions about the financial consequences of their marriage the respondent told the claimant his intention was they would share everything equally after they had been married for ten years. The claimant understood that stated intention to be true and constant throughout their relationship. She relied on that understanding. I find that their

behavior, in acting in concert to support the Family Business Corporations and fulfil the family's needs, as well as that verbal commitment, support the conclusion that both parties actually intended their relationship and economic efforts to be a joint enterprise.

iv. Priority of the Family

[276] When she met the respondent the claimant had started and was growing her own business. However, after the Family Business Acquisition, more and more of the claimant's time was allocated to ECL, leaving her with less time to grow her own business. She took no income for her work done for the benefit of ECL. I find she made those sacrifices for the welfare and collective interest of the family, while continuing to maintain her elevated role as the spouse primarily responsible for the care of the children and all aspects of the family's domestic life.

v. Conclusion

[277] Overall, I am satisfied on a balance of probabilities that throughout their marriage the parties were engaged in a joint family venture to which the claimant directly and equally contributed. I find the claimant's contributions to the joint venture made the accumulation of wealth now held by ECL possible. The Family Business Corporations were enriched and the claimant was correspondingly deprived without juristic reason. The circumstances do not fall within any of the established categories of juristic reason: Kerr at para. 41. In addition, the parties did not reasonably expect the claimant would contribute effort equal to that of the respondent for the benefit of the companies without equal reward. There are no policy considerations that warrant a denial of recovery by the claimant in these circumstances. I declare that half of the ECL shares, registered solely in the respondent's name, are impressed with a constructive trust in the claimant's favour.

d. Division of Property

[278] The claimant seeks reapportionment of the family property in her favour. In Remmem v. Remmen, 2014 BCSC 1552 at para. 47, Justice Bulter suggests that before ordering an unequal division of family property, the court must first notionally divide the family property equally to allow an assessment of whether division on that basis is significantly unfair. I agree that is a reasonable approach.

i. The Chattels

[279] In this case, the notional equal division of family property is complicated because evidence regarding the current fair market value of the family property is largely absent or unreliable. In addition the methods the parties have proposed to divide and determine the value would take further time and could lead to further disputes that would come back to the court for determination.

- [280] The respondent acknowledged during his cross-examination that the current state of the storage of the chattels, which I find is exclusively his doing, makes it basically impossible to view them. Liquidation of the chattels may ultimately cost more than they are worth; it is impossible to know given the state of their storage. Based on the photographs presented at trial and the evidence of Mr. Collins, it appears a person could spend all day, every day, for months, trying to sort through all the chattels, and not make a dent in what needs to be divided. The vast quantity of chattels to be divided mean the sorting, evaluating, potential cataloguing, and selling of several buildings full of chattels, some of which are of marginal value. An organized liquidation would be time-consuming and expensive. There is the option of liquidating the chattels as a single lot, but that could negate any possibility of the respondent locating the few items that I have found are his excluded property or the retrieval of family mementos such as photographs by the claimant.
- [281] Further, both liquidation and an alternating pick process would take additional time, while the storage costs continues to rise and the condition of chattels stored at the Ontario Street Property, which is rife with rodent feces and water damage, continues to deteriorate.
- [282] The respondent's animosity towards the claimant also means alternating picks, which would require the parties to spend extended periods of time together, is not an option I find to appropriate beyond what Justice Loo has already ordered. The deficient evidence concerning the current value of the family property would also make it difficult to determine whether fairness required an equalization payment to be paid by one of the parties.
- [283] The division of the chattels has been an unresolved issue since the claim was filed almost five years ago. The division of the property needs to be resolved fairly but quickly.

ii. ECL Shares

- [284] I have found the claimant has established her claim for unjust enrichment against the corporate respondents and declared that one half of the ECL shares are impressed with a constructive trust in her favour. Remedies for unjust enrichment are restitutionary in nature, and a monetary award should always be the first remedy considered and may suffice, however in certain circumstances the deprived party may be entitled to a proprietary remedy: Kerr at paras. 46, 47, and 50. In addition, ss. 97(1)(b) and 97(2) of the FLA allow me to fashion a remedy which provides the claimant with real property held by ECL.
- [285] In considering whether a monetary award is insufficient, the court may consider various factors, including the probability of recovery and whether there is a reason to grant the plaintiff the additional rights that flow from recognition of property rights: Kerr at para. 52.

- [286] I note that the initial business plan developed by the parties for the Family Business Acquisition called for the sale of the West 3rd Property, which supports the conclusion that, contrary to the respondent's evidence, he was willing to sell it. I find the respondent has no particular sentimental value attachment to either the West 3rd Property or the Ontario Street Property that might preclude a proprietary award to the claimant.
- [287] The respondent proposes a monetary award reflecting half the value of the ECL shares. However, during his closing submissions I questioned whether I would need some evidence that the respondent had the ability to effect such a payment, since without it my order could create an impossibility. The respondent agreed such evidence would be needed. However, no such evidence is before the court. Instead, the respondent submits that whether and how he could finance the purchase would be his problem, but he advocated for the opportunity to pursue it. The respondent invited me to provide him with that opportunity, and put a time limit on it. The respondent also submitted it would be necessary for the claimant to cooperate, for example if a mortgage on the property were required. Further, he acknowledges that if he is unable to come up with the sufficient funds, I would then have to look at other options.
- [288] The property distribution issues need to be resolved. The trial was for that purpose. Evidence relating to proposed remedies was to be marshalled and presented at trial. I find the idea of a contingent remedy, premised on the respondent's ability to successfully raise or finance millions of dollars, which was uncertain at the close of trial and may be more so following the release of these reasons, is unpalatable.
- [289] Finally, in my view there is an additional reason to grant the claimant the ability to secure a proprietary remedy. Throughout the trial the respondent was reluctant to acknowledge the claimant's role in and contributions to acquiring, preserving, and growing the wealth they jointly accumulated over the course of their marriage. A 'pay-off' is not what the claimant seeks. She seeks an interest in the property she worked for and earned. I find she is entitled to the recognition of her contributions that a proprietary award implies.

iii. Conclusion

- [290] I find a just, speedy, and inexpensive way to value and divide the property is through sealed bids exchanged by the claimant and the respondent, based on the process and categories of property outlined below. The respondent has indicated an interest in retaining all of the chattels and all of the real property. A sealed bid process provides him a fair opportunity to realize that goal. The claimant has indicated she would like all the Remaining Chattels sold because the time that would be needed to sort and organize them in a way that would allow anything to be reclaimed outweighs the potential value to be gained. A sealed bid process would allow her to bid a price that provides what she feels is a fair return net of the sale costs. In advance of the sealed bid process, the respondent can take steps to determine whether he can raise sufficient funds to acquire both the West 3rd Property and the Ontario Street Property and bid accordingly. A sealed bid process will enable the respondent's

excluded property to remain with him. A sealed bid process will also result in a valuation of the family property that is fair to both parties.

[291] Therefore I order the following process (the "Sealed Bid Process") to divide the property:

1. Within 60 days of these reasons for judgment, the claimant and the respondent are to each prepare a sealed bid setting out the dollar amount at which they value each item listed below (their "Sealed Bid") and provide their Sealed Bid to their legal counsel.
2. Together, and within 7 days of the date on which both legal counsel have received their client's Sealed Bid, the parties' legal counsel will:
 - a. review the Sealed Bids and determine which of the parties had highest bid for each item. The person with the highest bid for each item will receive that item, with one exception. If the claimant has the highest bid for a chattel I have found to be the respondent's excluded property but for which no historical value was proven, the respondent will have the option of matching the claimant's Sealed Bid amount and keeping the chattel;
 - b. calculate the total of the winning bid amounts for all of the items (the "Total Value"). The Total Value is to be divided in half to determine the value of each party's interest in the Total Value (the "Equal Share Value");
 - c. calculate the total of each party's bids for the items they won (their "Total Bid"); and
 - d. communicate the results to the parties concurrently (the "Communication Date").
3. If a party's Total Bid exceeds the Equal Share Value, that party shall pay the difference to the other party within 45 days of the Communication Date.

[292] The respondent's proposal for dividing much of the family property involved treating multiple individual items within certain categories globally. I believe that is a sound approach and with that in mind I direct the following list be used for each party's Sealed Bid:

- Each artwork itemized in the Langmann Reports is to be a separate item;
- Other than the 1955 American Motors Metropolitan, 1971 Mercedes-Benz 280 SL, and 1972 Mercedes-Benz 350 SL, each of the vehicles itemized in the Koniczek Report is to be a separate item;
- The 1981 Honda XL 185S Motorcycle is to be a separate item;
- The Remaining Vehicles are to be treated collectively as one item;
- Each vessel itemized in the Small Report is to be a separate item; and
- Palm Desert Property, and all chattels located there as at the date of these reasons for judgment, are to be treated collectively as one item;

- The Ontario Street Property (excluding the contents) is to be a separate item;
- The West 3rd Property (excluding any contents) is to be a separate item;
- All other chattels stored in the former Adera Family Residence, the Ontario Street Property and Granville Storage as at the date of these reasons for judgment (which are the Remaining Chattels) are to be treated collectively as one item.

[293] I am excluding from the Sealed Bid Process the chattels I have determined to be the respondent's excluded property and for which I have determined he established a historical value, or over which the claimant makes no claim ("Excluded Property Items"). If the claimant's Sealed Bid results in her receiving possession of any of the respondent's Excluded Property Items, she is to deliver them to the respondent within 60 days of the Communication Date. Similarly, if either party's Sealed Bid results in them receiving possession of an item for which they did not have the highest bid (for example, if they have the highest bid for the Remaining Chattels but a vehicle, vessel or artwork for which they did not have the highest bid is stored with the Remaining Contents) that party is to deliver that item to the other party within 60 days of the Communication Date.

[294] I recognize there is a risk that in treating several categories of chattels collectively as one item the respondent may lose things that are important to him. However, he has no one but himself to blame for the current state of chaos of the chattels. If he had ensured a fair and orderly process from the beginning, he would not find himself in this position. The situation I must deal with is the one before me.

[295] If the claimant has the winning Sealed Bid for either or both of the West 3rd Property and the Ontario Street Property, those properties shall be transferred to a new company incorporated by the claimant for that purpose, by way of a butterfly transaction on terms and conditions to be agreed upon by the parties within 90 days of these reasons for judgment (the "Butterfly Transaction"). If the parties cannot agree on the terms, either is at liberty to seek further directions from the court and I will impose terms.

[296] Upon completion of the Sealed Bid Process and the Butterfly Transaction, the claimant's beneficial interest in the ECL shares will be extinguished.

[297] After the Communication Date has passed and the Point Road chattels distributed by the alternating pick process set out in Justice Loo's order of December 14, 2016, if the claimant is of the view that reapportionment of family property is still warranted, the parties may make further submissions on that point, based on schedule agreeable to both counsel. If a schedule cannot be determined, the parties can write to Supreme Court Scheduling and I will set timelines and parameters for those submissions.

[298] However, because the claimant sought a declaration of entitlement to spousal support as a factor favouring reapportionment in her favour, I will address that issue here so my findings can guide the parties.

- [299] The claimant seeks declaration that she is entitled to spousal support on a compensatory basis: *Chutter v. Chutter*, 2008 BCCA 507. If successful, she asks that it be viewed as a factor supporting the reapportionment of family property: FLA, s. 95.
- [300] The respondent submits the claimant is not entitled to spousal support. He seeks to distinguish *Chutter* on the basis that the payor in *Chutter* travelled extensively for his work, wanted his wife to be at home for their son, and maintained the same salary after separation which was significantly higher than that of his spouse. The respondent argues the parties are similarly situated in terms of their age, career background, and lack of employment income, and are "in a similar financial position, even after taking into consideration the value of Mr. Chapman's excluded property claim, which is a relatively small portion of the total value of the assets".
- [301] I find the claimant has established an entitlement to spousal support on a compensatory basis. The claimant sacrificed the opportunity to fully focus on and grow her own business in order to take primary responsibility for managing the family's household and raising the couple's children. The years she dedicated to caring for her family and working to support ECL, without any significant income, were years she could have dedicated to her own business. As a result, her own business suffered. She has no employment prospects and, other than her portion of the family property, no assets or income of any kind.
- e. Division of Excluded Property
- [302] The parties' marriage was a long one. I reject the respondent's position that the claimant did not contribute to the preservation, maintenance, operation, or management of his excluded property for the reasons set out in my analysis of the trust claims. However, because of the relatively small value of the respondent's excluded property relative to the family property, I do not find it is significantly unfair not to divide the respondent's excluded property. My conclusion on this point is predicated on my findings regarding the nature and extent of the respondent's excluded property. If I am wrong about the nature or extent of the exclusion to which the respondent is entitled, my determination on this issue would likely be different.

VI. DIVORCE

- [303] Both parties seek a divorce, but ask pronouncement of divorce be delayed to allow for any corporate reorganization undertaken following the release of these reasons.
- [304] I find that all statutory preconditions for divorce are met, but I accede to the parties' request that the pronouncement of the divorce be deferred to a later date. The parties are at liberty to submit an application for their divorce to my attention without further hearing so long as they do so with an accompanying affidavit confirming that there have been no changes in circumstances that would disentitle them to a divorce.

VII. ACCOUNTINGS

- [305] The proceeds of sale of various real property are currently being held in trust in the respondent's counsel's firm ("JML"). The parties both agree those proceeds are family property and should be divided equally, however the claimant submits that equal division should be done following two accountings.
- [306] I find that after the Date of Separation, the respondent caused a significant decrease in the value of family property by incurring significant and unnecessary storage costs which the claimant sought to avoid through various court applications. I also find that after the Date of Separation, the respondent caused a significant decrease in the value of family property by taking steps which resulted in the Timelines Reports being unreliable and the costs incurred for those draft reports wasted. The rent and any other expenses associated with the Adera Family Residence and the Granville Storage and the costs associated with the draft Timelines Reports shall all be the sole responsibility of the Respondent.
- [307] The respondent admitted and I find he spent some of the interim distribution funds provided to him to pay certain joint expenses, to pay expenses that exclusively benefited him, including various club memberships.
- [308] In addition, the constant blending of corporate and personal funds by the respondent throughout the marriage further supports my finding that the accountings sought by the claimant are warranted.
- [309] The inconsistencies in Bruce Reid's evidence, including with respect to when the respondent repaid the promissory notes and whether interest was charged or paid, also lead me to conclude the accountings sought by the claimant are appropriate.
- [310] I find the accountings sought by the claimant are appropriate. Under R. 18-1 of the Rules, I direct an accounting be held by the Registrar, of the scope and on the terms proposed by the claimant as the First Accounting and the Second Accounting with the exception of para. (c) of the Second Accounting, which duplicates para. (f) of the First Accounting. I further direct the result of those accountings to be certified by the Registrar.

VIII. OTHER RELIEF

- [311] In addition to the orders made in my reasons above, I further order:
- a) each party shall keep their own bank accounts in their own names free of claim from the other;
 - b) the respondent will keep his own jewelry free of claim from the claimant;
 - c) the claimant will keep her own jewelry free of claim from the respondent;
 - d) the claimant shall retain as her sole property her interests in Richter Designs and Iconic Investments;

- e) the respondent shall retain as his sole property Osborne Holdings Ltd. and Page Ponsford Brothers Ltd. (both incorporated in 2017) and Chapy's;
- f) the respondent is solely responsible for any money owed based on late delivery of vacant possession of the Pender Street Property;
- g) the Point Road Proceeds to be divided equally between the parties;
- h) the Little Lane Proceeds to be divided equally between the parties;
- i) each party shall remain solely responsible for the debts in their own names, shall not pledge the credit of the other, and shall hold the other harmless for any debts in their name whether arising during the marriage or post separation;
- j) the respondent shall personally indemnify the claimant for any liability associated with Chapy's, ECL, or any of its predecessor companies, including but not limited to corporate income taxes no matter when incurred or attributed;
- k) each party shall indemnify the other from liability for the other parties' personal tax liability incurred during the marriage or after, whether presently known or unknown;
- l) the respondent shall not cause or permit Chapy's, ECL, or any of its predecessor entities to take any step, make any election, or issue any document and which might reasonably be expected to create a tax liability for the claimant in respect of any taxation year past or present;
- m) the Point Road Contents shall be divided pursuant to the order of Madam Justice Loo pronounced December 14, 2016. The parties will make themselves available for the actual division within 30 days of the delivery of these reasons;
- n) CPP credits shall be divided equally in accordance with Part 6 of the FLA, using the dates of December 21, 1990 and March 1, 2014.

[312] As part of the relief sought in this family law case, the claimant had sought to affect a change of name. She abandoned that relief during the course of the hearing. That aspect of her family claim is dismissed.

[313] By order of Master Taylor dated April 9, 2019, the respondent was ordered not to move or remove any items from any of the addresses, including the Adera Family Residence, Granville Storage, Pender Property, West 3rd Property, and the Ontario Street Property without the written consent of the claimant or a court order. I order the respondent is prohibited from attending, or permitting anyone else to attend, the former Adera Family Residence, Granville Storage, West 3rd Property, Ontario Street Property, or Palm Desert Property without providing the claimant at least two clear days' notice, and the claimant is entitled to attend or have somebody attend on her behalf any time the respondent attends any of those properties. No items are to be removed from any of those properties except in accordance with these reasons or by consent of the parties evidenced in advance in writing.

IX. SUMMARY

[314] In summary I make the following orders:

- a) I impute an annual income of \$125,000 to the respondent;
- b) I impute an annual income of \$125,000 to the claimant;
- c) based on the respondent's Guideline Income of \$125,000, the respondent will pay the claimant child support in the amount of \$1,154 per month for the months Edward is living at home (May to August) and \$954 per month for the months Edward is away at university (September to April), payable on the 1st day of the month, via e-transfer, until further order of the court or written agreement of the parties. These amounts are subject to the adjustment advocated for by the claimant;
- d) the respondent will pay the claimant \$45,900 for retroactive child support;
- e) the parties will contribute equally to the Section 7 Expenses claimed by the claimant, with the exception of the New York Times subscription;
- f) the Sealed Bid Process will occur to divide the property, with the exception of the Excluded Property Items and the Point Road Contents. The respondent will retain the Excluded Property Items;
- g) there will be an accounting held by the Registrar, of the scope and on the terms proposed by the claimant as the First Accounting and the Second Accounting, with the exception of paragraph (c) of the Second Accounting.

X. COSTS

[315] I find the claimant is the successful party in this family law case.

[316] The claimant sought leave to make further submissions on the issue of costs. The parties are granted permission to provide written submissions on costs not exceeding ten pages, with the claimant's submissions being first and the respondent's submissions being provided within two weeks thereafter. Any written reply by the claimant must be filed and served within one week after receipt of the respondent's submissions and is limited to five pages. All submissions must be received within 45 days of the date of these reasons for judgement. The court will decide whether oral submissions are necessary after review of the written submissions.

[317] If issues arise from this order, I declare myself seized.

[318] The parties are at liberty to vary the property division terms of my order by way of a consent order submitted to my attention.

[319] I wish to acknowledge and thank all counsel for their professionalism and the quality of their advocacy on behalf of their respective clients.

"Jackson J."

- [1] By court order dated November 24, 2016, the respondent was granted permission to amalgamate the respondent Osborne Holdings Ltd., the respondent 454740 B.C. Ltd., and the respondent Page Ponsford Bros. Ltd. into the respondent Edward Chapman, Limited (described in the style of cause as Edward Chapman, Ltd. ("ECL"). However, it appears that instead, the respondent amalgamated Osborne, 454, and ECL into Page Ponsford under certificate of amalgamation BC1098630, and then effected a name change of Page Ponsford to Edward Chapman, Limited (also "ECL"). The parties submit the amalgamated entity, Edward Chapman, Limited, should be named as an additional respondent to the action under Supreme Court Family Rule 8-2(7) and the style of cause be amended under Supreme Court Family Rule 8-2(8) to reflect that addition, and I so order.
- [2] There was no suggestion any of the other Family Business Corporations ever held any of the chattels.
- [3] I dismissed this aspect of the claimant's claim at the close of trial.
- [4] There were two reports prepared by Jeannette Langmann. References the number assigned to artworks in the Langmann Reports are to the numbering in the report dated September 21, 2019.

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