

CANADA / JUDGMENT

## Chiu v. Yee

2025 BCSC 1070

### COURT

Supreme Court of British Columbia

### DECIDED

10 June 2025

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2025 BCSC 1070 Chiu v. Yee

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chiu v. Yee,

2025 BCSC 1070

Date: 20250610

Docket: E123269

Registry: Vancouver

Between:

Patty Shiu Ying Chiu also known as Patty Shiu Ying Yee

Claimant

And

Kong Lang Yee also known as Lannie King Yee also known as

Lannie (Kong Lang) Yee and Lannie King Perrott Yee also known as

Kelly (King Perrott) Yee

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Claimant:

E. Hatch

**J. Yonge**

The Attendee, Daniel Yee, in his capacity as Executor of the Estate of Kong Lang Yee also known as Lannie King Yee also known as Lannie (Kong Lang) Yee:

D. Yee

Place and Dates of Trial:

Vancouver, B.C.

April 28-30 and May 1, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 10, 2025

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**I. Introduction**

[1] This family law action was originally commenced in 2012 under the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA]. It arises from a 22-year relationship between the claimant, Patty Shiu Ying Chiu ("Patty") and her late spouse, Lannie King Yee ("Lannie"). Both had been married before and had children of their own from their previous relationships. They had no children together.

- [2] In the notice of family claim as originally filed in 2012, Patty sought a divorce and various items of corollary relief, including spousal support and a division of property. There were two respondents named: Lannie and his adult son, Kelly Yee ("Kelly"). Kelly was named as a respondent because Patty was then seeking an interest in a number of properties owned by Kelly, which were alleged to have been acquired using Lannie's funds. Lannie filed a counterclaim against Patty, seeking, among other things, a divorce, property division and spousal support.
- [3] By the time the action came on for trial before me some twelve and a half years later, however, the circumstances had changed considerably and the claims had narrowed.
- [4] First, Lannie died on January 5, 2022. During the trial, I granted an order, by consent of the parties, substituting Kelly's son Daniel Yee ("Daniel"), in his capacity as executor of Lannie's estate, as a party in Lannie's place.
- [5] Second, two of the properties in dispute were the subject of foreclosure proceedings in 2023 and 2024. As a result of those proceedings, one of those properties, the former family home where Patty and Lannie resided together for over 20 years, was sold and the proceeds applied to retire various debts. What remains of those proceeds of sale for distribution to the parties in this action is the sum of \$190,772.26, which has since been paid into court.
- [6] The parties disagree about how those funds in court, as well as other bank and investment accounts, should be divided between them.
- [7] Patty seeks an order that all of the funds in court be paid out to her, on the basis that the gross proceeds of sale were used to retire debts that were the responsibility of the respondents, not her. Once her half of those payments is credited back to her, she says, she is still owed \$41,309.25, even after receiving all of the funds in court.
- [8] Patty seeks to set off that deficiency claim against Lannie's interest in the remaining family assets to be divided, namely, a now liquidated RSP in her name (of which Lannie's half share would be \$21,435.26) and the funds remaining in their joint bank accounts (of which Lannie's half share would be \$10,443.43).
- [9] If she is successful in obtaining all of that relief, she is willing to relinquish the remainder of her deficiency claim - a total of \$9,430.56. She proposes that the parties otherwise retain the assets currently in their possession.
- [10] The respondents, Kelly and Daniel, oppose that relief. They argue that the funds in court should be paid out entirely to the estate. They say that the family property should be valued as of March 28, 2013 (which is the date of the "triggering event" under the FRA), or otherwise unequally divided in their favour. Further, they say that Patty's investment accounts are also family property subject to division in this action. Finally, they also seek, on Lannie's behalf, an award of spousal support.

- [11] In response, Patty argues that there is no sound reason to depart from the presumptive rule that the family property is to be valued as of the date of trial and divided equally. She disputes that her investment accounts were used for a family purpose so as to qualify them as family property subject to division. She opposes the claim for spousal support on the basis that, as a matter of law, only a living person can receive such an award.
- [12] For the reasons that follow, I have concluded that the claim and counterclaim should both be allowed in part.

## II. Background Facts

### A. Assets Acquired Prior to and During the Marriage

- [13] The parties were first introduced in 1989. At the time, Patty had just turned 40 and Lannie was about to turn 60. They had both been married previously. Patty had three daughters from her first marriage, and Lannie an adult son, Kelly, from his.
- [14] When she first met Lannie, Patty was residing in Vancouver. She had purchased her house, at 311 East 58th Street (the "58th Street Property") in Vancouver, in 1983. She was employed at a bank.
- [15] Lannie was residing at 2660 Island View Road (the "Island View Property") in Saanich, which had been his home since 1964. Lannie had purchased the Island View Property with his late wife, who died in 1986. Lannie grew fruit, raised chickens and maintained a trout farm on the Island View Property.
- [16] In 1989, as part of his estate planning, Lannie transferred title to the Island View Property into joint tenancy with himself and Kelly as joint tenants. That same year, he purchased a second property at 2292 Edgelow Street in Victoria (the "Edgelow Property"), and arranged for title to be taken there too by himself and Kelly as joint tenants.
- [17] Patty and Lannie were married on September 25, 1990. Prior to the marriage, they had been maintaining their relationship from a distance, residing in different cities. After the wedding, Patty quit her job and rented out the 58th Street Property. She and one of her daughters ("Jeannie"), moved to Saanich to reside with Lannie and Kelly at the Island View Property.
- [18] During the marriage, Patty and Lannie generally kept their finances separate. Although Daniel denied this in his testimony at trial, in an affidavit sworn in this action on November 5, 2024, he deposed that, "[Lannie] told me during his lifetime that he and Patty had agreed to keep their own assets separate for their own families." There was other evidence suggesting that their finances were generally kept separate. For example, Lannie waived his right to an interest in Patty's pension so that she could nominate her three daughters as beneficiaries. Similarly, Lannie later received a pension that he did not share with Patty.

- [19] On the other hand, it is common ground that, during the marriage, Lannie paid Patty an allowance of \$100 every two weeks. That amount was later increased to \$260 every two weeks. She used the money for household groceries, Lannie's alcohol and expenses for her and Lannie. In addition, in July 1992, Lannie purchased a townhouse at 1681 McKenzie Avenue in Victoria (the "McKenzie Property"), using funds borrowed on the line of credit secured by a mortgage charging the Island View Property. Although Lannie arranged for title to be taken in his and Patty's names, as joint tenants, Patty does not claim an interest in the McKenzie Property.
- [20] Although Patty and Lannie opened a number of joint bank accounts, they did so primarily to take advantage of the lower transaction fees offered to seniors at Patty's bank. Most of the money that Lannie deposited into the joint accounts was immediately transferred elsewhere, to accounts in his name alone. As of January 2025, the joint accounts contained funds totalling \$20,886.86.
- [21] From the beginning, there was friction between Patty and Kelly. As a result, after the first year of the marriage, Lannie, Patty and Jeannie left the Island View Property and began residing instead at the Edgelow Property. Jeannie later moved out of the Edgelow Property in 2006. Patty continued to reside there until she and Lannie separated in October 2012 and she returned to Vancouver.
- [22] On February 8, 1992, after Patty and Lannie had moved out of the Island View Property, Kelly married Yee Yee Shen ("Annie"). Daniel was born in December 1992. Kelly and Annie continued to reside at the Island View Property until their separation in July 1994. In response to the separation, Lannie and Kelly arranged for title to the Island View Property and the Edgelow Property to be transferred into Lannie's name alone. Annie then commenced an action under the FRA against Kelly and Lannie seeking, among other things, an interest in those properties. In early 1996, Annie, Kelly and Lannie reached a settlement whereby, among other things, Lannie agreed to transfer title to the Island View Property to himself and Kelly, in trust. Kelly and Annie agreed that they would have no beneficial interest in the Island View Property, except the right to occupy and use it during Kelly's lifetime, and would be responsible for paying the mortgage with Royal Trust Corporation ("RTC"). Their use was made subject to a license in favour of Lannie to allow him to farm there, in exchange for a license fee of \$300/month. As part of the settlement, Annie and Kelly relinquished any claim to an interest in the Edgelow Property or the McKenzie Property. Lannie was represented in the dispute by Crispian D. Starkey Law Corporation, which later obtained a judgment for its unpaid legal fees in the amount of \$104,929.48.
- [23] In 1991, Patty purchased an investment property at 1502 Elnido Road in Victoria (the "Elnido Property"), at a cost of about \$160,000. She used her savings to make the down payment and financed the balance of the purchase price with a mortgage, which she serviced by renting the Elnido Property out. She sold the Elnido Property in 2003, yielding net proceeds of approximately \$250,000.

- [24] She sold the 58th Street Property in 2002, yielding net proceeds of \$168,135.38. She deposited those funds into an investment account and, in 2003, used them to purchase another investment property, this one at 3630 Harriet Road in Victoria (the "Harriet Property"). She sold the Harriet Property in 2006, yielding net proceeds of \$185,194.78.
- [25] As of March 2013, Patty held savings and investment accounts in her name totalling over \$1.1 million in value.

## B. Litigation History

- [26] Patty commenced this action on October 29, 2012. Among other things, she claimed an interest in four properties held in Lannie's or Kelly's names, namely, the Edgelow Property, the Island View Property, a property in Duncan and a property in Campbell River. She filed certificates of pending litigations ("CPLs") on title to each of those properties, but the CPLs were subsequently cancelled by order of this court in 2014. Patty no longer claims an interest in any of those properties, other than the Edgelow Property. No steps were taken by any of the parties in the litigation between 2016 and 2023.
- [27] Lannie continued to reside at the Edgelow Property until his death on January 5, 2022, at age 91. Thereafter, Kelly and Daniel continued to reside there. On September 12, 2023, Daniel obtained a probate order of this court recognising him as executor of Lannie's estate. Following Lannie's death, the mortgage payments continued to be made automatically from Lannie's line of credit until it was exhausted in 2023. At that time, RBC, which had a mortgage on the Edgelow Property to secure the line of credit, contacted Patty seeking payment of the balance owing. When Patty sought to contact Lannie about this, Daniel told her about Lannie's death the year before.
- [28] In response, on March 23, 2023, Patty filed a notice of intention to proceed with this action.
- [29] On April 27, 2023, RBC commenced foreclosure proceedings in respect of the Edgelow Property. It obtained an order nisi on July 19, 2023. On August 3, 2023, RTC, which held a mortgage on the Island View Property, commenced foreclosure proceedings. It obtained an order nisi on November 1, 2023 and registered its judgment against title to the Edgelow Property.
- [30] In May 2024, this court approved the sale of the Edgelow Property in the RBC foreclosure proceeding. The gross proceeds of sale were distributed as follows:

Sale Price (after adjustments) paid to RBC counsel:

\$1,016,434.78

Deductions

Property taxes

\$4,513.71

RBC court costs

\$14,941.55

RBC mortgage registered against the Edgelow Property

\$532,816.24

RTC judgment (which paid out the mortgage registered against the Island View Property)

\$168,461.28

Crispian D. Starkey Law Corporation judgment

\$104,929.48

Net Amount Paid into Court by RBC:

\$190,772.26

[31] On December 20, 2024, Majawa J. dismissed an application by the respondents to have this action dismissed for want of prosecution.

### III. Discussion

#### A. Property Division

##### 1. Governing Legislation

[32] Pursuant to s. 252 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], this action must be resolved pursuant to the provisions of the FRA. The division of matrimonial property was governed by Part 5 of the FRA.

[33] The starting point of the analysis under those provisions is s. 56, which stated as follows:

Equality of entitlement to family assets on marriage breakup

56 (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset on or after March 31, 1979 when

(b) a declaratory judgment under section 57,

respecting the marriage is first made.

(2) The interest under subsection (1) is an undivided half interest in the family asset as a tenant in common.

[34] On March 28, 2013, Groves J. granted an order under s. 57 in this case, thereby "triggering" Patty and Lannie's rights under that provision.

[35] The term "family asset" was defined in s. 58 as follows:

Family asset defined

58 (1) Subject to section 59, this section defines family asset for the purposes of this Act.

(2) Property owned by one or both spouses and ordinarily used by a spouse or a minor child of either spouse for a family purpose is a family asset.

(3) Without restricting subsection (2), the definition of family asset includes the following:

(a) if a corporation or trust owns property that would be a family asset if owned by a spouse,

(i) a share in the corporation, or

(ii) an interest in the trust

owned by the spouse;

(b) if property would be a family asset if owned by a spouse, property

(i) over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself or herself, or

(ii) disposed of by the spouse but over which the spouse has, either alone or with another person a power to revoke the disposition or a power to use or dispose of the property;

(c) money of a spouse in an account with a savings institution if that account is ordinarily used for a family purpose;

(d) a right of a spouse under an annuity or a pension, home ownership or retirement savings plan;

(e) a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.

(4) The definition of family asset applies to marriages entered into and property acquired before or after March 31, 1979.

[36] Pursuant to s. 60, the onus was on the spouse opposing a claim under s. 56 to prove that the property in question was not ordinarily used for a family purpose.

[37] The term "ordinary use" in this context has been held to mean more than just "casual or occasional use" - see *Elsom v. Elsom* (1983), 49 B.C.L.R. 297 (C.A.); *Devine v. Devine*, 2012 BCCA 509. The following statement by Lambert J.A. in *Evetts v. Evetts* (1996), 85 B.C.A.C. 19, is often cited for guidance in the application of this provision:

23 I think it would be unwise to try to establish any rules for the determination of whether a capital asset will be considered to be a family asset. However one or two guidelines are readily revealed from the cases. The fact that income from a capital asset is used occasionally for a family purpose does not of itself make the capital asset a family asset . The fact that capital from the asset is used from time to time, when required, for a family purpose may be an indication that the asset is a family asset . But the distinction between income being used for a family purpose and capital being used for a family purpose is not, in itself determinative . So the fact

that only income is used for family purposes does not necessarily mean that the capital asset itself is not used for a family purpose. The use of the asset to provide financial security and protection against erosion of income or other family misadventure in the future may constitute a present ordinary use for a family purpose. The fact that the words "ordinarily used for a family purpose" are the governing words in the statute means that the use pattern must be examined in each case to determine whether, in the ordinary course, the present use commitment to meet a present or future need includes a use for a family purpose. Ordinary use for a family purpose is not inconsistent with ordinary use for other purposes.

[Citations omitted.]

[38] The court's discretion to reapportion family assets was set out in s. 65(1), which stated as follows:

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

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

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

2. What is the property and debt to be divided?

[39] It is common ground that:

- a) the Edgelow Property was a family asset; and
- b) the debts paid from the proceeds of sale of the Edgelow Property to RTC and Crispian D. Starkey Law Corporation were the responsibility of the respondents, not Patty.

[40] What is disputed is whether the investment accounts that Patty held in her own name as of March 2013 were family assets subject to division. Patty bears the onus to show that they were not. She argues that she has satisfied that onus by demonstrating that she and Lannie agreed to keep their assets separate and that those funds and their sources were never used for any family purpose. In support of that submission, she cites *Lye v. McVeigh* (1991), 56 B.C.L.R. (2d) 158, [1991] B.C.J. No. 2008 (C.A.); *Oliver v. Oliver*, 2011 BCSC 1126; and *S.E. v.*

N.E., 2012 BCSC 1803, as examples of cases, said to be similar to this one, in which investment accounts in a spouse's sole name were found not to be family property on similar grounds and in a similar context.

- [41] The respondents disagree. They argue that even if Lannie and Patty had agreed to keep their assets separate during the marriage, they expected that Patty would eventually draw on her personal savings to care for Lannie in his old age, once he was no longer able to do so for himself, just as he had cared for her during the marriage. That expectation, they say, amounts to an "ordinary use" of Patty's savings for a family purpose that is sufficient to make them a family asset.
- [42] I do not find the respondents' argument persuasive. There was no reliable evidence that Lannie and Patty had any such expectation and abundant evidence that they did not. For example, Patty testified that their arrangement was that "what was hers would remain hers and what was his would remain his". When they married, she recalled, Lannie told her that he would not touch her house (presumably, the 58th Street Property). I appreciate that Patty's self-serving account of their arrangement is inconsistent with the claims she made to an interest in Lannie's properties when she commenced this action. However, her and Lannie's conduct during the marriage appears to have been generally consistent with her description of the arrangement as she described it at trial.
- [43] In any event, the respondents' testimony to the contrary was vague, self-serving and contradictory, particularly when compared with Daniel's pre-trial affidavit evidence attesting to his having been told by Lannie that the spouses had indeed agreed to keep their finances separate, as Patty testified.
- [44] In addition, the respondents adduced an unsigned, typed letter dated August 29, 1994, that purports to have been prepared by Lannie in the context of the dispute with Annie over her matrimonial claim. In it, Lannie summarised the items of property that he owned, described how he acquired them and how he saw his obligations to his family members in relation to each one. After referring to his marriage to Patty in 1990, the letter stated that Patty was aware of Lannie's "investment program with Kelly". It added that in July 1992, he purchased the McKenzie Property, using his own funds but took title jointly in his and Patty's names because Patty "wants some security as well." The next paragraph asserted that he has "the right to designate my properties to anyone as I see fit" and that "[n]obody should just want to take these properties without taking the liabilities that I should be saddled with". The letter concluded with his long-term financial plan, which he described as follows:

My return on investment is 20% on the use of the line of credits [sic]. My deficit is about \$6,000 per year, but my property is increasing in value at the rate of \$20,000 per year. This is why I Need in [sic] get a new line of credit every 3-4 year and still have enough meney [sic] left over for the future to pay off the line of credit and the mortgages.

- [45] What is noteworthy about this, assuming the letter is authentic, is that Lannie expected to be able to live indefinitely off of his own investments. He made no mention, and claimed no interest, in Patty's personal savings, nor did he anticipate having to draw on them to make ends meet later in life.
- [46] I agree with Patty's submission that this case is, in that sense, similar to *S.E. There*, Baker J. cited *Graff v. Graff*, 1987 CanLII 2490, 19 B.C.L.R. (2d) 234 (C.A.), for the following general propositions (at para.113):
- a) savings made during a marriage to provide retirement income would normally be a family asset ...
  - b) in the usual case, savings made by either spouse during the marriage will have been at the expense of the family and with the intention of providing for the family in the future ...
- [47] However, Baker J. found that, like *Lye and Oliver*, the case before her presented an exception. In those cases, like *S.E.*, the court was dealing with a second marriage in which the parties generally kept their assets separate and contributed equally to shared expenses. She described the factors weighing in favour of that conclusion as follows:
- [134] S.E.'s primary submission is that N.E.'s savings were intended to be used for both parties to provide income for their retirement and are therefore family assets. In my view, the fact that the parties did not discuss the amount of savings they had accumulated and did not discuss in any detail the kinds of investments they had each made, suggests that they did not intend to alter their financial arrangements on retirement - that each would continue to contribute a modest sum to pay for joint household expenses, and otherwise be free to use his or her own savings for his or her personal use. The modest sum could come from pension income - N.E. would be eligible to receive pension income from her employment pension; both parties would receive Canada Pension Plan payments; and they also had RRSPs. N.E. testified that she did not even know that S.E. had received a pay-out of employment pensions from two earlier employers.
- [135] S.E. did ask N.E. how much she could contribute from her savings for the purchase of a property in Ontario. The parties disagree about whether there was discussion of a plan to move to Ontario in the very near future, or at retirement. S.E. testified that N.E. said she could contribute \$180,000. The property was never purchased, and this discussion does not establish that N.E.'s savings were ordinarily used for a family purpose; or that she intended to use her savings for a family purpose. The fact that the parties intended to remain married after retirement does not, without more, disprove N.E.'s contention that their non-RRSP savings were intended for personal, rather than family, purposes.

- [136] S.E. also contends that N.E.'s savings were accumulated at the expense of their "family"; that she was able to save as she did because he paid more of the household expenses. I am satisfied that the couple generally used S.E.'s vehicle, including to drive both of them to and from work. S.E. also paid for more of their entertainment expenses when they went out for live theatre performances or concerts, but that appears to have been his choice - in effect, he made a gift to N.E. of these items or events.
- [141] The fact that the parties implicitly agreed that each could use his or her income and savings as he or she saw fit also weighs against S.E.'s assertion that the parties' savings were a family asset, intended to be used to fund their mutual expenses on retirement. As stated earlier, S.E. made gifts of money to some of his relatives. N.E. generally knew of his intentions, but he did not ask for her agreement or approval. S.E. testified that N.E. occasionally gave him suggestions about investing his money, but that does not establish that she believed he was investing it for her eventual benefit; or lead to the conclusion that she was investing her money for his eventual benefit or use, as well as her own.
- [48] I agree with Patty that the facts of this case are similar. As in S.E., this was a second marriage. The spouses brought their own assets to the marriage and generally kept them separate. They did not routinely discuss the amount of personal savings they had accumulated. They did not consult with one another before making new investments or other purchases, even if they did occasionally share advice on investment strategies. Although Patty did not contribute equally to shared expenses during the marriage, I am satisfied that, like the claimant in S.E., Lannie intended the resulting imbalance as a gift to Patty. What matters is that neither Lannie nor Patty exhibited any expectation that Lannie would rely on Patty's savings for his retirement, as the respondents now contend.
- [49] I have therefore concluded that the savings and investment accounts in Patty's name are not family assets subject to division.
3. What is the appropriate valuation date?
- [50] The principles to be applied in determining the appropriate valuation date under Part 5 of the FRA were set out *N.M.M. v. N.S.M.*, 2004 BCSC 346, as follows:
- [76] From my review of the forgoing authorities I distill the following principles:
1. Because it is the triggering event that gives each spouse a prima facie equal interest as tenants in common in each family asset the circumstances as they exist at that date are to be considered in determining whether the prima facie equal division would be unfair.
  2. Generally speaking, the spouses will share any increase or decrease in value of a family asset that occurs after the triggering event because their interests in the asset have vested.

3. Valuation at the date of trial is generally appropriate when considering the mechanism under s. 66 to achieve the division of family assets, for example by dividing the assets in species by vesting the various assets in the names of the parties or by vesting an asset in the name of one party in exchange for an order compensating the other for the divested interest.
  4. While generally the appropriate date for valuing family assets will be the trial date it appears there is discretion to fix another date, not earlier than the triggering event, if that is necessary in order to achieve fairness.
  5. Discretion may exist to reapportion assets or to vest title in one spouse while awarding the other compensation taking into account events following the triggering event where, for example, the conduct of one party alone has caused the asset to increase or decrease in value and it would create unfairness and injustice if those events were ignored.
  6. Where it is established that one spouse has disposed of a family asset or caused it to decrease significantly in value it is open to the court to order compensation for that loss. Such a compensation order will be based on the loss in value and will necessarily involve determining the value of the asset prior to the loss.
- [51] The respondents seek an order valuing the family assets as of March 28, 2013. At that time, the Edgelow Property was said to be assessed at \$576,000 and subject to two mortgages with a total of \$658,000 owing, based on the parties' financial statement filed that year. When it was sold in 2024, the net proceeds available to the parties before payment of the two unrelated judgments were \$464,163.02.
- [52] I see no reason to depart from the ordinary rule calling for the assets to be valued as of the trial date. There was no evidence to suggest that one of the parties caused the value of Edgelow Property to increase or decrease after the date of the triggering event. Although Lannie (and, after his death, his estate) paid the mortgage and other related expenses alone throughout that period, they also had the exclusive use of the Edgelow Property, and, at times, received rental income from it. It has been held that, in those circumstances, the trial date remains the appropriate time for the valuation: *Stojanovic v. Stojanovic*, 1994 CarswellBC 440, 97 B.C.L.R. (2d) 101 (C.A.).
4. Should there be reapportionment?
- [53] The respondents seek to have the family property reapportioned in their favour, so that the estate receives the entirety of the funds in court. They say that, during the marriage, Lannie's savings were severely depleted, particularly during the financial crisis of 2008, while Patty was able to see her savings grow without interruption, thanks to Lannie's one-sided financial support for her over those years. In their submission, the resulting imbalance in the parties' respective financial positions today calls for a substantial reapportionment.

- [54] Patty opposes any reapportionment, arguing that there is no basis to depart from the presumptive rule that the family assets should be divided equally. In her submission, while she will, if successful, receive all of the funds in court and the other family assets to be divided, the respondents will retain the Island View Property free and clear of any financial encumbrances.
- [55] In my view, the factors listed in s. 65 yield mixed results.
- [56] First, the relatively long duration of the relationship, 22 years, weighs in favour of an equal division.
- [57] On the other hand, there has been extensive delay in bringing this case to trial, which weighs in favour of a reapportionment: *Ernst v. Carmichael*, 2019 BCSC 68, at paras. 99-101; *R.L.N. v. D.L.J.-N.*, 2025 BCSC 270, at para. 52 (cases decided under the FLA, which imposes a higher standard, requiring a showing of significant unfairness before an unequal division can be ordered). The parties separated nearly 13 years ago. Between then and when it was sold, the Edgelow Property appreciated in value due to market forces. In refusing to dismiss this action for want of prosecution, Majawa J. found Patty's delay in moving the case forward, particularly during the period from 2016-2023, to be inexcusable. Nevertheless, it is also true that Lannie (and later, his estate) were likewise dilatory in pressing the counterclaim, which reduces the weight I can attach to this factor. I have already commented on how Lannie's and the estate's payment of expenses related to the Edgelow Property is offset by their exclusive occupancy and receipt of rental revenue from that source during the period from the separation to the foreclosure and sale in 2024.
- [58] What is more significant is that Lannie purchased the Edgelow Property with his own funds in 1989. Lannie brought it to the marriage and Patty made no financial contribution to its acquisition or maintenance thereafter. Although I have accepted Patty's testimony that she and Lannie agreed in general to keep their assets separate, she has made claims in this action that are inconsistent with that alleged arrangement and, indeed, continues to advance such a claim even now, at least in relation to the Edgelow Property.
- [59] In my view, it is unfair, when viewed against the backdrop of that arrangement, that the estate must now be made to share a substantial portion of the net worth that Lannie brought into the marriage, while Patty will only share her RSP (which had a value of \$42,870.51 when it was liquidated, a small fraction of her net worth). This imbalance flows from the operation of the FRA merely because Lannie offered to make one of his properties the principal matrimonial residence. Further, I agree with the respondents that Patty was, at least to some extent, able to preserve and grow her personal investments thanks to the financial support that Lannie provided to her during the marriage. These factors weigh in favour of a reapportionment.
- [60] On other hand, other factors weigh in Patty's favour. Lannie's financial support for Patty during the marriage was modest. Patty paid for most of her personal expenses from her own savings. Further, while Patty's financial contributions to the family may have been limited,

she also provided homemaking and other services. Most notably, she cared for Lannie when he was sick from pneumonia for two years prior to the separation. She gave up her job at the bank in Vancouver to join Lannie on Vancouver Island. When they got married, Lannie told her that he preferred that she not work outside the home. Accordingly, she remained a homemaker from 1990 to 1997 and only later found work as a home support worker and then as a nursing assistant until she retired in 2009.

- [61] Finally, I must also consider the parties' present circumstances. While both Patty and Lannie entered the marriage with substantial assets, they left it with a pronounced imbalance in their relative means. In the result, while the estate is now left with the Island View Property free and clear, but few other assets, Patty retains, as a result of my ruling, unencumbered investments in her own name that were valued in 2013, at the time of the triggering event, in an amount in excess of \$1.1 million.
- [62] Overall, I have concluded that an equal division would be unfair, but the reapportionment called for is not as extensive as that which the respondents seek. Instead, I am dividing net proceeds 75/25% in favour of the estate.
- [63] The effect of my conclusion is that, of the \$464,163.02 in net proceeds available for distribution to the parties before payment of the unrelated judgments, Patty's share is 25%, or \$116,040.76. She is therefore entitled to be paid that amount from the funds in court, less Lannie's share of her RSP. To be consistent, I am awarding the estate a 25% interest in the RSP, or \$10,717.63, for a net payment to Patty from court of \$116,040.76 - \$10,443.43 = \$105,597.33.
- [64] The estate is entitled to the balance remaining in court after that payment to Patty is made. In addition, Patty and the estate are each entitled to be paid their half share of the balances remaining in the joint accounts ( $\$20,886.86/2 = \$10,443.43$  each).

## B. Spousal Support

- [65] I agree with Patty that an award of spousal support cannot properly be made in favour of a deceased spouse and that Lannie's claim for such an award must therefore be dismissed: *Milne v. MacDonald Estate*, 1986 CarswellBC 191, 5 B.C.L.R. (2d) 46 (C.A.).

## C. Summary and Conclusion

- [66] I am making the following orders:
- \$105,597.33 is to be paid to Patty from the funds in court, with the remaining balance to be paid to the estate;
  - The sums remaining in the joint accounts are to be divided equally between Patty and the estate; and

- c) The parties will otherwise retain the assets currently in their possession and all other claims in the action are dismissed.

[67] The parties have leave to schedule a supplemental hearing before me if they are unable to agree on the appropriate order as to costs, in light of my decision.

"Milman J."

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