

CANADA / JUDGMENT

Hancock v. Hancock

2000 BCSC 48

COURT

Supreme Court of British Columbia

DECIDED

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**Citation: Hancock v Hancock 2000 BCSC 48 Date: 20000112 Docket: D108824 Registry: Vancouver
IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROBERT WILLIAM HANCOCK
PETITIONER

AND:

DARLENE CECIL HANCOCK RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE RALPH

Counsel for the Petitioner Lorne N. MacLean and Jonas Dubas

Counsel for the Respondent Margaret Smyth and Tarynne E. Hooper

Place and Date of Hearing: Vancouver, B.C. June 21, 13-25 and September 7-10, 1999

- [1] Mr. and Mrs. Hancock were married in November 1988 and separated in 1997 after 9 years of marriage. It was the second marriage for each of them. While there are no children of the marriage, they each had one child from their previous marriages and at different times during their marriage the children lived with them.
- [2] On June 2, 1998, a declaration was made under section 57 of the Family Relations Act that the parties had no reasonable prospect of reconciliation and on January 14, 1999, an order of divorce was made.
- [3] Mr. and Mrs. Hancock have agreed on the appropriate division of furnishings and art which they owned.

- [4] The issues that must be addressed in this trial are: 1) the valuation of land known as the "PKI lands" which are owned by one of Mr. Hancock's companies;
- 2) the valuation and apportionment of the shares in a cluster of companies described in this action as "the Hancock companies;
- 3) the valuation and apportionment of the RRSP's held by Mr. and Mrs. Hancock; and
- 4) Mrs. Hancock's claim for spousal support.
- [5] Mr. Hancock is now 50 years old and Mrs. Hancock is 52. Mr. Hancock has worked as a property developer throughout the marriage and for a number of years before that. Most of the projects in which he was involved through the Hancock companies took place during the course of the marriage and have continued since the parties separated.
- [6] As Mrs. Hancock noted in her evidence, at the time they were married, "Neither one of us had any money." That situation changed over the next few years as Mr. Hancock worked on increasingly large projects. Reflecting that success, in the early 1990's Mr. and Mrs. Hancock built and moved into a 6000 square foot home that cost \$1.1 million. They both agreed that for a period of time they enjoyed a high standard of living that included annual trips to Hawaii and the purchase of expensive jewelry and art.
- [7] Mr. Hancock received income from his companies that reached the amount of \$150,000 in 1996. In addition, he received additional monies from his companies that were characterized as shareholder's loans that at the time of the trial amounted to approximately \$387,000. The evidence indicates that a portion of that amount was used to augment the living expenses of both Mr. and Mrs. Hancock, including expenses associated with their new home.
- [8] From 1990 to 1995 Mrs. Hancock was employed by one of the Hancock companies at a salary of \$2000 per month. She performed reception, secretarial and other functions for that company and other Hancock companies. She continued to receive this monthly payment after she ceased working at the company offices.
- [9] In late 1994 or early 1995 the business was not doing well and it became necessary for Mr. and Mrs. Hancock to sell their home, which they did at a loss. They rented first a 3500 square foot home and then a 2500 square foot home. In 1996, Mrs. Hancock returned to employment in retail sales to help deal with their financial difficulties. In 1995 Mrs. Hancock received an inheritance from her mother's estate and it appears that \$20,000 - 25,000 of it was put into the business in 1995 or 1996.
- [10] In 1996, 1997, and 1998 Mr. Hancock continued to receive monthly income from his companies in amounts ranging from \$7000 to \$10,000 per month. In addition, he received either a car allowance or use of a company vehicle. In his property and financial statement of January 11, 1999, Mr. Hancock stated that he was receiving a monthly income of \$7000.

- [11] Mrs. Hancock has continued to be employed since the parties separated in 1997, but Mr. Hancock has argued that she has been intentionally under-employed. Mrs. Hancock is seeking spousal support in this action and that claim is considered below.
- [12] At about the time of Mr. and Mrs. Hancock's separation in September 1997, one of Mr. Hancock's companies purchased a 31.6 acre parcel of land in the Port Kells area for the purpose of development. It was referred to in these proceedings as the "PKI lands" and it constitutes the most significant asset of the Hancock companies. For a number of reasons, some of which are disputed by either Mr. Hancock or Mrs. Hancock, the development of that land has stalled. In Mr. Hancock's opinion this fact has placed the project and the financial viability of him and his companies in jeopardy. He has been unable to receive monthly income from his companies, and his companies are in arrears on some of their financial obligations.
- [13] The value of the PKI lands and the fair market value of the Hancock companies were central issues in the trial. The determination of the value of the PKI lands essentially determines whether the value of the shares in the Hancock companies is negative or positive.
- [14] Mr. Hancock directly or indirectly owns all of the shares in the Hancock companies. Some Hancock companies are wholly owned by other Hancock companies and I will consider in more detail below the share structure to the extent that it is necessary to this decision.

The PKI Lands [15] The PKI lands were purchased in October 1997 for \$800,000. Eighty Thousand dollars of the purchase price came from funds available in a number of the Hancock companies and the balance came from borrowed funds. A portion of the land is comprised of peat that requires substantial fill if any structures are to be built on it. In developing the land, one of the decisions Mr. Hancock must make is whether the land is to be developed and resold as a single parcel or whether it should be subdivided and sold as individual parcels. Substantially higher development costs would be incurred in subdividing the land, but relatively higher returns on investment might result from a successful subdivision development. In either case there is a high cost entailed in filling the area containing peat.

- [16] A number of appraisals of the property were carried out by different appraisers between September 1997 and May 1999. In some cases the appraisals valued the land "as is" and others included a value based on the land being subdivided. What constitutes an "as is" state is not entirely consistent in the appraisals because of assumptions that are made about the need for and the extent of the fill in the peat area of the property. The "as is" appraisals range from \$1,400,000 to \$4,200,000. The filled and serviced appraisals range from \$4,800,000 to \$8,700,000, the latter figure being based on a subdivision containing 14 lots.
- [17] No subdivision of the land has been carried out or was underway at the time of the trial. For that reason, it is my view that the valuing of the land for the purposes of this action must be based on the land's unsubdivided value. I think that its potential for development would nevertheless be a factor in the price to be considered by any prospective purchaser.

- [18] I recognize that Mrs. Hancock has argued that Mr. Hancock has been poised to carry out the subdivision and has deliberately postponed this step to avoid having the value of the land for purposes of this action significantly increased. That argument in my view overlooks the fact that subdividing the land will require a significant financial expenditure and the incurring of substantial indebtedness to achieve it. The impact of this step on the net value of the land is at best speculative.
- [19] Mr. Geoffrey Burgess, a qualified land appraiser, gave the highest valuations for both the "as is" and filled and serviced states. He provided a full evaluation as at September 4, 1998. He then revised his opinion of the land's value in an unsubdivided state on two occasions as a result of changing some of the assumptions contained in the September 4, 1998, appraisal.
- [20] In September 1998 Mr. Burgess concluded that the value "for current residual land value prior to subdivision, but reflecting work to date" was \$4,200,000.
- [21] In April 1999 Mr. Burgess reduced his appraisal to \$3,850,000 based on three circumstances that had changed since September 1998. The first change was to eliminate from the valuation the proceeds of an anticipated sale of a right of way to the City of Surrey. By April 1999 evidence indicated that, if the property were to be subdivided, the owner would be required to dedicate a right of way in any event and there would be no need for the City of Surrey to purchase it. The second change was an increase in the estimated cost of fill needed for the peat area. The third reduction was caused by an anticipated loss of useable land resulting from land that might need to be dedicated to accommodate creeks running across the property.
- [22] In May 1999 Mr. Burgess further reduced his opinion of the value to \$3,500,000 based upon a further change in the estimate of the cost of fill for the peat area from \$124,500 to \$460,000.
- [23] In his evidence Mr. Burgess said that the need for fill stabilization makes that portion of any sub-division unmarketable until the fill has settled. He also said that in his experience filling peat sites was a gamble. In cross-examination, however, he said that he had looked at the geodetic information on settlement rates that had been provided to him and was satisfied with the rationale for settlement rates that necessitated additional fill.
- [24] In early 1998 the property was listed for sale with Colliers Macaulay Nicolls Inc. at a price of \$5,950,000. No offers were received. In February 1999 it was the opinion of Mr. Johnston of that firm that if the property was required to be sold within 60 to 90 days that the price that could most likely be achieved was \$115,000 per acre for 26.36 useable acres for a total of \$3,031,400.

- [25] Counsel for Mrs. Hancock submitted that other evidence of the value of the property could be inferred from evidence of what shareholders and investors expect to gain on their investments in the property as well as statements made by Mr. Hancock to potential lenders and others about its value. It was argued that one could infer a higher value for the land based on those expectations. While those investors may indeed be astute, I find that approach to be too uncertain and of little assistance in determining current value.
- [26] It is likely that the value of land purchased for development purposes is affected by a great number of variables. The fact that the PKI land was purchased in October 1997 for \$800,000 may be the most concrete starting point that exists for valuing the property.
- [27] I am satisfied that the evidence of Mr. Burgess was thorough and objective. To value the land in any other form than its current state is in my view an incorrect approach to the issue that must be determined in this action. Even that valuation contains uncertainties. A particular uncertainty is the estimate of the cost of filling the peat area.
- [28] Having regard to all of the evidence on this matter, I find that the most recent estimate of Mr. Burgess is reasonable but should be modified to recognize that the estimate of the cost of fill is quite uncertain. It is my conclusion that the best estimate of the value of the land that can be made at this time is \$3,700,000.

The Hancock Companies [29] Mr. Hancock directly or indirectly owns 100% of the shares of the Hancock companies. The indirect ownership results from Mr. Hancock's ownership of the shares of SYA Holdings Ltd. SYA Holdings Ltd. in turn owns the shares in a number of other companies, some of which are now inactive. The companies all have some connection to land development, some being created for specific projects such as PKI Warehouse Park Corporation and some carrying out management and operational functions related to land development. There has been a considerable flowing through of funds among the companies that gave rise at the trial to a complex examination of the financial condition of the companies that seemed out of proportion to the value of the assets involved.

- [30] The parties retained Mr. Vern Blair, a chartered accountant and qualified business valuator, to do an en bloc valuation of the fair market value of the Hancock companies as of July 31, 1998, and of January 31, 1999. In addition, Mr. Blair did a third valuation as of May 7, 1999 by adjusting his earlier calculations to assume a further reduced value for the PKI lands. Mrs. Hancock did not accept the valuations of Mr. Blair, primarily because of his treatment of the value of the PKI lands. As a result Mr. Blair was called as a witness at the trial by Mr. Hancock and cross-examined by counsel for Mrs. Hancock.
- [31] In carrying out his valuation Mr. Blair used an "asset approach." In his opinion that approach was the proper one because "the Hancock Group of Companies' business has historically been limited to purchasing, holding and developing raw land." The value of the companies' shares essentially derived their value from the value of the investments or holdings. He therefore calculated the fair market value of the assets and liabilities of all the companies en bloc and determined that at each of the valuation dates the value of the assets exceeded the

value of the liabilities.

- [32] The principal issues that arise in Mr. Blair's valuation of the companies are the treatment of the value of the PKI lands, the treatment of a shareholder's loan to Mr. Hancock, the application of distributive tax to the valuation, and the valuation date.
- [33] The total en bloc values before tax were \$1,347,000 at July 31, 1998, \$348,000 at January 31, 1999, and \$116,000 at May 7, 1999. At all times, however, Mr. Hancock owed his companies \$387,000 by way of a shareholder's loan. If Mr. Hancock is unable to repay this loan then the en bloc values could be further reduced. Mr. Hancock's inability to repay this indebtedness must be considered in determining the value of the companies.
- [34] In making each valuation Mr. Blair used a series of "low," "mid," and "high" values for the PKI lands. The assumed "mid" value of the PKI lands was \$3,900,000 at July 31, 1998, \$3,850,000 at January 31, 1999, and \$3,500,000 at May 7, 1999. While the assumed value of the PKI lands was not the only factor that affected the value at different time periods, it was a significant factor.
- [35] In considering the tax implications of the valuation, it was Mr. Blair's opinion that "a notional investor assessing the fair market value of the shares would recognize the present value of the latent income tax costs." It was his view that it would be appropriate to recognize 100 per cent of the latent taxes as it could be expected that, given the nature of the business, its properties would be sold within one or two years. He provided calculations, however, that recognized both 50% and 100% of latent personal distributive income taxes.
- [36] In his evidence at trial Mr. Blair stated that a value of \$3,500,000 for the PKI lands would produce enough money (along with the companies' other assets) to pay all of the companies' debts. There would not, however, be sufficient funds for the company to pay Mr. Hancock a bonus or dividend sufficient to eliminate his shareholder loan and the taxes resulting from such a payment to him.
- [37] The triggering event in this action was June 2, 1998. On that date Mrs. Hancock acquired an undivided half interest in each family asset including Mr. Hancock's shares in the Hancock companies. The closest valuation date to this event was July 31, 1998. The valuation at that date, recognizing a 100% distributive tax but not deducting the shareholder indebtedness of Mr. Hancock, was \$872,000. If only 50% of the latent taxes were deducted the value would be \$1,109,000. Both valuations assumed a value for the PKI lands of \$3,900,000.

Mr. Hancock submits that all of the shares of the Hancock companies should be reapportioned to him. He also says that the appropriate valuation for the shares in the companies is their value at the time of the trial. In his submission that after tax value is negative, particularly when one takes into account his financial inability to repay the shareholder loan of \$387,000 and the impact of that upon the financial position of the companies.

[38] Mrs. Hancock submits that half of the shares should vest in her. Alternatively, she submits there should be a compensation order that would compel Mr. Hancock to cause the Hancock companies to sell the real property registered in the name of "KGF", one of the Hancock companies, and provide the net proceeds to Mrs. Hancock. As a further alternative Mrs. Hancock submits that Mr. Hancock be ordered to cause the shares of two of the companies to be transferred to her.

Analysis [39] When determining whether an equal division of property would be unfair having regard to the factors set out in section 65 of the Family Relations Act, the appropriate valuation date in most cases is the date of the triggering event (*Blackett v. Blackett* (1989) 40 B.C.L.R. (2d) 99 22 R.F.L. (3d) 337 (C.A.)). Applying the \$3,700,000 value for the PKI lands that I have determined above, the value of the companies at the triggering event, June 2, 1998, was approximately \$672,000 using a 100% distributive tax or \$909,000 using a 50% distributive tax.

[40] In *Halpin v. Halpin* (1996), 27 B.C.L.R. (3d) 305 Huddart J.A. stated at para. 63:

It is well settled in this province that there is no absolute rule as to whether tax consequences should or should not be taken into account in the valuation of assets or in the determination of the amount of the compensation order.

[41] In the case before me I am satisfied that, for the reason given by Mr. Blair, it is appropriate to take distributive taxes into account in the valuation of the Hancock companies. I am not persuaded, however, that such disposition would occur within two years. For that reason I find it more appropriate to use a 50% distributive tax, giving a value at June 2, 1998 of \$909,000.

[42] Using this value and considering the factors set out in section 65 of the Family Relations Act, I note that the marriage was of 9 years duration. The cases recognize this as more than a short marriage. The current principal asset of the companies, however, was acquired at about the same time as the parties separated. The financial success or failure of the companies is essentially going to turn on the ability of Mr. Hancock to develop the PKI lands.

[43] I further note that the likelihood of Mr. Hancock being able to remain self-sufficient is heavily dependent upon his capacity to operate the Hancock companies. Related to this factor is the reality that Mr. Hancock has also personally covenanted a substantial obligation of Northmark Development Corporation, one of the Hancock companies. He is at substantial risk on that obligation.

[44] Having regard to these factors and the value of the shares at the date of the triggering event, I am satisfied that an equal division of the shares of the Hancock companies would be unfair. I am of the view that a fairer division would be to reapportion the interest in the Hancock companies 75% in favour of Mr. Hancock and 25% in favour of Mrs. Hancock.

[45] Mrs. Hancock has submitted that there should be a compensation order that would lead to the transfer of certain assets of the companies to her. In *Newson v. Newson* (1993) 78 B.C.L.R. (2d) 35 (C.A.), Hinds J.A. at para. 28 observed:

Where a spouse has an interest in the shares in a company which carries on one or more businesses to which the other spouse has made a direct or indirect contribution, thus establishing a claim of a family asset, then, in the absence of exceptional circumstances, the value of the interest in the shares in the company, rather than the value of the business of the company to which the other spouse has made a direct or indirect contribution, should be held to constitute a family asset. ...

If there is a power under the Family Relations Act to segregate assets out of a company into the hands of a shareholder, it is a power to be exercised sparingly.

[46] The Hancock companies are closely interrelated both structurally and operationally. It is also clear from *Blackett*, supra, that the family asset is the shares in the Hancock companies. While I recognize that what Mrs. Hancock has proposed is characterized by her as a compensation order, it is tantamount to segregating out particular assets of the Hancock companies, and I decline to do so.

[47] I now turn to the value of the interest in the Hancock companies acquired by Mrs. Hancock. That value is to be determined as at the date of the trial. The purpose for doing so in these proceedings is to determine what compensation Mr. Hancock may pay to Mrs. Hancock to avoid holding in trust for Mrs. Hancock 25% of his shares in the Hancock companies. In determining that value I recognize that Mrs. Hancock has submitted that Mr. Hancock has arranged the affairs of the companies to create an artificially low value at the time of the trial. In my view that submission is not established on the evidence.

[48] Mr. Blair valued the Hancock companies at May 10, 1999, at \$116,000 before distributive taxes and at \$96,000 after applying a 50% distributive tax. That value was based upon a valuation of the PKI lands of \$3,500,000. I have found the value of that land to be \$3,700,000. Recognizing this difference as well as the fact that there have been other debts incurred by the companies between May 10, 1999 and the trial I would assess the value of the Hancock companies at the date of trial as \$250,000.

[49] Although the value of Mrs. Hancock's interest would therefore appear to be \$62,500, I have concluded that a portion of Mr. Hancock's shareholder indebtedness should be attributed to Mrs. Hancock, who also benefited from these funds. That portion should be deducted from any amount that Mr. Hancock might pay to buy out Mrs. Hancock's interest in the companies. I determine the amount that Mr. Hancock should pay to purchase Mrs. Hancock's interest to be \$30,000.

[50] In my view the appropriate order to make is that Mr. Hancock will hold in trust for Mrs. Hancock 25% of his shares in the Hancock companies. The parties may apply to address the terms of the trust. Mr. Hancock will have 30 days in which to purchase Mrs. Hancock's interest in those shares at a price of \$30,000. With the consent of Mrs. Hancock that time period may be extended for a further 30 days.

The Registered Retirement Savings Plans [51] The parties have held RRSP's totaling \$242,652. \$56,822 was held in Mrs. Hancock's name, and she has disposed of that amount. Mr. Hancock holds \$185,830 in his name. Although Mr. Hancock has argued that the RRSP in his name should be apportioned in full to him, I am not satisfied that it would be unfair to hold that Mrs. Hancock should be entitled to one-half of the RRSP's. Each party will therefore be entitled to \$121,326. As a result, Mrs. Hancock will be entitled to \$64,504 of the RRSP's held in Mr. Hancock's name.

[52] To enable Mrs. Hancock to obtain her share, some deregistering of the funds in Mr. Hancock's RRSP may be required, and such disposition may give rise to tax obligations. Mrs. Hancock must bear the taxes and charges attributable to her share of Mr. Hancock's RRSP. If counsel are unable to agree on the arrangements necessary to achieve this, they may make written submissions on the issue.

Spousal support [53] Mrs. Hancock seeks spousal support from Mr. Hancock in the amount of \$3000 per month for a period of 12 months and \$1000 per month for an additional 12 month period with Mrs. Hancock's continuing need for support being subject to review after this 2 year period.

[54] Mr. Hancock opposes such an order on the grounds that Mrs. Hancock has suffered no economic disadvantage arising from the marriage, he has no ability to pay support to her, and Mrs. Hancock is intentionally under-employed and could be self-supporting.

[55] Mrs. Hancock is 52 years of age. She, her adult daughter and her infant grandson occupy rental accommodation at a monthly cost of \$1350. Mrs. Hancock left school in grade 11 and has worked almost continuously since 1963. From 1990 to 1995 Mrs. Hancock was employed by one of the Hancock companies and paid \$2000 per month. In my view the evidence is clear that the major responsibilities for maintaining the matrimonial home during the marriage rested with Mrs. Hancock. They included for periods of that time the care of her daughter from her first marriage and Mr. Hancock's daughter from his first marriage. Mrs. Hancock's role in the marriage was shaped in part, by the intense and consuming nature of Mr. Hancock's work as a developer and its impact upon her responsibilities at home.

[56] In 1997 and part of 1998 Mrs. Hancock was employed as a salesperson in a ladies' fashion business. Her earnings averaged between \$1100 per month in 1997 and \$1500 for 1998. Mrs. Hancock stated that she finds sales work to be stressful and that being on her feet all day is hard on her health. Mrs. Hancock resigned from that position and took part-time work in a mortgage brokerage business. She initially worked 4 hours per day and increased that to 6 hours per day in September 1999. It is her hope that the hours worked will increase by another hour per day in April 2000. She is paid the minimum wage, but it is her expectation

that her hourly rate will increase over time.

- [57] Mrs. Hancock's employer gave evidence at the trial and indicated that he hoped to increase Mrs. Hancock's hourly rate in December 1999. Mrs. Hancock is acquiring computer skills in her current employment and her employer stated that she is progressing and has potential as a long-term employee.
- [58] Mrs. Hancock has claimed expenses of \$4500 per month. Those expenses include payment on her credit card debt of \$300 per month and a contribution to her grandson's expenses of \$330 per month. Mrs. Hancock's daughter contributes \$478 per month toward expenses and has made other occasional contributions.
- [59] In making an order for interim spousal support July 24, 1998, Master Brandreth-Gibbs found that Mrs. Hancock should be able to earn a gross income of \$1200 per month. Interim maintenance in the amount of \$1000 was ordered on the assumption that the \$2000 per month being paid to Mrs. Hancock by the Hancock companies would continue. It has not.
- [60] At the trial it was Mr. Hancock's evidence that he had been unable to draw any salary from his companies since April 1999. Because the PKI lands project was stalled, no further loan proceeds were being advanced to the companies and a proposed investment arrangement was not proceeding because an accommodation with Mrs. Hancock could not be achieved. Mr. Hancock stated that he was unable to pay his staff and that other financial obligations of his companies were falling behind.
- [61] In his Property and Financial Statement of January 11, 1999, Mr. Hancock stated that his monthly employment income was \$7000 per month. This amount was paid by the Hancock companies from funds borrowed by the companies to carry out development of the PKI lands.
- [62] At the time of making a Property and Financial Statement in July 1998, Mr. Hancock was receiving \$7000 per month from his companies and in April 1998 he was receiving \$10,000 per month.
- [63] In his income tax return for 1995, Mr. Hancock declared an income of \$277,033. It appears that this amount included a substantial payment to pay down a shareholder loan owed by Mr. Hancock to his companies and to meet a related tax debt. In 1996 Mr. Hancock's declared income was \$150,000; in 1997 it was \$130,000.
- [64] In his January 1999 Property and Financial Statement, Mr. Hancock states his monthly expenses as \$6967, including a monthly legal expense bill of \$3000. He has stated that he is unable to meet these expenses and has borrowed from family members and friends to meet current obligations.
- [65] His counsel have argued that the Hancock companies have had no real income since 1993 and have existed on borrowed funds. For that reason, they submit that Mr. Hancock has also not had any true income since 1995 and that his "salary" from his companies has come from

these borrowed funds. They say further that, as of April 1999, all borrowed funds have been exhausted and that Mr. Hancock is personally heavily in debt. Because of this financial state and the position taken by Mrs. Hancock in relation to the Hancock companies, they say that Mr. Hancock is also unable to proceed with the PKI lands project. In the result, they submit that he has no ability to pay spousal support to Mrs. Hancock.

- [66] Mrs. Hancock's claim for support must be analyzed by reference to section 15.2 of the Divorce Act. *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, while recognizing that the factors set out in section 15.2 have an effect on both entitlement and quantum, suggests that it may be useful to consider entitlement first and then make any necessary adjustments through quantum, and I will do so.

At para. 35 of *Bracklow*, McLachlin J. stated: *Moge*, supra, [[1992] 3 S.C.R. 813], sets out the method to be followed in determining a support dispute. The starting point is the objectives which the Divorce Act stipulates the support order should serve: (1) recognition of economic advantage or disadvantage arising from the marriage or its breakdown; (2) apportionment of the financial burden of child care; (3) relief of economic hardship arising from the breakdown of the marriage, and (4) promotion of the economic self-sufficiency of the spouses. 15.2(6). No single objective is paramount; all must be borne in mind. The objectives reflect the diverse dynamics of the many unique marital relationships.

Against the background of these objectives the court must consider the factors set out in s. 15.2(4) of the Divorce Act. Generally, the court must look at the "condition, means, needs and other circumstances of each spouse". This balancing includes, but is not limited to, the length of cohabitation, the functions each spouse performed, and any order, agreement or arrangement relating to support. Depending on the circumstances, some factors may loom larger than others.

- [67] In considering these matters, it is my conclusion that Mrs. Hancock experienced an economic disadvantage arising from the marriage and its breakdown. That disadvantage relates to the nature of the employment she undertook during the course of the marriage and following the breakdown of the marriage. Prior to the marriage, within the limits of her education and experience, Mrs. Hancock held increasingly responsible positions. During the marriage she undertook responsibilities in the management of the family home and the periodic care of the two children of the parties' former marriages. She also worked for the Hancock companies for 5 years.

- [68] Shortly before the parties separated and the Hancock companies suffered an economic setback, Mrs. Hancock took employment that did not match the responsibility or income she had achieved prior to the marriage.

- [69] I do not accept the argument that after separation Mrs. Hancock deliberately placed herself in a position of under-employment in her current work. It is not unreasonable that she should seek employment that offers some scope for retraining and some prospect of continuing employment in the future. Mrs. Hancock recognizes that, if her current employment does not develop as she hopes, she will need to seek other employment.
- [70] In my view Mr. Hancock also gained an economic advantage from the contribution to the management of the family home provided by Mrs. Hancock during the course of their 9-year marriage.
- [71] The other two relevant objectives of relieving economic hardship and the promotion of the economic self-sufficiency of the spouses are intertwined in this case. This is so primarily because of the financial condition of the Hancock companies. In many respects Mrs. Hancock needs a bridge to self-sufficiency that will give her time to succeed in her present employment or find new employment, while Mr. Hancock needs an opportunity to utilize whatever financial resources he can muster to make a go of his development business.
- [72] In considering the factors set out in s. 15.2(4) of the Divorce Act, I am satisfied that Mrs. Hancock has demonstrated a need for financial support. Counsel for Mr. Hancock has argued that such support could come from Mrs. Hancock's daughter who should be paying more toward the cost of rent and food for their shared accommodation. While I do not think that Mr. Hancock has an obligation to contribute to the cost of caring for Mrs. Hancock's grandson, it must also be recognized that, if Mrs. Hancock did not share accommodation with her daughter, much of the expense incurred each month would remain for Mrs. Hancock to pay.
- [73] Mr. Hancock has had no income since April. His financial means must, however, be looked at over a longer term. Up to April 1999 he was receiving substantially more income than Mrs. Hancock and living at a standard higher than hers. If Mr. Hancock's businesses do not succeed one cannot conclude that he will be unable to obtain other employment. In my view it would be unreasonable to conclude that the very difficult circumstances Mr. Hancock is presently faced with should lead to a finding that he has no capacity to pay some spousal support. His earning capacity is greater than Mrs. Hancock's and I am satisfied that Mrs. Hancock has demonstrated an entitlement to spousal support.
- [74] Section 15.2(1) provides for the payment of both periodic and lump sum support. The only source of a lump sum payment is Mr. Hancock's RRSP. Mr. Hancock's ability to utilize that fund for his own purposes, however, may assist him in dealing with the financial problems related to his business and his own present lack of income. After considering all of these matters, it is my conclusion that Mr. Hancock should be required to pay Mrs. Hancock forthwith a lump sum of \$12,000 utilizing his RRSP as the source of that fund. If the parties cannot agree on the steps necessary to accomplish this, they may make written submissions on the appropriate means of securing the RRSP for this purpose. In addition, commencing June 1, 2000, Mr. Hancock must pay Mrs. Hancock spousal support of \$2000 per month for a

period of 6 months. Commencing December 1, 2000, he must then pay Mrs. Hancock spousal support in the amount of \$1000 per month for a period of 12 months. Mrs. Hancock should have reached a position of self-sufficiency at that point.

Application for sealing order [75] Mr. Hancock has applied under Rule 60D(36) for an order that his Property and Financial Statements filed in this action be sealed in an envelope so that no person may search the sealed documents without an order of the court. In support of the application he cites *Braich v. Braich* (1994), 34 C.P.C. (3d) 236 (B.C.S.C.).

[76] Mr. Hancock submits that the Property and Financial Statements contain substantial information about his finances and his corporate holdings that could affect his business operations.

[77] While *Braich v. Braich* was decided in reference to the then Rule 60A(15), Rule 60D(36) essentially replaces that rule. *Braich* recognizes the need for privacy in matrimonial proceedings in certain circumstances including where access to information in the registry file might assist a business competitor. I am satisfied that public disclosure of information in Mr. Hancock's Property and Financial Statements would be a hardship on him. For that reason there will be an order that the statements be sealed subject to any other application.

[78] Mr. Hancock also seeks an order that the reasons for judgment and other documents relating to the file refer to the parties and to all of the Hancock companies by their initials. No authority for such an order was submitted nor am I satisfied that the privacy concerns of Mr. Hancock have been demonstrated as requiring that level of confidentiality. I therefore decline to make this order.

Application for solicitor's lien [79] In an application made August 19, 1999, counsel for Mr. Hancock sought an order confirming their entitlement to a lien against the property of PKI Warehouse Park Corporation, one of the Hancock companies. A solicitor's lien is provided for in section 79 of the Legal Professions Act, S.B.C. 1998, c.9. At that time I declined to make such an order on the ground that section 79 applies to "property that is recovered or preserved as a result of the proceeding" and the proceeding at trial had not yet been completed. For that reason it was not possible to determine what property, if any, has been recovered or preserved.

[80] At the conclusion of the trial counsel for Mr. Hancock renewed their application. In the limited time available, counsel essentially referred to the submissions made August 19, 1999.

[81] As can be seen from these reasons for judgment, no property of PKI Warehouse Park Corporation has been directly recovered or preserved. The only property that has been in issue has been Mr. Hancock's shares in the Hancock companies. Even if it could be said that Mr. Hancock's shares in the Hancock companies have been "recovered or preserved", there remains a serious question of whether such a determination could be said to create any charge against the property of PKI Warehouse Corporation. Because the issue was not argued by counsel, I will permit written submissions to be made if counsel wish to pursue

the matter.

Costs [82] No submissions were made on costs. If counsel are unable to resolve the matter, they may speak to it.

"Ralph, J." Vancouver, British Columbia January 12, 2000

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