

CANADA / JUDGMENT

Hutter v. Hutter

2023 BCSC 1975

COURT

Supreme Court of British Columbia

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2023 BCSC 1975 Hutter v. Hutter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hutter v. Hutter,

2023 BCSC 1975

Date: 20231116

Docket: E64263

Registry: New Westminster

Between:

Chad Alexander Hutter

Claimant

And

Danielle Nicole Hutter

Respondent

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

The Claimant, appearing in person:

C. Hutter

The Respondent, appearing in person:

D. Burgess

Place and Dates of Trial:

New Westminster, B.C.

September 10 - 13, 2023

Place and Date of Judgment:

New Westminster, B.C.

November 16, 2023

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I. Introduction

- [1] These reasons result from a family law trial between the claimant, Chad Alexander Hutter, and the respondent, Daniel Nicole Hutter, who now uses the name Danielle Burgess. The parties began living together in a marriage-like relationship in March 2014. They formally married on April 20, 2021, in Langley, British Columbia, and separated on June 30, 2021. The duration of the marriage-like relationship was seven years and four months. There are no children of the marriage.
- [2] The parties represented themselves at trial and did an admirable job in presenting their arguments. However, there are several instances in which they have failed to provide proper valuations of the assets or debts. As such, my task of dividing the property has been made more difficult. As I will discuss below, some asset and debt values are agreed to by the parties. Where there is no agreement, I have taken the evidence before me and made best efforts to assess the asset and debt values to provide, what I view to be, an equitable result for the parties, who clearly wish for resolution of the litigation and to move forward with their lives.
- [3] There are essentially three issues before me for determination:
- a) Divorce: have the requirements of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp), been satisfied such that the court may grant an order for divorce?
 - b) Property Division: should the parties' assets and liabilities be divided and, if so, how?
 - c) Spousal Support: should the claimant be required to pay spousal support to the respondent and, if so, in what amount and for what duration?

- [4] The majority of the trial was devoted to the parties' arguments regarding the appropriate division of assets and debts. In order to resolve the division of property issue, I must determine what, if any, of the parties' property should be excluded from being considered family property. As I will describe below, the two most contentious assets are a recreational condominium located at Sun Peaks, British Columbia (the "Sun Peaks Condo") and the four horses owned by the parties (the "Horses").
- [5] The respondent contends that the Sun Peaks Condo was an investment property she purchased and owned with her father and was never intended to be considered family property. The claimant asserts that he and the respondent lived together for two years at the Sun Peaks Condo and continued to use it as a recreational property and rental investment property during their marriage. As such, he argues he is entitled to a share of the asset as family property under the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [6] In respect of the Horses, the parties' shared an interest in raising and training horses during the relationship. The respondent's interest in horses was both personal and professional, while the claimant's was largely personal. When the parties separated, they divided up ownership of the Horses. The value of the Horses is now hotly contested. To determine the value of the Horses, I was provided with what the parties considered to be "expert" valuation reports. Unfortunately, neither of these competing "expert" reports conformed with proper expert report requirements under the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] or the FLA. I will address the valuation of the Horses when I consider the parties' claims for division of family property and debt.
- [7] The respondent claims spousal support on the basis that she married the claimant believing he would provide for her financially. In doing so she sacrificed career options and financial security. She says that an award of spousal support both prospectively and retroactively to the date of separation is appropriate because she is in significantly disadvantaged economic position as compared to the claimant as a result of the breakdown of the marriage.
- [8] In these reasons for judgment, I will first set out some background facts for context and then turn to my analysis and determination of the issues.

II. Background Facts

A. The Parties and the History of the Relationship

- [9] The claimant is currently 35 years old. He holds a Bachelor of Commerce degree and certificates and licenses for real estate. He is currently employed as a strata property manager for SM Quay Pacific Property MGMT headquartered in New Westminster, British Columbia.
- [10] The respondent is currently 30 years old. She is originally from Ontario where, as a teenager, she owned, rode and trained horses extensively and studied to be a power engineer technician.

- [11] The parties met in Collingwood, Ontario, and began dating when the respondent was 17 and the claimant was 22. At that time, the claimant was somewhat established in his career, and the respondent was taking courses at Georgian College towards a diploma in Power Engineering Technology. She completed the course work, however, in order to obtain certification she was required to complete an internship and field placement, and complete licensing tests. As I understand the evidence, she completed her internship and field placement, but was unsuccessful in completing all of her exams. As such, she is not a certified power engineer technician. I will discuss the parties' incomes and earning capacities in my analysis of spousal support below.
- [12] As I understand the evidence, the respondent moved to British Columbia and the parties began living together in marriage-like circumstances in March 2014. They separated in June 30, 2021. In respect of the separation, as I understand from the parties' evidence and submissions, there remains animosity regarding the circumstances of the breakdown of the marriage, which I will, in general terms, reference below in my analysis of spousal support.

B. The Blue Mountain Condo and the Sun Peaks Condo

- [13] The respondent testified that in 2010 her grandmother passed away and left her \$40,000 as an inheritance. The respondent, her father, Michael Burgess, and her mother, Gail Burgess, used that inheritance to jointly purchase a recreational condominium located at Unit 26, 796904 Grey Road 19, Town of the Blue Mountains (the "Blue Mountain Condo"), at a ski resort in Ontario.
- [14] On July 28, 2014, the respondent and her father purchased a recreational property located at 24-6005 Valley Drive, Sun Peaks, British Columbia (previously defined as the "Sun Peaks Condo") for \$154,000. To fund the purchase, the respondent and her father used the proceeds from the sale of the Blue Mountain Condo. As I understand the evidence, the mortgage from the Blue Mountain Condo was "ported" to the Sun Peaks Condo. The respondent and her father continue to own the Sun Peaks Condo as joint tenants and the claimant is not on title. Mr. Burgess testified at the trial that he has only ever visited the Sun Peaks Condo once.
- [15] The parties commenced living in the Sun Peaks Condo in September 2014 and lived there for approximately two years while they worked in Kamloops. It is accepted that during those two years the respondent paid the mortgage for the Sun Peaks Condo. However, the claimant paid for most or all other expenses for the respondent because he earned a significantly larger income than the respondent.
- [16] After two years, the parties moved to Langley, British Columbia and purchased a home there. During the marriage they continued to rent out the Sun Peaks Condo for short term rentals and also used that property for recreational purposes. I was provided with evidence that the current mortgage registered on title to the Sun Peaks Condo at the time of trial is \$85,122.51.

C. The Family Home and Mortgage

- [17] As just referenced, after leaving the Sun Peaks Condo, the parties purchased a home as joint tenants at 3083 268th Street, Langley, British Columbia (the "Family Home"). The parties lived in the Family Home until the breakdown of their marriage on June 21, 2021, when the respondent moved out. The claimant continues to live at the Family Home and has paid the expenses for the Family Home since that time.
- [18] The claimant provided me with an appraisal of the Family Home dated August 31, 2023, prepared by Benjamin Lowther of Westech Appraisal Services, Ltd. Mr. Lowther appraised the Family Home at \$580,000 (the "Home Appraisal"). While the appraisal was not prepared as a jointly commissioned appraisal as required under Rule 13-6(2) of the Rules, the respondent accepts that the appraisal of the Family Home is accurate for the purpose of this trial.
- [19] There is currently a mortgage on the Family Home from the Bank of Nova Scotia in the amount, as of August 28, 2023, of \$293,243.90 (the "Home Mortgage").

D. The Horses

- [20] As mentioned above, the parties shared an interest in raising horses. During the relationship the parties had four horses: Iocane, Andorra NL, Pandora's Charm and Moe (previously defined collectively as the "Horses").
- [21] Immediately after the parties separated, the respondent sold Moe for \$10,000. She says she was required to do so because she was in financial difficulties and could not afford to maintain that horse, and needed the money to survive and care for the other horses. The claimant seeks \$5,000 as his half-share of the proceeds from the sale of Moe. Of the other three horses, the respondent kept two, Andorra NL and Iocane, and the claimant kept Pandora's Charm. As the valuation of the Horses is a central issue in the division of property at this trial, I will return to that issue below in my analysis.

III. Analysis and Determination

A. Divorce Order

- [22] The parties seek an order of divorce. Sections 8, 10 and 11 of the Divorce Act set out requirements that must be satisfied before the Court will grant a divorce. I am satisfied based on the testimony of the claimant at trial--which was accepted by the respondent--that the requirements of the Divorce Act to grant a divorce have been satisfied. Specifically, the claimant provided the following testimony:
- a) the parties began living in marriage-like circumstances in March 2014 and were formally married on April 21, 2021, in Langley, British Columbia;

- b) the parties have been living separate and apart since June 30, 2021, which is more than one year;
 - c) there is no collusion in relation to the application for divorce and the parties are not seeking the divorce for any improper purpose or on false evidence; and
 - d) there is no chance that the parties will reconcile.
- [23] Further, at trial, the parties presented a Clearance Certificate issued by the Central Registry of Divorce Proceedings confirming there are no other divorce proceedings involving the parties.
- [24] Given the foregoing, I order that, pursuant to s. 12(1) of the Divorce Act, the parties are divorced with the divorce taking effect on the 31st day after the issuance of this order.

B. Division of Property

- [25] The primary and most contentious issues at trial relate to the division of the parties' property. The issues may be divided into six general categories: the Family Home, the Sun Peaks Condo, the Horses, the investments, the vehicles, and the division of family debt. I will address each of these categories, but before doing so, I will provide a brief overview of the legal framework in respect of the division of assets and debts under the FLA.
- a) Legal Principles - Property Division
- [26] The presumption under the FLA is that the parties have an equal entitlement to family property and are equally responsible for the family debts:
- 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.
- [27] Under the FLA, family property includes many types of assets, while certain kinds of property are excluded. Pursuant to s. 84(2)(g) of the FLA, family property includes the amount that an excluded asset has appreciated during the relationship.
- [28] Under s. 85 of the FLA, the party claiming that property is excluded from family property bears the burden of proving the exclusion:
- 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;

(b.1) gifts to a spouse from a third party;

(2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[29] As a result of s. 85, property acquired by a spouse before the marriage-like relationship between the spouses commenced is excluded, but the party alleging that the property is to be excluded must demonstrate that it is, in fact, excluded property.

[30] Additionally, while an equal division of family assets and debts is presumed, under section 95(1) of the FLA, a court may reapportion the value of these items if, on the facts of a case, equal division would result in significant unfairness:

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].

[31] Section 95(2) of the FLA sets out a number of factors the court may consider when determining whether it would be significantly unfair to divide the property equally.

[32] Under s. 87 of the FLA, absent an order or agreement otherwise, the presumptive date for the valuation of a family property is the date of the trial. Further, s. 87 provides that the value of family property must be based on its fair market value. I pause to note that, in this case, the parties advised the court that they were satisfied that the appraisals of the Sun Peaks Condo and the Family Home accurately assessed the value of those properties.

b) Family Home

[33] As set out above, the parties purchased the Family Home in 2018 as joint tenants and agree that for the purposes of this trial, the value of the Family Home is \$580,000.

[34] The claimant argues that he has paid the expenses on the Family Home since separation; a period of approximately 27 months. He contends that the Family Home should be unequally divided to recognize his contribution. He also argues that when the parties purchased the Family Home, it was undergoing a significant renovation and was not livable. He argues that since separation its value has appreciated significantly and it would be unfair for the parties to share that appreciation equally.

[35] The respondent asserts that there is no basis to depart from the principle under the FLA that the equity in the Family Home should be divided equally.

- [36] In my view, there is no basis to stray from the presumption imposed by the FLA that the equity in the Family Home should be divided equally between the parties. While the claimant has paid the expenses related to the Family Home since separation, he has also had the opportunity to live there. The respondent, on the other hand, has been required to find her own accommodation with its associated expense.
- [37] I find no significant unfairness that requires the Family Home be divided in any manner other than equally between the parties. As such, I order that the parties are entitled to an equal share in the equity of the Family Home. As I understand the evidence, at the date of trial, the mortgage was \$293,243. Unless the parties seek to have that amount varied before me, or if the parties decide they will sell the Family Home and divide the equity, I calculate the equity in the Family Home as at trial is \$286,757. Accordingly, each party is entitled to the amount of \$143,378.50.
- [38] At trial, the claimant indicated he would like to stay in the Family Home if his financial situation allowed him to purchase the respondent's share. I will leave it to the parties to determine how they will make the net equalization payments. If the parties are unable to agree, they may make arrangements through Supreme Court Scheduling to appear before me to clarify this order or make additional orders to assist in the division of family property.
- c) Sun Peaks Condo
- [39] As set out above, the contract of purchase and sale for the Sun Peaks Condo is dated July 28, 2014. Title to the Sun Peaks Condo has always been in joint tenancy between the respondent and her father, Mr. Burgess. As such, the respondent holds only a 50% interest in the Sun Peaks Condo.
- [40] The purchase price of the Sun Peaks Condo was \$154,000 and was paid by the respondent and her father. The respondent's evidence was that the money used for the purchase of the Sun Peaks Condo was from the sale of the Blue Mountain Condo she, her father and her mother owned in Ontario that itself resulted from an inheritance from her grandmother. She testified that it was never her intention that the Sun Peaks Condo would become family property in her marriage.
- [41] The evidence at trial was that the parties began living together in the Sun Peaks Condo in late 2014. As a starting point, I accept that the Sun Peaks Condo was purchased by the respondent and her father with the proceeds of the Blue Mountain Condo that was itself excluded property. As such, I conclude that pursuant to s. 85(1)(b) of the FLA, the value of the Sun Peaks Condo at the time of its purchase of \$154,000 is excluded property.
- [42] The claimant argues that there is no basis for unequal division of the value of the Sun Peaks Condo because the parties resided there for two years, used it for a recreational property for years after and he paid for most of its related expenses. I accept that the Sun Peaks Condo was a home to the parties for two years during their relationship and both a recreational property and source of rental income to them for the remaining five and half years of their

relationship. Mr. Burgess testified that he did not contribute to the maintenance of the Sun Peaks Condo, however, he always maintained ownership on title.

- [43] Further, I note that the respondent has now raised an issue of how the funds from renting the Sun Peaks Condo were accounted for during the relationship by the claimant. During the relationship, the claimant managed the nightly rentals of the Sun Peaks Condo. He managed the Airbnb website rentals and collected the funds. It appears that since separation, the respondent and her father have taken issue with the claimant's collection and accounting of the income from the rental of the Sun Peaks Condo. The respondent and Mr. Burgess have filed a small claims action against the claimant in the Provincial Court of British Columbia for "unaccounted income for the rental property owned by Danielle Burgess and Michael Burgess". The claim is for \$35,000, the maximum allowed under the Small Claims Court Monetary Limit Regulation, B.C. Reg. 179/2005. While this claim indicates that the respondent and Mr. Burgess are displeased with what they say was a non-transparent accounting of the rental revenue from the Sun Peaks Condo, it also, to my thinking, demonstrates that the claimant was significantly involved in managing the property during the marriage.
- [44] As set out above, s. 84(2)(g) of the FLA provides that family property includes the amount by which the value of excluded property has increased since the date the marriage-like relationship between the spouses began. In my view, it is clear that when the Sun Peaks Condo was purchased it was excluded property. Further, the claimant would only ever have a claim to half of the respondent's half interest in the Sun Peaks Condo, because she owns it jointly with her father, Mr. Burgess. As such, the claimant's maximum interest in the Sun Peaks Condo is 25% in the appreciation during the relationship.
- [45] The best evidence before me is that the value of the Sun Peaks Condo at the time the relationship began was its purchase price of \$154,000. The parties agree that a fair valuation of the property now is \$489,000. As such, I find that 50% (representing the respondent's 50% interest) of the \$335,000 appreciation in the value of the Sun Peaks Condo ($(\$489,000 - \$154,000) \times 50\%$) is properly considered family property, being \$167,500. Of that, the claimant's interest in the respondent's 50% interest in the Sun Peaks Condo totals \$83,750 ($\$167,500 \times 50\%$).
- [46] I find no reason to divert from the presumption of equal division of the portion of the Sun Peaks Condo that is family property. In other words, I do not find it would be significantly unfair to order that the claimant is entitled to \$83,700 of family property related to the Sun Peaks Condo. The evidence supports that the parties lived in the Sun Peaks Condo for two years immediately after it was purchased. Following that period, they used it as a recreational property and to generate rental income. The parties contributed to the property's upkeep and maintenance during their relationship. Indeed, the focus of the small claims action initiated by the respondent and Mr. Burgess against the claimant supports that the claimant was very involved in the rental activities of the Sun Peaks Condo--even if it is now alleged that he did so in a manner that has offended the respondent.

[47] I was provided with evidence that the mortgage on the Sun Peaks Condo at September 2023, was \$85,122.51. As I understand the testimony of the respondent, that mortgage was "ported" from the Blue Mountain Condo. The claimant shall be responsible for 25% of the mortgage being \$21,280.63 ($\$85,122.51 \times 25\%$). By my calculation this results in the claimant's entitlement from the Sun Peaks Condo as \$62,469.37 ($\$83,750 - \$21,280.63$). Again, if the parties have concerns settling the details of my order, they may make arrangements through Supreme Court Scheduling to appear before me for that purpose.

d) The Horses

[48] As referenced above, much of the trial concerned the value of the Horses and how that value should be apportioned between the parties. I will now turn to the specific circumstances of each of the horses: Moe, Iocane, Andorra NL, and Pandora's Charm.

i. Moe

[49] The parties accept that Moe was purchased by the parties during the relationship. As such, pursuant to s. 85 of the FLA, unless ordered otherwise or other circumstances exist, Moe is properly considered family property. On June 30, 2021, very soon after the parties separated, the respondent sold Moe (a.k.a. Diamante) to Kaitlyn Dance for \$10,000. The respondent testified that she sold Moe quickly because after the parties separated she needed money to pay for expenses, and could not afford to maintain paying the expenses related to Moe. The claimant says, as Moe was a family asset, he is entitled to half of the sale price and seeks \$5,000 for his share of the proceeds from the sale of Moe.

[50] I conclude that Moe was a family asset that was liquidated by the respondent at the time of separation. As such, the claimant is entitled to a share of the sale proceeds from Moe. However, as I find with all of the Horses, in my view, although the claimant contributed financially to the maintenance and care of the Horses, the respondent, through her specific training and experience, made a far greater contribution to the value of the Horses such that it would make it significantly unfair to distribute the equity in the horses equally between the parties.

[51] Section 95(2) of the FLA provides a list of factors which can ground a finding of significant unfairness. The list is non-exhaustive and, pursuant to s. 95(2)(i), the court may consider any factor that may lead to significant unfairness. Compared to its predecessor, s. 95(2) demonstrates some constraint by the Legislature on the judicial discretion to depart from equal division: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 44. However, s. 95(2)(i) still allows "the consideration of the relative contribution of spouses to the acquisition, preservation, maintenance or improvement of family property during the relationship": *Singh v. Singh*, 2020 BCCA 21 at para. 139, citing *Jaszczewska* at para. 44. In my view, failing to recognize the respondent's years of contribution to the increase in value of the Horses would be significantly unfair.

- [52] The disparity between the respondent's and claimant's contributions to the value of Moe--and the other horses--was marked and prolonged. Importantly, this is not a case of merely "unequal financial contributions", which "do not usually constitute significant unfairness": *Klotz v. Funk*, 2019 BCSC 817 at para. 50, in that I find that the Horses were the major focus of the respondent during the marriage. So, while I recognize that comparing "respective contributions to family property is generally discouraged", I emphasize that it is not prohibited and in certain cases may ground a conclusion that equal division would be significantly unfair: *Rana v. Ullah*, 2022 BCCA 192 at para. 48.
- [53] Further, as the Court of Appeal noted in *Hannon v. Hopson*, 2022 BCCA 314 at para. 81, "the focus of the exercise of discretion is on the extent of the contribution made by the spouse taking into account all of the relevant circumstances" (emphasis in original).
- [54] In making this finding I am aware that s. 95(2)(f) of the FLA provides that the court can consider whether a spouse caused a significant increase in the value of family property after the date of separation, and I am considering the contribution made by the respondent during the relationship. In the unique circumstances of this case, where the respondent was so singularly focused on the Horses, I find it would be significantly unfair that she not be compensated for that contribution she made to the increase in the value of the Horses in the division of assets.
- [55] As such, I conclude that the claimant's presumptive half interest in the Horses should be reduced by a further 30% to recognize the respondent's contribution. In respect of the value of Moe, I find that the respondent is required to compensate the claimant in the amount of \$3,500 for the sale of Moe, being 70% of the \$5,000 of the equally divided asset.
- [56] I will now turn to how the parties should share the remaining horses. First, however, I will address the valuation reports provided by each party.

ii. The Valuation Reports

- [57] In support of their claims of the value of Andorra NL, Iocane and Pandora's Charm, the parties each provided an appraisal prepared by a purported expert in the field of equestrian valuations. The claimant provided a valuation report prepared by Christine Rolando dated September 3, 2023 (the "Rolando Report"). Ms. Rolando is based in the state of New York in the United States. The respondent provided a valuation report prepared by B. Christopher Names dated August 9, 2023 (the "Names Report"). Mr. Names is based in the state of Washington in the United States.
- [58] Neither of the parties complied with Rule 13-3 of the Rules which requires that, for financial issues, parties present expert evidence to the court through a jointly appointed expert. Further, each party disputed the valuations provided by the other party's expert and in submissions attempted to attack the assumptions upon which the other's report was made. I note that neither of the experts inspected the horses in person and as such relied upon documentation provided by the respective party to complete the appraisals.

- [59] Given the reports were not jointly commissioned expert reports and the parties' argument over the reports' conclusions, I am concerned about relying on the reports. Especially so given neither of the experts was made available at trial to be cross-examined as to the deficiencies alleged by the parties.
- [60] Ms. Rolando indicates in her report that she is a "Certified Senior Equine Appraiser". She used the "sales comparison approach" to value the horses, which is premised on comparing the subject horses with similar horses recently sold in a relevant market. Unlike Mr. Names, Ms. Rolando includes her source documents of the show records for the horses. She also included internet descriptions posted by the owners of the horses. She reviewed photos and videos of the horses, but did not inspect them. Ms. Rolando was also candid about her appraisal's limitations:

We would also like to note that, because markets are constantly changing, the values of these horses may vary considerably within the weeks and months to come.

- [61] In my view, the Rolando Report is significantly more comprehensive than the Names Report. However, given the Rolando Report appears to be based on limited source data, that was likely provided to Ms. Rolando by the claimant, and Ms. Rolando was not made available at trial, I approach her report with caution and do not feel bound by her conclusions. I stress that neither the Rolando Report nor the Names Report meets the requirements of the Rules for expert reports. That said, the Horses must be valued for the purposes of property division and the reports provide at least some evidence on which to reach my conclusions.

- [62] Ms. Rolando provides the following appraisals for the horses:

- a) Iocane - US\$75,000;
- b) Andorra NL - US\$60,000; and
- c) Pandora's Charm - US\$6,000.

- [63] In his report, Mr. Names indicates he has been involved in the horse industry for 55 years and has taken a number of "Principles of Valuation" courses presented by the American Society of Equine Appraisers. The Names Report is not detailed and provides no information regarding the material on which he based his appraisal, other than stating that he used the "Sales Comparison" approach to valuation. The complete basis for the analysis of the value of the horses is provided by Mr. Names as follows:

This appraisal for Fair Market Value is based upon the horse's registration, an investigation of Competitive Jumping performance records, along with evaluation of blood lines and their records, and analysis of pertinent data

- [64] Mr. Names provides no details of the pertinent data or an explanation of how he arrived at his valuations. Put bluntly, the Names Report provides scant details or analysis to support his conclusions. As with the Rolando Report, I do not feel compelled to follow the appraisals provided by Mr. Names.
- [65] Mr. Names provides the following appraisals for the horses:
- a) Iocane - between US\$8,000 and US\$10,000;
 - b) Andorra NL - between US\$18,000 and US\$25,000; and
 - c) Pandora's Charm - between US\$35,000 and US\$40,000.
- [66] Given the parties are self-represented, and the credentials of the "experts" appear legitimate, I conclude that the reports provide some evidence of the value of these horses. In my view, the reports are the best evidence I have in respect of valuing these horses for the purposes of resolving the parties' property division issues. I will use the reports as a starting point to assess the value for the horses, but am aware of the limitations and dangers of embarking on such an endeavour. I reiterate that I have concerns with both reports.
- [67] For clarity, I note that while the reports provide the values of the horses in United States dollars, I have made allowance for the currency exchange in my consideration. As such, my assessments of the horses' values are in Canadian dollars.

iii. Andorra NL

- [68] The respondent provided a bill of sale for Andorra NL from March 20, 2011, that provides she purchased the horse for \$500. Clearly, this was before the parties were in a relationship. I was provided no evidence as to what value Andorra NL would have had when the marriage-like relationship started in 2014.
- [69] Given that the respondent owned Andorra NL prior to the relationship, the value of the horse prior to the marriage-like relationship is excluded property. Similar to the Sun Peaks Condo analysis above, whatever value of appreciation since the start of the relationship is presumptively considered family property.
- [70] To determine the appreciation, I must assess the values of Andorra NL at the time of trial and at the start of the marriage-like relationship. To do so, I will first evaluate the Rolando Report and the Names Report. It appears that both Ms. Rolando and Mr. Names conclude that Andorra NL has a significant. I prefer Ms. Rolando's report as it is more detailed and appears to include a more rigorous methodology. Again, neither "expert" report is compelling. I conclude that an appropriate value of Andorra NL is \$55,200. I based this on weighting the average between the values provided by Ms. Rolando and Mr. Names towards the higher values provided by Ms. Rolando.

- [71] However, given that the respondent has had Andorra NL since she was a teenager, and trained the horse during this time, I find that a different calculation is needed to acknowledge her contribution. I accept the evidence before me that it was primarily the training and effort of the respondent that in large part increased the horse's value. I conclude it would be significantly unfair to equally divide the appreciation of Andorra NL between the parties. First, the respondent provided the bulk of the training to increase the value of the asset. Second, the respondent had the horse for at least three years prior to the relationship commencing. Again, I do not have evidence before me of how much the horse appreciated in the first three years since being purchased for \$500, but I expect it must have appreciated to some extent. It seems significantly unfair to me that the respondent would not have the benefit of having the appreciation of Andorra NL in the first three years as part of her claim for excluded property of that horse.
- [72] Given the foregoing, I conclude it is appropriate to increase the value of the portion of Andorra NL that should be an excluded asset at the commencement of the relationship. Again, applying a crude estimate and based on the testimony of the parties regarding the respondent's contributions to training her horses, I conclude that 25% of the value of the horse should be considered excluded property pursuant to s. 85(1)(a), arriving at a reduction of \$13,800 (25% x \$55,200). For the same reasons as those above, I find that that it would be significantly unfair to divide the remaining share of the horse equally between the parties. As such, I further reduce the claimant's entitlement of \$20,700 by 30%. This results in my conclusion that the claimant is entitled to \$14,490 for his share of Andorra NL (($\$55,200 - \$13,800$)/2 x 70%.) I realize these are rough calculations based on imprecise data, but in my view, they result in an appropriate outcome in the circumstances.

iv. Iocane

- [73] Iocane was purchased by the parties on August 3, 2016, for \$3,000. As such, Iocane was purchased during the relationship and is presumptively a family asset that should be divided at separation.
- [74] While the respondent argues that Ms. Rolando's valuation of Iocane is excessively high, I was provided with evidence of a posting on the internet on a website called ProEquest in which the respondent listed Iocane for sale for \$50,000-\$75,000 with a lease value of \$10,000-\$20,000. The sales advertisement was undated. However, in my view, this is some, albeit limited, corroborative evidence that Iocane has a high value. The reason I find it only of limited support for Ms. Rolando's valuation is because, indeed, the horse did not sell at the value posted by the respondent on the internet. Further, she may well have listed Iocane's value at an inflated price that did not reflect market value. I accept the truism stated by the respondent regarding the value of horses--which I note applies to most assets--that "a horse is worth what someone will pay for the horse."

[75] In my view, given the Rolando Report and the Names Report and the other evidence provided to me at trial, I find that an appropriate value of Iocane for the purpose of dividing family assets is \$35,000. The Rolando Report appraisal of US\$75,000 (over C\$100,000) seems excessively high and leads me to question the accuracy of Ms. Rolando's conclusions. I emphasize that I am applying a crude valuation based on the limited information before me. I have arrived at this amount on the basis that Iocane did not sell when advertised for \$50,000 and additional time has passed since the horse was listed for sale.

[76] Again, recognizing that it would be significantly unfair to divide the value of Iocane equally between the parties given the respondent's superior contribution to the horse's value, I find that the claimant's share in the asset should be reduced by 30%. As such, the respondent is required to pay the claimant \$12,250 being 70% of the claimant's half interest in the horse of \$17,500.

v. Pandora's Charm

[77] The claimant kept possession of Pandora's Charm at separation. Pandora's Charm was purchased by the parties during the relationship and as such is presumptively family property. The claimant provided a veterinary report dated May 4, 2022, from Wise Equine Veterinary Services Ltd. that indicates that the horse had severe "bench knees". The plan provided by the veterinary was to, "[s]tick to low level/pleasure work to avoid shortened useful life, advise 6 weeks off to allow resolution of tendon injury."

[78] The Rolando Report and the Names Report appraise Pandora's Charm very differently. Unlike Ms. Rolando, Mr. Names makes no mention of the veterinary report or any limitation to the use of Pandora's Charm. While I do not have full information about the nature or extent of Pandora's Charm's injuries or limitations, given the Names Report makes no reference to the "bench knees" diagnosis, I put more faith in the Rolando Report. However, I also acknowledge that the veterinarian's report was from May 2022, and in the respondent's cross-examination of the claimant, exposed that Pandora's Charm, despite the injuries, participated at an equestrian competition in September 2023, thus tempering the negative prognosis of the veterinarian relied on by Ms. Rolando and the claimant.

[79] In my view, given Ms. Rolando's reliance on the veterinarian report, I find that an appropriate valuation of Pandora's Charm is \$15,000. As above, I find that the respondent likely contributed significantly more to the appreciation of Pandora's Charm's value and as such, I find that the claimant share should be reduced by 30% being \$2,250 (30% of the \$7,500 half-value of the horse). Given the claimant currently has possession of Pandora's Charm, to retain ownership he must pay the respondent \$9,750 (\$7,500 + \$2,250).

vi. Summary of Valuation and Division of the Horses

[80] In summary, in respect of the Horses I conclude the claimant is entitled to:

- a) \$3,500 for his share of the sale proceeds of Moe;

- b) \$14,490 for his share of Andorra NL; and
- c) \$12,250 for his share of Iocane.

[81] In addition, the respondent is entitled to \$9,750 for her share of Pandora's Charm.

[82] In ordering the unequal distribution of the value of the Horses, my assessment of whether the presumptive equal distribution would be significantly unfair includes my overall consideration of the distribution of family property and family debt in this matter. In other words, while my reasons consider the issue of the distribution of the Horses before my consideration of all of the family property issues, I have considered all of the factors at play in this family law trial holistically in arriving at my conclusion.

[83] For further clarity, I note that I have deliberately applied the 30% discount to the claimant's interest in the Horses only to his half interest in those assets. While it was open to me to find that 30% of the value of the horses should be excluded from family property and then divide the remainder between the parties, I did not. In my view, to remedy the significant unfairness of dividing the horses equally between the parties, reducing the claimant's half interest in the value of the Horses by 30% was sufficient.

e) Investments

[84] The respondent seeks entitlement to the claimant's Canada Pension Plan ("CPP"). Neither party presented me with any evidence as to the amounts of the CPP in issue or how it should be divided. As such, I will make no order regarding division of the claimant's CPP.

[85] The claimant provided to the court a list titled "Bank Accounts & Cash" purportedly providing a summary of the accounts of the parties at July 1, 2021. I was not provided with updated information about these accounts at the trial in any detailed form. Further, the limited information that was put before the court appeared to demonstrate that while the claimant stated that the respondent held \$18,815.41 in her Tax Free Savings Account on June 30, 2021 - at September 1, 2023, the respondent's TFSA account had a balance of zero.

[86] Pursuant to s. 87 of the FLA, the presumptive date of valuation of family property is the date of trial. I have been provided no compelling evidence of the value of the parties' investments that allow me to value them at the date of trial. As such, I decline to value the bank accounts and investments of the parties for the purpose of distributing the family property.

f) Vehicles

[87] The parties argue that the court must determine the valuation and disposition of two motor vehicles and a horse trailer. Specifically, the vehicles in issue are: (1) a 2005 Dodge Ram Truck (the "Truck"); (2) a 2020 Mercedes-Benz A35 AMG Car (the Mercedes"); and, (3) a horse trailer (the "Horse Trailer").

i. The Truck

- [88] The claimant alleges that at separation, the respondent kept the Truck, which was in fair condition. He provided a "Kelly Blue Book" value dated September 6, 2023, that he obtained from the Internet that provides that the value of a truck of a similar make and model, a RAM 3500, is between \$9,020 and \$10,032 at separation. The Kelly Blue Book appraisal sets the private sale value at \$9,671.
- [89] The respondent objects to the claimant's valuation. She says that the Truck was a "2500" not a "3500" and therefore the Kelly Blue Book estimate overstates the Truck's value. I accept that the evidence of the Truck's value put forward by the claimant is weak. However, while admittedly a crude valuation, I have been provided with no better evidence to determine the value.
- [90] Based on the evidence before me, I conclude that the Truck was family property and the respondent had the benefit of that asset after separation. I have set the value at \$8,000 given the respondent's contention that the valuation provided by the claimant was for a RAM 3500 not a RAM 2500. I conclude that the respondent received a benefit of \$4,000 being half of the \$8,000 that I set for the value of the Truck. As such, the claimant is entitled to receive \$4,000 in respect of the value of the Truck as his share of that family asset.

ii. The Mercedes

- [91] The claimant began leasing the Mercedes on February 18, 2021, with a \$5,000 deposit. This was prior to the parties' separation in June 2021. The price of the vehicle, after tax, was \$73,711.94. The terms of the lease were that the claimant would pay \$971.14 each month for 47 months commencing on March 18, 2021. There would be an option to buy out the lease for \$23,068.36 on February 18, 2025.
- [92] The claimant testified that he determined that he could not afford the Mercedes and so, on July 6, 2023, he disposed of the lease and his ownership of the Mercedes for \$43,000. The claimant's evidence is that after paying off the car loan, the difference was only \$1,450. He provided a cheque from Destination Honda in this amount as proof that the Mercedes as an asset was only worth \$1,450.
- [93] In my view, the claimant received \$1,450 from the sale of a family asset. Accordingly, the respondent is entitled to a 50% share of that asset being \$725.

iii. The Horse Trailer

- [94] The Horse Trailer is currently in the possession of the respondent. The claimant contends that he purchased the Horse Trailer in May 2016. The email exchange between the claimant and the person from whom he purchased the Horse Trailer shows that it was listed for \$10,500 but that the seller was willing to sell for \$9,000. The claimant says that a fair value of the Horse Trailer now is \$8,500.

- [95] The claimant wishes to have the Horse Trailer for his use. As with several aspects of this application, I was not provided with conclusive evidence as to the value of the Horse Trailer. The best evidence I have is that its value is \$8,500. I note that, given the claimant wants to have the trailer, and so would be required to pay for it, I accept that his incentive would be to suggest a lower price. That said, his testimony regarding the value of the Horse Trailer appeared candid and in my estimation he wished to provide the court with an accurate valuation, whether the Horse Trailer is kept by the respondent or provided to the claimant.
- [96] I will leave it to the parties to determine if the respondent will transfer the Horse Trailer to the claimant for his use. If she does so, the claimant is to provide (in the total accounting of the distribution of assets), the amount of \$4,250 being half of the value of the Horse Trailer. If the respondent keeps possession of the Horse Trailer, she is required to provide \$4,250 to the claimant (again, in the total accounting of the distribution of assets).

C. Debt

- [97] The largest debts relate to mortgages registered on the Family Home and the Sun Peaks Condo. I have already addressed how those debts are to be divided in my consideration of those two assets above.
- [98] In addition to the mortgages, the parties have a CIBC Personal Line of Credit ("CIBC LOC") with a value of \$21,353.79 at August 23, 2023. The evidence regarding the CIBC LOC is that it was opened during the relationship in 2019. The claimant says that at the time of separation there was no debt associated with the CIBC LOC. The respondent testified that she has used the CIBC LOC since separation to support herself. The respondent also provided evidence that she has another line of credit with CIBC in the amount of \$8,753.64 at August 17, 2023.
- [99] Section 86 of the FLA defines family debt and, importantly, establishes the relevant time period during which financial obligations become a family debt shared by the spouses:

86 Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

- [100] I accept the evidence that the CIBC LOC was accumulated by the respondent after the separation. However, given the respondent's low income and limited resources, I find that a portion of the debt would be incurred for the purpose of maintaining the horses in the possession of the respondent, which are family property. While I have limited evidence on the costs associated with the maintenance and am aware that these horses were, in part, leased during this time, I find that during the parties' 25 months of separation from July 2021 to August 23, 2023--the date of the CIBC LOC statement--\$500 per month would be a reasonable amount to attribute to maintaining the horses incurred under the CIBC LOC. As such, I find that \$12,500 of the respondent's CIBC debts should be included as family debt,

shared equally by the claimant and respondent.

[101] Accordingly, the claimant is responsible for \$6,250 of the respondent's CIBC debt (\$12,500 x 50%). For clarity, the respondent is responsible for any outstanding debt on her CIBC LOC as well as her other CIBC debt of \$8,753.64.

D. Spousal Support

[102] There are two issues to be determined in respect of spousal support. First, whether the respondent is entitled to spousal support. Second, if the respondent is entitled to spousal support, I must determine the appropriate amount, duration and commencement of the support. More specifically, I must determine if spousal support should be payable from the date the parties separated or from the date of trial and if it should be a lump sum or in periodic payments.

[103] The claimant has not paid any spousal support to the respondent. He contends that given the duration of the marriage and the assets available to the respondent that he should not be required to pay spousal support. He also argues that the respondent has provided an artificially low picture of her current income and earning capacity.

[104] The respondent contends that she is entitled to spousal support from the date of separation for a duration of seven and a half years. She points to the significant difference in incomes earned by the parties, with the claimant earning \$194,671 in 2022 and the respondent earning between \$36,000 and \$60,000 for 2019 to 2021, but earning only \$8,266 in 2022 after the separation. She says that she is suffering from financial hardship as a result of the breakdown of the marriage and there is a significant disparity between her and the claimant's standard of living. The respondent seeks a lump sum spousal support payment, which I infer is to limit future contact and interaction between the parties.

[105] In assessing the issue of spousal support, I will first provide the legal framework and the necessary considerations when determining whether spousal support is warranted. I will then apply the specific facts of this case to that framework to provide my analysis and determination.

a) Legal Framework

[106] The objectives of spousal support are set out in 15.2(6) of the Divorce Act:

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[107] All of the objectives must be considered and no single objective is paramount: *Moge v. Moge*, [1992] 3 S.C.R. 813, 1992 CanLII 25. Self-sufficiency is only one objective, and is only a goal "in so far as practicable". In determining what is practicable, the court should consider all circumstances, including the recipient spouse's age, gender, skills, education, opportunity for retraining, and the realistic prospect of the spouse finding a job that enables him or her to become self-sufficient: *Tedham v. Tedham*, 2005 BCCA 502 at para. 33. If entitlement to spousal support is established, the amount and duration of spousal support is determined through consideration of the factors in 15.2(4) which include the length of time the spouses cohabitated, the functions performed by each spouse during cohabitation and any order or arrangement relating to support of either spouse.

[108] While I must consider the objectives of spousal support set out in the Divorce Act and the specific conditions of the spouses, there are no "hard and fast rules" and "[t]he determination is always fact specific": *Quaife v. Quaife*, 2014 BCSC 1418 at para. 53.

[109] The Supreme Court has determined that there are three bases for entitlement to spousal support: compensatory, non-compensatory, and contractual support: *Moge*. Given the circumstances of this case--most significantly that there were no children of the marriage, the parties are relatively young and there is no evidence that the respondent made a significant contribution to the advancement of the claimant's career during the marriage-like relationship--I find that spousal support is best considered on non-compensatory grounds.

[110] The principles of non-compensatory spousal support address the needs of a spouse after the breakdown of a relationship. The need for support arises out of the relationship itself and is based on the social obligation of a spouse to look after a former partner who is in difficulty, rather than letting that burden fall upon the public: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 410, 1999 CanLII 715 at paras. 23, 31. No one principle or set of objectives dominates the analysis. As set out above, a court should balance the various relevant factors and strike the balance "that best achieves justice in the particular case": *Bracklow* at para. 32.

[111] Justice Fleming helpfully summarized the grounds for non-compensatory spousal support in *Jordan v. Jordan*, 2022 BCSC 1564:

[131] Although the compensatory and non-compensatory grounds for spousal support are animated by different statutory objectives and different models of marriage or spousal relationships, the cases recognize that many claims involve aspects of both. The underlying goals of compensatory and non-compensatory spousal support are the equitable sharing of the economic consequences of a spousal relationship or its breakdown and narrowing the gap between the needs and means of the spouses.

[133] Need alone may establish an entitlement to non-compensatory support. The concept of need, however, goes beyond the basic necessities of life and varies with the circumstances of the parties. The same is true for self-sufficiency. In longer marriages, both need and self-sufficiency are measured against the marital standard of living or the payor's post-separation standard of living.

[Citations omitted.]

[112] Further guidance was provided on the approach to non-compensatory spousal support by our Court of Appeal in *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC ref'd, 33002 (28 May 2009):

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[113] In short, the overarching purpose of non-compensatory spousal support is to both relieve economic hardship and promote the recipient spouse's economic self-sufficiency within a reasonable period of time.

b) Analysis and Determination

[114] To reiterate, the claimant has paid no spousal support to the respondent. As I will describe below, it is clear that the respondent is facing financial hardship and has been placed in an economically disadvantaged position as a result of the breakdown of the marriage. Further, the evidence supports a finding that the income earning capacity of the claimant is significantly greater than that of the respondent.

- [115] In considering the factors set out in s. 15.2(4) of the Divorce Act of the condition, means, needs and other circumstances of each spouse, I am satisfied that the claimant has, both during the marriage and currently, earned significantly more income than the respondent. The claimant has not filed his income tax returns for 2020, 2021 and 2022. He included a copy of his 2020, 2021 and 2022 T4 slips that indicate that in 2022 he earned \$194,671 per year. He states that his income fluctuates because it is based on commission.
- [116] I pause to note that failure to disclose material documents has been referred to as "the cancer of family law litigation": *Michel v. Graydon*, 2020 SCC 24 at para. 33. Given the claimant has not disclosed his income tax returns because he has not filed them, I will use the income he states he earned for 2022 for the purposes of determining the respondent's entitlement to (and thereafter the amount of) spousal support.
- [117] The respondent's income is also difficult to accurately assess. Her income from self-employment in various businesses related to horses and animals has fluctuated. For example, the respondent started a company called Instagrooms Inc. It has not generated the income that the respondent had hoped. I characterize her income from self-employment as precarious. In her Financial Statement, she indicates that she earned \$30,000 in 2021 and \$8,266 in 2022. As I understood her submissions, she states that she earned between \$36,000 and \$60,000 in 2019 to 2021. As I will discuss in a moment, while I accept that the respondent earned only \$8,266 in 2022, in my view, that year is abnormally low given the circumstances of the breakdown of the marriage. As such, I find it unrepresentative of the her earning capacity.
- [118] I accept the respondent's testimony that she was educated as a power engineer, but never became qualified to pursue that vocation. I also conclude that in part her decision not to pursue qualification was a result of her decision to live with the claimant and leave Ontario. Of course, it is difficult to know whether, had the parties not married, the respondent would have pursued her career as a power engineer. However, I accept the respondent's evidence that she believed by marrying the claimant her financial needs would be generally looked after and she could pursue her business and personal interest in the horse industry. Indeed, for the duration of the marriage that is how the parties conducted themselves: the claimant paid a majority of the expenses and the respondent contributed what she could financially from her earnings related to her various business endeavours involving horses. As set out above, the respondent also contributed her time and skill in respect to training the horses.
- [119] From the evidence before me, I have no hesitation in concluding that the respondent is entitled to spousal support. Without spousal support she has suffered economic hardship which she says she has been coping with by borrowing money from her parents. She testified that her parents loaned or gifted her approximately \$30,000 in 2022 and \$50,000 to \$60,000 in other years. As set out by the courts, the policy rationale for spousal support is that the parties ought to share the economic burden resulting from the breakdown of the marriage such that it does not fall on the public purse (or, in my view, individuals other than the spouses). The evidence supports that the respondent has a significant need for spousal

support in the circumstances of this case to attempt to equalize the standards of living between the parties and to move the respondent towards self-sufficiency.

[120] Before moving to my calculations, I pause to address the evidence at trial provided by the respondent that she believes that after the parties separated the claimant spoke disparagingly of her to her employers, thus causing her to lose work and business opportunities. I need not go into detail, but I accept from the evidence before me that the claimant more likely than not engaged in some form of spreading negative information about the respondent that caused her to lose business and business opportunities. The evidence of the parties on this point is corroborated by the dramatic decrease in the respondent's earnings from at least \$30,000 in 2021 to \$8,266 in 2022.

[121] Section 15.2(5) of the Divorce Act specifically excludes spousal misconduct or fault from the considerations to be included in determining a spousal support application. I wish to be clear that I am not recognizing the claimant's alleged misconduct as a factor in awarding spousal support, but accept that it is simply a factor that contributed to the respondent's lower income and earning potential after the breakdown of the marriage. The consequence is that the claimant will be required to pay higher spousal support based on the calculations under the Spousal Support Advisory Guidelines [SSAG]. As set out above, one of the objectives of spousal support is to promote the self-sufficiency of the party receiving the support. It appears that a consequence of the claimant's discussions with the respondent's employers and her resultant loss of work is that the respondent will require additional time and funds to regain her economic self-sufficiency.

[122] I accept that the claimant's income fluctuates as it is based on commission. However, given I was not provided with cogent evidence of the fluctuations, I find that it is appropriate to set it at \$190,000 for the purpose of calculating spousal support under the SSAG.

[123] In respect to the respondent's income I conclude that her income in 2022 was abnormally low and she will more likely than not earn more income in the coming years. As such, I set her income for the purposes of calculating spousal support at \$25,000. In my view, the respondent is in a precarious financial situation as a result of the breakdown of marriage. Spousal support is designed to remedy the inequality of financial circumstances between parties.

[124] Using the claimant's income of \$190,000, the respondent's income of \$25,000 and a marriage-like relationship of 7.5 years duration, the SSAG amounts are as follows:

- a) Low - \$1,650 per month;
- b) Mid - \$1,925 per month; and
- c) High - \$2,200 per month.

- [125] Based on the relationship's duration and the ages of the parties, the SSAG provides that spousal support would be payable for a duration of four to eight years. Given the circumstances of this case, including that the respondent started the marriage-like relationship at a young age and put her career on hold as a result, I find that there was a dependency. I conclude that it is appropriate that the claimant pay monthly spousal support for a period of six years (72 months) from the date of separation. For the first four years (48 months) the claimant will pay \$2,000 per month to the respondent. For the remaining two years (24 months) the respondent will pay \$1,500 per month. My rationale for not setting the spousal support amount at the highest spousal support levels or for the longest duration suggested under the SSAG and for having the payments decrease after a period of four years, is that I recognize that the respondent is relatively young and will likely be able to become economically self-sufficient in the future. Her past success at completing a power engineer technician program indicates she has an aptitude and ability to regain economic self-sufficiency. However, that self-sufficiency may take time to achieve.
- [126] Given the claimant has not paid any spousal support to the respondent to date, I order that it should have commenced at the month after separation being July 1, 2021. Based on my calculations, the claimant is to pay a lump sum amount of \$56,000 for the period of July 1, 2021 to November 30, 2023, being comprised of 28 payments of \$2,000 each. The claimant will continue paying the \$2,000 per month commencing on December 1, 2023, and continuing for an additional 20 months at which time he will be required to pay \$1,500 per month for the following 24 months.
- [127] During submissions, the respondent asked that she be awarded a lump sum amount of spousal support. In determining whether to make a lump sum award, the court should weigh the advantages and disadvantages of a lump sum award against those of more typical periodic payments: *Parton v. Parton*, 2018 BCCA 273 at para. 47; see also *Falkener v. Falkener*, 2020 BCCA 303. In my opinion, the disadvantages of a lump sum award, including the possibility that the parties' needs and means will change over time, outweigh the advantage of allowing the parties to move on from one another by ending the need for ongoing contact. As a result, I will not order spousal support as a lump sum award. That said, I leave it with the parties to decide if they wish to vary the terms of the order to agree to a lump sum amount for spousal support. I would suggest that the parties obtain independent legal advice if they intend to pursue such variation.

IV. Order

- [128] Based on the foregoing, I order the following:
- a) Pursuant to s. 12 of the Divorce Act, the parties who were married on April 20, 2021, in Langley, British Columbia, are divorced from each other effective the 31st day after the date of this order.

- b) The claimant shall pay the respondent \$160,103.50 on account of the following assets (and debt repayment):
 - i. equity in the Family Home: \$143,378.50;
 - ii. proceeds from the sale of the Mercedes: \$725;
 - iii. respondent's share of Pandora's Charm: \$9,750; and
 - iv. \$6,250 for the claimant's share of the respondent's debt incurred since the time of separation incurred for the maintenance of family property.
- c) The respondent shall pay the claimant \$100,959.37 on account of the following assets:
 - i. equity in the Sun Peaks Condo: \$62,469.37;
 - ii. proceeds from sale of Moe: \$3,500;
 - iii. Andorra NL: \$14,490;
 - iv. Iocane: \$12,250;
 - v. the Truck: \$4,000; and
 - vi. the Horse Trailer: \$4,250.
- d) For clarity, the \$293,243 mortgage registered against the Family Home and the \$85,122.51 mortgage registered against the Sun Peaks Condo are already accounted for in the equity in the Family Home and the Sun Peaks Condo listed above.
- e) For clarity, the parties may net out the amounts above resulting in the claimant paying the respondent an equalization payment of \$59,144.13.
- f) The claimant shall pay the respondent the amount of \$56,000 in spousal support for the period of July 1, 2021 to November 30, 2023.
- g) The claimant shall pay the respondent the amount of \$2,000 per month of spousal support commencing on December 1, 2023, for a duration of 20 months ending on July 31, 2025, and then pay \$1,500 per month for a further 24 months ending on July 31, 2027, unless agreed to in writing by the parties or varied by further order of the court.
- h) As long as the respondent is paying monthly spousal support, the parties shall provide their income tax returns and Notices of Assessment to the other party at the request of the other party.

V. Costs

- [129] The general rule in respect of costs is that the party who is substantially successful is entitled to his or her costs: *Gold v. Gold* (1993), 106 D.L.R. (4th) 452, 1993 CanLII 1248 (B.C.C.A.) at para. 19. This general rule accords with Rule 16-1(7) of the Rules that costs must be awarded to the successful party unless the court orders otherwise.
- [130] In my view, there has been mixed success in this trial. The respondent unsuccessfully sought to exclude the entirety of the Sun Peaks Condo and the majority of the value of the Horses as family property. However, she successfully obtained an award of spousal support and limited the claimant's assertion that he is entitled to a significant distribution related to the Horses. In my view, this mixed success supports a finding that the parties should bear their own costs.
- [131] Further, in my attempt to balance the distribution of the division of family property and debts as well as the consideration of spousal support, I am sensitive to the fact that a costs award may disturb that balance: *R.L.D. v. J.R.J.M.*, 2023 BCSC 299 at para. 137.
- [132] However, if there are any issues regarding costs of which I am unaware, such as formal offers to settle that would have achieved a superior result to that obtained at trial, the parties have leave to, within 30 days of this order, make arrangements with Supreme Court Scheduling to appear before me for that purpose.
- [133] The respondent also raised the issue of witness fees she says the claimant owes to her father, Mr. Burgess. As I understand the issue, the respondent argues that the claimant subpoenaed Mr. Burgess, who resides in Ontario, to attend at trial and has not paid his witness fees.
- [134] It may be that since trial this issue has been resolved. As the matter was not brought before me in any formal manner I will not provide an order in respect to witness fees, but strongly encourage the claimant to honour any fees or obligations he owes to Mr. Burgess, who participated as requested and required at the trial.

VI. Conclusion

- [135] As should be clear from this order, it assumes that the claimant will continue to reside in the Family Home and pay the respondent for her share. It also assumes that the parties will not decide to exchange assets such as horses or the horse trailer as opposed to paying the other party for the asset. If the parties make a determination to, for example, sell the Family Home, then the value of that asset may change based on the value for which the Family Home sells and the amount of the mortgage at the time of its sale. If the parties require clarification regarding the terms of my order they may make arrangements, within 30 days of this judgment, through Supreme Court Scheduling to appear before me for that purpose. The party seeking clarification must file and provide to the other party a brief written submission setting out the issue five days before the appearance. The responding

party must provide a brief response to the party and file it with the court three days before the day scheduled for the appearance.

[136] Before concluding, I note that I was impressed with how the parties conducted themselves in this litigation. It was clear to me that while there was tension between them, they still treated each other with civility and respect in presenting their arguments. I thank them for their efforts in presenting their evidence and arguments to the court.

"Gibb-Carsley J."

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