

CANADA / JUDGMENT

Davis v. Rodger

2025 BCSC 672

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Supreme Court of British Columbia

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2025 BCSC 672 Davis v. Rodger

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Davis v. Rodger,

2025 BCSC 672

Date: 20250410

Docket: E82253

Registry: Nanaimo

Between:

Kelley Doreen Davis

Claimant

And

Kenneth Leigh Rodger

Respondent

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Claimant:

K. Rongve

Counsel for the Respondent:

L.K. Taylor

Place and Date of Trial/Hearing:

Nanaimo, B.C.

May 30-31, 2024

June 3-7, 2024

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October 4 and 11, 2024

Place and Date of Judgment:

Nanaimo, B.C.

April 10, 2025

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Introduction

- [1] The main issues of this family law trial relate to division of assets and a claim for spousal support.
- [2] It is not disputed that the parties were involved in marriage-like relationship from 2004 to 2017. However, the parties take polar opposite positions on most of the financial issues.
- [3] The financial issues have been complicated by three factors:
 - a) The parties' main asset, the family home, was destroyed by a fire shortly before the date of separation (the "Fire"). After separation, there was precious little communication between the parties. The claimant took on the role of general contractor for the rebuild of the house. At trial, each side takes a different position on the receipt and application of the insurance proceeds.
 - b) The claimant failed to disclose certain banking records (until mid-trial) and any rental income (at all).
 - c) Seven years passed between the date of separation and the trial. There were no interim orders regarding support.
- [4] As a result, multiple issues were raised at trial, with no issues having been resolved in the pretrial period.
- [5] Both parties advance excluded property claims. This is not surprising given that their relationship started when they were both in their 40s. The claimant also seeks an unequal division of assets on the basis that she performed substantial work on the rebuild of the home after the Fire. The respondent acknowledges that the claimant did work on the rebuild but disputes her claim for unequal division.
- [6] The parties also take polar opposite positions on spousal support, attribution of mortgage payments, occupation rent and actual rent.

[7] There are many variables in the discussion below. However, viewed within the light of reasonable possible outcomes, the parties' opposing positions on the division of property fall within the following parameters:

- a) As of the date of trial, the total net assets of the parties are valued at approximately \$1,164,000 (real estate plus retirement investments).
- b) The claimant's submission would allow her to keep the former family home and require her to pay the respondent with approximately \$148,000.
- c) The respondent's submission would leave the following result:
 - i. if the claimant keeps the former family home, then she pays the respondent approximately \$700,000; or
 - ii. if the former family home is sold, then the proceeds would be divided equally, and the claimant would pay the respondent approximately \$337,000.

[8] Within that financial context, I address the various arguments and issues.

Issues

[9] In an attempt to simplify the issues, after reviewing the chronology, I have addressed them in the following order:

- a) Credibility and Reliability, including accounting for insurance payments.
- b) Division of Assets including the former family residence and the retirement funds:
 - i. The Claimant's Excluded Property Claim.
 - ii. The Claimant's Unequal Division Claim.
 - iii. The Respondent's Investments and His Excluded Property Claim.
- c) Spousal Support, Mortgage Payments, Occupation Rent and Actual Rent.
- d) Division of Personalty.

[10] I have addressed all of these issues with the ultimate goal of doing fairness between the parties.

Background Facts

[11] The claimant, Kelley Davis, is 61 years old, born in 1964. Prior to the subject relationship, she had been married twice. Her first marriage was from 1983 to 1991. She has two children from that relationship. In 1994 she began a marriage-like relationship with Mr. Randy Davis. They were married in 1997 and separated in 2002. They had one son. The terms of her second divorce, which resolved in 2006, are relevant, and I discuss them below. Of importance to this action, the claimant and Mr. Davis purchased 664 Western Acres Road

("Western Acres") on July 12, 1995. Western Acres is the property in dispute in this action.

- [12] Over the course of her career, the claimant had a number of jobs in accounting departments with a number of different employers. During the 13 years of the parties' relationship, she generally worked full time although she did have some health concerns and missed some time. She continued to work full time after the separation.
- [13] The respondent, Kenneth Rodger, is 66 years old. During the course of trial, he was diagnosed with Parkinson's disease or a similar condition. Over his career he has been employed as a heavy machine operator and truck driver for several employers. He also worked on the Site C Dam. Due to his recent diagnosis, his ability to maintain employment is in doubt.
- [14] The parties started their relationship, and Mr. Rodger moved into the Western Acres home in February 2004. The home was fully furnished. He brought a duffel bag of clothes, some tools and other chattels.
- [15] The parties resided as a couple at Western Acres for the next 13 years. The parties agree that, although they both worked, they took on traditional roles at home. The claimant did most of the cooking and cleaning. The respondent did work around the home, including some renovations.
- [16] By early 2017, it was evident that there were strains in the relationship.
- [17] Unrelated to those strains, the Western Acres home burned down on January 24, 2017. The Fire was completely accidental. The house was completely destroyed. An insurance claim ensued.
- [18] The parties separated on April 4, 2017, when Mr. Rodger moved out.
- [19] After separation, the parties did not communicate. There was a significant amount of distrust flowing in both directions.

Credibility and Reliability

- [20] Before delving into the legal issues, I address here the parties' testimony. Each side challenges the credibility and reliability of the other. A full review of the parties' credibility requires me to jump ahead in the chronology.
- [21] Given the effluxion of time since the beginning of the relationship, and since separation, it is not surprising that there would be significant memory gaps and incorrect placements of events along the timeline. Hence, problems with reliability were to be expected.
- [22] With that said, I find the claimant to be a generally reliable witness. She was generally able to recount events in an order that was logical and accorded with the documentary evidence. Further, most of her evidence was credible.

- [23] There was, however, one significant problem with the claimant's credibility. That problem affects my findings of fact and the positions taken by the claimant. The explanation of my finding regarding the claimant's credibility requires some amount of background. Ironically, the fact that the claimant was a reliable witness accentuates this problem with her credibility.
- [24] Much of the trial time was spent reviewing bank records which documented the receipt and expenditure of the insurance proceeds after the Fire. There had been significant pretrial disclosure of banking records.
- [25] Both parties were on title to Western Acres. Both parties were on the mortgage. Both parties were insured under the fire insurance policy.
- [26] In the early months of the insurance claim, the claimant was presented with an option: either pay for a restoration company to be the general contractor for the rebuild, or take on that role herself. To save the contractor's fees, the claimant acted as general contractor for the rebuild of the Western Acres home. In that role, she had the power to redirect funds earmarked for one type of loss (say "Contents") into rebuilding of the home. There was no formal demarcation for the use of the funds.
- [27] The credit union that held the mortgage agreed with the insurance company that it would safeguard the interests of all parties by controlling the outflow of the insurance proceeds. To achieve that goal, the credit union created two joint accounts in the names of both parties:
- a) The first account would hold the overall insurance proceeds (the "Insurance Account").
 - b) The second account was the "Build Account".
- [28] Each stage of the rebuild was pre-funded from the Insurance Account. When the claimant satisfied the credit union that a stage of the rebuild had been completed, a tranche of funds from the Insurance Account would be transferred to the Build Account. The claimant then used that new tranche to pay for the next stage in the rebuild.
- [29] Both the Insurance Account and the Build Account were joint accounts held in the names of both parties. However, the respondent did not attempt to exercise any control over either account. The claimant controlled virtually all of the insurance funds post separation in her capacity as general contractor.
- [30] The claimant had signing authority over both accounts, subject to the requirement that she provide evidence to move funds from the Insurance Account to the Build Account.
- [31] This system worked well during the course of the rebuild. A significant majority of the funds were used to rebuild the residence. The rebuild was completed in approximately February 2018. However, after completion of the rebuild, there were surplus funds in the Insurance Account.

- [32] Following completion of the rebuild, the claimant obtained a letter from the insurer indicating that the insurer was satisfied that the terms of the insurance claim had been fulfilled. That letter allowed the release of the final tranche of funds from the Insurance Account to the Build Account. Those funds were transferred into the Build Account in the first half of 2019.
- [33] In the course of the litigation, the credit union records of the Insurance and Build Accounts were disclosed by the claimant to the respondent. Those records show that, at some point, the last remaining funds were transferred out of the Build Account and to an unidentified account.
- [34] The respondent focusses on this transfer as a significant issue in this trial.
- [35] During cross-examination by the respondent's counsel, the claimant was taken through the credit union records, including the months when the remaining funds in the Build Account were transferred out. In answer to counsel's questions, the claimant testified that the bank records from the receiving account had been disclosed and there must be a record of those transactions. The respondent's counsel advised there was no record of the receiving account.
- [36] The next day (still during her cross-examination), the claimant arrived at court with two sets of previously undisclosed bank records. Those records showed that she had moved the remaining Build Account funds into two newly created accounts. She professed to have been mistaken about having previously produced those documents. The respondent was not on either of the new accounts. They were controlled by the claimant.
- [37] Hence, as of the commencement of trial, the respondent was aware the funds had been transferred out, but he did not learn of the true nature of those transfers until the middle of trial. The funds in the Build Account were clearly joint funds in which the respondent had an interest. They were transferred to accounts under the claimant's sole control.
- [38] The claimant testified that some of the funds constituted a reimbursement of payments she had made for improvements to the Western Acres property. I do not find her testimony on that issue to be credible.
- [39] In closing submissions, the claimant described the respondent's case as being full of "suspicious". In my opinion, the respondent held "suspicious" until the moment the new bank records were disclosed mid-trial. At that point, he became "convinced" that the claimant had improperly withdrawn joint funds for her own use.
- [40] If it had not been for the crucible of trial, the claimant's conversion of these funds would not have been exposed. I find as a fact that the claimant attempted to hide the transfer of funds by withholding the banking records. In my opinion, that act constitutes a significant mark against the claimant's credibility. I also do not accept as truthful the claimant's explanation for not producing the ultimate documents until mid-trial. I find that she was trying to hide a wrongful transaction from the respondent and the court. Obviously, that act hurts her

credibility.

- [41] In total, the claimant moved \$109,754.49 out of the parties' joint accounts and into her personal accounts or to her own use. This amount includes the claimant using Build Account funds for personal expenses, as evidenced by ATM withdrawals.
- [42] I find that the claimant improperly withdrew funds that were held in a joint account and over which the respondent had a claim. I infer that the claimant felt that she had some entitlement to those funds because the respondent did not participate in the work toward the rebuild. However, that was not her decision to make. She had a right to half of those funds, but not all of those funds.
- [43] This finding on the claimant's credibility affects other issues in the litigation.
- [44] There is evidence that the claimant earned rental income that she did not disclose. Part of the redesign and rebuild of the Western Acres home included the construction of a separate rental suite. The claimant conceded that she had rented out the suite, but claimed that the rentals were intermittent. She also conceded that she took cash for the rent. She kept no records. She claims that the total amount of rent was low, because it was hard to rent out the suite. The property is at the end of a remote road with no bus service. Further, the suite does not have its own entry. She testified that she would only rent to women, because she was afraid of having male tenants.
- [45] Regardless of the difficulty with rent, as a result of the claimant's failure to keep any record of the amount of the rent received, or the months in which the suite was rented, there is a gap in the evidence.
- [46] Further, the claimant's credibility affects my finding on the value of the Western Acres property. Toward the issue of excluded property, the claimant testified that she received an offer to purchase Western Acres in 2005 (before the respondent went on title) for \$675,000. The appraisal evidence suggests that the property was worth approximately \$365,000 in 2006. The claimant says that a developer was interested in assembling land for a new development. The respondent denies that any offer was made. He recalls that a developer showed some interest in the property after 2006, but says that nothing ever came of the idea. Hence, he says there is no evidence of a higher value.
- [47] In my opinion, there is no evidence of a higher value for Western Acres. Given the claimant's credibility issues, I do not accept her testimony. There has been no new development of the real estate in the area over the past decade. An overture from a developer does not indicate the value of the property. Hence, I rely on the appraised values in my discussions below.
- [48] Turning to the respondent, I had no reason to doubt his credibility. He provided his answers in a straightforward manner. He was not seriously challenged on his answers. There were many questions which he could not answer because his memory had faded. He was credible, but not particularly reliable.

[49] Having addressed the credibility and reliability of the parties, I now turn to the legal issues and the underlying evidence.

Property Division

[50] Each party claims excluded property: the claimant in Western Acres and the respondent in his retirement investments. Both claims are based upon the value of the asset at the date the relationship began.

[51] The claimant also seeks an unequal division of the Western Acres property. For continuity, I address both of the claimant's arguments regarding Western Acres before addressing the respondent's submission on excluded property.

Excluded Property

[52] The FLA provides:

Family property

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
- (i) property that is owned by at least one spouse, or
- (ii) a beneficial interest of at least one spouse in property;
- (2) Without limiting subsection (1), family property includes the following:
 - (d) money of a spouse in an account with a financial institution;
 - (e) a spouse's entitlement under an annuity, a pension plan, a retirement savings plan or an income plan;
 - (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require its return or to direct its use or further disposition in any way;
- (g) the amount by which the value of excluded property has increased since the later of the date
 - (i) the relationship between the spouses began, or
 - (ii) the excluded property was acquired.

Excluded property

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;

Division of excluded property

96 The Supreme Court must not order a division of excluded property unless

- (b) it would be significantly unfair not to divide excluded property on consideration of the duration of the relationship between the spouses and one or more of the following factors:
 - (i) a spouse's direct contribution to the preservation, maintenance, improvement, operation or management of the excluded property;
 - (ii) the terms of any agreement between the spouses respecting the excluded property, other than an agreement described in section 93 (1) [setting aside agreements respecting property division], including but not limited to terms respecting the transfer of the excluded property;
 - (iii) if the Supreme Court makes a determination under section 95 (1) [unequal division by order] respecting significant unfairness, the extent to which the significant unfairness cannot be addressed by an unequal division of family property or family debt, or both.

[53] The first step in this analysis requires me to determine the values at the beginning of the relationship in February 2004.

The Claimant's History of Home Ownership Before the Relationship

[54] The main asset to be divided in this litigation is the former family home. The claimant has a claim for excluded property. The respondent accepts that the excluded property claim exists, but disputes the amount. For context:

- a) the claimant submits that her equity was \$190,000; and
- b) the respondent submits that her equity was \$42,000.

[55] The history of the claimant's ownership interest in real estate is as follows:

- a) In May 1983, she and her first husband purchased 559 Weber St. in Nanaimo. She put \$25,000 down payment on that property from an inheritance.
- b) When her first marriage ended in 1991, the claimant retained the Weber St. home. She bought out her ex-husband for \$28,000. In 1992 the Weber St. home was transferred into her name.
- c) In 1994 the claimant moved into a house with Mr. Davis. The Weber St. home was sold in November 1996.
- d) As noted, the claimant and Mr. Davis purchased Western Acres on July 12, 1995. They also purchased another property at 237 Old Victoria Rd. The Old Victoria property is not relevant to this case.
- e) To purchase the Western Acres property, the claimant put down the following amounts:
 - i. the equity from the sale of the Weber St. property, approximately \$70,000-\$90,000, and

- ii. a further \$25,000 which she had inherited from her grandfather.
- f) The claimant's relationship with Mr. Davis ended in 2002. At that point she continued living in the Western Acres home with her three children. Upon separation, Mr. Davis continued to pay the mortgage on the property until December 8, 2006 (a period of four years).
- g) In December 2006, following the settlement of the claimant's divorce from Mr. Davis, Mr. Rodger went on title (and on the mortgage) to Western Acres.
- [56] As discussed below, in her divorce from Mr. Davis, the claimant did not pursue any (ongoing) spousal support or any interest in Mr. Davis' company. She exchanged those claims for equity in the Western Acres property.

What equity did the claimant have in 2004?

- [57] The chronology of the ownership of Western Acres during the parties' relationship is as follows:
 - a) The parties started their relationship, and Mr. Rodger moved into the Western Acres home in February 2004. Both parties negotiated their respective divorces from their former spouses over the next couple of years.
 - b) In the period between 2004 and October 2006, the claimant's ex-husband paid the mortgage on Western Acres. Although not recorded in writing, it was generally agreed that Mr. Davis' mortgage payments were in lieu of child support.
 - c) In her divorce from Mr. Davis, the claimant did not pursue any (ongoing) spousal support or any interest in her former husband's company. She exchanged those claims for equity in the Western Acres property. The claimant's ex-husband testified at trial that the equity in the Western Acres property in 2006 was approximately \$190,000. He testified that the property was valued at \$365,000 and the mortgage was approximately \$175,000.
 - d) The respondent does not accept the claimant's valuation. He submits that the proper date for assessment is the beginning of the relationship (i.e., when a couple passes the two-year threshold under the FLA, they are deemed to have been spouses from the beginning of the relationship):
 - i. An appraisal of Western Acres as of May 3, 2004, was tendered in evidence by the respondent. That appraisal was commissioned for the claimant's ex-husband in the divorce proceeding against the claimant. It appraised the property at \$260,000.
- ii. In her Form F8 sworn May 11, 2004 (in her divorce proceeding against Mr. Davis), the claimant stated that the property was worth \$325,000.
- iii. An appraisal of Western Acres as of March 2006 was tendered in evidence. That appraisal was commissioned for the claimant's divorce proceeding against Mr. Davis. It appraised the property at \$335,000.

iv. When the parties signed the mortgage in December 2006 (after transfer of title from Mr. Davis), the mortgage documents valued the property at \$335,000.

- e) As noted, on October 17, 2006, the claimant settled her divorce with Mr. Davis wherein he agreed to transfer Western Acres into her name. She then transferred title into joint tenancy with Mr. Rodger. She testified that she did this because they required new financing after the transfer from Mr. Davis. The claimant was not eligible for a mortgage without the respondent's commitment.

[58] On that evidence:

- a) The claimant submits that her equity in Western Acres was \$190,000 based upon a 2006 value of \$365,000 and the mortgage owing of approximately \$175,000.
- b) The respondent submits that in 2004, Western Acres was appraised at \$260,000 while the mortgage was \$175,000. Hence, there was \$85,000 in equity, half of which belonged to the claimant (\$42,500).
- c) There is other evidence indicating that Western Acres was worth \$325,000 in 2004. With a mortgage of \$175,000, that would indicate that the equity was \$150,000.

[59] I note that the respondent argues that the transaction in the 2006 divorce from Mr. Davis constituted an acquisition of family property during the relationship. Hence, the value in December 2006 was not "excluded property". I do not accept the respondent's position on this issue. Instead, I approach it from a different starting point:

- a) As of 2004 (at the beginning of her relationship with Mr. Rodger), the claimant had a claim (a chose in action) against Mr. Davis. She had claims against the equity in the Western Acres and against Mr. Davis' business interests.
- b) The claimant then, in 2006, negotiated a resolution of her claims in her divorce from Mr. Davis. She agreed to swap her claim against his business interests and any claim for spousal support in exchange for Mr. Davis' equity in Western Acres.
- c) At the time the swap was completed, in October 2006, that equity was valued at \$190,000.

[60] Hence, the claimant brought into the relationship (in February 2004) the full value of her claim against Mr. Davis. I find that by February 2004:

- a) she had invested somewhere between \$95,000 and \$115,000 into Western Acres when it was purchased in 1995;
- b) her total claim against Mr. Davis was not worth \$190,000, because Western Acres was not yet valued at \$365,000 (which was the basis of Mr. Davis' estimate);
- c) there is some evidence that in 2004 Western Acres was only worth \$260,000; however, I accept the evidence that it was worth \$325,000; and

- d) the claimant was entitled to claim the full amount (not half) of that equity as excluded property.
- [61] I discussed above the claimant testified that she received an offer to purchase the property in late 2005 at a price of \$650,000. I do not accept that evidence.
- [62] On the basis of the evidence at trial, I calculate the claimant's excluded property claim at \$150,000. I reach that figure using the equity in the property based upon a value of \$325,000 and a mortgage of \$175,000. As of 2004, she had a claim for half of that equity, plus a claim against Mr. Davis' other assets. She traded the latter claim for a full interest in Western Acres. That was the value of her equity in the property in 2004 at the beginning of the relationship.
- [63] Hence, I find the claimant's excluded property claim is \$150,000.

The Claimant's Claim for Unequal Division of Property Based on Her Work

- [64] In addition to her excluded property claim, the claimant argues that she is entitled to retain the increase in value of Western Acres that is due to her work as general contractor. She seeks an unequal division of property under the FLA, s. 95(1)-(2):

Unequal division by order

95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to

- (a) equally divide family property or family debt, or both, or
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;

- [65] The claimant's claim is based upon her undertaking the role of general contractor for the rebuild after the Fire. The prelude to that undertaking was as follows:

- a) Immediately after the Fire, a restoration company came and cleaned up the property. They installed a new power pole to provide power to the claimant's new rental trailer.
- b) The restoration company then prepared a budget for the rebuild of the house. That budget contained an allowance for payments to the restoration company acting as the general contractor (approximately \$56,000-\$68,000, plus GST).
- c) The insurance adjuster discussed the matter with the claimant. By this point, the parties had separated and were not in communication. The adjuster advised the claimant that if she acted as the general contractor, then she could use the funds earmarked for to the restoration company (as general contractor) for additional investment in the rebuild.

d) The claimant agreed to take on that responsibility.

[66] The claimant submits that her work as general contractor caused a significant increase in the value of Western Acres. Specifically, she arranged for improvements to be included in the rebuild, including an in-law suite. Those improvements created additional value in the property. The claimant assesses that increase at \$305,000. In support of that figure, she relies on two appraisals as of April 2024:

a) The value of the property assuming the original house was rebuilt to the original specifications is \$935,000.

b) The value of the property as rebuilt with an in-law suite is \$1,240,000.

[67] The claimant seeks an unequal division in the amount of \$305,000.

[68] The respondent opposes this claim. He submits:

a) The claim of \$305,000 is significantly more than the amount of effort expended by Ms. Davis.

b) It would be unfair to grant an award based upon the increase in value of the property because the fair market value of the claimant's efforts can be measured by the following metrics:

i. The restorations company's estimate of the fees to act as general contractor was less than \$68,000 plus taxes.

ii. Ms. Davis continued to work at her full-time job while overseeing the rebuild.

c) The claimant chose to take on the general contractor role without obtaining his approval.

d) Further, in order to achieve the higher value, the claimant spent the insurance proceeds, which were jointly owned by the respondent.

[69] In my opinion, this is an issue where I accept a portion of each side's submission:

a) I accept that the claimant should receive some compensation for the work she did as general contractor. I accept that it would be appropriate to achieve that goal by way of an unequal division.

b) However, in my opinion, her efforts do not rise to the level of establishing a basis to claim the entire increase in the value of Western Acres. I accept the respondent's submission that the claimant is not entitled to claim the increase in value of the property occasioned by her efforts because:

i. the funds she spent on the rebuild were joint funds with the respondent;

ii. the claimant maintained her full-time work during the rebuild.

c) both parties benefitted from the claimant's work.

[70] Given the time span of the rebuild, I assess the value of her work at \$40,000, and I make provision for an unequal division in that amount.

What is the current value of Western Acres?

[71] As noted above, in December 2006, Western Acres was valued at \$365,000 and the mortgage was approximately \$175,000. Hence, two years into the relationship, the equity in the property was approximately \$190,000. The increase in equity was due to the increase in the property's value in the almost three years since the relationship began.

[72] In January 2008, the claimant and respondent refinanced Western Acres. They took a loan of \$295,200. With that money they paid out the existing mortgage on the property as well as other debts that the couple had accumulated.

[73] In 2016 the claimant and respondent, again, refinanced the Western Acres property, this time borrowing \$348,750. Of that amount,

- a) approximately \$246,000 went to pay off the existing mortgage;
- b) approximately \$50,000 went to pay off personal loan on the respondent's pickup truck; and
- c) approximately \$20,000 went to pay off other personal loans. One of those personal loans was for a classic car being restored by the respondent (a 1963 Acadian).

[74] During the course of the relationship, the respondent performed work on the Western Acres house. That work consisted of remodelling some rooms and ongoing maintenance.

[75] Since 2017 the respondent has been paying the mortgage. In total, he paid \$170,581 plus property taxes of \$21,528. I have addressed those payments below.

[76] I accept the appraisal indicating that Western Acres' value is \$1,240,000 and that the mortgage is \$277,648.49.

[77] Based on my discussion above, the claimant is entitled to:

- a) an excluded property claim of \$150,000, and
- b) an unequal division claim of \$40,000.

[78] Hence:

Property value:

\$1,240,000.00

i. Less mortgage:

\$ 277,748.49

ii. Less excluded property claim:

\$150,000.00

iii. Less unequal division claim:

\$40,000.00

Net Equity to be divided:

\$772,251.51

[79] The respondent is entitled to half of that amount, or \$386,125.76.

[80] If the claimant seeks to purchase Western Acres, she is responsible to compensate the respondent \$386,125.76. The claimant will have 30 days from the release of these reasons to make that decision and a further 30 days to raise the funds.

[81] If the parties decide to sell the property, the net sale proceeds (after deducting all closing costs and the amounts listed above) will be divided in half. The parties will have joint conduct of sale.

Family Debts

[82] The respondent submits that between the date of separation and the date of trial, he paid off certain family debts. He claims compensation for those payments.

[83] The payments are:

a) Medical Services Plan debt:

\$2,976.00

b) TD VISA on separation:

\$4,194.00

c) His own CRA debt for 2017:

\$14,242.00

d) Mortgage payments:

\$170,581.00

e) Property Taxes:

\$21,528.00

Total:

\$213,521.00

[84] I accept that Mr. Rodger paid off certain debts that the couple incurred prior to separation. However, I limit those debts to: Medical Services Plan and TD VISA (total \$7,170).

- [85] I do not accept that Mr. Rodger's income tax debt for 2017 was a debt incurred during the relationship. The relationship ended on April 4, 2017. I have no evidence as to his tax debt as of the date of separation.
- [86] As to the mortgage and property tax payments, I have addressed those payments under the bundle of monthly payments and obligations below.
- [87] I note that the respondent has one other claim that I am choosing to fit into this category. It relates to certain utilities provided by the City of Nanaimo. During trial, evidence was adduced that the claimant did not pay certain of the City utilities (e.g., water) when they became due. As a result, those amounts were added to her property taxes in the following year. As noted, Mr. Rodger was paying the mortgage. Mr. Rodger knew that the mortgage payments included "Property Taxes", but he did not know that they also included the claimant's civic utilities bills.
- [88] Mr. Rodger claims \$4,388.18 for these civic utilities. I accept that those payments were made by Mr. Rodger. In my opinion, the best way to address them is to treat them in the same manner as the mortgage payments and property taxes. As a result, I address them below.
- [89] I now move on to Mr. Rodger's investments

The Respondent's Retirement Funds

- [90] Mr. Rodger claims the value of his retirement investments (as of 2004) as excluded property.
- [91] The claimant disputes this claim. She testified that, in 2006, when she agreed to put the respondent on title to the Western Acres property, the deal was that she would be entitled to half of his retirement funds. In other words, half the house for half his retirement fund.
- [92] In his testimony, the respondent disputed any agreement to share his retirement funds with the claimant in 2006. He said he agreed to put the claimant's name on his investments as his beneficiary. He did not agree to transfer any of the value to her. That means, she would get his investments should he die. However, the investments remained in his name. Further, he denies that this was part of any agreement with the claimant that involved the Western Acres property. As noted above, he says the claimant needed him to be on title because she could not obtain a mortgage.
- [93] On this issue, I accept the testimony of the respondent. In my opinion, the evidence is clear that the claimant would not have qualified for a mortgage in 2006. Hence, she needed the respondent to co-sign the loan.
- [94] I infer that neither of them discussed the concept of "excluded property" in 2004 or in 2006.
- [95] On that basis, I allow the respondent's claim for excluded property, based on the value of his investments in February 2004.

- [96] As of the date of trial, the respondent's retirement fund was valued at approximately \$324,961. He claims excluded property based upon the value of those investments at the beginning of the relationship.
- [97] To decide on the value of Mr. Rodger's investments in February 2004, I have used the same approach I used for Ms. Davis' assets. (i.e., as of February 2004, the claimant had a claim against her ex-husband.) Similarly, as of February 2004, Mr. Rodger had investments, but he also had obligations to his ex-wife. Those obligations were resolved in 2006. Using those figures, the respondent calculates the value of his investments (excluding amounts later paid to his ex-wife) at \$96,647.73. I accept that amount as being excluded property. Ms. Davis is entitled to half of the growth in those investments from 2004-2024. The growth during the relationship was $(\$324,961.09 - \$96,647.73 =) \$228,313.36$.
- [98] Each party is entitled to half of that growth, or \$114,156.68.
- [99] I address below the ability to set off one claim against the other.

Attribution of Insurance Proceeds Paid for "Contents" and "Building"

- [100] The respondent also submits that I should undertake an accounting for the insurance proceeds received by the claimant. He seeks a tracing remedy for insurance proceeds that were paid out under the headings "Contents" and "Building". I decline to do so for the reasons set out below. First, I set out the amounts paid out by the insurer.
- [101] The total amount paid out by the insurer was \$928,414. That amount was paid out under the following headings:
- a) Expenses: \$42,173. These amounts were all paid to the restoration company to administer the claim.
 - b) Additional Living Expenses ("ALE"): \$63,277. Of these amounts, \$45,177.12 was paid prior to separation. \$18,100 was paid to the claimant by advances after separation.
 - c) Contents: \$273,100. Of that amount:
 - i. \$35,000 was advanced prior to separation (including an amount for appliances);
 - ii. \$ 25,390 was paid to the restoration company;
 - iii. \$15,000 was paid directly to the respondent;
 - iv. Leaving \$197,710 paid to the claimant during the rebuild.
 - d) Building: \$549,864. Of this amount:
 - i. \$106,452 was paid to contractors, and
 - ii. \$443,412 was paid to claimant for rebuild. Of the \$443,412:

- (1) \$397,872 was paid out by the credit union based upon the claimant submitting sufficient proof that the prior advances had been used in the rebuild; and
- (2) \$45,540 was the last advance.

"Contents" Payments

[102] On the Contents payments, the parties take opposing positions:

- a) The claimant makes two submissions:
 - i. The insurance proceeds payable for "Contents" were primarily payable to her, because she was the owner of those contents. The respondent moved into the Western Acres home with a duffel bag and some tools. She pre-owned the contents of the house. Hence, the "Contents" were excluded property. (I note that the claimant does not press this position with any great vigor.)
 - ii. The claimant's main argument was based upon her evidence that she invested the Contents money into the rebuild of the house.
- b) The respondent submits that the amounts paid to the parties (\$15,000 + \$197,710) should be combined and then divided evenly. He seeks an award of \$106,355.

[103] On the claimant's first point, in my opinion, the claimant is not entitled to an excluded property claim regarding the contents of the home. I say this for the following reasons:

- a) The parties were involved in a 13-year relationship.
- b) The contents were in a "used" condition in 2004 when the respondent moved in.
- c) Many of the contents were replaced over time by the parties acting as a couple. In addition, the respondent did renovations on the home. He replaced hardware in the course of those renovations.
- d) As of the day immediately before the Fire (i.e., in early January 2017), the "Contents" would have had a very low value. Put another way, there would be no market for 20-year household furniture and used clothing.
- e) As of the day after the Fire, the "Contents" were destroyed.
- f) However, those former "Contents" had become an incorporeal right to receive a payment from the insurance company to replace the contents on a replacement value basis.
- g) Hence, to the extent that the claimant brought the contents into the relationship:
 - i. They had little value in 2004, less value in January 2006 and still less value in January 2017 - until the Fire.
 - ii. They increased in value dramatically by being destroyed in the Fire.

h) In my opinion, the respondent is entitled to a share of the increase in the value of those assets during the relationship.

[104] Hence, as a starting point, I find that the respondent was entitled to a 50% interest in the "Contents" payout by the insurer that was received by the claimant after separation. As noted above, those amounts were:

- a) \$15,000 was paid to the respondent, and
- b) \$197,710 paid to the claimant.

[105] Based on that evidence, the respondent submits that each party should have received \$106,355. He seeks an award in that amount.

[106] I dismiss this portion of the respondent's claim for two reasons.

[107] First, I have noted above that, by acting as general contractor, the claimant had the opportunity to rebuild the house to a higher standard. She did that. In order to achieve that goal, she spent Contents money on the rebuild. Hence, the funds earmarked for "Contents" are, to a large extent, already reflected in the increased value of Western Acres. I have ruled that the respondent is entitled to half of the equity in Western Acres. To grant a separate award for the Contents money would, in my opinion, result in double compensation to the respondent.

[108] Second, I have already found that the claimant inappropriately took \$109,754.49 of the insurance proceeds. Hence, to the extent that other improper expenditures may be discovered during an accounting, I infer that will be compensated within that award which I have made on different grounds.

"Building" Payments

[109] Turning to the "Building" funds, as noted, the respondent seeks an accounting of the "Building" proceeds received and expended by the claimant. I reject that claim.

[110] As noted, the vast majority of the "Building" funds were paid out by the credit union based upon the claimant submitting sufficient proof that the prior advances had been used in the rebuild. I accept that the credit union performed its due diligence on that front. Hence, \$397,872 was paid out based upon receipts. That leaves \$45,540 as the final tranche.

[111] I have noted above that I have found that:

- a) the claimant invested the majority of the insurance proceeds into the rebuilding of the house; and
- b) improperly converted \$109,754.49 to her own use.

[112] In my opinion, those findings address any possible liberties taken by the claimant with the insurance proceeds.

Summary on Property Division

[113] Based upon my assessment above:

- a) The equity to be divided in Western Acres totals \$772,251.51. The respondent is entitled to receive payment of half that amount, or \$386,125.76. Alternatively, he is entitled to half the net equity if the property is sold.
- b) The claimant improperly moved \$109,754.49 out of a joint account and to her own use. The respondent is entitled to receive payment of \$54,877.25.
- c) The respondent paid family debts post separation (Medical Services Plan and TD VISA) totalling \$7,170. The claimant is responsible to half of that amount.
- d) I calculate the amounts owing to the respondent on the division of property at \$444,588.00

[114] On the other side of the ledger:

- a) The respondent's investments: the claimant is entitled to a payment of \$114,156.68.

[115] I will leave it to the parties to set these amounts off against each other.

Spousal Support, Mortgage Payments, Occupational and Actual Rent

[116] I now move on to consider the other issues.

[117] Because there are a number of countervailing claims, I have addressed all of these claims under one heading.

[118] Based on the evidence adduced at trial, the following financial issues need to be addressed:

- a) The claimant never applied for interim spousal support. She now seeks an award akin to a lump sum.
- b) Insurance proceeds of \$18,100 were paid to the claimant for "Additional Living Expenses" post separation (up to the date of completion of the rebuild). None of those funds were paid to the respondent.
- c) The claimant lived at Western Acres while the respondent paid the mortgage. The claimant did not have any real housing costs. Meanwhile, the respondent lived in a travel trailer with his new partner. He seeks a declaration of occupation rent for the period after the completion of the rebuild of the home.
- d) The respondent paid the mortgage on the Western Acres property since separation. In total, he paid \$170,581 over seven years. Those payments reduced the amount owing on the mortgage.
- e) After the rebuild, the claimant rented out a suite in the home without recording the amount of income paid in rent.

[119] I assess those issues below, but in summary, I make the following findings:

- a) I accept that the claimant was entitled to spousal support. However, her failure to claim support on an ongoing basis means that no income was attributed to her (or deducted from the respondent's taxable earnings). In my opinion, it is too late to remedy the tax aspect of that problem. As a result, I have estimated a fair reduction.
- b) I make no order in respect of the Additional Living Expenses.
- c) I accept that the claimant is required to pay occupation rent.
- d) I accept that the respondent paid the mortgage between separation and trial. The claimant is responsible to compensate him.
- e) I further accept that I must assign some amount to the actual rent that the claimant received from the suite in Western Acres.

[120] In my assessment below, I have attempted to do fairness between the parties despite the passage of significant time between separation and trial, and the limited availability of evidence. By necessity, I have estimated the quantum of some of the claims. In grand overview, I have estimated the quantum of each claim, then applied them against each other to arrive at a total that is fair.

Spousal Support

[121] Although it was included in her notice of family claim, the claimant does not present a formal claim for past spousal support at trial. She argues that the mortgage payments (or a portion thereof) made by the respondent should be considered the equivalent of spousal support. She does, however, seek an award of future spousal support in the amount of \$817 per month for a period of two years commencing the month after title to Western Acres is transferred. She assumes that the respondent will continue to pay the mortgage in the interim.

[122] The claimant estimates her entitlement to spousal support in the range of \$700-\$913 per month since 2017. That figure must be considered an estimate, because there have been variations in the respondent's income over the past seven years. I have not attempted to recreate the amount owing over the seven-year stretch from separation to trial.

[123] Based upon the length of the relationship, the claimant submits that she is eligible for spousal support for the period from separation through the trial and a further two years (9.5 years in total). She acknowledges that she did not seek spousal support. As a result, while the respondent paying the mortgage:

- a) no income was attributed to her from the payment of mortgage payments (as opposed to spousal support);
- b) the respondent obtained no tax benefit from paying the mortgage (as opposed to spousal support).

- [124] The upshot of the claimant's position would result in a substantial percentage of the respondent's mortgage payments not being attributed to the maintenance or reduction in the mortgage debt.
- [125] The theoretical claim for arrears of spousal support, calculated at the mid-range (say, \$800 per month) over 7.5 years would be approx. \$72,000 to the start of trial. A further 2.5 years would be a further \$24,000.
- [126] The respondent notes that any order that de facto reapportions the mortgage payments to spousal support would deny him the tax benefit of those payments over a seven-year period.
- [127] To be clear, my assessment pursues the hypothetical entitlement of the claimant. In my opinion, the claimant's entitlement would have been approximately \$800 per month. However, there would have been tax consequences to those payments. I am unable to calculate those consequences. However, I estimate the benefit to the respondent would have been 25%. Hence, I view the hypothetical claim for past spousal support as a lump sum. My starting point is \$72,000, but I reduce that figure by 25% to provide the estimated tax consequences to each side. I reduce the lump sum by \$18,000, leaving an amount notionally payable by the respondent to the claimant of \$54,000.
- [128] I dismiss the claimant's claim for ongoing spousal support beginning after the first day of trial. In my opinion, the respondent's health, and the other issues discussed in these reasons, indicate that 7.5 years was sufficient period of support payments.

Insurance Proceeds for Additional Living Expenses

- [129] The respondent claims a portion of the funds received by the claimant for additional living expenses.
- [130] In my opinion, this claim is ill-conceived.
- [131] The insurer paid proceeds of \$18,100 to the claimant for her additional living expenses after separation and up to the date of completion of the rebuild.
- [132] By definition, those funds compensated the claimant for her additional expenses.
- [133] To the extent that the respondent had additional living expenses, he was entitled to submit a claim to the insurer. He did not.
- [134] The respondent should have claimed his expenses from the insurer. He is not entitled to receive half of the amount that was reimbursed to the claimant.

Occupation Rent

[135] The respondent claims compensation for the benefit the claimant received from living at Western Acres without any housing costs from the date of separation to the trial, and ultimately to the date of resolution of the issues between the parties.

[136] Occupation rent falls under Division 4 of Part 5 of the FLA. It falls under a heading that addresses division of family property. However, I choose to address it in line with the other monthly obligations that the parties incurred over time.

[137] The factors relevant to a claim of occupation rent were addressed in *Ross v. Ross*, 2013 BCSC 1716 (decided under the former Family Relations Act, R.S.B.C. 1996, c. 128):

[47] I observe that in other Canadian jurisdictions, the law does not focus upon the question of ouster, or of claims for expenses by the spouse remaining in possession. The principles applicable in Saskatchewan were recently summarized in *Casey v. Casey*, 2013 SKCA 58 at para. 48:

From the jurisprudence the following principles may be drawn regarding the awarding of occupational rent on a matrimonial home:

1. Occupational rent is a remedy which may be utilized to obtain justice and equity in appropriate circumstances.
2. The remedy is exceptional and should be used cautiously.
3. The following factors, where relevant, are appropriately considered:
 - The conduct of both spouses, including failure to pay support, the circumstances under which the non-occupying spouse left the home, and if and when the non-occupying spouse moved for a sale of the home (Peltier at paras. 16-17; Wilgosh at paras. 99 and 109; Good, at para.90)
 - Where the children are residing and who is supporting them (Good at para. 90; Peltier at paras. 16--17; Wilgosh at para.108).
 - If and when a demand for occupational rent was made (Wilgosh at paras. 100 and 106; Good at para.90, and Peltier at para.16)
 - Financial difficulty experienced by the non-occupying spouse caused by being deprived of the equity in the home (Peltier, at paras. 16-17; Wilgosh at para. 106)
 - Who is paying for the expenses associated with the home. This includes who is paying the mortgage and other upkeep expenses (maintenance, insurance, taxes, etc.). .
 - Whether the occupying spouse has increased or decreased the selling value of the property (Peltier at paras. 16-17)

- Any other competing claims in the litigation that may offset an award of occupational rent (Wilgosh at para. 108; Good at para. 92).
 - 4. The remedy is a discretionary one requiring the balancing of the relevant factors to determine whether occupational rent is reasonable in the totality of the circumstances of the case.
- [50] On the approach used by other jurisdictions, as I interpret it, the overriding question is whether occupational rent, as a discretionary remedy to be used cautiously, should be utilized in order to achieve justice and equity in all of the circumstances of the case. This approach appropriately places little if any emphasis on the question of fault or blame for the decision of one spouse or the other to leave the matrimonial residence.
- [138] There was a thread in the cases suggesting that occupation rent was only warranted when the claiming party had been ousted from the property. Mr. Rodger was not ousted. However, *McFarlen v. McFarlen*, 2017 BCSC 1737 at para. 21, follows Ross (at para. 47 above) and indicates that ouster is not a requirement.
- [139] In line with these cases, I have applied the discretionary remedy of occupation rent in order to do justice between the parties. In my opinion, the facts of this case warrant the exceptional remedy.
- [140] There is a dispute on the date of the rebuild completion and hence the claimant re-occupying the home. The respondent submits that the rebuild was completed in September 2017. In my opinion, the best evidence was provided by Ms. Kristin Porter, the insurance adjuster who testified at trial. Her fourth report indicates that construction was completed, and the claimant moved into the house, in February 2018.
- [141] Hence, there are two periods to consider:
- a) April 4, 2017, to February 2018; and
 - b) February 2018 to May 30, 2024 (commencement of trial).
- [142] The respondent is not entitled to claim for occupation rent during the first period. The claimant was living in a trailer on the Western Acres property. Although she received insurance payments for her additional living expenses, she actually expended those dollars and received reimbursement from the insurer. Again, the respondent could have submitted a claim for additional living expenses to the insurer, but he did not. That failure does not create a financial obligation on the claimant.
- [143] As such, I am only considering the period commencing February 2018. In my opinion it makes sense to continue that claim until the day that Mr. Rodger ceases paying the mortgage. It does not make sense to stop those payments on the date of the commencement of trial.

- [144] The respondent obtained an appraisal of the monthly rental value of the entire Western Acres property. The market monthly rent value was in the range of \$2,350- \$2,450. (I note that the same appraisal opined that the market rent for the suite in Western Acres was \$1,350-\$1,450 per month.)
- [145] During the period from separation to trial, the respondent has paid \$1,500 per month for a place to park his travel trailer (in addition to the mortgage on Western Acres). His accommodations have been sub-optimal. I infer that he could not afford better accommodations because he was paying the mortgage on Western Acres.
- [146] The respondent submits that an appropriate amount for occupation rent would be \$1,500 per month. Again, my role is to do fairness between the parties. In my opinion, fairness will be achieved by assessing occupation rent at \$1,200 per month. Of course, she would pay half of that rent to herself, so that figure is notionally reduced to \$600 per month.
- [147] From February 2018 to the first date of trial, May 27, 2024, was a period of 64 months ($\$76,800/2 = \$38,400$). A further 11 months have transpired to the date of these reasons representing a further \$6,600. This figure of \$600 per month will continue until Mr. Rodger ceases to pay the mortgage.

The Mortgage Payments

- [148] Having addressed spousal support and occupation rent above, I now turn to the issue of the respondent's mortgage payments. As noted above, those amounts consist of:

- a) Mortgage payment:

\$170,581

- b) Property taxes totaling:

\$21,528.56

- c) Civic Utilities:

\$4,388.18

Total:

\$196,497.74

- [149] On the civic utilities, I noted above, under the heading "Family Debts", that the claimant had failed to pay certain civic utilities. As a result, those utilities were added to the yearly municipal tax bill. That tax bill, in turn, was paid as part of the mortgage. Hence, the respondent paid the claimant's civic utilities bill.

- [150] In my opinion, half of this amount (\$98,250) is payable by the claimant to the respondent.

Actual Rent

[151] I noted above that the claimant rented out the suite in Western Acres but kept no records of the amounts received. Hence, we do not know the rent paid or the months it was occupied.

[152] I accept that I must assign some amount to the actual rent that the claimant received from the suite in Western Acres. I have no evidence upon which to rely. My best guess is \$48,000. I reach that figure based upon approximately 4 years of rental at \$1,000 per month. The respondent is entitled to half of that amount or \$24,000.

Summary on Monthly Expenditures

[153] As noted, I am considering all of these monthly obligations together in order to achieve fairness:

- a) The claimant is entitled a payment which is the equivalent of a lump sum spousal support payment of \$54,000 ending at the commencement of trial.
- b) The respondent is entitled to \$160,650 (plus \$6,600 and other ongoing amounts) including:
 - i. occupation rent in the amount of \$38,400 (to the first day of trial). A further 11 months have transpired to the date of these reasons representing a further \$6,600. This rent will continue until Mr. Rodger is removed from the mortgage;
 - ii. equalization of mortgage and other payments of \$98,250 and continuing until Mr. Rodger is removed from the mortgage;
 - iii. compensation for actual rent in the amount of \$24,000.

[154] Hence, when set off against each other, the respondent is entitled to (\$160,650 - \$54,000 =) \$106,650 (plus ongoing amounts).

Division of Personalty

[155] In addition to Western Acres and the investments, the parties also had a number of chattels that they seek to divide. The largest items are the parties' vehicles.

[156] I am informed that there is still \$25,000 in a joint credit union account. That amount should be divided evenly.

[157] Somewhat comically, each side assesses the other party's vehicles at a high value and their own items at a low value. I do not find their testimony to be of any assistance.

[158] The claimant submits that the respondent's truck and his project cars (1963 Acadian and an old Ford) have a value of \$55,000. She submits that if the respondent keeps his truck and his project cars, then the claimant should keep her items and the respondent should pay her \$27,550.

- [159] In my opinion, the claimant's valuation of the respondent's vehicles is unsupported by any credible or reliable evidence.
- [160] In my view, the fairest result is for each party to keep their own personalty. To the extent the two project cars and any of the respondent's possessions are at Western Acres, the respondent is entitled (and required) to pick them up within three months of the release of these reasons (or such later date agreed between the parties).
- [161] To the extent there are any funds left over in joint accounts, that amount should be divided evenly.

The Respondent Seeks an Award for Non-Disclosure

- [162] The respondent submits that he is entitled to an award under s. 213(2)(d)(ii) of FLA, on the basis that he suffered real prejudice in answering this action by the claimant's failure to produce all of the relevant banking documents and financial records. I outlined above, under the heading "Credibility and Reliability", my findings regarding the claimant's efforts to hide from the respondent and the court her taking of \$109,754.49 from the insurance proceeds. I also noted that the claimant rented out a suite in the Western Acres home, but took her rent in cash and produced no records of the amount paid or the periods during which the suite was rented.
- [163] In my opinion, this is the type of concealment that s. 213 is designed to punish. While neither of the parties is of substantial means, the claimant used her control over the bank accounts and the Western Acres property to receive funds. In the case of the insurance proceeds, she concealed the taking of those funds. In the case of the rent payments, she made any accounting impossible.
- [164] I impose a fine of \$5,000 on the claimant under s. 213(2)(d)(ii).

Summary and Conclusion

[165] In summary:

- a) I allow the claimant's:
 - i. excluded property claim at \$150,000, and
 - ii. unequal division of property at \$40,000.
- b) Hence, on the real property, if the claimant seeks to purchase Western Acres, she is responsible to compensate the respondent \$386,125.76. The claimant will have 30 days from the release of these reasons to make that decision and a further 30 days to raise the funds.
- c) If the parties decide to sell the property, the net sale proceeds (after deducting all closing costs and the amounts listed above) will be divided in half. The parties will have joint conduct of sale.

- d) The claimant is responsible to pay to the respondent half of the \$109,754.49 that was improperly taken from the Build Account, plus half of the \$7,170 that he paid in civic utilities, along with interest.
- e) In respect of the respondent's investments, the claimant is entitled to a payment of \$114,156.68.
- f) In relation to the amounts paid out on a monthly basis (spousal support, mortgage and tax payments, occupation rent and actual rent) after set-off, the respondent is entitled to (\$160,650 - \$54,000 =) \$106,650.
- g) To the extent there are any funds left over in joint accounts, those funds should be divided evenly.
- h) Each party will keep their own personalty, and the value will set off against the value received by the other party. To the extent the two project cars and any of the respondent's possessions are at Western Acres, the respondent is entitled (and required) to pick them up within three months of the release of these reasons (or such later date agreed between the parties).
- i) The claimant will pay a fine of \$5,000 to the respondent.

[166] There are a number of steps that need to be taken to implement the orders arising from these reasons. I will leave those steps to counsel. However, I will hear submissions if agreement cannot be reached.

[167] I heard no submissions on costs. In my opinion, each side had some success, and they should bear their own costs. If there were offers, I will hear submissions on costs.

"A. Ross J."

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