

CANADA / JUDGMENT

Chapman v. Cuthbert

2021 BCSC 1

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Supreme Court of British Columbia

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2021 BCSC 1 Chapman v. Cuthbert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chapman v. Cuthbert,

2021 BCSC 1

Date: 20210106

Docket: E55121

Registry: New Westminster

Between:

Michelle Lee-Ann Chapman

Claimant

And

Sean Clarke Cuthbert

Respondent

Before: The Honourable Justice Shergill

Reasons for Judgment

Counsel for Claimant:

D.C. Halkett

The Respondent, appearing in person:

S.C. Cuthbert

Place and Date of Trial:

New Westminster, B.C.

October 26-30, 2020

November 2, 2020

Place and Date of Judgment:

New Westminster, B.C.

January 6, 2021

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I. Overview

- [1] The parties were in a common-law relationship for approximately two-and-a-half years, which ended with separation in November 2017. The main issue in dispute is division of the parties' former family home.

- [2] The claimant, Michelle Lee-Ann Chapman, seeks an equal division of all family property (including the former family home), unequal division of some family debts, as well as lump sum spousal support. The respondent, Sean Clarke Cuthbert, takes the position that due to the short duration of the relationship, and the claimant's lack of financial contribution during the marriage, she should only be entitled to 15% of the growth in equity of the former family home. In addition, he seeks to have all of the family debts apportioned equally, and resists any award for spousal support, arguing that the claimant has not suffered any economic disadvantage on account of the relationship, and has also not established needs-based entitlement.

II. Issues

- [3] The following issues arise in this proceeding:
- a) Whether the claimant is entitled to 50% of the growth in equity of the former family home, or a lesser amount;
 - b) Whether the remaining assets, BMW, and household effects should be divided equally;
 - c) The manner in which family debts should be divided between the parties; and
 - d) Whether the claimant is entitled to spousal support, and if so, the duration and amount.
- [4] Mr. Cuthbert did not have legal representation at the trial, though he did have counsel assisting him with preparing for the trial. The respondent's lack of legal training did not pose an impediment to his ability to represent his interests fully at the trial. The respondent was prepared, understood the necessary aspects of the trial process, and was able to follow along well.

III. Background

- [5] Most of the central facts in this case are not in dispute, though the parties have differing interpretations of some of the events.
- [6] The claimant is 47 years old. She has an adult daughter from a previous relationship and a 10-year-old grandchild. The respondent is 52 years old. He has two adult step-children from a previous relationship. There are no children from the parties' relationship.
- [7] In February 2014, the respondent's wife of 10 years (Heidi[1]) died after a lengthy battle with cancer. The respondent turned to his recovery community at Alcoholics Anonymous ("AA") to assist him in coping with this loss. It was during these AA meetings that the respondent met the claimant. Their relationship was initially platonic.
- [8] The parties began dating in June 2014. At the time, the claimant was living in a townhouse with her parents. The respondent was living in a home that he had shared with his then-deceased wife (the "North Surrey House"). Residing with him were his mother-in-law, brother-in-law, and his step-son.

- [9] As their relationship grew, the parties began to spend increasing amounts of time together. By January 2015, the parties saw each other virtually everyday. They split their time between each of their homes, with more of the time spent at the respondent's home.
- [10] In May 2015, Mr. Cuthbert sold the North Surrey House and purchased a property located on 139A Street in Surrey (the "139A Street House", also referred to as the "former family home"). The respondent was the sole person on title to the 139A Street House and also the sole person on the mortgage.
- [11] Mr. Cuthbert got possession of the 139A Street House in May 2015 and moved into the residence almost immediately. He was joined by the claimant, who moved her belongings into the 139A Street House over the course of the ensuing weeks.
- [12] In December 2015, Mr. Cuthbert proposed marriage to Ms. Chapman, and the two became engaged. At some point, the parties set their wedding date for September 9, 2017.
- [13] Difficulties in the relationship began to emerge by the spring of 2016. The parties tried to work through their differences and eventually sought relationship counselling. Unfortunately, things did not improve, and the wedding did not proceed as planned.
- [14] The parties continued to reside together until November 25, 2017, when the relationship ended and the claimant left the former family home. The claimant moved back in with her parents, but by this time, her daughter and granddaughter were also living there. Because of the limited space at her parents' place, the claimant continued to keep her possessions at the former family home and attended there regularly. During this time, the claimant made some efforts to try to reconcile with the respondent, but Mr. Cuthbert did not wish to do so.
- [15] Around December 28, 2017, the claimant returned to sleep at the former family home, though the parties did not share the same bedroom. The respondent was unhappy with the claimant having moved back into the 139A Street House. On January 8, 2018, the respondent had the locks changed. The claimant was forced to seek the assistance of the police in order to retrieve her personal belongings from the former family home.
- [16] This family law proceeding was commenced by way of Notice of Family Claim on April 18, 2018. The respondent filed a Response and Counterclaim in June 2018.

IV. Credibility and Reliability

- [17] Credibility of the parties was not a major issue in this trial. Not many facts were in dispute, and the parties' evidence was generally in accord with each other's testimony, and that of the other witnesses and documentary evidence.

- [18] I generally found both the claimant and the respondent to be credible witnesses. Although it was evident that the events surrounding their relationship and its breakup were emotionally upsetting, they each made efforts to provide their evidence in a forthright, fair, and impartial manner. They were respectful of each other and the court, and I found them both to be sincere in their efforts to accurately recall events.
- [19] Though generally good historians, neither the claimant nor the respondent had a completely accurate recall of events. They were sometimes vague in their testimony. As is often the case when relaying historical events that are coloured by emotion, there were some discrepancies in each of their evidence.
- [20] For example, in her direct examination, the claimant testified that over the course of their relationship, she had transferred \$10,209 to Mr. Cuthbert for payment of the household expenses. When banking and other documents were put to her during cross-examination, Ms. Chapman agreed that a large portion of this money constituted repayments to Mr. Cuthbert for money that he had loaned to her for her personal expenses. However, Ms. Chapman later resiled from this admission, stating that she was confused and needed time to consider the documents. On the resumption of her testimony, Ms. Chapman was unable to reconcile her testimony with the documentary evidence, which supported Mr. Cuthbert's version of events.
- [21] I do not consider the contradiction between the documents and Ms. Chapman's position regarding the amount of money she had paid towards household expenses, to affect her credibility, though they do affect her reliability. Ms. Chapman seemed genuinely surprised that her financial contribution was lower than she had expressed. The difference in the numbers was, in my view, more a reflection of the human tendency to reinterpret and recast historical events in a favourable manner, rather than any attempt on Ms. Chapman's part to mislead the court.
- [22] There were also discrepancies in Mr. Cuthbert's evidence which affected his reliability as a witness, though not his credibility. For example, there were some unexplained contradictions between the respondent's trial evidence and his evidence given at his examination for discovery. These related to matters such as each party's respective contribution towards household chores.
- [23] In arriving at my findings of fact, I have considered all of the evidence as a whole, including the known facts that are supported by independent evidence, such as other witnesses and the documentary evidence. Due to concerns which arise with respect to the reliability of some aspects of a party's evidence, I have accepted and rejected parts of each party's testimony on key issues.

V. Date of Cohabitation

- [24] The parties agree that they were spouses within the meaning of s. 3(1)(b)(i) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], such that they lived together in a marriage-like relationship for a continuous period of at least two years. However, the parties differ on the date they commenced cohabitation.
- [25] In her Notice of Family Claim, the claimant alleges that she and the respondent commenced cohabitation in October 2014. She maintained this position at trial, though her evidence was somewhat more ambiguous, suggesting that the start date for cohabitation could have potentially been as late as January 2015. It is the claimant's position that while they lived in separate residences during this period, she and Mr. Cuthbert spent virtually all of their spare time together. They alternated between sleeping in each other's homes, although they stayed mostly at the respondent's home. They maintained an exclusive relationship, provided emotional support to one another, and had some intermingling of finances.
- [26] The respondent does not dispute that the parties were in an exclusive relationship since at least January 2015. They saw each other virtually every day, ate meals together, and generally slept together at the same house. He also does not deny that they slept mostly at his place (about four-to-five nights per week), with the parties spending the remainder of the time at Ms. Chapman's home. However, Mr. Cuthbert maintains that they did not commence cohabitation until June 2015, when they both moved into the 139A Street House.
- [27] The evidence leads me to conclude that while the parties were in a serious romantic relationship since at least January 2015, their marriage-like relationship did not commence until June 2015 when they began residing together in the former family home.
- [28] Prior to June 2015, there were many aspects of the parties' relationship that indicated that their level of commitment towards one another was less than marriage-like. The parties did not have free reign at each other's homes. Ms. Chapman was given one dresser drawer for her personal possessions at Mr. Cuthbert's home and did not stay there without him. When Mr. Cuthbert was out of town, she would return to her own residence pending his return.
- [29] The parties also maintained separate bank accounts, credit cards, and debts. Though Mr. Cuthbert co-signed on the loan documents to assist the claimant with buying a car, I accept that he did this as a favour to Ms. Chapman as she was his girlfriend. He did not drive her vehicle, or in any other way treat it as his own. While Mr. Cuthbert provided the claimant with money for the down payment for her car, Ms. Chapman repaid the money to Mr. Cuthbert in full.
- [30] Though the financial arrangement between the parties remained essentially the same after they moved into the 139A Street House, their relationship saw a fundamental shift in other ways. For all intents and purposes, they operated like one family unit. The parties moved all of their belongings out of their previous residences and into the new home. They shared the same living space and household chores such as yard work, cooking, and cleaning. Mr.

Cuthbert did not expect Ms. Chapman to contribute towards the management of the household finances. When Ms. Chapman lost her job just a few weeks after moving into the 139A Street House, Mr. Cuthbert was understanding of her situation, encouraged her to find alternate work, and ultimately assisted her financially so that she could take a course to advance her career. The parties made plans for the future together, got engaged, and explored options for having children. These are all indicia of a committed marriage-like relationship.

- [31] I conclude that the evidence supports a finding that the parties started cohabitation on June 1, 2015.
- [32] The parties agree that the relationship ended on November 25, 2017. This date was also memorialized in a letter dated November 29, 2017, provided by the respondent to the claimant, at the claimant's request.

VI. Family Property

- [33] Division of family property should be determined before a support claim so that the court can assess each party's means, taking into account the property division: *Hsieh v. Lui*, 2017 BCCA 51 at para. 25; *Narayan v. Narayan*, 2006 BCCA 561 at para. 33.
- [34] Under the FLA, property owned by the spouses at the time of separation is categorized as either "family property" or "excluded property".
- [35] All real or personal property owned by either spouse at the date of separation is broadly defined as family property (s. 84(1)). "Excluded property" is property which presumptively remains with the owning spouse, and is not subject to division, except by operation of s. 96. Section 85(2) places the onus on the spouse claiming the exclusion to prove that the property qualifies as excluded property.
- [36] Pursuant to s. 81 of the FLA, each spouse is presumptively entitled to an undivided half interest in all family property, regardless of their respective use or contribution: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38.
- [37] Section 95(1) of the FLA allows the court to order an unequal division of family property or family debt if it would be "significantly unfair" to equally divide such property or debt. Section 95(2) enumerates factors the court may consider in weighing an unequal division.
- [38] To meet the "significant unfairness" test, the court must be satisfied that there exists "something objectively unjust, unreasonable or unfair in some important or substantial sense" which requires the family property to be divided unequally: *Jaszczewska* at para. 42.

- [39] The court is guided in this endeavour by s. 95(2), which sets out relevant factors that can be considered to constitute significant unfairness. Included in these are a variety of factors such as: the duration of the relationship between the parties; the existence of an agreement between the spouses (other than one described in s. 93(1)); and a spouse's contribution to the career or career potential of the other spouse. Section 95(2)(i) permits the court to also consider "any other factor" that may lead to significant unfairness.
- [40] Unequal contribution during a marriage-like relationship may be considered as relevant to reapportionment. However, the legislature's decision not to include "the principle of relative contribution" as one of the enumerated factors in s. 95(2) is noteworthy: *Jaszczywska* at para. 43. The Court in *Jaszczywska* explained the distinction at para. 44:
- [44] Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion. Accordingly, in my view, one cannot read the FLA as abolishing unequal contribution as a factor that may be relevant to reapportionment, although the circumstances in which it may be considered and relied on are intended to be much constrained.

[emphasis added]

- [41] In *Khan v. Gilbert*, 2019 BCCA 80 at para. 32, the Court noted the common feature amongst cases where unequal contribution has lead to unequal division:
- [32] Cases in which unequal contribution to family expenses and burdens were found to make it significantly unfair to divide family property equally have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: *Nanara v. Nanara*, 2017 BCSC 1447; *E.H.H. v. C.L.M.*, 2017 BCSC 1299.
- [42] I turn now to the matters at hand.

A. Real Estate

- [43] Mr. Cuthbert sold the North Surrey House in early 2015, and used \$265,863.44 of the sale proceeds to purchase the 139A Street House in May 2015, for \$495,000.
- [44] Mr. Cuthbert sold the 139A Street House in May 2018 for \$780,000, with an outstanding \$290,000 mortgage. The proceeds of sale were \$462,368.46. Pursuant to the Order of Justice Ball pronounced on October 11, 2019, the respondent received \$265,863.44 as excluded funds. The remaining sum of \$196,505.02 (the "Net Sale Proceeds") is being held by Zukerman Law Group (Mr. Cuthbert's lawyers), in a non-interest bearing trust account.
- [45] There is no dispute that the increased equity of \$196,505.02 in the 139A Street House was attributable to market forces rather than any specific contribution by either of the parties towards improvements of the former family home.

[46] The parties disagree on how the Net Sale Proceeds should be divided. The claimant seeks to have the \$196,505.02 divided equally. The respondent argues that the claimant's entitlement should be 15%. The different positions of the parties are grounded in their disparate views of the impact that two key facts in their relationship should have towards the s. 95 analysis. Specifically, they disagree on whether the relatively-short duration of the relationship, and the unequal contribution of each of the spouses towards the acquisition and maintenance of the family property, should cause this Court to conclude that it would be significantly unfair to divide the family property equally.

[47] To understand the parties' respective positions, it is helpful to take a closer look at the events surrounding the purchase of the 139A Street House.

1. Background Facts

[48] After his wife's passing, Mr. Cuthbert wanted to sell the North Surrey House so that he could make a fresh start. Mr. Cuthbert testified that the North Surrey House evoked a lot of painful memories for him. He and Heidi had lived there for the duration of their relationship and through her lengthy battle with terminal cancer. Heidi passed away in the living room of the home in February 2014. After Heidi's passing, Mr. Cuthbert was also interested in buying a place to call his own. The North Surrey House had been owned by Heidi and purchased before Mr. Cuthbert's marriage to her. As such, Mr. Cuthbert wanted to experience buying his own house; one where he could live alone without any family.

[49] Mr. Cuthbert was advised by his recovery support group at AA not to make any major life decisions until at least one year after his wife's death. Mr. Cuthbert waited one year. He then made plans to sell the North Surrey House in the spring of 2015. He sought Ms. Chapman's advice, who recommended that he hire Mr. Crocker, a real estate agent that she had used for her own property transactions in the past. Mr. Cuthbert retained Mr. Crocker to assist him in the sale of the North Surrey House and to help him locate a new home.

[50] It is common ground that Ms. Chapman staged the North Surrey House for Mr. Cuthbert to sell, attended all of the viewings of prospective homes for purchase, provided advice to Mr. Cuthbert about which homes he should consider buying, and assisted him with moving into the 139A Street House. The parties also agree that Ms. Chapman moved into the 139A Street House after Mr. Cuthbert took possession, and moved in her belongings over the ensuing weeks.

[51] Where the parties disagree is on Mr. Cuthbert's reasons for buying the new home. Mr. Cuthbert says that he was purchasing the 139A Street House only for himself. Though he was in a relationship with Ms. Chapman, Mr. Cuthbert did not wish to have anyone (including Ms. Chapman) move into the new home with him. However, shortly before he obtained possession of the 139A Street House, Ms. Chapman asked him if she could move in with him as she did not like living with her parents. Despite his desire to live alone, Mr. Cuthbert acquiesced to Ms. Chapman's request, and she moved into the 139A Street House with him. However, as he considered the home to be his alone, Ms. Chapman was not placed on title,

nor was she placed on the mortgage, or expected to contribute towards any of the property related expenses such as utilities and property taxes.

- [52] Ms. Chapman testified that the intention was for the 139A Street House to be purchased for the both of them. The only reason that she was not also on title, or a co-signatory on the mortgage, was because she did not have the financial means to contribute to the down payment.
- [53] It was the claimant's evidence that Mr. Cuthbert expressed his intentions to purchase a home for the both of them to live in. These expressions occurred over the course of time. As their relationship evolved, she and Mr. Cuthbert discussed living together. Neither of them wanted to live in the North Surrey House as Mr. Cuthbert and his wife had lived there, and "it was weird for both of us". Living in Ms. Chapman's home was also not an option as her parents lived there. The parties then discussed buying a house together. Ms. Chapman could not recall when these conversations occurred. However, Ms. Chapman had specific recall of two conversations regarding the parties' future living arrangements. In the first conversation, which occurred around the "middle" of their relationship, Ms. Chapman says that she asked Mr. Cuthbert, "am I going to find a place of my own or am I going to live with you because I cannot stand living with my parents". The second conversation occurred at one of the viewings of the 139A Street House, where they embraced and she said to Mr. Cuthbert, "we could be happy here".
- [54] Mr. Cuthbert does not deny that the first conversation occurred, though he says it occurred only a few weeks before he took possession of the 139A Street House. Mr. Cuthbert does not have any recollection of the second conversation occurring. However, he recalls mentioning to Ms. Chapman that his deceased wife would have been happy at the 139A Street House because it had a creek in the back.
- [55] In addition to the parties' own testimonies, three lay witnesses testified at the trial. Their evidence was proffered to support the parties' competing versions of the reasons for the purchase of the 139A Street House.
- [56] None of the parties' witnesses were privy to the conversations between Mr. Cuthbert and Ms. Chapman where they may have discussed Mr. Cuthbert's intentions about the reasons for his purchase of the 139A Street House. As such, their evidence is only of marginal assistance in this query. Melvin Crocker, the real estate agent who assisted with the purchase of the 139A Street House, testified on behalf of the claimant. Mr. Crocker testified that he thought the claimant and respondent were purchasing the home together as they were consulting each other on the purchase. The respondent's friends, Mike Reinhard and Mike Kennelly, both testified on behalf of the respondent. It was their evidence that the respondent had told them he was purchasing the property for himself.

- [57] Having regard to the whole of the evidence, I prefer Mr. Cuthbert's testimony over that of Ms. Chapman's with respect to his intentions about why he was buying the 139A Street House.
- [58] In my view, Mr. Cuthbert's evidence is consistent with the behaviour of the parties, both prior to and after the purchase of the home, and more plausible in light of the circumstances of his wife's death. I consider Ms. Chapman's version of events to be more reflective of her wishful thinking rather than actual sentiments expressed by Mr. Cuthbert to Ms. Chapman about his desire to buy a house for the both of them. No doubt some of Ms. Chapman's beliefs were shaped by Mr. Cuthbert's somewhat ambivalent attitude towards Ms. Chapman moving into the 139A Street property, after expressing that he wished to live alone.
- [59] The evidence leads me to conclude that Mr. Cuthbert did not intend to purchase the 139A Street House for both himself and Ms. Chapman. Having arrived at this conclusion, I note that Mr. Cuthbert's reasons for buying the 139A Street House are only marginally relevant to the issues before me. This is because Ms. Chapman's entitlement arises from the actions and intentions of the parties once they moved into the property, rather than their stated intentions prior to moving into the new home. I will discuss this in further detail below.

2. Relative Contribution

- [60] When the parties commenced cohabitation, they were both gainfully employed. Mr. Cuthbert was working at a boatyard earning approximately \$20 per hour as an office manager. Ms. Chapman was working at a car dealership earning about half of that sum. Unfortunately, Ms. Chapman lost her job just a few weeks after moving into the 139A Street House, and remained off work for about a year before securing permanent employment at another car dealership.
- [61] Despite the change in their living arrangements, the financial arrangements between the parties remained essentially the same after they commenced cohabitation in June 2015. They continued to maintain separate bank accounts, credit cards, and debts. Each party paid for their own vehicles, including gas and insurance.
- [62] However, Mr. Cuthbert was the sole person on the mortgage to the 139A Street House, made all the mortgage payments, took care of all of the property related expenses, and a substantial portion of the parties' joint living expenses. According to Mr. Cuthbert, he had no expectations that Ms. Chapman would contribute towards the mortgage payments, utilities, property taxes, or other property related expenses. This is because: the parties had always been responsible for their own debts; Ms. Chapman was making significantly less money than he was; and Mr. Cuthbert considered these expenses to be his exclusive responsibility as he solely owned the house. Because of Ms. Chapman's limited finances, Mr. Cuthbert also did not ask or expect her to contribute equally towards their joint living expenses.

- [63] It was Ms. Chapman's evidence that she did make a substantial contribution towards the parties' joint living expenses. In addition to purchasing groceries and other household items on a regular basis, she testified that she made electronic transfers totalling \$10,209 to Mr. Cuthbert between January 2015 and October 2017. These electronic transfers represented her contribution towards the running of the joint household. However, Ms. Chapman's testimony is not supported by the documents put into evidence.
- [64] It is clear from the documentary evidence, and the testimony of Mr. Cuthbert, which I found to be credible on this point, that most of the \$10,209 that Ms. Chapman transferred to Mr. Cuthbert represented repayment for monies that he had loaned to her for her personal expenses. The evidence establishes that Mr. Cuthbert had given approximately \$8,370 to Ms. Chapman during the same period. These included a down payment for her car, as well as tuition fees for a course. The transactions totalling \$8,370 were made close in proximity to the transfers of money from Ms. Chapman to Mr. Cuthbert. This, along with other evidence, leads me to conclude that of the \$10,209 given to Mr. Cuthbert by Ms. Chapman, only about \$1,800 represents her net contribution towards the joint living expenses of the parties during the period of their cohabitation.

3. Analysis

- [65] Having regard to the whole of the evidence, I conclude that the circumstances in this case would make it significantly unfair to divide the Net Sale Proceeds of the 139A Street House equally between the parties.
- [66] The greatest factor in this case which warrants a departure from the presumption of equal division is the short duration of the relationship between the parties. The parties' relationship here lasted only two-and-a-half years.
- [67] A relationship of approximately four years or less, has been a factor that has been given considerable weight in supporting judicial reapportionment: see *Williams v. Killey*, 2014 BCSC 1846; *Yeh v. Wadud*, 2017 BCSC 694; *A.M.D. v. K.R.J.*, 2015 BCSC 1539; and *A.J.E. v. T.B.W.*, 2017 BCSC 1657.
- [68] Having said that, I do not consider unequal contribution as being solely determinative of whether an equal division would be significantly unfair in this case. However, when combined with the short duration of the marriage, I find that it would be significantly unfair for Ms. Chapman to receive an equal share of the Net Sale Proceeds of the former family home.
- [69] I accept that Mr. Cuthbert has received a substantial exclusion representing the down payment for the purchase of the 139A Street House. However, providing him this exclusion does not sufficiently ameliorate the significant unfairness that would arise should Ms. Chapman be awarded 50% of the Net Sale Proceeds of the former family home.

- [70] I also accept that the increase in the value of the home was due largely to market forces. Yet the investment was made possible solely due to the respondent. The asset was purchased with Mr. Cuthbert's money, he paid for all of the house related expenses, and he was the only person who put his money and credit at risk by being solely on title for the mortgage.
- [71] In the following cases, the court reapportioned the increase in the value of a property to the party that was responsible for virtually all of the payments towards the down payment, mortgage, taxes, and the ongoing household expenses of the property before and during the relationship: Prasad v. Prasad, 2019 BCSC 1248 at paras. 69-73; and Yeh at paras. 103-106.
- [72] Accordingly, the Net Sale Proceeds of the 139A Street House should be reapportioned to 80% in Mr. Cuthbert's favour, such that Ms. Chapman is entitled to 20%, or \$39,301 as her share of this family property.

B. Vehicles

- [73] The following vehicles, boats, and trailers existed at the time of separation:
- a) The claimant's BMW 320i X Drive car ("BMW");
 - b) The respondent's Dodge Ram 1500 truck ("Truck");
 - c) A cargo trailer; and
 - d) A boat.
- [74] As the BMW debt exceeds the value of the vehicle, it is addressed elsewhere in these reasons.
- [75] Mr. Cuthbert purchased the Truck for approximately \$40,000 in May 2016. The purchase was originally financed with the car dealership, but several months later, the respondent increased his mortgage by \$40,000 to clear the finance company debt. By doing so, Ms. Chapman argues that the respondent effectively reduced the equity in the former family home by \$40,000. The claimant asks that she be credited half of the original value of the truck, i.e., \$20,000, to off-set this loss. Mr. Cuthbert says that she should only be entitled to the depreciated value of the Truck.
- [76] The respondent testified that he paid out the finance company debt so that he could reduce his monthly Truck payment of \$700/month to a more manageable level. By increasing his mortgage debt by \$40,000, his weekly mortgage payment increased only by about \$25/week. The respondent also explained that he did not agree to pay out the claimant's BMW debt by subsuming it into his mortgage because the parties had kept their finances separate. Simply put, he did not wish to be responsible for the respondent's BMW debt.
- [77] I find no impropriety in the respondent's decision to pay off the finance company debt by borrowing against his home. It was a reasonable decision and done for a legitimate purpose. The fact that he did not accede to the claimant's request to do the same with her BMW debt was in keeping with the parties' practice to keep their finances separate. While the inclusion

of the Truck debt into the mortgage may have had the impact of reducing some equity in the former family home, this was a decision that Mr. Cuthbert was entitled to make as he was the person who was solely responsible for carrying the expenses related to the property and the Truck. These actions do not entitle the claimant to a one-half share of the purchase value of the Truck.

- [78] There is no dispute that the Truck would have depreciated in value during the period that the parties were together. It would therefore be unfair and unjust to credit the claimant the full purchase value of the Truck without requiring her to share in the depreciation.
- [79] I turn now to what value to ascribe to the Truck. In his Property and Financial Statement ("PFS") of May 2018, the respondent valued the Truck at \$24,000. In his September 2020 PFS, he valued it at \$20,000. The respondent explained that the two different numbers were simply a guess as to the value of the vehicle. The respondent did not have any documentary or other objective evidence to support either number.
- [80] In ascribing values to the various vehicles, I note that there is no independent evidence as to their values. Doing the best that I can with the evidence I have, I conclude that the appropriate attribution for the value of the Truck is \$24,000, of which the claimant is entitled to one-half, or \$12,000.
- [81] During the relationship, the respondent purchased a cargo trailer for approximately \$2,700. The respondent has valued it now at \$2,500. In my view, this is a reasonable figure which accounts for the depreciation of the cargo trailer. Having found the value of that cargo trailer to be \$2,500, I find that the claimant's one-half interest is \$1,250.
- [82] The claimant seeks to have one-half of the value of a boat that was purchased by the respondent during the parties' relationship for approximately \$6,000. Following their separation, the respondent did not use the boat as it was in significant disrepair. It remained parked in a friend's driveway, with Mr. Cuthbert paying \$100 per month for storage. Mr. Cuthbert eventually decided to cut his losses, and gave the boat away at no cost. I accept his evidence on this point and conclude that the value of the boat at the date of separation was nil.

C. TFSA and RRSP

- [83] The claimant agrees that the respondent's public service survivor benefit from his deceased wife should be retained solely by the respondent as excluded property.
- [84] At the time the parties commenced cohabitation, the respondent held a TFSA in the amount of \$1,000.82. At the date of separation, it stood at \$2,619.60. The respondent made further contributions following separation, such that the TFSA is currently \$6,105.25. In my view, it would be significantly unfair for the claimant to share in one-half of the trial value of the TFSA, given that the claimant was the sole person that contributed to it post-separation. I place the value of the TFSA at the date of separation, at \$2,619.60. The respondent is entitled

to an exclusion of \$1,000.82. This yields a net figure of \$1,618.78. Half of that amount is payable to the claimant, i.e., \$809.39.

[85] The respondent has an RRSP with Worldsource Financial Management Inc., of which the claimant seeks half. The respondent brought an RRSP amount of \$10,009.22 into the relationship, which he seeks to exclude. Mr. Cuthbert contributed \$960 during the course of the relationship. The RRSP stood at \$10,969.08 at the date of separation. He made further contributions following separation. The current value of the RRSP is \$25,549.00.

[86] In my view, it would be significantly unfair to ascribe the trial value to the RRSP, given that the respondent solely contributed to the increase of this asset post-separation. Using the separation date value of \$10,969.08, and granting the claimant an exclusion of \$10,009.22, the remaining \$960 is a family asset. The claimant is entitled to one-half this amount, which is \$480.

VII. Family Debt

[87] The family debts at issue relate to the parties' credit cards, the cost of the planned wedding, and the BMW.

[88] At the time of separation, the parties had the following credit card debts:

- a) The claimant's MasterCard debt of approximately \$5,300; and
- b) The respondent's Visa and MasterCard debts of approximately \$9,200.

[89] The claimant proposes that each party be responsible for their own credit card debts. I agree. I have already taken into consideration the respondent's unequal contribution towards the payment of household expenses when considering the reapportionment of the Net Sale Proceeds of the former family home. As such, in my view, it would be unjust and unfair for the claimant to be required to share equally in the respondent's credit card debts. The parties are each ordered to be responsible for their own credit card debts.

[90] During the relationship, the parties agreed to split the cost of the wedding. The respondent was going to take care of the cost of the rings as well as the wedding hall. The claimant would be responsible for the wedding dresses and any other costs. The respondent purchased an engagement ring, which the claimant took with her and sold following separation for approximately \$700. The respondent paid a \$950 deposit for the wedding hall, which he subsequently got back. He gave this money to the claimant following separation, so she could apply it towards any rent that she may have had to pay for alternate accommodation.

- [91] The claimant ordered a wedding dress and some bridesmaid dresses in advance of the September 2017 wedding date. She made two payments on her credit card during the course of the relationship, totaling \$1,000. An outstanding balance of \$1,295.85 was due on this debt at the date of separation. However, the claimant did not make any further payments for the wedding dresses following the date of separation because she could not afford to. She therefore forfeited the \$1,000 deposit, half of which she now seeks to have refunded to her.
- [92] In my view, it would not be appropriate to reimburse the claimant for an expense paid during the relationship. To do so would embark this Court on "a forensic accounting of expenditures during the relationship", something that the FLA was not designed to do: *Yousefian v. Jafarmadar*, 2018 BCSC 855 at para. 13.
- [93] I turn now to the BMW debt. In 2016, the claimant purchased a BMW vehicle for approximately \$49,000. Although the car was purchased solely in the claimant's name, the respondent co-signed the claimant's BMW loan. Loan payments of approximately \$593 per month were paid entirely by the claimant. The vehicle was driven exclusively by the claimant during the course of the relationship. Following the parties' separation, the claimant took the BMW vehicle with her. However, in late February or early March 2018, the claimant dropped off the BMW vehicle at the respondent's home as she could no longer afford the payments. She gave the claimant a gift letter with the vehicle. In May 2018, the respondent decided to consolidate his debts by paying off his credit cards and the BMW loan through a loan obtained from Coast Capital Savings Credit Union ("CCS"). The CCS loan was for \$43,148.56, of which \$33,000 represented the money owing on the BMW as of May 30, 2018.
- [94] Despite the gift letter, the respondent considered the BMW to belong to the claimant and did not use it. It remained parked in his driveway until he finally sold it in July 2019 for \$12,500, after marketing it through Facebook and Craigslist.
- [95] In his May 2018 PFS, the respondent estimated that the BMW was worth \$24,000 at the date of separation. The claimant argues that because Mr. Cuthbert sold the BMW at half the price that he had valued it at, she should not be required to share equally in the BMW debt. In other words, she asks that she only be required to pay \$5,000.
- [96] Mr. Cuthbert concedes that he sold the BMW for less than what it was worth. He also agrees that the claimant offered to assist him in selling the vehicle so they could get a better price. However, he says that this offer was made after he had already acquired the CCS loan. Their version of events also differ on what happened afterwards. According to Ms. Chapman, Mr. Cuthbert refused her offer for assistance in selling the BMW. Mr. Cuthbert says that he did seek her assistance, by providing Ms. Chapman the VIN number for the BMW, but she did not follow up.

[97] I conclude that the claimant should be required to share equally in the BMW debt. It is clear that both the parties abdicated their responsibilities with respect to the BMW. The claimant had every opportunity to assist in the sale of the BMW in order to get a higher market price. The fact that she and the respondent were not able to communicate effectively to get that done is something for which both the parties must now share responsibility.

[98] If the parties are required to pay for the BMW debt equally, Ms. Chapman's contribution is \$10,250. This figure is arrived at by taking the value owed on the BMW at the time that Ms. Chapman returned the car to Mr. Cuthbert, i.e., \$33,000, and subtracting from it the amount it sold for, i.e., \$12,500. The residual \$20,500 is divided equally between them.

[99] I conclude that the claimant is required to compensate the respondent for the BMW debt in the total amount of \$10,250.

VIII. Summary of Financial Orders

[100] As her share of the family assets, the claimant is entitled to receiving \$53,840.39, as follows:

- a) \$39,301 for her share of the former family home;
- b) \$12,000 for her share of the Truck;
- c) \$1,250 for her share of the cargo trailer;
- d) \$809.39 for her share of the TFSA; and
- e) \$480 for her share of the RRSP.

[101] The claimant is solely responsible for her MasterCard debt of approximately \$5,300. The respondent is solely responsible for his Visa and MasterCard debts of approximately \$9,200.

[102] The claimant's share of the BMW debt amounts to \$10,250.

[103] After accounting for set-off for the BMW debt, the claimant is entitled to receive \$43,590.39 from the Net Sale Proceeds held in the Zukerman Law Group trust account.

IX. Spousal Support

[104] The claimant seeks a lump sum spousal support award of \$3,500 to \$5,000, representing needs-based entitlement. The respondent resists any award for spousal support.

[105] Section 161 of the FLA sets out the objectives of spousal support, which are virtually identical to those set out in s. 15.2(6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) as follows:

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;

- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[106] Consistent with these objectives, our courts have recognized three grounds for entitlement to spousal support: compensatory, non-compensatory and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 15; and *Chutter v. Chutter*, 2008 BCCA 507 at para. 47, leave to appeal ref'd [2009] S.C.C.A. No. 41.

[107] There is no compensatory or contractual claim advanced in this case.

[108] Non-compensatory spousal support is "grounded in the 'social obligation model' of marriage, in which marriage is seen as an interdependent union" (*Chutter* at para. 54) or a "joint endeavour" where the "default presumption of this socio-economic partnership is mutuality and interdependence" (*Bracklow* at para. 20).

[109] Upon marriage dissolution, it falls on the former partner to meet the needs of a disadvantaged spouse, not the state: *Chutter* at para. 54. "Need" alone may be sufficient to ground a claim for spousal support: *Bracklow* at para. 43.

[110] "Needs" are something more than the basic necessities of life and may vary according to the circumstances of the parties and the family unit. Importantly, "need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. Rather, it is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted: *Chutter* at para. 55.

[111] Similarly, economic self-sufficiency is a relative concept, which is "informed by the standard of living previously enjoyed by the parties": *Chutter* at para. 56, quoting from the Ontario Court of Appeal in *Allaire v. Allaire* (2003), 170 O.A.C. 72, 35 R.F.L. (5th) 256. As the Court noted in *Fisher v. Fisher*, 2008 ONCA 11 at para. 52, "[s]ection 15.2(6)(d) of the Divorce Act promotes the objective of economic self-sufficiency only if it is 'practicable' to do so and where the objective can be realized 'within a reasonable period of time'".

[112] In *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, the Court held that the parties' standards of living are relevant considerations in determining spousal support:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement. ... As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution.

[Citations omitted.]

- [113] When the parties met in June 2014, the claimant was working part-time as a dancer in a bar and trying to start her own business. By September 2014, she had secured a job at a car dealership as a parts driver. She was later promoted to a service advisor position, which is where she was working until June 2015. Unfortunately, shortly after the parties moved into the former family home, Ms. Chapman was laid off from her position.
- [114] There is no dispute that the claimant became financially dependent on the respondent following her sudden unemployment. Mr. Cuthbert was understanding of her situation. Though he encouraged the claimant to find alternate work, he did not have any expectations that Ms. Chapman would contribute financially towards running of the household. Mr. Cuthbert took care of the majority of the household expenses, including mortgage payments. He also financially assisted Ms. Chapman so that she could take a course to advance her career.
- [115] Ms. Chapman was successful at finding work and eventually settled at Mertin Imports in August 2016. She remained employed there until June 2017, but then left the job because of burnout. Not long after, she suffered a personal tragedy which took an emotional toll on her. Aside from some brief employment, Ms. Chapman remained largely unemployed for several years. When the parties separated, she obtained disability benefits. Eventually, she got some paid work.
- [116] For the year leading up to the trial, Ms. Chapman had been working in the television and film industry. However, the work was piecemeal and sporadic. Following the start of the pandemic, this work virtually dried up. In the months leading up to the trial, she was in receipt of government income assistance benefits, such as CERB and EI.
- [117] For spousal support purposes, the claimant is agreeable to having an income of \$30,000.00 imputed to her from all sources. This figure is consistent with her 2017 income from all sources.
- [118] In contrast, Mr. Cuthbert has always been a relatively high-income earner. He is gainfully employed and earns a base salary plus performance bonuses. His income has grown substantially over time. He had earnings of about \$46,000 in 2015, \$57,000 in 2016, \$72,000 in 2017, \$74,000 in 2018, and \$82,423 in 2019. Included in these figures are death benefits in relation to his wife. However, the pandemic has taken a toll on Mr. Cuthbert's employer. The company lost 75% of their business overnight and is still struggling to get up to pre-pandemic levels.

- [119] After having regard to all of the evidence, and considering the conditions, means, and needs of each party, I conclude that a spousal support award to the claimant is warranted based on needs-based entitlement. I turn now to determining the amount of the award.
- [120] Ms. Chapman claims that the Spousal Support Advisory Guidelines [SSAG] show a range of spousal support based on the respondent's 2018 income and the claimant's imputed income of "between \$3,807 and \$5,076." However, I note that the claimant is relying on Mr. Cuthbert's 2019 income, and a date of cohabitation from October 2014, to arrive at these figures. Neither of these are supported by the evidence.
- [121] The claimant asks that she be attributed income of \$30,000. In my view, this is reasonable in the circumstances given her historical pattern of earnings prior to and subsequent to the parties' separation. However, Mr. Cuthbert's income for SSAG purposes should be based on his 2017 earnings, reflecting the year of the parties' separation.
- [122] Based on Mr. Cuthbert's 2017 income of \$72,275, and the claimant's imputed income of \$30,000, the SSAG "Without Child Support" formula provides a monthly range from \$132 to \$176 for a duration of 1.25 to 2.5 years, and a lump-sum award range from \$2,156 to \$2,871, with a midpoint award of \$2,519.
- [123] The claimant is seeking a lump-sum payment of spousal support, on the grounds that it would be preferable for her and the respondent to have a clean break. I agree.
- [124] I conclude that it is appropriate to award a lump sum figure of \$2,519 for spousal support to the claimant. From this figure, Mr. Cuthbert is entitled to a set-off of \$950 representing the deposit for the wedding hall, which he gave to Ms. Chapman following separation to assist her with living expenses. The net result is that Mr. Cuthbert must pay \$1,569 to Ms. Chapman, in lump-sum spousal support.
- [125] This spousal support award is to be paid to the claimant from the Net Sale Proceeds which are being held by Zukerman Law Group.
- [126] After paying out the claimant's spousal support award, and her share of the family assets, and accounting for her share of the family debt, the balance of the Net Sale Proceeds remaining in trust with Zukerman Law Group, are to be paid to the benefit of Mr. Cuthbert.

X. Costs

- [127] Costs in family law cases are awarded to the party that has achieved substantial success. In this case, the outcome was mixed. My preliminary view is that each party should bear their own costs.
- [128] However, if a party wishes to make submissions on costs, they may do so in writing, as follows:

- a) The applying party may file written submissions, up to a maximum of five (5) pages in length, for my consideration. These are due within 30 days of this Order.
- b) The responding party has 10 days from receipt of the applying party's costs submissions, for their response submissions. These are also limited to five pages.

[129] All parties are to send their costs submissions to my attention, through Supreme Court Scheduling

"Shergill J."

- [1] To avoid confusion, I have referred to Mr. Cuthbert's deceased wife by her first name. By doing so, I intend no disrespect.

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