

CANADA / JUDGMENT

Edwards v. Perry

2024 BCSC 1775

COURT

Supreme Court of British Columbia

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2024 BCSC 1775 Edwards v. Perry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Edwards v. Perry,

2024 BCSC 1775

Date: 20240926

Docket: E58051

Registry: Kamloops

Between:

Lorill Leah Edwards

Claimant

And

Christopher Donald Perry

Respondent

Before: The Honourable Justice E. McDonald

Reasons for Judgment

Counsel for the Claimant:

H.A. Lloyd

Counsel for the Respondent:

S.R. Bunn

Place and Date of Trial:

Kamloops, B.C.

May 27-31, June 4 and 21, 2024

Place and Date of Judgment:

Vancouver, B.C.

September 26, 2024

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Introduction

- [1] In the trial of this family law proceeding, the main issue concerns the division of family property and debt. Ms. Edwards seeks unequal division of family property while Mr. Perry seeks equal division.

- [2] The main asset is a rental property held by Mr. Perry. Following the parties' separation, the rental property was damaged by fire and insurance proceeds were paid to Mr. Perry. There is an issue concerning those insurance proceeds and whether the funds were used to repair the rental property or whether, as Ms. Edwards alleges, Mr. Perry misappropriated the funds.

Background

- [3] At present, the claimant, Ms. Edwards, is 63 years old and the respondent, Mr. Perry, is 68 years old. During the relationship, Ms. Edwards was employed and she earned a salary. Mr. Perry was self-employed, working as a handyman and at the multi-unit rental property he owned.
- [4] On October 31, 2014, the parties began living together in a marriage-like relationship. At that time, Mr. Perry was separated from his now ex-wife and involved in family law proceedings in this court related to the breakdown of his first marriage to Janet Perry (the "Perry v. Perry Action").
- [5] At the time of the Perry v. Perry Action, the family property included a variety of real estate. The Perry v. Perry Action took many years to resolve. At times, Mr. Perry and his ex-wife were unrepresented during the Perry v. Perry Action.
- [6] Because it has some relevance to the present proceedings, I will set out the details respecting the division of family and property that occurred in the Perry v. Perry Action.
- [7] On March 2, 2018, Justice Groves made an order in the Perry v. Perry Action as follows:
1. Upon the sale of 704 St. Paul Street, Kamloops, BC, the first and second mortgage, real estate fees, legal fees, and \$987.00 judgment against Christopher Perry are to be paid out from the sale. Any funds remaining from the sale are to be paid out in accordance with the attached sheet, save and except for the Fairmont time share property.
 2. Janet Perry is to attempt to negotiate with the Fairmont time share to pay out the principle of the time share, special assessment, and quick [sic] claim the time share to Fairmont upon such payment. If that can't be negotiated there is liberty to apply.
 3. The remaining sale proceeds will be divided equally between the parties.
- ("March 2018 Order")
- [8] The payout sheet attached to the March 2018 Order indicates a sale price of \$369,900 for 704 St. Paul Street. The "payouts to clear title" listed include a first and second mortgage and the total payouts is \$186,947, which left a balance after payouts of \$182,953.

- [9] The payout sheet also listed "joint debt" totalling \$148,937.48. Included in the joint debt total was a \$31,000 BMO Mortgage for 640 Battle Street, a Fairmont timeshare debt of \$10,000 and a Mexico timeshare debt of \$1,250. The remainder after deduction of the payouts to clear title and the payment of the joint debt was \$34,016. Pursuant to the March 2018 Order, Mr. Perry and Ms. Perry were to equally divide the remaining sale proceeds of \$34,016.
- [10] On October 9, 2018, Justice Groves made a final order in the Perry v. Perry Action. It provided, among other things, the following regarding dividing family property:
3. In terms of division of assets, Christopher Donald Perry is entitled to keep as his sole property 636-640 Battle Street, Kamloops, British Columbia, and the current mortgage on the property is his responsibility. He is entitled to keep the Service Rentals business and all the assets associated with it. He is also entitled to keep his Toronto Dominion Term deposit, the 2 C-Cans and all assets he has in his possession, and he is responsible for all his personal debt.
 5. Christopher Donald Perry is to pay Janet Lynn Perry \$118,331 to equalize the family property, based both on the equalization of family property and the further adjustments. Additionally, Christopher Donald Perry is to pay lump sum support of \$46,669 to Janet Lynn Perry. That totals \$165,000 that Christopher Donald Perry is required to pay Janet Lynn Perry.
 6. Christopher Donald Perry has an asset appraised at \$714,500 with a \$63,000 mortgage. If he is to advance on that asset further funds as is anticipated, that would require him to have a new mortgage of \$228,000. Until such time that the \$165,000 is paid, Janet Lynn Perry is entitled to receive her spousal support, and the next spousal support payment is due on October 15, 2018 in the amount of \$1,000 and it is payable on the 15th of each month until the lump sum payment is paid to Janet Lynn Perry.
- ("October 9, 2018 Final Order")
- [11] As part of the October 9, 2018 Final Order, Mr. Perry retained ownership of certain property, including a rental property located at 636 and 640 Battle Street in Kamloops, British Columbia (the "Rental Property").
- [12] On August 19, 2019, Mr. Perry and Ms. Edwards separated. On September 19, 2019, Ms. Edwards filed her notice of family claim.
- [13] As mentioned, in 2021, after the separation of the parties, there was a fire at the Rental Property. The insurer paid insurance proceeds for the fire damage to Ms. Perry. Since the fire, the Rental Property has been repaired but there is an issue about the completion of repairs and how the insurance proceeds were used.

Position of the Parties

- [14] Ms. Edwards did not pursue her claim for spousal support at trial, but she did seek unequal division of family property. In respect of the Rental Property, Ms. Edwards seeks unequal division in her favour because:
- a) Mr. Perry borrowed funds and granted mortgages against the Rental Property that are not family debt;
 - b) Ms. Edwards should be compensated pursuant to s. 95 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] for her contributions, including providing unpaid legal work in the Perry v. Perry Action, bookkeeping and other work for the Rental Property business and the handyman business; and
 - c) Mr. Perry caused a decrease in value to family property pursuant to s. 95(f) of the FLA.
- [15] The parties agree that the Rental Property must be sold. Ms. Edwards seeks sole conduct of the sale of the Rental Property. Ms. Edwards is concerned that Mr. Perry will not supply records, such as documents related to rental revenue, to the realtor or prospective purchasers to maximize the sale price. Finally, Ms. Edwards is concerned that the Rental Property may require repairs or improvements to preserve it or maximize the sale price. Therefore, she seeks an order to facilitate any work required to be done to the Rental Property.
- [16] Mr. Perry submits that he has a claim for excluded property and, after accounting for that, he seeks equal division of property and debts. Mr. Perry did not pursue his claim for unequal division of family property and debts at trial.

Credibility and Reliability of Witnesses

- [17] Each party challenges the credibility and reliability of the witnesses who testified in this case.
- [18] The well-known principles applicable to assessing credibility are set out in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357 [Faryna]:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him

because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

- [19] In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186 [Bradshaw], Justice Dillon describes the process for assessing credibility as an art based on a number of factors.
- [20] Three witnesses testified: Ms. Edwards and her work colleague, Ms. McQueen, Mr. Perry and his current partner, Ms. Huschter.
- [21] Mr. Perry had a poor memory, including for events during his relationship with Ms. Edwards. He testified to taking prescribed medicine for memory problems. I observed Mr. Perry to be unsophisticated and he had real difficulty recalling events. Mr. Perry often resorted to guessing or describing his usual practice. His answers were sometimes unhelpful to his own position.
- [22] For example, when the court asked Mr. Perry about a document showing that his insurance company issued a cheque jointly to him and his mortgage lender, Mr. Perry testified that he thought he brought that cheque to his lender. However, he volunteered that the insurer issued the bigger cheques only in his name. That evidence is not particularly helpful to Mr. Perry given that Ms. Edwards alleges he misappropriated insurance proceeds. However, overall, I find that Mr. Perry attempted to give his evidence honestly and to the best of his ability, without attempting to tailor his evidence to assist his case.
- [23] Likewise, I found Ms. Edwards to be largely credible, except in respect of one issue which I will discuss when I consider the financial charges of the Rental Property. Ms. Edwards' recall of events was much better than Mr. Perry's.
- [24] Counsel for Mr. Perry submits that I ought to find Ms. Edwards lacking in credibility and unreliable. For example, Ms. Edwards testified repeatedly that she had no idea the financial charges, such as mortgages, Mr. Perry registered against the Rental Property during their relationship. However, when she was confronted with a document setting out the details of those charges, she agreed it was her handwriting on the document but she stated she could not recall writing that information on the document.

- [25] Ms. McQueen testified that she works with Ms. Edwards. While Ms. McQueen and Ms. Edwards were at work together, Ms. McQueen observed Ms. Edwards doing work, such as placing phone calls and organizing paperwork related to Mr. Perry's divorce proceedings or his handyman business. Ms. McQueen's evidence, which I accept, confirms that she saw Ms. Edwards performing tasks for the Perry v. Perry Action.
- [26] Ms. Huschter testified about her knowledge of the Rental Property after the fire, where Mr. Perry deposited the insurance proceeds and his efforts on repairing and maintaining the Rental Property. Although Ms. Huschter is Mr. Perry's current partner and she only had knowledge of more recent events, it did not appear that she tailored her testimony in an effort to assist Mr. Perry. I found Ms. Huschter to be a credible and reliable witness.

Family Property and Debt

- [27] The value of family property is generally divided equally unless it is significantly unfair to do so. Family property is also generally valued on the date of the hearing and parties presumptively share in any post-separation increases in value: *Jaszczevska v. Kostanski*, 2016 BCCA 286 at paras. 35 and 39 [*Jaszczevska*].
- [28] The main item of family property is the Rental Property. Both parties agreed that the Rental Property provides accommodations at the lower end of the rental market. The rent for some tenants was paid directly by government social assistance programs.
- [29] There is appraisal evidence concerning the Rental Property. In 2018, the Rental Property was appraised for Mr. Perry's ex-wife at \$714,500. In 2022, the Rental Property was appraised as of May 24, 2022 at \$1.045M and as of October 31, 2014 at \$660,000.
- [30] Both parties wish to sell the Rental Property and no party is seeking to acquire the other party's interest. The parties are not seeking a valuation of the Rental Property because their intention is to sell it and divide the proceeds, whether equally or unequally.

Unequal Division Claim

- [31] As mentioned, Ms. Edwards seeks unequal division of family property and debt pursuant to s. 95 of the FLA on the grounds that she contributed significantly to the maintenance of the Rental Property by performing unpaid labour such as when she did the bookkeeping. Ms. Edwards also alleges that the unequal division should be ordered because the parties agreed that she would receive \$50,000 from Mr. Perry as compensation for her work on the Perry v. Perry Action and her work for Mr. Perry's businesses.
- [32] The threshold for "significant unfairness" is a high one and the parties relative contributions to assets and debts is not relevant. There must be "something objectively unjust, unreasonable or unfair" and to justify an unequal division, the court must find that the unfairness is compelling or meaningful having regard to all of the factors set out in s. 95(2) of the FLA: *Jaszczevska*, at paras. 41-42.

- [33] In *Lopez v. Romanova*, 2023 BCSC 1825 [Lopez], Justice Lamb considered a request for unequal division pursuant to s. 95(2) of the FLA and she found that the other party depleted family assets and incurred family debt that would not have been incurred but for unauthorized transfers. In *Lopez*, Lamb J. ordered payment of an amount to compensate for the depletion of family assets and unequal division, on the basis that the party had withdrawn money for a non-family purpose and caused a decrease in the value of family property after separation. Unlike the situation in *Lopez*, I do not find that Mr. Perry depleted family assets, by deliberately neglecting the Rental Property, or by borrowing funds that were not for the family purpose of repairing the Rental Property.
- [34] Expenditures necessary to preserve the parties' equity in family property, such as expenses to maintain the property, taxes, home insurance and interest on authorized encumbrances, should be accounted for between the parties: *Ostere v. Harding*, 2017 BCCA 157, at para. 22.
- [35] Regarding Ms. Edwards' evidence about her unpaid work for the Rental Business, and his handyman business, she testified that Mr. Perry would give her records, for example, receipts, which she would organize for the bookkeeper and accountant. Ms. Edwards did not prepare the tax returns or the general ledger. She had no access to the bank account.
- [36] Mr. Perry agreed in his testimony that he would give receipts to Ms. Edwards and she sometimes accompanied him when he repairs or collected rent. He agreed that Ms. Edwards would sometimes accompany him to the bank when he made rent deposits. Mr. Perry readily agreed he was not good with the paperwork, so Mr. Edwards assisted with that.
- [37] While Ms. Edwards seeks unequal division in respect of the Rental Property, I do not find that there is any significant unfairness associated with equal division. Mr. Perry agreed he probably promised to compensate Ms. Edwards for her assistance with the *Perry v. Perry* Action. Ms. Edwards testified that Mr. Perry never compensated her. However, she did acknowledge receiving \$10,000 from Mr. Perry, a small portion of which was reimbursement for the money she loaned him towards a down payment on a vehicle.
- [38] There is no dispute these parties were involved in a marriage-like relationship for period of approximately five years. In my view, parties in marriage-like relationships sometimes provide assistance to their spouses. In this proceeding, Ms. Edwards is not advancing a claim for unpaid wages or breach of contract. While Mr. Perry said that he would compensate her for her work assisting him during their relationship, I do not find that in the particular context of this marriage-like relationship, that the failure to do so rises to the level of significant unfairness for purposes of unequal division. I also note that Ms. Edwards' efforts and contributions towards the outcome of the *Perry v. Perry* Action, led in part to Mr. Perry receiving the entirety of the Rental Property against which she now claims an interest. In other words, Ms. Edwards' efforts, while not remunerated, did result in Mr. Perry obtaining the main asset against which she now claims.

- [39] Ms. Edwards is concerned that since separation, she has not shared in the rental income that Mr. Perry collected for the Rental Property.
- [40] After the fire in 2021, Mr. Perry testified that many units were vacant due to fire damage. He received insurance payments for lost rental income, as evidenced by the insurance documents. He agreed that he did not pay any of that to Ms. Edwards.
- [41] However, the evidence demonstrates that Mr. Perry had expenses to operate the Rental Property business. Based on Mr. Perry's tax returns, it does not appear that the Rental Business was particularly profitable.
- [42] In 2019, Mr. Perry reported gross business income \$132,234 and net business income of \$37,578. In 2020, Mr. Perry reported gross business income \$124,368 and net business income of \$49,317. In 2021, Mr. Perry reported gross business income of \$34,672 and net business income of \$-69,178. In 2022, Mr. Perry reported gross business income \$68,860 and net business income of \$-5,739.
- [43] In 2023, Mr. Perry reported gross business income \$49,332 and net business income of \$22,139. Mr. Perry's tax documents did not always indicate how much of the gross business income was attributable to the rental versus handyman business. However, for 2019, the records show that approximately 75% of the business income was attributable to the rental business. Based on the tax records, since separation, the business revenue, most of which relates to the rental business, was \$109,034 with losses for the same period totalling \$74,917. Therefore, it appears that from 2019 to 2022, the cumulative net profit was approximately \$34,117.
- [44] However, when considering the retention of profits and income from the rental business at the Rental Property, the parties' respective roles in maintaining the Rental Property and operating the business should be kept in mind. Since separation, Ms. Perry has not participated in the rental business; rather, she has been working and earning a salary that is far in excess of what Mr. Perry earns. Meanwhile, Mr. Perry has operated and maintained the Rental Property business including by doing some of the repair and maintenance work himself.
- [45] When I consider all of the factors, such as the amount of rental income, the roles of each party in operating the rental business and maintaining the Rental Property following separation, I do not find there is significant unfairness associated with Mr. Perry's handling of the rental income earned at the Rental Property that would justify unequal division.

Excluded Property Claim

- [46] Ms. Edwards acknowledges that Mr. Perry is entitled to an excluded property claim for the Rental Property. Ms. Edwards values Mr. Perry's excluded property claim at \$280,000.

- [47] Mr. Perry asserts that his excluded property claim respecting the Rental Property is \$575,150. Mr. Perry's counsel submits that Mr. Perry's excluded property claim for the Rental Property arises at two points in time: first, as of October 31, 2014, being the date when the parties' relationship began; and second, as of October 9, 2018, being the date when Janet Perry's one-half interest in the Rental Property vested in Mr. Perry as part of the final division of family property in the Perry v. Perry Action.
- [48] According to Mr. Perry, his value of his excluded property claim when the parties' relationship first began in October 2014, is \$314,500. His submission is based on the Rental Property being valued at that time at \$660,000, less a mortgage of \$31,000 in favour of the Bank of Montreal. Of the total value available to Mr. and Ms. Perry, Mr. Perry's one-half share is valued at \$314,500.
- [49] In my view, before Mr. Perry commenced his marriage-like relationship with Ms. Edwards, his one-half interest in the Rental Property and his exclusion is valued at \$314,500. I am supported in this conclusion by the fact that the March 2018 Order refers to there being a \$31,000 mortgage to be paid out of the sale proceeds of the St. Paul property.
- [50] As mentioned, Mr. Perry also takes the position that there is another exclusion for 2018 when he receives the entire interest in the Rental Property pursuant to the October 9, 2018 Final Order.
- [51] As Mr. Perry is seeking to establish an excluded property claim, he bears the onus to "prove both that the excluded property falls within the ambit of s. 85 of the FLA, and the value of the excluded property at the outset of the relationship ": *Parvizi v. Taherzadeh*, 2024 BCCA 205 at para. 18 [Parvizi BCCA], citing *Brazinski v. Brazinski*, 2023 BCCA 359 at para. 81.
- [52] In *Parvizi v. Taherzadeh*, 2023 BCSC 1412 [Parvizi BCSC], aff'd at 2024 BCCA 205, Justice Francis considered an excluded property claim that involved the tracing of funds in a White Rock property owned jointly by the parties to a Whistler property that Mr. Taherzadeh had owned prior to the relationship. Mr. Taherzadeh purchased the Whistler property during a previous marriage and at the time of the parties' cohabitation, he held the Whistler property jointly with his daughter. The parties sold the Whistler property during the relationship and used the proceeds to purchase the White Rock property.
- [53] At the time the Whistler property was sold, Mr. Taherzadeh issued a promissory note to his daughter for half of the Whistler property's sale price. There was a dispute about whether Mr. Taherzadeh beneficially owned all of the Whistler property or only half, with his daughter owning the other half.
- [54] In *Parvizi BCSC*, Francis J. held that Mr. Taherzadeh owned half of the Whistler property at cohabitation and that his excluded property from the White Rock property was his half-interest in the Whistler property at the time of cohabitation. The promissory note to his daughter was also determined to be family debt.

- [55] Section 85 of the FLA is clear that property acquired by a spouse "before the relationship between the spouses began" is excluded from family property. There is no dispute that Mr. Perry's half interest in the Rental Property was acquired before the relationship.
- [56] However, the evidence does not establish why Mr. Perry obtained the second half of the Rental Property after the relationship began and whether that entitles him to a further excluded property claim in respect of it in 2018. For example, there is no evidence that Mr. Perry received sole ownership of the Rental Property in the Perry v. Perry Action because it was found to be entirely his excluded property.
- [57] In my view, on balance, the evidence establishes that Mr. Perry only obtained the second half of the Rental Property in 2018 because he bought out the other party. The fact that Mr. Perry was ordered to make an equalization payment to his ex-wife and it was contemplated that he would borrow further funds to do so, supports my conclusion that Mr. Perry obtained the second half of the Rental Property because he bought out Ms. Perry.
- [58] In my view, Mr. Perry has not met the onus to show that when he received the second half of the Rental Property, it was also subject to an exclusion. I also note that Mr. Perry seeks to have Ms. Edwards equally share mortgage debt on the Rental Property which more likely than not includes funds he borrowed to make the property equalization payment to his ex-wife. If the mortgage debt is to be shared equally, that further militates against finding an exclusion in favour of Mr. Perry in respect of the second half of the Rental Property.
- [59] As I have explained, Mr. Perry has an excluded property claim for a half interest in the Rental Property to be valued as of October 2014, when the parties' relationship began. Based on the preponderance of the evidence, I conclude that Mr. Perry's exclusion for the Rental Property is \$314,500.
- [60] Mr. Perry is entitled to a \$314,500 excluded property claim to be paid out of the net sale proceeds of the Rental Property.

Conclusion re Rental Property

- [61] Mr. Perry's excluded property claim respecting the Rental Property is valued at \$314,500 and after crediting that amount to him, the parties shall equally share the net sale proceeds of the Rental Property.
- [62] There is no significant unfairness to conclude that there should be an unequal division of the Rental Property. The parties shall equally divide the net sale proceeds of the Rental Property as directed in these reasons for judgment.

Insurance Proceeds

- [63] Sometime in early January 2021, there was a fire at the Rental Property, namely at 640, 642 and 642A Battle Street (the "Fire Damaged Rental Property").

- [64] According to the insurance policy documents for the period around the fire, the total coverage for the building and equipment at 640, 642 and 642A Battle Street, which was described as a "rooming house", was \$359,000 with a 90% co-insurance amount and a \$2,500 deductible. The total coverage for rental value was \$50,000 with a 100% co-insurance amount and no deductible. There was also coverage under the same policy for 636 Battle Street but the fire did not occur there, so there was no claim for that location.
- [65] On April 28, 2021, Mr. Perry received a letter from his insurance adjuster that explained the insurance underwriter's settlement proposal to him with respect to building and equipment damage at the Fire Damaged Rental Property. The letter explained that because Mr. Perry's "limit of insurance that [he] carried on the building was not adequate to meet the co-insurance requirements under [his] policy" he was responsible for a 22% penalty on any repair costs. Mr. Perry carried a limit of insurance of \$359,000 but he was required, based on the replacement cost for the building, to carry \$462,300.31.
- [66] While Ms. Edwards is critical of Mr. Perry for the limit of the insurance that he carried on the Rental Property, there is no evidence to demonstrate that Ms. Edwards ever inquired about the insurance or that she sought to increase the coverage. In short, I am unable to determine that Mr. Perry is at fault for this apparent shortfall of insurance coverage for the Rental Property. Therefore, I find no significant unfairness due to, for example, Mr. Perry deliberately underinsuring the Rental Property.
- [67] The adjuster's letter of April 28, 2021 refers to an estimate prepared for "emergency, abatement and demolition" in the amount of \$117,675.43 and an estimate for repair on a replacement cost basis of \$168,512.28. After deducting Mr. Perry's 22% co-insurance penalty, the recoverable amount should Mr. Perry complete repairs was \$220,726.11, after payment of his deductible.
- [68] However, Mr. Perry was also offered a settlement option on the basis of "actual cash value" of the building of \$355,424.21, which would be within Mr. Perry's limit of insurance of \$359,000 and adequate for co-insurance purposes.
- [69] On an actual cash value settlement basis, the net claim amount was \$185,311.22, which included \$93,981 for abatement and \$93,830 for repairs and deductibles. The letter explains that this is less than the replacement/repair total, but to get more, Mr. Perry would have to "incur the repair costs in full including your payout of the 22% co-insurance penalty".
- [70] On May 19, 2021, Mr. Perry's insurance adjuster, Mr. Hansen, wrote to him enclosing cheques for his claim for rental loss. According to the schedule of loss attached to the letter, Mr. Perry was paid a total of \$220,857, comprised of a rental loss of \$28,763.89, emergency services of \$5,182.04, abatement and demolition of \$93,981.01, repairs of \$93,830.21, damaged appliances of \$1,200, moving and storage of appliance of \$400, less the \$2,500 deductible. Based on some of the insurance documents tendered by Mr. Perry, it appears some of the cheques were issued both to Mr. Perry and his mortgage lender. Mr. Perry thought that he took the cheque to his mortgage lender but he believes the big cheques from

the insurance company were issued in his name not jointly to him and his lender.

- [71] Mr. Perry remembered very little about the details of the insurance, but he did recall that he took the lower amount and that at the end of the day, he did not have enough money to complete all of the repairs. For some of the work, he hired third parties and he also did some of the work himself. He said he did work himself to save costs. Mr. Perry said that all repairs, except for the exterior siding, were completed and that he used all of the insurance proceeds and he was still short money to complete the repairs from the fire damage.
- [72] Ms. Edwards values the insurance proceeds paid to Mr. Perry at \$187,000. She seeks an order compensating her for one-half of the unused insurance proceeds paid to Mr. Perry. According to Ms. Edwards, Mr. Perry could only prove that he used \$28,000 of the insurance money for repairs to the Rental Property.
- [73] Ms. Huschter testified about going to the bank with Mr. Perry to deposit a cheque for \$144,159.95. She said the cheque was for the fire insurance on the Rental Property. She recalled that it took a year and a half to do the repairs to the Rental Property, but Mr. Perry ran out of money for repairs sometime in the fall of 2022.
- [74] Ms. Huschter was at the Rental Property with Mr. Perry when the mortgage lender, Mr. Stewart, came to view it in 2022. This was at the time when Mr. Perry was trying to borrow money to complete the repairs. As mentioned, I found Ms. Huschter to be a credible and reliable witness and I accept her evidence regarding these events.
- [75] When I consider all of the evidence, including the insurance estimates of the cost of repairs, as well as Mr. Perry's evidence about the work he did, I find that on a balance of probabilities, Mr. Perry expended all of the money he received from the insurer on maintaining and repairing the Rental Property. I do not find that Mr. Perry misappropriated the insurance proceeds by taking the money for his personal use. I find it more likely than not that Mr. Perry ran out of money and that he had to borrow additional funds to carry out repair work on the Rental Property.

Timeshares

- [76] Following the October 9, 2018 Final Order in the Perry v. Perry Action, Mr. Perry retained two timeshare properties: (a) Panorama; and (b) Fairmont. Ms. Edwards seeks compensation for the value of these two timeshares, specifically \$1,862 for the Panorama and \$5,426 for the Fairmont.
- [77] There was evidence that Mr. Perry transferred the Fairmont timeshare to his son after separation. The payout sheet attached to the March 2018 Order indicates an amount of \$10,000 was required to payout the debt owing on the Fairmont timeshare. Mr. Perry could not remember if he paid the debt but he thought his son might have paid the debt as part of the transfer.

- [78] In my view, the payout sheet is strong evidence that the Fairmont timeshare was a liability at the time it was transferred to Mr. Perry's son. If that asset had a value, it makes no sense that it would not have been treated that way in the March 2018 Order.
- [79] Therefore, I conclude that the family property consisting of timeshares is limited to the Panorama unit. After factoring in Mr. Perry's excluded property claim, I accept Ms. Edward's calculation that she is entitled to receive a payment from Mr. Perry of \$1,862 for her interest in the Panorama timeshare. That shall be paid out of Mr. Perry's one-half share of the net sale proceeds from the Rental Property.

St. Paul Property

- [80] Ms. Edwards seeks an order compensating her for her interest in a property that Mr. and Mrs. Perry owned on St. Paul Street in Kamloops.
- [81] As indicated in the March 2018 Order, the St. Paul property was ordered sold and the net proceeds divided in the Perry v. Perry Action. Ms. Edwards was not a party to the Perry v. Perry Action.
- [82] As the St. Paul property was sold during Ms. Edwards and Mr. Perry's relationship, it is not family property as defined by s. 84(1) of the FLA. Therefore, the St. Paul property is not subject to division in the present proceeding.
- [83] In reply on closing submissions, Ms. Edwards' counsel submitted that Ms. Edwards sought an interest in the sale proceeds of the St. Paul property. The payout sheet attached to the March 2018 Order indicates that Mr. Perry and his former spouse were to equally divide the net sale proceeds of \$34,016, meaning that Mr. Perry's one-half interest was \$17,008. Based on the terms of the October 9, 2018 Final Order, Mr. Perry was still required to pay his former spouse \$165,000, comprised of a property equalization payment and lump sum spousal support.
- [84] There is no evidence to establish that Mr. Perry saved or used his share of the net sale proceeds from the St. Paul property to, for example, purchase another piece of real estate. If that were the case, subject to any claim for excluded property, Ms. Edwards might have a valid claim against the savings account or the subsequent asset Mr. Perry acquired using the proceeds.

Pension/RRSP/Vehicles

- [85] Ms. Edwards seeks to keep her pension and RRSP investments pursuant to s. 95 of the FLA.
- [86] The parties have modest pension and investment assets and I find that in all of the circumstances, including the short duration of the relationship and the age of the parties, it is appropriate to order that each party shall keep their vehicles, pension, RRSP, CPP, bank and investment accounts.

Mortgage Debt

- [87] There is a dispute between the parties about the mortgages registered against the Rental Property and whether the mortgages are family debt. Ms. Edwards submits that Mr. Perry is responsible for all mortgage debt secured against the Rental Property, while Mr. Perry submits that it should be shared equally.
- [88] Ms. Edwards submits that there was no mortgage on the Rental Property when Mr. Perry obtained title to it in the Perry v. Perry Action and she had no knowledge of Mr. Perry borrowing against the property. For the reasons that follow, I do not agree that Mr. Perry ever held the Rental Property mortgage-free during the parties' relationship or that Ms. Edwards lacked knowledge of the mortgage advances.
- [89] The October 9, 2018 Final Order states that Mr. Perry is entitled to keep the Rental Property as his sole property. The October 9, 2018 Final Order also states that Mr. Perry has an asset appraised at \$714,500 with a \$63,000 mortgage registered against it and it contemplates Mr. Perry increasing the mortgage debt to \$228,000 to pay Ms. Perry the equalization payment. It also stated that Mr. Perry had an obligation to pay spousal support to Ms. Perry pending the equalization payment.
- [90] In May 2018, the title to Rental Property indicates there was a mortgage registered in favour of Mr. Perry's long-time mortgagor, Kam-Mic Investments Corp. and/or Stewart Mortgage Corp., that was cancelled on April 1, 2019. On December 14, 2018, another mortgage was registered in favour of Kam-Mic Investments Corp. and/or Stewart Mortgage Corp., which remains on title. I find that when Mr. Perry received the other half interest in the Rental Property, there was a mortgage registered against the Rental Property. The October 9, 2018 Final Order acknowledges the existence of the mortgage and the potential of increasing the mortgage.
- [91] According to the mortgage statement of account provided by Mr. Perry, the balance forward of the mortgage on the Rental Property increased from zero in early May 2018 to approximately \$274,687 in January 2019. The balance increase was caused by a number of advances on the mortgages including one in December 2018, in the approximate amount of \$176,000. These advances occurred during the relationship. I find that on a balance of probabilities, Mr. Perry borrowed against the Rental Property to make the property equalization payment and to pay spousal support due to his ex-wife prior to making the equalization payment.
- [92] In my view, the evidence establishes that at all material times, there was mortgage debt secured against the Rental Property.
- [93] In April 2022, after the parties had separated, Mr. Perry drew a further \$50,000 from the mortgage. Although Mr. Perry could not recall the precise details, he testified that he was short money to repair to complete repairs on the Rental Property.

- [94] Mr. Perry also testified that if he borrowed money after the fire, it was to finish the renovations, but he volunteered that he could not recall or say that was the case with certainty. He further testified that he never took money out of the Rental Property for his personal use.
- [95] I accept Mr. Perry and Ms. Huschter's evidence regarding the money borrowed in 2022 and how it was spent. I also note that despite Mr. Perry being cross-examined about his bank records, I find nothing in those records supports the serious allegation that Mr. Perry misappropriated or dissipated insurance and/or mortgage proceeds.
- [96] Ms. Huschter recalled Mr. Stewart, the lender, coming to the Rental Property when Mr. Perry was trying to borrow money for repairs. I find that it is more likely than not that the \$50,000 mortgage draw in April 2022 was to maintain and repair the Rental Property. I do not find that Mr. Perry misappropriated those funds for personal use.
- [97] I accept Mr. Perry's evidence that he decided to do some of the repair work himself because it was more affordable to do so. It is clear that the actual cash value settlement payment offered to Mr. Perry was for an amount far less than the insurer's estimate of the abatement and repair costs.
- [98] There is no suggestion that Mr. Perry should not have taken the actual cash value settlement and there is no evidence to show that there were better and viable options open to repair the Rental Property by accepting the other option the insurer presented. When I consider all of the evidence, I find that Mr. Perry ran out of money to complete the repairs, not because he engaged in blameworthy conduct, but because the insurance proceeds were insufficient to cover the cost of fully repairing the Rental Property.
- [99] Ms. Perry also alleges that she had no knowledge and did not consent to the mortgages that Mr. Perry obtained and which were registered against the Rental Property, both during their relationship and after separation.
- [100] Ms. Edwards testified at length about her extensive efforts to assist with the Perry v. Perry Action, the Rental Property business and Mr. Perry's handyman business, including by organizing paperwork for the lawyer, bookkeeper and accountant. However, Ms. Edwards baldly denied having any knowledge of funds borrowed and secured against the Rental Property during the relationship.
- [101] When I consider that the October 9, 2018 Final Order contemplates Mr. Perry borrowing additional funds for the equalization payment he was required to make to his ex-wife, along with Ms. Edwards' testimony that she was deeply involved in that claim, I disbelieve that Ms. Edwards' evidence on this issue.

[102] Therefore, I conclude that all mortgages registered against the Rental Property, are family debt to be shared by the parties equally. I so conclude because I find that the mortgages were either incurred during the relationship, or in the case of the post-separation \$50,000 draw in April 2022, they were for the purpose of maintaining family property.

[103] The mortgages registered against the Rental Property are family debt which shall be shared on an equal basis between the parties. After payment of the amounts owing for the mortgages, the parties shall equally share the net sale proceeds of the Rental Property.

Judgment Registered Against Rental Property

[104] On August 12, 2020, Mr. Perry's former counsel who acted for him in the Perry v. Perry Action registered a charge against the Rental Property. The amount of the charge relates to a judgment against Mr. Perry in favour of the counsel in the amount of \$17,661.77.

[105] Ms. Edwards submits that Mr. Perry should be entirely responsible for the judgment to his former counsel. In my view, because judgment relates to legal services provided to Mr. Perry in the Perry v. Perry Action and he received the Rental Property in the course of that action, it is not significantly unfair to order that the parties equally share this debt.

[106] The whole reason the Rental Property is available to the parties as an item of family property to be divided in the present proceedings is because, as part of the outcome of the Perry v. Perry Action, Mr. Perry was awarded the Rental Property. In my view, it makes no difference that Mr. Perry was unrepresented at the time of the October 9, 2018 Final Order.

[107] Therefore, the judgment in respect of legal services is ultimately related to family property and as such, the legal services benefitted the present parties. In other words, the legal services assisted Mr. Perry in obtaining and maintaining family property that is now the subject of the present family law proceedings.

[108] The judgment registered as charge no. CA8356690 secures a family debt for unpaid legal services and this debt shall be shared equally between the parties. After payment of the amount owing for the legal services secured by the judgment, the parties shall equally share the net sale proceeds of the Rental Property.

Non-Mortgage Debts

[109] I have already addressed secured debts, such as mortgages. Respecting other debts, there are two CIBC lines of credit claimed to be family debt. The first line of credit is for \$15,955 and the second is for \$5,000.

[110] I find that these are debts incurred during the relationship and as such, the parties are equally responsible for the current balances owing on the CIBC Lines of Credit held by Ms. Edwards and Mr. Perry. The amounts owing shall be paid by way of set-off against each party's respective share of the net sale proceeds from the Rental Property.

- [111] Each party owes money for their vehicles and I have already ordered that the parties shall retain their respective vehicles. Therefore, each party is solely responsible for any debts associated with their respective vehicles.

Miscellaneous Matters

- [112] Ms. Edwards paid for the appraisal of the Rental Property and Mr. Perry shall reimburse Ms. Edwards for one-half of the appraisal cost from his one-half share of the net sale proceeds of the Rental Property.
- [113] During this proceeding, Mr. Perry was ordered to pay Ms. Edwards costs and some of those costs remain unpaid. Ms. Edwards is entitled to receive those unpaid costs, which shall be paid out from his one-half share of the net sale proceeds of the Rental Property.
- [114] If they have not already done so, the parties shall jointly list the Rental Property for sale at a list price that the parties, in consultation with their realtor, agree to. Ms. Edwards sought sole conduct of sale, but I am of the view that joint conduct of sale is appropriate in all of the circumstances.
- [115] The parties shall provide the reasonable assistance and information required by the realtor for the listing and marketing of the Rental Property.
- [116] The parties shall not unreasonably withhold their agreement to any adjustments to the list price recommended to them from time to time by their realtor.
- [117] The parties shall not unreasonably withhold their agreement to accept an offer to purchase the Rental Property.
- [118] In the event that the parties are unable to agree on the acceptance of an offer to purchase, the parties may apply to the Court in respect of the listing of, the offer to purchase the Rental Property, in order to facilitate a reasonable sale of the Rental Property. I am not seized of any such application that may be brought by a party.
- [119] Unless the parties otherwise agree, there is no requirement for the parties to expend funds on improving or repairing the Rental Property. However, if there is work required to maintain or preserve the Rental Property while it is listed and until it is sold, the parties are at liberty to apply for an order authorizing them to carry out required repairs or maintenance and to seek contribution from the other party. I am not seized of any such application that may be brought by a party.
- [120] Once the Rental Property is sold, the net sale proceeds, which for clarity means the amount left after paying the amounts required by these reasons for judgment, as well as the usual closing costs, such as real estate commission, taxes and conveyancing costs, shall be equally divided between the parties.

Costs

[121] If the parties are unable to agree on costs, they may provide written submissions regarding on that issue through SC Scheduling to my attention on the following schedule:

- a) the claimant may provide her written submissions on costs to the respondent and to SC Scheduling not later than 10 days from the date of these reasons for judgment;
- b) the respondent may provide his written submissions responding to the claimant's submissions on costs to the claimant and to SC Scheduling not later than 10 days from the date of receipt of the claimant's submissions; and
- c) the claimant may provide her written submissions replying to the respondent's submissions to the respondent and SC Scheduling not later than four days after receipt of the respondent's submissions.

"E. McDonald J."

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