

CANADA / JUDGMENT

Falconer v. Cohrs

2024 BCSC 1602

COURT

Supreme Court of British Columbia

DECIDED

29 August 2024

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2024 BCSC 1602 Falconer v. Cohrs

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Falconer v. Cohrs,

2024 BCSC 1602

Date: 20240829

Docket: E223064

Registry: Vancouver

Between:

Lynn Elizabeth Victoria Falconer

Claimant

And

Johann Alvin Cohrs

Respondent

Before: The Honourable Justice Brundrett

Reasons for Judgment

Counsel for Claimant:

J. Wong

Counsel for Respondent:

J. Aucoin

A. Zanic

Place and Date of Trial:

Vancouver, B.C.

May 6-10, 2024

May 29, 2024

Place and Date of Judgment:

Vancouver, B.C.

August 29, 2024

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I. Introduction

- [1] These reasons for judgment address various issues between the parties following their four-year common law relationship that ended in 2022. The claimant is 57 years old and is a self-employed artist who earns income through investments. The respondent is 58 years old and owns an engineering consulting business. While the parties both have children from previous relationships, they have no children together.
- [2] The primary issues relate to property division. Those issues depend in turn on a) whether there was an oral agreement as to how property should be divided, and b) whether the claimant has made out grounds for unequal division of the family home that she primarily financed during the relationship. I must also make various asset allocations between the parties and consider excluded property and family debt.
- [3] In addition, the claimant claims for spousal support and occupational rent. Her entitlement, and the appropriate quantum and duration of spousal support are disputed.

II. General Background Facts

- [4] I find the following facts. The claimant was 51 years at the commencement of the spousal relationship, 56 at separation and 57 at the time of trial. The claimant has two children from a previous relationship.
- [5] The respondent was 52 at the commencement of their relationship, 56 at separation, and 58 at trial. The respondent has three children from a previous relationship, two of whom continue to live with him as they pursue post-secondary education.
- [6] The claimant owns and operates her own art studio called Falconer Art. Her primary source of income is investment income. Since separation, she has collected 100% of the rental income from the parties' real property. According to her 2023 T1 tax return, the claimant's income is at least \$93,000 per year.
- [7] The respondent runs his engineering consulting business through his incorporated firm, Leading EPC Consultants Inc. His income was approximately \$204,000 in his latest financial statement, sworn April 4, 2024.
- [8] The parties met on March 1, 2016. They became engaged on March 21, 2018 but never formally married.
- [9] At the commencement of the relationship as of 2018, the claimant's financial circumstances were as follows:
 - a. The claimant owned and resided at a house on West 11th Avenue, Vancouver, B.C. which had a 2018 assessed value of \$3,011,000 (the "Kits Property").
 - c. The claimant owned another property on Beach Avenue, Vancouver, B.C., which sold for \$952,757.35 in November of 2018.

- d. The claimant had investments of approximately \$725,000.
 - e. The claimant had total gross assets of approximately \$4.7 million.
- [10] At the commencement of the relationship, the respondent's financial circumstances were as follows:
- a. The Respondent rented a two-bedroom home in North Vancouver where he was living in one room and his three children shared the other room.
 - b. As at April 30, 2018, his company Leading EPC Consultants Inc. had retained earnings of \$256,544.
 - c. The Respondent had investments of approximately \$55,000.
 - d. The Respondent had total gross assets of approximately \$300,000.
- [11] The claimant testified that on April 10, 2018 the parties and the claimant's father had lunch in Vancouver where financial arrangements for property purchases were discussed. The respondent does not recall such a meeting, though in cross-examination did not deny it happened.
- [12] In the spring of 2018, the parties purchased a house located at 1174 Adderley Street in North Vancouver, BC for \$1,430,200 (the "Adderley Property"). The property was financed with a TD line of credit ("the TD LOC") secured on the claimant's Kits Property, which was co-signed by her father, in the amount of \$1,787,500. The respondent contributed to interest payments on the TD LOC.
- [13] On June 25, 2018, the parties executed an Assignment Agreement with respect to the Adderley Property, which assigned "all [of the claimant's] rights, title, and interest in the Contract of Purchase and Sale dated April 26, 2018," to the claimant and the respondent as the Assignees. As a result, the purchase of the Adderley Property was then made in both of the parties' names.
- [14] On June 27, 2018, the parties completed the sale of the Adderley Property (using the TD LOC) with both parties being registered as tenants in common with a one-half interest.
- [15] The parties are in agreement that they began living together in a marriage-like relationship as of the same date, June 27, 2018.
- [16] After the parties took possession of the Adderley Property in late June of 2018, the respondent moved into the property with his children. The parties completed renovations in two stages with some renovations being done in the June-August, 2018 period and the bulk of the renovations starting in March of 2020.

- [17] On October 4, 2018, the parties obtained a \$500,000 mortgage from TD against the Adderley property, which was used to pay down the TD LOC originally used to fund the purchase. The respondent's payments were applied to this mortgage, and the payments were roughly equivalent to what he had been paying previously in rent.
- [18] On November 2, 2018, the claimant sold her Beach Avenue property, which was mortgage-free. She used the sale proceeds to pay down the TD LOC.
- [19] Specifically, on November 5, 2018, the claimant transferred \$952,057.35 to the TD LOC to pay down the purchase of the Adderley Property. At this point, the parties were de jure equal owners of the Adderley Property and the respondent assumed responsibility for paying the \$500,000 mortgage on the home.
- [20] On December 13, 2019, the claimant proposed a framework for a cohabitation agreement.
- [21] On December 23, 2019, the parties adopted a dog together named Chico.
- [22] In March of 2020, the major renovations to the Adderley Property began. The claimant financed the renovations through her TD LOC.
- [23] In January 2021, the parties commenced using the suite in the Adderley Property for short-term rentals through Airbnb.
- [24] In the spring of 2021, the Adderley Property renovations were substantially completed.
- [25] On March 17, 2021, the claimant sold the Kits Property for \$3,125,000.
- [26] On May 28, 2021, the claimant deposited \$1,909,467.24 into her RBC Private Banking Account.
- [27] On May 31, 2021, the sum of \$1,125,862.58 was paid to the TD LOC that purchased the Adderley Property (after which it was closed). These funds paid off the TD LOC.
- [28] In the fall of 2021, the claimant coordinated the transfer of the \$500,000 TD Mortgage to RBC, thereby paying out the TD Mortgage on the Adderley Property. Excess funds of \$20,000 were paid to the respondent. The parties also established an RBC line of credit in both parties' names of approximately \$930,677.53 which increases as the mortgage is paid down.
- [29] In June of 2021, the claimant purchased a new HC1 Trailer. The parties disagree as to whether the claimant bought the trailer for herself or for the respondent, or both.
- [30] In the spring of 2022, the claimant presented the respondent with a draft cohabitation agreement.
- [31] In June of 2022, the claimant moved out of the Adderley Property.
- [32] On June 23, 2022, the parties separated.

- [33] On December 15, 2022, the claimant unilaterally withdrew \$949,166.66 from the parties' RBC joint line of credit. This amount was repaid approximately one week later following demands from the respondent's counsel.
- [34] On December 16, 2022, the claimant filed a notice of family claim.
- [35] On January 9, 2023, the respondent filed a response to family claim and a counterclaim.
- [36] On March 17, 2023, the Adderley Property was appraised at \$2,550,000.
- [37] On January 23, 2024, the Adderley Property was appraised at \$2,675,000.
- [38] On March 14, 2024, the claimant filed an amended notice of family claim.
- [39] On April 3, 2024, the respondent filed a response to the amended family claim.
- [40] The parties' trial began started on May 6, 2024 and finished with closing arguments on May 29, 2024.

III. Conduct of the Parties

- [41] The respondent has invited me to consider the conduct of the claimant in my assessment of the issues below, including her removing items from the family home, her attendance at the family home without consent, and her removal of funds (later repaid) from the parties' joint line of credit. While I would consider these facts as part of the overall narrative, I do not find that they detract from the claimant's credibility. Nor was any basis shown to find that conduct is relevant to property division, spousal support or occupational rent. I do not agree with the respondent that these aspects of the claimant's conduct impact the issues I have to decide in this matter.

IV. Property-Related Issues

A. Legal Principles Respecting Family Property

- [42] The Family Law Act, S.B.C. 2011, c. 25 [FLA] regime governs the analysis of the formal validity of the alleged oral agreement respecting the respondent's inheritance.
- [43] Section 81 of the FLA sets out the general rule that each spouse is presumptively entitled to an undivided one-half interest in all family property, subject to an agreement or order that provides otherwise:

Equal entitlement and responsibility

81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and

- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[44] Family property is defined in s. 84 of the FLA:

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;

[45] Hence, the point in time at which family property and exclusions therefrom are determined is the date of separation, subject to extensions under s. 84(1)(b) for property acquired after separation and derived from family property.

[46] Section 85 provides for exclusions from family property as follows:

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

- (a) property acquired by a spouse before the relationship between the spouses began;
- (b) inheritances to a spouse;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

[47] Section 85(2) provides that "[a] spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property".

[48] As to valuation, s. 87 provides that unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6, (a) the value of family property must be based on its fair market value, and (b) the value of family property and family debt must be determined as of the date of (i) an agreement dividing the family property and family debt is made, or (ii) of the hearing before the court respecting the division of property and family debt.

B. Legal Principles Respecting Oral Agreements

[49] Section 92 allows spouses to make agreements in respect of "property" division:

92 Despite any provision of this Part but subject to section 93 [setting aside agreements respecting property division], spouses may make agreements respecting the division of property and debt, including agreements to do one or more of the following:

- (a) divide family property or family debt, or both, and do so equally or unequally;
- (b) include as family property or family debt items of property or debt that would not otherwise be included;

- (c) exclude as family property or family debt items of property or debt that would otherwise be included;
- (d) value family property or family debt differently than it would be valued under section 87 [valuing family property and family debt]

[Emphasis added.]

[50] Hence, s. 92 allows the parties to make agreements with respect to the division of family property and to include property that would otherwise not be included.

[51] The making of such agreements must be construed in light of s. 6 of the FLA which addresses the formation of agreements in the family context:

6 (1) Subject to this Act, 2 or more persons may make an agreement

- (a) to resolve a family law dispute, or
- (b) respecting
 - (i) a matter that may be the subject of a family law dispute in the future,
 - (ii) the means of resolving a family law dispute or a matter that may be the subject of a family law dispute in the future, including the type of family dispute resolution to be used, or
 - (iii) the implementation of an agreement or order.
- (2) A single agreement may be made respecting one or more matters.
- (3) Subject to this Act, an agreement respecting a family law dispute is binding on the parties.
- (4) Subsection (3) applies whether or not
 - (a) there is consideration,
 - (b) the agreement has been made with the involvement of a family dispute resolution professional, or
 - (c) the agreement is filed with a court.

[Emphasis added.]

[52] Thus, a binding "agreement" respecting a family law dispute or a matter that may be the subject of a future family law dispute does not require consideration. Further, by the combined virtue of ss. 6 and 92, it is open to the parties to make an agreement to include as family property items that would not otherwise be included.

[53] The fact that an oral agreement is not in writing or not witnessed is not a bar to its validity under the FLA. There is no requirement under s. 92 that the agreement be in writing or that it be witnessed. Oral agreements respecting the division of property are enforceable if properly proven on the evidence: *Asselin v. Roy*, 2013 BCSC 1681 at para. 132.

- [54] The decision in *P.N.K. v. C.L.*, 2013 BCSC 1856 further addresses how oral agreements are contemplated in the FLA:
- [86] Interestingly s. 92 makes no reference to such an agreement being in writing. Indeed, the FLA has a specific provision dealing with written agreements respecting the division of property: s. 93 provides that the court may only set aside or replace such agreements in certain circumstances. Section 95(2)(b) then requires that a court considering the unequal division of family property or debt consider "the terms of any agreement between the spouses, other than an agreement described in section 93" [emphasis added]. It is clear that the legislature intended s. 92 to permit oral agreements between spouses.
- [55] I agree that oral agreements are clearly permissible under s. 92. I further heed Justice N. Brown's caution in *Mottershead v. Ladouceur*, 2014 BCSC 604 that the lack of a written agreement makes the words and actions of the parties more important and mandates greater scrutiny of the credibility of witnesses: at para. 101.
- [56] When parties do not reduce an alleged agreement to writing, the Court must consider the parties' words and actions to see if they establish an intention to be bound. The credibility of witnesses will be particularly important; different versions of events increase the difficulty of finding out if the parties made an enforceable bargain: *Le Soleil Hotel & Suites Ltd. v. Soleil Management Inc.*, 2009 BCSC 1303 at para. 328.
- [57] The absence of a formal signed and properly witnessed agreement does not change the binding nature of a contract. What is required is that the contracting parties express themselves outwardly in a manner indicating an intention to be bound to mutually agreed upon and reasonably certain terms. The courts will not attempt to enforce what is effectively an "agreement to agree." The test is an objective one: if a reasonable person would find that the parties were in agreement as to a contract and its terms, then a contract exists. The burden of proving the existence of the contract is on the party seeking to enforce it on the balance of probabilities: *Berthin v. Berthin*, 2016 BCCA 104 at paras. 46-49; *Salminen v. Garvie*, 2011 BCSC 339 at paras. 25-27; *Bate v. Smith*, 2017 BCSC 1261 at paras. 52-54.
- [58] As well, a court may consider the parties' conduct leading up to and following the conclusion of an alleged agreement to determine whether a binding agreement was created vis-à-vis the parties' manifest intentions: *Salminen* at para. 28. Generally, the mere proposal of additional or better terms does not negate the existence of a binding agreement: *Salminen* at paras. 29-30.

C. Legal Principles Respecting Excluded Property

- [59] The onus is on the party seeking to claim excluded property pursuant to s. 85 of the FLA. The proper test for establishing a claim to excluded property is proof on a balance of probabilities: *Pisarski v. Piesik*, 2019 BCCA 129 at para. 24.

- [60] In all cases, the court must look at the evidence with respect to the transfer to determine whether the transferor intended to make a gift when the transfer was made. The Court of Appeal affirmed the considerable consistency of the Court of Appeal decisions on how trial judges are to determine whether property transferred from one spouse to the other is excluded property or becomes family property: *Cohoon v. Stobo*, 2023 BCCA 479 at para. 18.
- [61] When determining whether a spouse who received an inheritance which was then transferred into some joint account or joint property has met the onus per s. 85 of the FLA, a court must first determine the transferor's intent: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 40. In *Venables v. Venables*, 2019 BCCA 281, Justice Griffin held:
- [95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: *V.J.F.* at paras. 74-79; *Namdarpour* at para. 46.
- [Emphasis added.]
- [62] If one party transfers their excluded property to another spouse, it is possible that the party may lose their exclusion, and that the excluded property becomes family property: *V.J.F. v. S.K.W.*, 2016 BCCA 186. If a party makes no attempt to keep excluded property separate, this supports an intention to gift the property to the other spouse: *Pisarski v. Piesik*, 2019 BCCA 129 at para. 48; *Wickstrom v. Ng*, 2019 BCSC 1685 at paras. 160-161; *Small v. Small*, 2020 BCSC 707 at para. 108.
- [63] In relation to the respondent's argument that exclusion was lost because the Adderley Property was registered in joint names, the claimant cites the presumption of advancement from *Namdarpour* and urges the following principles upon me:
- a. The presumption of advancement is an evidentiary presumption whereby in certain circumstances a gratuitous transfer is presumed to be a gift. It is most useful where evidence of the transferor's intention in making the transfer is unavailable or unpersuasive, especially where the transferor is deceased: *Pecore* at para. 23. (para. 25)
 - b. Although the presumption of advancement continues to apply under the FLA, I would not overemphasize the role of evidentiary presumptions in the current property division scheme for a number of reasons, including the apparent context in which the presumption has its origins (the sometimes anachronistic notions of economic dependence), in contrast to contemporary circumstances. (para. 33)
 - c. These decisions emphasize that evidentiary presumptions operate only where the trial judge is unable to reach a conclusion about the transferor's actual intention at the time of transfer. In my view, the following principles can be discerned from the case law: (1) a conclusion

about intention is only to be determined after consideration of "all the circumstances" of the case; (2) those circumstances include both direct evidence and, importantly, circumstantial evidence; (3) those circumstances include evidence that arose subsequent to a transfer if relevant to the transferor's intent at the time of transfer, although such evidence will be reviewed critically; and (4) only where a judge is unable to reach a conclusion about the transferor's actual intention will the evidentiary presumption operate. (para. 40)

D. Analysis of the Property Issues

[64] The claimant testified that she and the respondent entered into an oral agreement in 2018 before they bought the home. She stated that the terms, including the respondent's obligation to contribute sweat equity, were discussed at the lunch with her father and the respondent at the Cactus Club restaurant in English Bay. The respondent had no recollection of such a meeting. Based on that meeting and other discussions, the claimant's understood they agreed to the following terms:

- a) the respondent was responsible for the mortgage on the Adderley Property in the amount of \$2,000 per month;
- b) the respondent would contribute "sweat equity" in the amount of \$200,000;
- c) the parties were equally responsible for the construction costs;
- d) the claimant would receive rental income from the home; and
- e) they would renovate the home over 5 years and sell it afterwards.

[65] The claimant stated that although they had a verbal agreement, it wasn't put into writing. She asked the respondent "regularly" if she could get it in writing, but he replied that he had to talk about it with a lawyer, or further with her, or both.

[66] The claimant stated that financial issues were a source of irritation between the two and could lead to fights. She found stressful conversations were mentally difficult for her. Because the respondent had a temper, she did not push the issue further.

[67] On December 13, 2019 (just over a year and a half after the Adderley Property was purchased), the claimant proposed a framework for a cohabitation agreement. In the initial Proposed Agreement, the claimant suggested that if the parties were to separate:

- a) the Adderley Property would be sold;
- b) the debts would be paid from the sale;
- c) the equity would be split equally between the parties; and
- d) the RBC Mortgage would come out of the Respondent's one-half share (the "Proposed Agreement").

- [68] The first term was allegedly based on their oral agreement. The second to fourth terms above were the claimant's proposals. The Proposed Agreement further included comments regarding different scenarios related to property division in the event of a death of either, or both, parties. In every scenario, whether the parties separated, one party died, or both parties died, the proposal was for the responsibility for the renovations to be a shared cost between the parties. There was no explicit discussion of excluded property.
- [69] The respondent did not formally reply to the Proposed Agreement in writing until March of 2022. In his email, he refers to the claimant's Proposed Agreement as the "original framework", and suggests different formulas that would see his share in the Adderley Property increasing from 50% to 60% to 75% to 90% in different scenarios that contemplated the claimant's anticipated inheritance and excluded property.
- [70] In the spring of 2022, the claimant provided the respondent with a draft cohabitation agreement (the "Draft Cohabitation Agreement"). The Draft Cohabitation Agreement was prepared by Mr. Van Der Sande, the same lawyer who acted for both parties in the conveyance of the Adderley Property. It was never signed.
- [71] The respondent points out that recital C of the Draft Cohabitation Agreement states, "This Agreement has been made following negotiations between the parties that commenced in 2019." [Emphasis added.] The 2019 date is, of course, well after the purchase of the Adderley Property in 2018.
- [72] The Draft Cohabitation Agreement does not contain a dollar amount correlating to the respondent's labour and expense. Nor does it mention a five year plan to sell Adderley, and it contains terms waiving claims to spousal support.
- [73] The claimant argues that key elements of a verbal agreement are present here, including the following:
- a) The parties' one-half responsibility for the purchase costs was approximately \$700,000 each. The claimant had paid her half of \$700,000 upfront, she would pay \$200,000 for the Respondent's "sweat equity," and the Respondent would be responsible for the remaining \$500,000 by the assumption of a line of credit/mortgage owing to a bank.
 - b) The claimant would front the renovation/construction costs (the "Construction Costs"). The interest payments on the line of credit used to pay for the Construction Costs would be serviced by rental income from the Adderley Property. The Construction Costs will be paid back upon sale of the Adderley Property.
- [74] The respondent disputes the existence of any verbal agreement. He submits that he is instead entitled to an equal share of the Adderley Property.
- [75] The respondent notes that the claimant took deliberate steps to ensure the Adderley Property was placed in their joint names by way of an assignment agreement. He submits that the claimant's evidence on the existence of an oral agreement is not credible and that

the assertion of such an agreement is inconsistent with communications between the parties, the assignment agreement, emails between the parties regarding the claimant's proposed agreement, and the draft cohabitation agreement. He notes that the claimant's father did not testify at trial in support of the existence of an oral agreement.

[76] The respondent notes that:

- On April 27, 2018, the claimant wrote an email to Mr. Van Der Sande with a subject line: "We bought a house! " The body of the email states: "We got it for \$1,430,200. [It's] an awful house on a beautiful lot. Plenty of work to do!" [Emphasis added.]
- On May 22, 2018, the claimant sent an email to the parties' real estate lawyer, Mr. Van Ver Sande, stating "can you give me a call when you have a few minutes to chat? I want to discuss the purchase of the new house and some questions that I have around making sure it is in both Joe's and my name."
- Initially, the parties agreed that the respondent would pay the interest on the TD LOC in an amount approximately equal to the rent that he was previously paying (\$2,000/month). However, after discussion between the parties, in or about Fall 2018, the claimant set up a TD mortgage of \$500,000 in the parties' joint names against the Adderley Property (the "TD Mortgage"). In the summer of 2018, the respondent e-transferred funds to the claimant to assist with interest payments on the TD LOC. The respondent subsequently made all payments on the TD Mortgage.

[77] The respondent acknowledged at trial that he took responsibility for 50% of the renovation costs for the Adderley Property.

[78] Taking all the circumstances into account, I agree in a general sense that there was an oral agreement between the parties. I accept the claimant's evidence on this point, but I have more difficulty with the specifics of their oral contract.

[79] For these parties, their actions over time assist in clarifying what they meaningfully agreed to. For instance, it is clear that the parties intended to enter into an agreement to purchase and develop the Adderley property. I further find that the parties intended to and did agree to certain key terms; namely that:

- the claimant would finance the purchase of the home;
- the respondent had responsibility for servicing the \$500,000 mortgage on the Adderley Property;
- they would share labour in renovating the home;
- the claimant would receive rental income from the Adderley Property to finance payments on the line of credit; and
- the claimant would finance the renovations but the parties were to share equally in the cost of renovations.

- [80] On an objective basis, a reasonable person would find that the parties were in agreement on the above terms. However, I cannot fully agree with the claimant's position that the oral contract encompassed all the other terms in the manner she submits that it did.
- [81] The facts are not sufficiently clear to find the existence of an oral contract at the level of detail suggested by the claimant. For instance, I cannot find that the \$500,000 mortgage would come fully out of the respondent's share of any proceeds and that in compensation he would receive \$200,000 in "sweat equity." This may have been her understanding, but the evidence that the parties agreed to the more specific terms she put forward falls short of that required to establish an oral contract on this basis.
- [82] I come to the same conclusion with respect to the existence of an oral agreement to maintain her excluded property. I cannot find a sufficient evidentiary basis to conclude that the parties intended to preserve the claimant's total contributions to Adderley as excluded property. I find instead that, aside from the renovation expenses, the funds the claimant contributed to the Adderley Property lost their exclusionary character when the property was registered into their joint names when they came into possession of it on June 27, 2018: *Basi v. Basi*, 2021 BCSC 421 at paras. 31, 41-43; *Wickstrom v. Ng*, 2019 BCSC 1685.
- [83] In order to give effect to the limited terms I can find the parties agreed to, I would make the following order with respect to property division in the Adderley Property (assuming equal division of the equity):

Fair market value \$2,675,000.00

Divided equally \$1,337,500.00

Claimant receives:

One-half fair market value \$1,337,500.00

One-half of construction costs \$582,402.12

Half the mortgage (\$228,854.58)

Total: \$1,691,047.54

Respondent receives:

One-half fair market value \$1,337,500.00

One-half of construction costs (\$582,402.12)

Half the mortgage (\$228,854.58)

Total: \$526,243.34

- [84] The above is essentially consistent with the position of the claimant, except that the parties are to share the mortgage equally.

V. Whether to Order Unequal Property Division

A. Legal Principles

[85] The claimant argues in the alternative that I should use my authority under ss. 95 and 97 of the FLA to give effect to an unequal division of family property in her favour. Section 95 provides that I may only do so if equal division of family property and debt would be significantly unfair:

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
- (b) divide family property as required under Part 6 [Pension Division].

[Emphasis added.]

[86] Section 97 is an ancillary provision which allows me to make orders to give effect to division of property or family debt.

[87] In assessing what is significantly unfair, s. 95(2) provides as follows:

- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (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;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;

- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[88] Regarding "any other factor that may lead to significant unfairness", the court may consider (a) the origins of formerly-excluded property (Venables, paras. 97-98) and (b) the parties' financial position if the family property was divided equally relative to their financial position at the beginning of the marriage (Singh v. Chandi, 2024 BCSC 771, at para. 125).

[89] Section 95(3) of the FLA provides that,

the Supreme Court may also consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[90] Subsection 95(3) of the FLA clearly contemplates orders for the division of property as a means of providing compensatory spousal support where the objectives of the Act cannot be achieved by an order for periodic payments. Such an order can only be made where compensatory spousal support has been ordered and it has been determined that the objectives of spousal support are served by a lump sum allocation as opposed to periodic spousal support payments: Cook v. Cook, 2021 BCCA 194 at para. 51.

[91] The policy objectives underlying the division of family property in the FLA were discussed in Jaszczewska v. Kostanski, 2016 BCCA 286 as follows:

[36] It is useful to recognize that the purpose of the legislative reform to the FRA seems to have been to simplify the division of family property, to render it more certain and predictable, and to divide property on a basis that better fits people's expectations of fairness. The Legislature attempted to accomplish this purpose in two ways. First, the definition of excluded property in the FLA provides greater clarity regarding what property is subject to division than existed under the FRA, where the identification of family assets was often difficult. Second, the Legislature reduced the discretion of courts to depart from equal division. This was accomplished in part by imposing a higher test for such a departure. Under the new scheme, family property is to be divided equally unless it is "significantly unfair" rather than just "unfair" to do so. A court's discretion was also limited by identifying more precisely the considerations relevant to the analysis than had previously been the case.

- [92] I note that s. 95(2) does not prevent a court from considering unequal contributions to family property, and this has occurred in some cases: see, for instance, *Davie v. De Mark*, 2017 BCSC 872 at para. 161. In *Khan v. Gilbert*, 2017 BCSC 2060, McEwan J. awarded a husband only 15 percent of the family property on the basis of his lack of contribution to the property and the household generally: at para. 30.
- [93] I am cognizant of the decision in *Jaszczevska*, with respect to the absence of legislative wording in the FLA specifically mandating that the relative contributions to the acquisition, maintenance, preservation, or improvement of family property ought to be a significant factor. In *Jaszczevska*, the Court held that the general rule is that the parties should share in post-separation increases in the value of property independent of the parties' respective contributions to post-separation increases in value:
- [38] It is safe, therefore, to conclude that the Legislature intended to limit the circumstances in which a departure from equal division of family property could be justified because of unequal contributions to its acquisition, preservation, maintenance or improvement. The FLA starts with the presumption found in s. 81 that family property is to be equally divided. As I read s. 81, each spouse is presumptively entitled to an undivided half interest in all family property, regardless of their respective use or contribution. I do not think the use of the words "regardless of their respective use or contribution" in s. 81(a), rather than in s. 81(b), is inconsistent with that view. Any potential uncertainty on this point would have been removed if s. 81(b) had read "on separation, each spouse has a right to an undivided half interest in all family property, regardless of their respective use or contribution." But as I read it, the phrase in s. 81(a) refers to the basis of entitlement to family property. Entitlement exists independent of contribution or use, and the extent of that entitlement on separation is defined in s. 81(b).
- [39] Also, because family property is generally valued on the date of the hearing, the parties will presumptively share in any post-separation increases in the value of family property. Once again, because of s. 81, this entitlement exists independent of the parties' respective contribution to the post-separation increase in value.
- [40] Nonetheless, the scheme contemplates judicial discretion to depart from an equal division. That discretion is recognized in s. 81 and further articulated in s. 95. Section 95 defines both the test and the factors for a court to consider in exercising its discretion.
- [Emphasis added.]
- [94] The Court of Appeal also provided some guidance for the determination of significant unfairness and discussed the unequal contribution factor as follows:
- [43] The determination of whether an equal division would be significantly unfair is also guided by a more precise identification of relevant factors than was found in the FRA. Importantly, the Legislature did not include in s. 95(2) the principle of relative contribution found in s. 65(1)(f) of the FRA. Under s. 65(1)(f), a court could consider circumstances relating to the

acquisition, preservation, maintenance, improvement or use of property. Section 95(2), by comparison, refers rather narrowly to career contributions (95(2)(c)) and to post-separation increases in value beyond market trends caused by one spouse (95(2)(f)). I agree with the judge's view that if relative contribution to the acquisition, preservation, maintenance or improvement of family property during the relationship was intended to be a significant factor or one frequently relied on in justifying the conclusion that the equal division of family property is significantly unfair, the Legislature would have said so. Allowing relative contribution to become a regular consideration in the context of s. 95 would likely create uncertainty and complexity. This would be contrary to the legislative objectives discussed earlier that underlie the FLA division of property regime.

- [44] Having said that, in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion. Accordingly, in my view, one cannot read the FLA as abolishing unequal contribution as a factor that may be relevant to reapportionment, although the circumstances in which it may be considered and relied on are intended to be much constrained.

[Emphasis added.]

- [95] Thus, Jaszczewska provides that unequal contribution remains a relevant though "much constrained" factor, and there is nothing in the FLA which prohibits some consideration of relative contribution.

- [96] I find it appropriate here to consider unequal contribution as a relevant factor in assessing significant unfairness. However, this is but one factor within the overall context.

B. Discussion of Unequal Division

- [97] If I am wrong about the effect of the parties' verbal agreement, I would consider unequal division of family property as follows.
- [98] The respondent submits that the Adderley Property should be divided equally; or alternatively if unequal division is ordered on the basis of significant unfairness, the split should be at most 60/40 in the claimant's favour.
- [99] The claimant argues that the property was bought for \$1,430,200 (or \$1,461,141.78 including closing costs). She says that she contributed just over \$900,000 to finance the property and the respondent took responsibility for the \$500,000 mortgage. She says she agreed that he could receive \$200,000 in "sweat equity." The claimant says that she financed the construction costs of \$1,164,804.24. In the claimant's submission, she ought to receive one-half of her construction costs back and one-half of the net value of the property, with the respondent being responsible for the mortgage balance.

- [100] In terms of their relative financial positions, the claimant calculates that assuming the Adderley Property's fair market value is \$2,675,000 and the outstanding RBC mortgage is \$457,709.16, the net equity is \$2,217,290.84. If the equity is divided equally, then the parties would each receive \$1,108,645.42.
- [101] As of the date of trial, the claimant has investments of approximately \$1.9 million (excluding her inheritance). If the equity in Adderley Property is divided equally, she would receive \$1.1 million. She would be leaving a four-year relationship with a gross asset value of \$3 million (compared to \$5 million at the beginning of the relationship).
- [102] As of the date of trial, the respondent had investments of approximately \$300,000. As of April 30, 2023, Leading EPC Consultants Inc. had retained earnings of \$637,655.00, though the increase during the relationship is subject to property division. If the Adderley Property is to be divided equally, he will receive the \$1.1 million. He would be leaving a four-year relationship with a gross asset value approaching \$2 million (compared to \$300,000 at the beginning of the relationship).
- [103] In assessing the relevant factors, I note inter alia that the duration of the relationship (at four years) was relatively short. The parties had an oral agreement that contemplated that they would share in the cost of renovations and that the claimant would hence later receive a greater share of the proceeds, though the specifics are more difficult to discern.
- [104] I would not find that either spouse caused a significant increase or decrease in the value of the Adderley Property beyond market trends, or that either acted in bad faith. After the cost of renovations and purchase price are deducted from the most recent appraised fair market value for the property, the property only increased modestly in value (less than \$50,000) in the time the parties owned it.
- [105] I would take into account other factors, including the claimant's far greater financial contribution to the acquisition and cost of renovating the Adderley Property, though I would not over-emphasize this factor. I also acknowledge the respondent made some contributions, especially non-monetary contributions such as labour, design and supervision of the renovation process. I further consider the parties' financial positions if the family property was divided equally relative to their financial position at the beginning of the marriage.
- [106] Overall, absent the oral agreement, I would find on the basis of all the circumstances that it would be significantly unfair to divide the Adderley Property equally.
- [107] Respecting the proper ratio for an unequal division of the Adderley Property, the claimant suggests that the parties split the fair market value of the property 72/28 if an unequal division is ordered. However, she would then assign responsibility for the \$500,000 mortgage solely to the respondent. This would effectively leave the claimant with net equity of \$1,919,902.12 (87% of the equity) and the respondent with equity of \$297,389.72 (13%).

- [108] On the other hand, the respondent suggests that if unequal division is ordered, it should be at most a 60/40 split in favour of the claimant. This would leave the claimant with net equity of \$1,330,374.50 and the respondent with \$886,916.34. I find both approaches to be too self-serving.
- [109] I would instead exercise my discretion to substitute an order that the net equity in the Adderley Property (\$2,217,290.84) be divided 75/25%, with the larger share in the claimant's favour. This would leave the claimant with net equity of \$1,662,968.13 and the respondent with \$554,322.71. As noted, I would not assign responsibility for the mortgage solely to the respondent; rather, that debt is to be split equally. As the above split is an alternative finding of unequal division in the event my reasoning on the oral agreement is in error, I would primarily order the sharing of the Adderley Property based on the oral agreement and equal division on the basis outlined above.
- [110] The claimant has sought an order for sale of the Adderley Property. I am prepared to grant such an order, but I would give the respondent an opportunity to purchase the home first.

VI. Division of Other Family Property

- [111] Subject to the comments below, I would order an equal division of other family property under the FLA. I have considered but am not convinced that an unequal division of other family property is appropriate because I am not convinced that equal division of other family property would be significantly unfair.

A. Leading EPC Consultants Inc.

- [112] The claimant is entitled to a share of the increase in retained earnings over the course of the relationship. I would not depart from equal division of this asset on the basis of significant unfairness. The increase in value of retained earnings during the relationship was \$248,281, less distributive taxes of 40%, leaving \$148,968.60. A 50% share of this amount would be \$74,484.30. I award this amount to the claimant.

B. Trailer

- [113] The claimant purchased an HC1 Trailer in the spring of 2021. The respondent submits that it is clear that the trailer was intended as a gift to him, or at the very least, as a gift to both parties. I cannot agree. The claimant purchased the trailer with funds from the sale of her Kitsilano property. She bought the trailer without consulting the respondent and registered it in her name alone. She clearly contemplated that the respondent could occasionally use the trailer, but I find the trailer did not lose its character as excluded property. I find that the trailer is excluded property and not subject to equal division.

C. The Parties' Vehicles

- [114] The claimant and respondent own vehicles of approximately the same value. The claimant purchased a Tesla Model 3 during the relationship. The source of funds is not entirely clear. The respondent's Jeep was purchased with the cheque of \$50,000 from the claimant to the respondent (which I find was a gift) and partially through a trade-in of his former truck.
- [115] I would not divide these assets as family property. Instead, I would simply order that the parties retain the vehicles registered in their names.

D. Chico

- [116] The parties adopted a dog together during the relationship, which the claimant took with her upon separation. The respondent confirmed at trial that he accepts the claimant will retain custody of Chico, and no order is made in relation to the family dog.

E. Other Property

- [117] With respect to other family property, I would order an equal division as suggested by the parties and, for excluded property, order the sharing of increases in value during the relationship. As the parties are in substantial agreement on other property, I will not go into further detail. I provide the parties with leave to address any matter not specifically dealt with by these reasons.

VII. Spousal Support

- [118] The claimant seeks spousal support on the basis of a compensatory exception in short marriages without children as set out in the Spousal Support Advisory Guidelines (Ottawa: Dept. of Justice, 2008) [SSAG] at pp. 59 and 64-65. The claimant submits that provided that the Adderley Property is divided as sought by the claimant, the respondent should pay the claimant a tax-free lump sum spousal support award of \$75,000. This sum is calculated as \$2,500 x 30 months. The tax-free sum of \$2,500 per month would gross up to approximately \$3,500 per month, and would result in a 71%/29% NDI split. The duration of 30 months would span from July 2022 to December 2024.
- [119] The provisions relating to spousal support are found in ss. 160-165 of the FLA. The objectives of spousal support must be considered by the court and are set out in s. 161:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;

- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[120] Compensatory claims are based on the recipient's economic loss as a result of the relationship. The nature and significance of compensatory spousal support is discussed in numerous authorities including *Moge v. Moge*, [1992] 3 S.C.R. 813, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420. The appropriate measure of compensatory support is not assessed by doing a detailed accounting at the end of a marriage to determine what financial "losses" a spouse suffered as a result of expenditures made during the marriage (including the period of cohabitation). Instead, the court must have regard to the statutory provisions governing support, the relevant authorities, and the SSAG.

[121] In *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-53, the Court summarized entitlement to compensatory spousal support as follows:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

[51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added).

[52] The Court in Moge discussed the relevance of the parties' standards of living in the context of compensatory support at 870:

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

[Emphasis added, internal citations omitted.]

[122] Applying the principles above to the question of entitlement to spousal support here, I note that the parties lived together for approximately four years. There were no children of the marriage. Certainly, the claimant makes far less income than the respondent. The claimant is the owner of an art business, which has generated a modest net income ranging from \$400 to \$10,059 since 2019 while the respondent's income is more significant (\$204,000 on his most recent financial statement).

[123] However, the claimant is significantly wealthier than the respondent. Her investment portfolio (excluding the Adderley Property) is on the order of \$2.4 million and would generate an income of \$121,403 per year at 5% or \$169,965 at 7%. She also recently received an inheritance of \$600,000, though this is unrelated to the circumstances of the relationship. She has also received rental income from the Adderley Property over the last five years of between \$47,261 in 2019 and \$16,485 in 2023.

[124] This is not a case where the claimant made personal sacrifices to advance the respondent's career, though I was told she provided some assistance in the form of creating a website for him. The claimant entered the relationship with significant wealth, and she does not appear to have been economically disadvantaged by the marriage or its breakdown.

[125] While the respondent was certainly focused on building his career, it does not appear to me that the claimant made significant sacrifices to, for instance, benefit the respondent's income. I cannot find that the claimant had to cut back on her employment to care for the children or that the marriage jeopardized her ability to ensure income security and her economic well-being. Overall, I do not find this an appropriate case for spousal support to compensate for the claimant's economic disadvantage arising from the marriage or its breakdown.

VIII. Occupational Rent

- [126] The claimant seeks occupational rent. Such a remedy is an equitable remedy and is to be approached as a discretionary tool to achieve fairness. A co-owner is entitled to claim occupational rent when he or she has been deprived of the use of joint property. If the owner in possession seeks to recover property expenses, the court has the discretion to set off occupational rent against the expense claim. Ouster is not required: *McFarlen v. McFarlen*, 2017 BCSC 1737, at paras. 12-21:
- [127] Mr. Mirzaei's Appraisal Report dated February 7, 2024 opined that the fair market value rent of the portion of the Adderley Property occupied by the Respondent is between \$4,600 to \$4,900 per month in 2022, with a mid-point being \$4,750. One-half of the fair market value of the rent is \$2,375 per month. The Claimant has been renting a two-bedroom apartment for \$2,500 per month.
- [128] While ouster is not required, it is common ground that it was not possible for the parties to continue to cohabitate. The claimant sought occupational rent in her notice of family claim.
- [129] The claimant repeatedly sought the sale of the Adderley Property after separation. The Respondent was opposed. The Claimant advanced a notice of application for the sale of the Adderley Property on May 4, 2023, and the Respondent opposed on the basis that he could buy her out if the final judgment is in his favour. The parties agreed not to proceed with the hearing of this application.
- [130] The respondent points out that he has continued to pay the mortgage on the property. He has also paid the insurance and utilities for the property. The claimant paid property taxes for the Adderley Property in 2022 and 2023, though she later received reimbursement for one-half of the 2023 taxes.
- [131] The claimant has received 100% of the rental income from the Airbnb suite of the Adderley Property. In 2022, the claimant received income of \$2,172.50/month for the Airbnb rental. In 2023 she received \$2,506.80, and \$2,579.42/month in 2024.
- [132] In all the circumstances, I dismiss the application for an order for occupational rent.

IX. Conclusion

- [133] Orders are made consistent with the reasons above.
- [134] In summary,
1. The net equity in the Adderley Property is to be shared by the parties with the claimant's share being \$1,691,047.54 and the respondent's share being \$526,243.34 after the cost of renovations is equalized. The parties remain both responsible for the mortgage on the property, though they may agree otherwise.

2. Within 60 days of the date of the judgment in this matter, the respondent may purchase the claimant's interest in the Adderley Property and contemporaneously with payment, the claimant will sign a Form A transfer document to transfer her interest in the Family Home to the respondent (the "Transfer").
3. Upon the completion of the Transfer, the respondent will be solely responsible for RBC Mortgage registered on title to the Adderley Property, and he will indemnify and save harmless the claimant from the same.
4. If the respondent is unable or unwilling to purchase the claimant's interest in the Adderley Property within 60 days, the property will be listed for sale forthwith, with the parties to have joint conduct of sale. The proceeds of the sale will be applied first to satisfy all adjustments on sale including conveyancing fees, realtor's commission and the RBC Mortgage Account No. 4288092 (the "Mortgage").
5. The parties have operated on the basis that the respondent pays the mortgage on the Adderley Property and the claimant receives the rental income for the property. However, as co-owners, the parties are equally entitled to rental income from and expenses for the Adderley Property.
6. Pending the sale or buyout of the Adderley Property, the claimant will continue to manage and collect the rent from the rental suite of the Adderley Property and the respondent will cooperate with her efforts in that regard. The claimant will cease all Airbnb activities at the Adderley Property upon removal of subjects on an accepted offer to purchase the property. This rental activity is permitted on the understanding that both rental income and mortgage and other property-related costs should be equalized subject to agreement of the parties.
7. The RBC Line of Credit Account No. 00920-77658392 will be closed.
8. The respondent will retain the following as his sole and separate property:
 - a. his shares in Leading EPC Consultants Inc.;
 - b. his shareholder loan owing from EPC Consultants Inc.;
 - c. his RBC Account No. 00010-5685045;
 - d. his RBC TFSA Account No. 264-96896-1-5;
 - e. his Computershare account; and
 - f. his 2021 Jeep Wrangler.
9. The claimant will retain the following as her sole and separate property:
 - a. her RBC Chequing Account No. 00920-5118005;
 - b. her TD Private Banking Account No. 0994-6265666;

- c. her RBC Investment Account No. 384-86080;
 - d. her RBC Investment Account No. 802-05563;
 - e. her RBC TFSA Account No. 798-06114;
 - f. her RBC Investment Account No. 387-05542;
 - g. her RBC Investment Account No. 8095657;
 - h. her 2022 Tesla Model 3; and
 - i. her 2022 HC1 trailer.
10. The respondent will pay the claimant an equalization payment in the sum of \$74,484.30.
11. The parties' RRSP accounts will be divided as follows:
- a. The respondent will retain his TD RRSP Account No. 23LJ69-S as his sole and separate property, and transfer to the claimant's RBC RRSP Account No. 386-02608 the sum of \$70,278.78 by way of spousal rollover;
 - b. The respondent will retain his TD RRSP Account No. 29M0R0-S and transfer one-half of its holdings to the claimant's RBC RRSP Account No. 386-02608 by way of spousal rollover; and
 - c. The claimant will retain her RBC RRSP Account No. 386-02608 and transfer one-half of its holdings, that exist prior to receiving the transfers set out in subparagraphs (a) and (b), to the Respondent's RRSP account of his choice by way of spousal rollover.
12. The above orders do not affect the claimant in her capacity as the executor of the estate of June Gordenia Matheson, and in particular the following:
- a. 50% interest of the property located at 405-1600 Hornby Street, Vancouver, B.C.;
 - b. RBC Investment Account No. 384-39365; and
 - c. RBC Investment Account No. 802-04047.
13. The respondent will make his best efforts to cooperate with the claimant's retrieval of the following chattels at the Adderley Property and will provide an itemized response in writing to the claimant within 30 days of the judgment in this matter of his efforts in this regard in respect of the following items:
- a. the Boudoir bowl;
 - b. the bronze woman with harp;
 - c. the Dyson vacuum;
 - d. the globe;
 - e. the hat rack;

- f. the King size linen sheet set;
 - g. the large green backpack and sleeping bag;
 - h. the large mirror;
 - i. the llama blanket;
 - j. the metal crows and ceramic doves;
 - k. books on the bookshelf that belong to the Claimant's children;
 - l. three nesting tables purchased from Modern by Design;
 - m. antique brass bell;
 - n. the three red silk rugs in the bathroom, the entry and the living room;
 - o. side table in the living room purchased from Modern by Design;
 - p. stone fruit bowl;
 - q. Tesla charger;
 - r. Platters;
 - s. Wall basket with leather hanger;
 - t. wooden side table in the suite;
 - u. all items from the basement rental suite;
 - v. the mid-century modern Danish entry buffet bar; and
 - w. her engagement ring.
14. As part owner, the claimant is generally entitled to attend the Adderley Property. More specifically, the claimant is entitled to attend the Adderley Property at an agreed-upon date and time to determine if there are further chattels she would like to retrieve from the home. In the event that the parties are unable to agree, either party will have liberty to apply to Court for further directions.
15. Each party will keep all other business interests, bank accounts, investments, chattels, RRSPs, CPP contributions, furniture and any other property in his or her name without further claim from the other.
16. Each party will keep all debts in his or her name and indemnify the other for the same.
17. The claimant's claims for spousal support and occupational rent are dismissed.
18. By consent, the claimant will have sole ownership and sole possession of Chico.

19. The aforesaid orders are subject to modification by further order of the Court and/or written agreement of the parties.

[135] The parties have leave to speak to the issue of costs should they wish to do so.

[136] The Court expresses its appreciation to counsel for their capable conduct of this matter and their helpful submissions.

"Brundrett J."

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Prepared on 29 October 2026 · Esheria