

CANADA / JUDGMENT

Huang v. Balchen

2023 BCSC 850

COURT

Supreme Court of British Columbia

DECIDED

19 May 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 850 Huang v. Balchen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Huang v. Balchen,

2023 BCSC 850

Date: 20230519

Docket: E210189

Registry: Vancouver

Between:

Liming Huang

Claimant

And

Jon Richard Balchen

Respondent

Before: The Honourable Mr. Justice Betton

Reasons for Judgment

Counsel for the Claimant:

S.K. Chen

Counsel for the Respondent:

M. Brandon

Y.Y.N. Gavrylko

Place and Dates of Trial/Hearing:

Vancouver, B.C.

March 20-24, March 27, 2023

Place and Date of Judgment:

Vancouver, B.C.

May 19, 2023

Table of Contents

Introduction.. 3

Background.. 3

Issues and Analysis.. 6

Surrey Property. 7

Chilliwack Property. 13

Toronto Property. 19

Investment Accounts. 20

Conclusions Regarding the Division of Property. 21

Spousal Support.. 21

Conclusions.. 23

Introduction

- [1] In this family law claim the parties seek orders regarding the division of family property and debt. In addition, the claimant seeks orders finding certain property to be excluded property, and for spousal support.

Background

- [2] The parties were not married. There are no children from their relationship.
- [3] The parties met in December 2011 and began living together in a marriage-like relationship on January 8, 2014. They separated on January 4, 2021.
- [4] The claimant is 53 years of age and the respondent is 52.

- [5] The claimant was unemployed when the parties met. She moved to Toronto from the United States in 2002. She owned condominiums in Toronto before moving to the Lower Mainland of British Columbia in 2010. At that time, she acquired a condominium in Richmond and retained ownership of two condominiums in Toronto. She sold one of those condominium, located on Young Street, in 2016. She sold the Richmond condominium in 2013. She continued to own the other Toronto condominium, located on Carleton Street, at the time of this trial ("Toronto property").
- [6] She acquired her real estate license in or about 2015. She generated her first income in that occupation in 2016.
- [7] The respondent was also not working when the parties met. He completed training as a "hearing instrument practitioner" in 2009. He opened his own hearing clinic in 2012, and operated it until 2022. He has been unemployed since it closed. The respondent was separated at the time the parties met and received monies from the sale of property associated with that marriage prior to January 8, 2014.
- [8] The parties kept separate bank and investment accounts throughout their relationship. Each has had balances in those accounts before, during, and after the marriage.
- [9] The claimant introduced account records into evidence. She testified that her only active accounts are with the TD Bank. The records from the TD are dated March 13, 2023 and indicate a line of credit for \$130,000.00 which she testified is secured by her Toronto property and a Visa debt of \$4,229.51. They also show investments with a balance of \$4,776.40 USD, apparently connected with five different accounts.
- [10] Other records reference an account with the TD that the claimant testified was closed January 8, 2020. Those records show significant activity between 2014 and January 2020, which the claimant says relates to her parents sending money from China.
- [11] Mr. Balchen had several accounts. At the date of cohabitation Mr. Balchen had \$34,823.57 in his TD Business Account. At the date of separation that balance was \$93,964.61, an increase of \$59,141.04 during the relationship.
- [12] At the date of cohabitation Mr. Balchen had \$20,497.68 in his TD Direct Investing Account, and \$804,075.00 at the date of separation. The balance at trial was \$335,345.59.
- [13] The parties decided to purchase property together in Surrey, British Columbia ("Surrey property"). Their marriage-like relationship commenced when they took possession and began residing on that property on January 8, 2014.
- [14] The Surrey property was registered in joint names. They lived there together until separation. After separation the respondent remained in the residence until October 2021 when the claimant obtained an order for exclusive occupancy.

- [15] During the relationship the parties also acquired, as joint tenants, a single-family dwelling with a rental suite in Chilliwack, British Columbia ("Chilliwack property"). That purchase was a "pre-sale" of the home prior to its construction. The purchase completed September 29, 2016.
- [16] A basement suite in the Chilliwack property has been rented, or for rent, continuously since December 2016. The upper floor has been rented, or been available for rent, since 2018. For a portion of the time between 2016 and 2018 the upper floor was occupied by the claimant's family when they visited from China.
- [17] On March 28, 2016 the claimant purchased a condominium unit on Kingsway in Burnaby, British Columbia. It was a pre-sale of a unit yet to be constructed. The purchase price was \$603,900.00. She paid a deposit of \$20,196.00 at that time. She completed the purchase on November 21, 2018, after construction was complete. The claimant was the registered owner. She sold the condominium in August of 2019 for \$713,452.66.
- [18] Aside from the ownership of the Surrey and Chilliwack properties, the parties' financial affairs have been almost entirely separate. The exception is some relatively minor day-to-day types of expenditures, which are not in dispute in these proceedings.
- [19] Appraisals of the Toronto, Surrey, and Chilliwack properties were entered as joint expert reports. They show the following appraised values:
- a) Surrey
 - i. As of January 30, 2023, \$1,200,000.00.
 - b) Chilliwack
 - i. As of January 4, 2021, \$1,115,000.00;
 - ii. As of January 30, 2023, \$1,350,000.00.
 - c) Toronto
 - i. As of January 8, 2014, \$450,000.00;
 - ii. As of January 4, 2021, \$705,000.00;
 - iii. As of February 27, 2023, \$800,000.00.

Issues and Analysis

- [20] Underlying the disputes as to the property division and the claims for excluded property are the parties' very different descriptions of their relationship.

- [21] The claimant describes a traditional type of relationship, although with little detail. She says that after the respondent agreed to purchase a home together, they proceeded to purchase the Surrey property. Thereafter, he worked in his business earning a good income and she looked after the home, including cooking and cleaning. She indicates, although modest, they did some travelling together.
- [22] She says that the purchases of the condominium on Kingsway and the Chilliwack property were her own investments.
- [23] The claimant says that certain of the property at issue in these proceedings is excluded property, pursuant to s. 85 of the Family Law Act. [FLA]. Specifically, she refers to each party's contributions to the down payment and completion funds for the purchase of the Surrey property, the deposit and all of the closing funds in respect of the Chilliwack property, and the condominium in Toronto which she owned prior to the commencement of the relationship.
- [24] The claimant argues, in respect of the family property, that there should be an unequal division.
- [25] The respondent denied that the parties were in marriage-like relationship, in the pleadings. At trial, however, he conceded that point. Despite the formal concession for the purposes of the FLA, he says it was much more like a roommate arrangement than a marriage. They each had areas of the home that were primarily their own, which they cleaned and maintained separately. They did not share a bedroom on a regular basis and did not socialize as a couple.
- [26] The respondent says they did share an interest in real estate investment and the Surrey purchase was the first step in pursuing that interest together. The purchase of the Chilliwack property was part of that joint venture. Generally, he says the intention was that each of them would recover from their real estate investments what they had put in and then divide any remaining interest.
- [27] He says the claims for excluded property in relation to the Surrey property and Chilliwack property have not been proved and that there should be an equal division of family property.
- [28] The FLA distinguishes between family property and excluded property. In relation to family property and family debt, the starting point is equal division with provision for unequal division to avoid significant unfairness.
- [29] The principle dispute here is in relation to the Surrey, Chilliwack and Toronto properties. The respondent makes no assertion that the Kingsway condominium was family property.
- [30] The parties both argue that each should retain their investment accounts without any division, although for different reasons.

[31] I will deal with each of the Surrey, Chilliwack and Toronto properties and the investment accounts individually. I will then provide my conclusions as to the global division of property.

[32] I will then address the claimant's claim for spousal support.

Surrey Property

[33] The Surrey property was placed in joint names and was the matrimonial home for the entire period of time the parties cohabitated. The purchase price was \$588,000.00. To complete the purchase a deposit in the amount of \$25,000.00 was paid, with a further amount of \$124,891.99 paid upon completion. The balance of the purchase price was paid from the mortgage proceeds.

[34] The claimant says she used funds from the sale of her condominium in Richmond for her contribution to the down payment. That contribution consisted of the down payment of \$25,000.00 and a further \$64,891.09 for the completion.

[35] The respondent says his contribution was from money he acquired in the division of assets following the separation from his former spouse. The respondent contributed \$60,000.00 to the completion funds.

[36] It is not disputed that the respondent paid the vast majority of the expenses, including the mortgage, utilities, taxes and insurance during the relationship. The claimant has paid all of the expenses associated to the Surrey property since she was granted exclusive occupancy on November 21, 2021.

[37] A ledger was created recording many, but not, all of the parties' separate contributions. It shows the parties' contributions to November 21, 2021 as \$103,833.84 by the claimant and \$329,567.62 by the respondent. The purpose and accuracy of that ledger as well as the timing and extent of the claimant's participation in its maintenance is disputed.

[38] The claimant says each party should receive their respective contribution to the down payment and then split the balance of what remains equally.

[39] The respondent says there should be no adjustments for their respective contributions; that there should be no finding of excluded property and the value should simply be split equally. His argument puts it this way:

20. The equity in the Surrey Property is therefore (approximately) \$833,440.

21. Given the lack of agreement between the parties, and given Mr. Balchen's overall greater contribution to the expenses related to the Surrey Property, Mr. Balchen submits that it would not be significantly unfair to divide the Surrey Property equally between the parties.

[40] His position as to the Surrey property is, however, linked to his position as to the Chilliwack property. As will be referred to in my analysis there, his position as to that property is justified, in part, on the basis of his greater financial contribution to the Surrey property.

[41] Section 85(1) of the FLA defines excluded property and includes the following:

Excluded property

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

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

...

(g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

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

[43] Given that the purchase occurred contemporaneous with the commencement of the marriage-like relationship, whatever the source of their respective contributions to the down payment, those funds had been acquired prior to the relationship.

[44] The Court of Appeal said this in *V.J.F. v. S.K.W.*, 2016 BCCA 186:

[1] In this appeal, we are asked to resolve a question of statutory interpretation arising under the 'new' Family Law Act, S.B.C. 2011, c. 25 ("FLA"), which came into force in March 2013. It adopts an "excluded property" model designed to "better fit with people's expectations about what is fair" and to make family law simpler and easier to understand than the previous "family purpose" model. (Ministry of Attorney General, White Paper on Family Relations Act Reform, July 2010, at 80-2.) The basic principle intended to be applied to the property of spouses on separation is that they "keep what is theirs". Most notably, with respect to property acquired by a spouse before the marriage, only the increase in value that accrues during the spouses' cohabitation is (presumptively) divisible under the Act. The rest is "excluded property" that is presumptively not divisible.

[45] In *Venables. v. Venables*, 2019 BCCA 281, the Court of Appeal described the categories of excluded property and family property. In defining them, the FLA recognized modern relationships are like a joint venture where there can be various forms of contribution while also addressing the fact a spouse may acquire property to which the other spouse did not contribute. The Act provides for judicial discretion to reapportion if not doing so would be "significantly unfair", as to each category.

[46] When transfers of excluded property occur the court said this, in part:

- [92] The FLA does not expressly address what to do in a situation where property that is in the category of "excluded property" changes ownership during the relationship, from one spouse to the other spouse, the issue at the center of this appeal.
- [93] Two questions arise under the FLA when ownership of excluded property is transferred from one spouse's name to the other spouse's name, solely or jointly, and remains in that form of ownership at the time of separation:
- a) first, does the "excluded property" become "family property", or does s. 85(1)(g) apply with the result that it continues to be excluded property; and,
 - b) second, if it does become family property, on relationship breakdown, can the origins of the property that previously made it excluded property be considered as a factor that might make it "significantly unfair" to divide the family property equally, justifying judicial reapportionment of the family property under s. 95?
- [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.
- [101] None of the above decisions suggest that the origins of the formerly-excluded property must be ignored when determining the question of whether it would be significantly unfair to divide family property equally.
- [47] In *Namdarpour v. Vahman*, 2019 BCCA 153 the Court of Appeal said this of the presumption of advancement:
- [40] 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.
- [48] There is no assertion of any specific agreement between the parties at the time of purchase regarding their contributions.

- [49] The claimant did not give evidence specifically as to her intent in relation to her contribution to the down payment. She did, however, testify that as she and respondent were considering living together, her belief was that they needed to own a home together. This is consistent with her description of the parties beginning their marriage-like relationship together. In her argument she put it this way:
39. . . . The Claimant states that it was her idea for the parties to purchase property together, as she wanted the Respondent to show commitment to the parties' relationship, especially because he had not yet legally divorced his ex-wife.
- [50] The respondent indicated the mutual intention was that the Surrey property was a joint investment. While conceding it was the start of the marriage-like relationship, he maintained that in fact the relationship was more centered on their mutual interest in investing. I do not find the respondent's proposition in relation to the Surrey property to be compelling.
- [51] The respondent says the parties met when he responded to the claimant's advertisement offering "escort services" and that it remained a "transactional relationship" for some time. His description of how the relationship morphed into the marriage-like relationship was very limited.
- [52] The respondent was unemployed at the time the parties met. He opened a hearing clinic in mid-2012, which became successful. By the respondent's own evidence that success was almost entirely the product of his finding an employee/subcontractor. In fact, he says that the principal reason the business was wound up in 2022 was the loss of that individual. While ultimately successful until that employee/subcontractor departed after separation, the evidence does not show the respondent's income as of January 2014 or in the early stages of the relationship.
- [53] The respondent had minimal savings, consisting of the \$20,497.68 in his investment account; \$34,823.57 in his business bank account; and the \$60,000.00 he received from the property settlement of his marriage. He was living in rental accommodation.
- [54] I am not convinced by the respondent's evidence that the relationship was formed by financial considerations or a mutual interest in investing. I accept that purchasing the Surrey property would have been viewed by him as an investment, but I find the decision to buy was made for the two to have a home together and begin their relationship.
- [55] On the whole of the evidence in relation to the Surrey property, I am satisfied that each party intended a gift when they made their respective contributions to the Surrey property purchase. As a result, I conclude that the claimant has not demonstrated the parties' contribution to the down payment should be treated as excluded property.
- [56] I turn to the question of whether equal division of this asset, when viewed in isolation, would be significantly unfair.

- [57] The claimant does not suggest that equal division would be significantly unfair. Her argument is limited to whether the contributions to the purchase price should be found to be excluded property.
- [58] As noted, the respondent says there should be an equal division but links that to his position in relation to the Chilliwack property.
- [59] It would not be significantly unfair to divide this property equally.

Chilliwack Property

- [60] The equity in this property is approximately \$1,000,000.00. I do note that, while the parties accept the appraisals, it is not clear that the parties agree on the mortgage balance.
- [61] It is not disputed that the claimant provided the whole of the down payment, including the initial deposit and the balance necessary to complete, totaling \$238,546.99. It is also not disputed that the source of those funds was from the sale of the claimant's Toronto condominium.
- [62] The evidence is she owned that property prior to the relationship. It sold in July 2016, and net proceeds to the claimant were approximately \$354,000.00. The respondent makes no assertion of any interest in that property.
- [63] The claimant says that the \$238,546.99 is excluded property.
- [64] In addition, the claimant argues that there should be an unequal division of the remaining equity. She states that, "an appropriate division, in recognition of the use of the Respondent's credit, would be 90/10 in her favour."
- [65] The respondent does not specifically address the claimant's excluded property claim. He acknowledges the source of the funds for the down payment.
- [66] He says the purchase was as furtherance of their joint interest in real estate investment that included the Surrey property. He does not take the position that any expectations he had regarding how the parties would share those investments rose to the status of an agreement for purposes of the FLA. Rather, he says those expectations are in keeping with the assessment of fairness in the division of the property that he seeks the Court to endorse.
- [67] He says that he paid the expenses associated with the Surrey property and that is why he did not contribute more financially to the Chilliwack property. He says he would never have put his name on the property if he was not a full partner.
- [68] The respondent summarizes his position as follows, in his written argument:

37. While Ms. Huang paid the downpayment, she also collected and kept the overage of the rental income after paying the mortgage and taxes. Given Mr. Balchen's significantly greater contribution to the expenses related to the Surrey property, Mr. Balchen submits it would not be significantly unfair to divide the Chilliwack Property equally between the parties.
- [69] I will first address the claimant's excluded property claim in relation to the down payment on the Chilliwack property, totaling \$238,546.99.
- [70] There is limited evidence that is directly relevant to assessing the intention of the claimant. Much of the evidence regarding the purchase, ownership and management, while helpful in assessing whether equal division would be significantly unfair, is neutral on this point.
- [71] The claimant testified that her intention was to retain the down payment as excluded property. As noted above, she says the entire investment was always intended to be hers alone.
- [72] The Chilliwack property was placed into joint names. The parties provide conflicting evidence as to why that occurred.
- [73] The claimant says she searched out and identified the property as an investment that was always intended to be hers alone. She says she paid all of the expenses, collected all of the revenues from rental and arranged for tenants. She says the only role the respondent had was assisting in obtaining more favourable mortgage terms; that is, the placement of the property in joint names was to take advantage of the respondent's credit to obtain better financing rates.
- [74] The respondent says the property was placed into joint names because it was always intended to be a joint investment. He says he was fully engaged in the search for the property generally, the selection of the specific property, monitoring the construction and the inspection on completion. He does not suggest he contributed to the purchase or the costs of ownership or retention of the property. He did testify that he assisted with costs of furnishings, including a TV and a couch.
- [75] The relevance of the joint ownership is further informed by how other real estate purchases were owned during the relationship.
- [76] As discussed above, the Surrey property was also placed into joint names but both parties contributed to the down payment and it was to be the family home acquired contemporaneously with the start of the marriage-like relationship.
- [77] The claimant purchased and briefly held an additional property on Kingsway in Vancouver, during the relationship. This was purchased in the claimant's name alone. The respondent says that was because it was her investment and it was of no interest to him. That property was not the subject of any claims in this proceeding.

- [78] It is my conclusion that placing the property in joint names is consistent with the intention that the property be a joint investment, but is neutral as to the claimant's intention to transfer the down payment.
- [79] The respondent testified that the claimant was very concerned about keeping finances separate going into the relationship. That concern would be consistent with the claimant's stated intention that the down payment remain excluded property.
- [80] The respondent placed a ledger in evidence that he testified was created to track the party's contributions to the purchase and retention of the Surrey property. He says the claimant was active in reviewing the ledger in relation to the Surrey property. She denies this proposition.
- [81] The respondent says that he assumed the claimant had created and maintained a similar document in relation to the Chilliwack property. There is no evidence of any such ledger actually being created or maintained or even being discussed.
- [82] The respondent testified that the intention was that each party would ultimately recover their respective contributions as per the ledgers and any residual values would be shared equally. Again, if true, this would be consistent with the claimant's down payment on the Chilliwack property remaining excluded property.
- [83] As to the truth of the respondent's assertions about the ledger(s), it is at least curious that he would not have ever actually confirmed the existence and accuracy of any ledger in respect to the Chilliwack property at any point after its purchase. Why would he not have made efforts to make entries in that ledger as he suggests was occurring in respect of the Surrey property? There was no evidence he did so or that he even raised the subject with the claimant.
- [84] Instead, he describes having made some entries into the Surrey property ledger that related to the Chilliwack property. If the Surrey ledger was a matter of joint effort of parties and he presumed that a similar ledger was being maintained in respect of the Chilliwack property, there would be no reason to make entries into the Surrey property ledger that related to the Chilliwack property. It also defies logic that he would not monitor the expenses in respect of contributions to the Chilliwack property.
- [85] Further, if the plan was as described by the respondent and the claimant had been aware of the ledger for the Surrey property and was focused on tracking those expenses, logic would suggest she would in fact have had a ledger for the Chilliwack property.
- [86] Generally, the evidence supports the claimant's contention that the down payment was intended to remain excluded property. I find the respondent's evidence as to the ledgers less than compelling.
- [87] On the whole, I am satisfied the claimant's intention was that the contribution to the purchase price was not a gift or otherwise intended by the claimant to be transferred to the respondent and become family property and that it remains excluded property.

- [88] I turn next to the assessment of the question of the division of this property.
- [89] As described above, I have very different and conflicting evidence as to the respondent's level of involvement, if any, in relation to the purchase process of the Chilliwack property. The parties' descriptions are irreconcilable. I find it difficult to resolve those conflicts in the evidence. There is no independent evidence.
- [90] The post-purchase use and contribution evidence in relation to the Chilliwack property is also conflicting and difficult to resolve. The parties agree the basement was always rented and that for a period of time the upstairs was occupied by the claimant's family. The respondent says he stayed at the property for brief periods, which the claimant denies. At most the respondent used the property on a very limited basis before it was fully rented.
- [91] The respondent made no direct financial contributions to the maintenance or retention of the property. His assertion that this was justified on the basis of his payment of expenses in respect of the Surrey property is logical, but I do not find it was the product of any deliberate plan by the parties. The respondent, through counsel, concedes that there is no agreement for purposes of the FLA.
- [92] The standard of significant unfairness is described in *Jaszczewska v. Kostanski*, 2016 BCCA 286:
- [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).
- ...
- [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.
- [93] In relation to the considerations outlined in s. 95(2) of the FLA, I note that subparagraphs (d), (e), (f), (g) and (h) have little application in the circumstances here.
- [94] The relationship was approximately seven years in duration.
- [95] Further, there was little, if any, contribution by either spouse to the career or career potential of the other.
- [96] The assessment of whether equal division would result in significant unfairness is not a process of measuring or calculating each party's contributions.
- [97] In *Rana v. Ullah*, 2022 BCCA 192 the Court of Appeal made these comments:
- [44] Thus, s. 95 ensures there are persuasive reasons for unequal division, but preserves the trial judge's discretion to consider any factor that contributes to significant unfairness. In the family law context, legal principles assist the judge to reach an outcome that is reasonable and fair to both parties and evidence is not compartmentalized in a mechanical fashion, rather it is considered globally: *Zilic v. Zilic*, 2021 BCCA 107 at para. 34.
- [98] Even when considered in conjunction with the Surrey property, I conclude that an equal division would be significantly unfair. Again, he and the claimant gave very different versions of what occurred. Even accepting what he says occurred, he made no direct financial contribution at any point in time and minimal other contributions. I have very little evidence as to the costs of retention and maintenance or the revenues in relation to that property. I find that, but for the joint ownership, the property was treated by both parties as the claimant's investment property.
- [99] The claimant suggests that a ten percent entitlement would be fair.

- [100] It is difficult to assign a proportion that can be rationalized in any concrete way or explained by calculation. I do not know if the claimant would have completed the purchase or how much the costs of ownership would have changed, had the respondent's credit not been available to obtain more favourable mortgage terms.
- [101] Having regard to all off the evidence, including the respondent's evidence of his involvement in the purchase, I conclude that, after the excluded property component of \$238,546.99, the respondent should receive 30 percent of the residual net value.

Toronto Property

- [102] This property was owned by the claimant prior to the parties' relationship and is registered in the claimant's name alone. The respondent does not dispute that the value, less any debts registered against it at the time the relationship began, should be treated as excluded property. The evidence of debt attached to the property is limited to the claimant's 2021 form F8 which indicates a mortgage of \$20,000.00. Neither party addressed the debt in their submissions, and given its very limited amount and the absence of evidence of how that amount may have changed over the course of the relationship, my conclusions that follow will address the net value.
- [103] The claimant says that there should be an unequal division and the increase in value during the relationship should be hers alone.
- [104] The respondent's submission is limited, saying only that the change in value should be divided between the parties.
- [105] The respondent's evidence is that he knew little of the Toronto properties generally. There is no evidence he played any role in the ownership, management, or financial maintenance of the Toronto property. There is no suggestion that the claimant's ownership of the Toronto property in any way influenced or affected the other financial affairs or decisions made by the parties.
- [106] It would be significantly unfair to divide the increase in value of the Toronto property equally and it is my conclusion the increase in value should go entirely to the claimant.

Investment Accounts

- [107] The final property that requires a ruling in these proceedings are the parties' investment accounts.
- [108] Thus far I have dealt with the issue of division of family property and significant unfairness looking at each individual asset.
- [109] The dispute in relation to these accounts, based on the parties' positions at trial, is limited. Those positions also provide a convenient segue to address the assessment of significant unfairness, viewing the disputed property as a whole.

- [110] The claimant's position as to the investment accounts is summarized in her written argument as follows:
100. The TD investments consist of money that the Respondent earned during the relationship and is prima facie family property. However, as already noted, the parties kept separate finances and managed their own assets throughout the relationship. If the Claimant's Toronto Condo and the Chilliwack Property are reapportioned to her as sought, the Claimant does not seek a share of the gain in value of the Respondent's investments.
- [111] The respondent does not argue that a different result is appropriate, although his rational is different. The respondent says that the claimant has failed in their financial disclosure obligations and says that:
61. In light of Ms. Huang's non-disclosure of her financial assets, Mr. Balchen submits that each party should retain their own investments and banking accounts for their own use absolutely.
- [112] It is my observation, having reviewed the claimant's testimony and the exhibits at trial, that it is difficult to determine the value of her investment accounts at the relevant points in time. From her testimony and documents entered into evidence, it can be concluded that significant monies from family in China were acquired by her during the relationship.
- [113] Generally, the evidence suggests that the claimant's investments may have been of a similar value to those of the respondent.

Conclusions Regarding the Division of Property

- [114] The assessment of whether the equal division of family assets and debts would be significantly unfair requires, in addition to looking at individual assets, a global assessment. I have provided my conclusions with respect to the Surrey property, the Chilliwack property and the Toronto property individually.
- [115] Here, proceeding on the basis of the parties retaining their investment accounts and considering my analysis of the Surrey property, the Chilliwack property and the Toronto property, arguments regarding significant unfairness are properly resolved by dealing with each of the individual properties as described above. For clarity, the division of each as described above when viewed globally addresses any issues of significant unfairness.

Spousal Support

- [116] There is no contractual basis for entitlement to spousal support.
- [117] The claimant acknowledges entitlement on a compensatory basis is also difficult to establish. There is no evidence that the claimant gave up any pursuit of a career as a result of the marriage. In fact, she obtained her real estate license and pursued that as she chose to. She was also able to pursue her financial and property investment objectives.

- [118] The respondent had his business. Despite differing descriptions of their roles in and the nature of the relationship, I do not find that the claimant's activities in the relationship enhanced the respondent's pursuit of his income-earning capacity.
- [119] The respondent says entitlement on a compensatory basis has not been established and I agree.
- [120] I turn next to the non-compensatory or needs basis.
- [121] I must take into account the division of property and debt set out above, including the claimant's retention of revenue property in Toronto and, at least potentially, the Chilliwack property.
- [122] I do note in this regard the claimant has not fully disclosed, or placed into evidence at least, all of the details of the Toronto and Chilliwack rental arrangements and financing. She testified that rents for the Chilliwack basement suite are currently \$1,600.00 per month. She introduced into evidence a tenancy agreement for the upstairs unit which indicates rent of \$2,395.00 per month ending January 31, 2020, although I did not get clear evidence that is the current rent. She testified that mortgage payments are \$2,300.00 per month, taxes are \$4,900.00 per year, and insurance is \$1,970.00 per year. If that remains the case, the net monthly income is approximately \$1,123.00 per month before any maintenance costs.
- [123] In relation to the Toronto property, the claimant testified she receives \$3,650.00 per month for rent. She produced a 2021 tax bill of \$2,951.21, but little else. The evidence available to me is not sufficient to calculate or even reasonably estimate what the net monthly income would be. She is the only party in a position to provide clarity on the issue.
- [124] She has not proved entitlement to spousal support on a non-compensatory basis.

Conclusions

- [125] The value of the Surrey property is to be divided equally.
- [126] In relation to the net value of the Chilliwack property, the claimant is entitled to retain the sum of \$238,546.99 as excluded property. The balance is to be divided 70 percent in favour of the claimant and 30 percent in favour of the respondent.
- [127] The claimant is entitled to retain 100 percent of the value of the Toronto property.
- [128] It is my conclusion that, given the division of property as set out above, and the fact that the claimant has income from rental properties in Toronto and Chilliwack, there is no entitlement to spousal support.
- [129] Accordingly, the claim for spousal support is dismissed.
- [130] The claimant indicated a desire to retain the Surrey property. In her argument she requested 90 days from the date of my decision to purchase the respondent's interest.

- [131] In the circumstances, I will require the parties to provide the Court with additional submissions regarding the manner in which this decision should be implemented. This will include calculation of any payments required as between the parties and, if applicable, the time within which the claimant may be able to arrange to purchase the respondent's interest in the Surrey property.
- [132] It may be that the parties can arrive at a consensus on such matters. Counsel should advise, through Supreme Court Scheduling, within 30 days of the release of this decision as to whether they seek to make additional submissions on any issues related to implementation of this decision.
- [133] In light of the conclusions, I make no order as to costs at this time. I would similarly direct that the parties advise Supreme Court Scheduling within 30 days of the release of this decision if they wish to appear to make submissions as to costs.

"Betton J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/08/2023BCSC0850.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/huang-v-balchen-2023>

Prepared on 29 October 2026 · Esheria