

CANADA / JUDGMENT

Jensen v. Guerster

2025 BCSC 949

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 949 Jensen v. Guerster

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jensen v. Guerster,

2025 BCSC 949

Date: 20250521

Docket: E59078

Registry: Kamloops

Between:

Leona Roma Jensen

Claimant

And

Thomas Paul Guerster

Respondent

Before: The Honourable Justice Hori

Reasons for Judgment

Counsel for the Claimant:

J.H. Grover

The Respondent appeared on his own behalf:

T.P. Guerster

Place and Date of Trial:

Kamloops, B.C.

June 10-14, 17-21, October 28-31 and November 1, 2024

Place and Date of Judgment:

Kamloops, B.C.

May 21, 2025

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Introduction and Issues

- [1] The parties in this family law case were married on August 8, 2008, and separated on May 2, 2020.
- [2] Before the parties were married, they lived together in a marriage-like relationship. However, the parties disagree about when that relationship began. The claimant, Leona Roma Jensen, maintains that the parties began living together at the end of September 2002. The respondent, Thomas Paul Guerster, claims that they did not begin living together until July 1, 2007. The date of cohabitation is an issue that must be resolved in this action.
- [3] Both parties wish to be divorced from each other.
- [4] There are no children of the marriage, so there are no parenting or child support issues in this action.
- [5] At the start of the trial, both the claimant and the respondent sought spousal support from the other. The threshold issue for spousal support is whether either of the parties is entitled to spousal support. During the claimant's submissions, her counsel submitted that neither party had established an entitlement to spousal support and, as such, I should dismiss both spousal support claims.
- [6] The parties also seek orders for the division of family property. There are a number of assets about which the parties disagree. Those assets include numerous pieces of real estate, vehicles and investment accounts. The parties also raise issues of excluded property and the unequal division of those assets.

Background of the Claimant

- [7] The claimant is 53 years of age. She graduated from high school in 1989 and then completed one year of college.

- [8] The claimant married her first husband, Neil Jensen, in 1990. However, she separated from him in 2001. During her first marriage, the claimant worked with her husband in their automotive garage business located in Princeton, British Columbia. The claimant performed administrative duties for the business such as book keeping, answering phones and picking up automotive parts.
- [9] In 1995, the claimant started working part-time at the Canadian Imperial Bank of Commerce ("CIBC") in Princeton. She started at CIBC as a teller and worked her way up to a position in the lending department. The claimant worked at CIBC for almost nine years and left that bank in 2004 for a better paying job.
- [10] In 2004, the claimant started working for a notary public in Princeton. She worked with the notary public until 2009 when the notary moved their practice out of town. While working for the notary, the claimant did the conveyancing paperwork, deposited cheques and answered the telephone.
- [11] Following the notary public, the claimant secured a job with Valley First Credit Union ("Valley First") as a lender. Within a year of starting with Valley First, the claimant became the senior lender at the branch. The claimant worked at Valley First from 2009 to 2015. While at Valley First, the claimant received training in mortgage lending and investments. She obtained her licence to be a mutual fund representative and financial planner.
- [12] The claimant left Valley First in 2015. From 2015 until 2020, the claimant did not work outside the family home. During this period, the claimant assisted the respondent with his rental properties doing cleaning, minor renovations and paperwork.
- [13] After the parties separated in May 2020, the claimant moved to Clearwater, B.C. and started part-time work at the Royal Bank of Canada. She worked at the Royal Bank until the fall of 2021 when she found work at Hartty Clothing Ltd. She worked at Hartty Clothing until that business closed in the summer of 2023.
- [14] The claimant has not worked since 2023.

Background of the Respondent

- [15] The respondent is 58 years old. He was born in Toronto after his parents moved to that city from Switzerland. The respondent moved to Switzerland with his parents in 1973. The respondent's parents bought and sold properties in Switzerland and the respondent followed their footsteps in Princeton by buying and renovating properties for rental or resale.
- [16] The respondent attended school in Switzerland and was an apprentice working on automobiles. The respondent worked on the Swiss railway for approximately 12 years. He began purchasing properties in Princeton for investment purposes in 1991 or 1992 with his then girlfriend, Barbara Haas.

- [17] The respondent married his first wife, Tammy Smart, in 1998 whom he met in Bella Coola, B.C. They then lived in Switzerland for four years until moving to Princeton in 2002. In March 2002, the respondent's first wife filed a family law claim seeking a divorce and other corollary relief including a division of property. The respondent and his first wife resolved their family law issues near the end of 2007.
- [18] Since moving to Princeton, the respondent relies on his investment properties to generate income to pay his expenses.

Credibility and Reliability

- [19] The evidence of the parties with respect to many of the significant issues in this action is in conflict. Therefore, the credibility of the parties and the reliability of their evidence is an over-arching consideration in this case. The assessment of credibility and reliability will have significant impact upon these reasons.
- [20] As explained by Justice Shergill in *Workers' Compensation Board v. Ramsay*, 2025 BCSC 734 at para. 18, credibility and reliability are related but distinct concepts.
- [21] Credibility centres on the honesty of witnesses. It involves an assessment of the trustworthiness of the witness. Our Court of Appeal described the task of assessing credibility in *Faryna v. Chorny* (1951), [1952] D.L.R. 352 (B.C.C.A.) as follows:
- [10] The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.
- [22] A more recent explanation of a credibility assessment was given in *Bradshaw v. Stenner*, 2010 BCSC 1398, *aff'd* 2012 BCCA 296:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at

para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Farnya at para. 356).

- [23] On the other hand, reliability concerns the accuracy of the testimony of a witness. It engages the consideration of the ability of the witness to accurately observe, recall and recount the events in question: Workers' Compensation Board at para. 18.
- [24] A witness who is not credible on a particular topic cannot provide reliable evidence on that topic. However, a credible witness may still provide unreliable evidence because their ability to observe, recall or recount the events is compromised: Workers' Compensation Board at para. 19.
- [25] I have no difficulty accepting the claimant as a credible witness and her evidence as reliable. On occasion, during cross-examination, the claimant was argumentative but, overall, she gave her evidence in a forthright manner. The circumstances of the relationship and the conduct of the parties as related by the claimant is generally consistent with the preponderance of probabilities in the case as a whole.
- [26] I have significant concerns about the credibility of the respondent and the reliability of his evidence. My assessment of the respondent's evidence leads me to conclude that his testimony is not trustworthy. The basis for my conclusion is that the respondent has shown that he is prepared to be untruthful, or is willing to manipulate the facts, if doing so works to his advantage. In reaching this conclusion, I have relied upon the following:
- a) The respondent admits to declaring rental income on his personal tax return that he did not receive so that he could write-off expenses related to his properties against his general income. An example of such practice was in 2022 when he declared \$4,137 in fictitious rental income in order to write-off \$7,708 in expenses.
 - b) On August 5, 2020, the respondent filed a sworn financial statement in these proceedings indicating that his only source of income was \$10,000 he received from the Canada Emergency Response Benefit ("CERB"). He did not include in that financial statement dividends and taxable capital gains totaling in excess of \$20,000 that he had declared in his 2019 income tax return.
 - c) When the respondent filed a second sworn financial statement on October 7, 2020, he again did not include any dividends or taxable capital gains as set out in his 2019 income tax return.
 - d) The respondent did not attach his 2020 income tax return to the sworn financial statement of October 7, 2020. However, the Canada Revenue Agency 2020 "reassessment" is evidence in the trial. The 2020 "reassessment" shows that the respondent had dividends and other income that he did not disclose in the October 7, 2020, financial statement. When these discrepancies in his financial statements were put to the respondent on cross-examination, he took no responsibility for them but, instead, blamed the lawyer who, he claims, prepared

those statements on his behalf.

- e) The respondent was present before the court on December 7, 2020, when the court restrained both parties from disposing of, transferring, encumbering, or dissipating any of their assets without a written agreement or further order of the court. The court made the identical order again on January 13, 2021, in the presence of the respondent. After the court made these restraining orders, the respondent drew down and disposed of the savings accumulated in his Registered Retirement Savings Plan ("RRSP") without the claimant's agreement or court order. The respondent explains that he required those funds to pay expenses. However, he neither consulted with the claimant nor applied for an exception to the restraining order before drawing down on those assets.
- f) The respondent owns property in Switzerland and in the United States of America. Both of those properties are part of the property disposition contested in this action. When challenged on cross-examination about whether he declared rental income from the Swiss property on his Canadian income tax returns, the respondent initially claimed that he did not do so because he declared that rental income in Switzerland. However, when asked later in his cross-examination about rental income that he had declared on his Canadian income tax return, he suggested that the rental income was from the Swiss property because he had no Canadian properties generating rental income at that time.
- g) On May 20, 2018, the respondent and his friend, Todd Ogryzlo, were in the process of transferring ownership of a Polaris Slingshot vehicle from Mr. Ogryzlo to the respondent. In that transaction, both Mr. Ogryzlo and the respondent signed a form generated by the British Columbia Ministry of Finance relating to a "gift of a vehicle" under the Provincial Sales Tax Act, S.B.C. 2012, c. 35. In that document the respondent certifies that he and Mr. Ogryzlo are "stepbrothers". The form expressly states that it is a form to be used to claim an exemption from provincial sales tax ("PST") on a vehicle received as a gift from a related individual. On cross-examination, the respondent acknowledged that Mr. Ogryzlo was not his stepbrother. The respondent explains that he did not submit the form to the Insurance Corporation of British Columbia on the transaction. However, the respondent did not submit the form because it was not required to complete the transaction. Nonetheless, the form was signed by the respondent certifying an untrue fact for the express intention of claiming an exemption from PST.
- h) In February 2019, the respondent executed a document on his own behalf and on behalf of his mother, Ruth Guerster, pursuant to a power of attorney. The document related to the sale of a property owned in joint names by the respondent and his mother and was declared before a commissioner for taking affidavits. The document declared that both the respondent and his mother were domiciled in Canada and were Canadian residents within the meaning of the Income Tax Act, R.S.C., 1985, c. 1 (5th Supp). This statement was untrue in that the respondent's mother was not domiciled in Canada, nor was she a Canadian resident.

- i) The respondent claims that one of the properties in which the claimant seeks an interest (the "Dollie Street Property") was his mother's property even though it was registered jointly in his name and his mother's name. When challenged in cross-examination about rental income declared on his income tax return, the respondent testified that the rental was from the Dollie Street Property. When asked why the income from the Dollie Street Property was claimed as his income if the property was owned by his mother, the respondent had no answer. He explained that he relied upon his "tax lady" who did not tell him that he could not claim it as his income.
- [27] All of the foregoing leads me to conclude that at best, the respondent is indifferent about whether he is truthful or not and, at worst, the respondent is being untruthful to suit his purposes. In either case, I find that his creditability is lacking and the reliability of his testimony is seriously compromised.
- [28] Accordingly, it is very difficult for me to accept the respondent's evidence where it is inconsistent or in conflict with the other evidence before me.

Length of Relationship

- [29] The length of time that the parties were living together as spouses is relevant to the issues of spousal support and property division. To define the term "spouse" we look to the Family Law Act, S.B.C. 2011, c.25, s. 3 [FLA]. For the purposes of the issues in this action, the definition of "spouse" in s. 3(1) is:
- (1)A person is a spouse for the purposes of this Act if the person
- (a)is married to another person, or
- (b)has lived with another person in a marriage-like relationship, and
- (i)has done so for a continuous period of at least 2 years, or
- (ii)except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- [30] Section 3(3) of the FLA also provides that:
- (3) A relationship between spouses begins on the earlier of the following:
- (a) the date on which they began to live together in a marriage-like relationship;
- (b) the date of their marriage.
- [31] The parties disagree about the date on which they began living in a marriage-like relationship.
- [32] The claimant alleges that the date of cohabitation was in September 2002. The respondent claims that they did not cohabitate until July 1, 2007.

- [33] The claimant testified that she first met the respondent when she served him as a client at CIBC in the summer of 2002. The claimant recalled that they attended the fall fair rodeo in Princeton on the long weekend in September 2002 and they began living together right away after the fall fair.
- [34] The claimant testified that in September 2002, she was living at 473 Corina Avenue in a mobile home and the respondent was residing in a house he owned at 220 Ridgeway Avenue in Princeton, B.C. The claimant recalled that when the parties started living together, the respondent moved in with her at 473 Corina Avenue. She testified that they slept in the same bedroom when they moved in together and that it was an exclusive relationship from September 2002.
- [35] When the parties' began living together, she was separated from her previous spouse, Mr. Jensen, and was in the process of resolving their family law issues. Similarly, in the fall of 2002, the respondent was also separated from his previous spouse, Ms. Smart, and was involved in a family law dispute with her.
- [36] The respondent agrees that they met at the fall fair in Princeton in 2002. However, he testified that they did not live together in a marriage-like relationship until July 1, 2007. The respondent describes his relationship with the claimant from September 2002 as involving sexual intimacy and labels it as a "friends with benefits" relationship. The respondent claims that during the period between 2002 and 2007, he had other sexual partners and that his relationship with the claimant was not an exclusive relationship.
- [37] Justice Schultes, in *Dey v. Blackett*, 2018 BCSC 244, provides a summary of the principles that the court considers when assessing whether a marriage-like relationship exists. I can do no better than reproducing Justice Schultes' summary of those principles:
- [192] The determination of whether a relationship was marriage-like requires a "holistic approach", in which all of the relevant factors are considered and weighed, but none of them are treated as being determinative of the question: *Austin v. Goerz*, 2007 BCCA 586 at paras. 58 and 62.
- [193] While a "checklist" approach to this question is not appropriate, it can still be helpful during the analysis to consider the presence or absence of commonly-accepted "indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship": *Weber v. Leclerc*, 2015 BCCA 492 at para. 25. A frequently-cited authority has identified these indicators as including "shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple": *M. v. H.*, [1999] 2 S.C.R. 3 at para. 59, citing *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 at para. 16 (Ont. Dist. Ct.).
- [194] While financial dependence was at one time considered an essential aspect of a marriage-like relationship, this is no longer so: *Austin* at paras. 55-56.

- [195] The intentions of the parties, particularly whether the [sic] saw the relationship as being "of a lengthy, indeterminate duration", will be important to the determination of whether the relationship was marriage-like. However, evidence of their intentions must be tested against objective evidence of their lifestyle and interactions, which will provide direct guidance on the nature of the relationship: Weber, at paras. 23, 24. In other words, "subjective or conscious intentions may be overtaken by conduct such that whilst a person living with another might not say he or she was living in a marriage-like relationship, the reality is that the relationship has become such": Takacs v. Gallo (1998), 48 B.C.L.R. (3d) 265 (C.A.) leave to appeal to SCC ref'd, [1998] S.C.C.A. No. 238, at para. 53.
- [196] In weighing the various factors, it is also an error to give undue emphasis to the future plans of a couple, in contrast to the current realities of their respective situations: Takacs at para. 58.
- [38] In this case, the "commonly accepted indicators" of a marriage-like relationship starting in 2002 are the claimant's evidence that she and the respondent had an intimate relationship and the respondent moved into her residence in the fall of 2002. The claimant also testified that she and the respondent prepared reciprocal wills and powers of attorney in 2004.
- [39] Both parties led evidence from third parties seeking to establish the "societal perception" of their relationship. I find that the evidence on the nature of the parties' relationship from the third-party witnesses is not helpful other than in one respect. In cross examination of the claimant's cousin, the respondent asked her how she knew he was staying with the claimant in the claimant's mobile home at night. The witness responded with "you told me you were living there" and "you said I am living with your cousin".
- [40] The respondent called a friend to testify that during the period between 2002 and 2007, she and the respondent had sexual relations. However, the witness conceded that the sexual contact was only on occasion and that she was also in a relationship with another person at that time. The witness did not give evidence about the nature of the parties' relationship between 2002 and 2007. Accordingly, I find that the evidence of this witness does not assist in determining the nature of the parties' relationship before 2007.
- [41] Based on my assessment of the credibility of the parties, I do not accept the respondent's evidence that the marriage-like relationship with the claimant did not begin until 2007. I accept the claimant's evidence that the marriage-like relationship began in September of 2002.
- [42] In addition, the following factors lead me to conclude that the parties were in a marriage-like relationship from September 2002:
- a) Even if the respondent had sexual relations with others between 2002 and 2007, that does not mean that he was not in a marriage-like relationship with the claimant;

- b) The respondent conceded that in September 2002, he brought his toiletries and his clothes to the claimant's home;
- c) The respondent told the claimant's cousin that they were living together at the claimant's mobile home;
- d) In Facebook messages, sent by the respondent to the claimant shortly after the separation, he repeatedly refers to their relationship as a "18 year relationship"; and
- e) The claimant testified that in 2004 she and the respondent prepared reciprocal wills and powers of attorney.

[43] I am persuaded by the claimant and I find that the parties began residing together in a marriage-like relationship in September 2002, and separated on May 2, 2020, after 18 years of residing in a marriage-like relationship.

Property Division

Property in Dispute

[44] The parties' disagreement with respect to property division revolves around the ownership and disposition of the following property:

- a) 386 Tulameen Avenue, Princeton, B.C. ("Tulameen");
- b) 220 The Ridgeway, Princeton, B.C. ("Ridgeway");
- c) 486B Corina Avenue, Princeton, B.C. ("486B Corina");
- d) 163 Dollie Street, Princeton, B.C. ("Dollie Street");
- e) 6 Bahnstrasse, Switzerland (the "Switzerland Property");
- f) 67 Fenchurch Avenue, Princeton, B.C. ("Fenchurch");
- g) 509 Central Avenue, Oroville, Washington (the "Oroville Property");
- h) 2841 Princeton-Summerland Road, Princeton, B.C. ("Princeton-Summerland Road");
- i) 318 - 8th Avenue, Princeton, B.C. ("8th Avenue");
- j) 343 Wyndhaven Place, Clearwater, B.C. ("Wyndhaven Place");
- k) Investments and accounts held at Raymond James;
- l) Vehicles; and
- m) Scrap booking materials and equipment.

Positions of the Parties

- [45] Since the respondent represented himself in this proceeding, his legal positions with respect to the division of property were not clearly articulated. However, I have done the best I can to interpret and understand his positions with respect to the issues.
- [46] Firstly, I understand the respondent to claim an exclusion from family property for those properties:
- a) that the respondent acquired before the parties' relationship;
 - b) that were registered in the name of the respondent's mother; or
 - c) to which the claimant made no contribution during the parties' relationship.
- [47] Secondly, the respondent alleges that the claimant wrongfully withdrew one-half of the value of the parties' Raymond James joint investment account following separation. The respondent further alleges that the claimant accomplished this withdrawal with the assistance of the parties' financial advisor at Raymond James.
- [48] Thirdly, the respondent seeks an unequal division of family assets and family debts.
- [49] The claimant submits that the respondent has failed to establish his claims for excluded property and unequal division of family property and debts. Accordingly, the claimant seeks an equal division of the family property and debts.
- [50] In order to decide the property division issues raised by the parties, it will be necessary to consider each of the properties separately and, where appropriate, trace the flow of funds from the disposition of one property to the acquisition of others. Unfortunately, neither party provided me with a detailed analysis supported by the appropriate documents related to the flow of funds. Therefore, I undertook the time-consuming task of reviewing numerous documents filed by the parties to understand the time sequence for the various acquisitions and dispositions of properties. Once I understood that time sequence I reviewed additional documents to trace, where possible, the flow of funds from property to property and to determine the ultimate state of each property at separation.
- [51] The respondent did not have legal counsel for this trial. As a result, the respondent presented his documents in a disparate and seemingly random order. I am not being critical of the respondent in this regard, but make this comment so that the parties understand that it was a lengthy process to analyze the documents and the evidence to reach these conclusions.

Legal Principles

- [52] Before considering each of the properties in dispute separately, I will set out the relevant legal principles that I must apply in my analysis.

Excluded Property

[53] Section 84(1)(a) of the FLA defines family property as:

Family property

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
- (i) property that is owned by at least one spouse, or
- (ii) a beneficial interest of at least one spouse in property;

[54] Section 84(2)(g) provides that family property includes the amount by which the value of excluded property has increased since the later of the date:

- a) the relationship between the spouses began, or
- b) the excluded property was acquired.

[55] Section 85 of the FLA, provides that property that is excluded from family property includes the following:

- a) Property acquired by a spouse before the relationship between the spouses began;
- b) Inheritances to a spouse; and
- c) Property derived from property or the disposition of property acquired by a spouse before the relationship began or acquired by an inheritance.

[56] Pursuant to s. 85(2) of the FLA, the spouse claiming that property is excluded from family property bears the onus of proving the exclusion on a balance of probabilities.

[57] When one spouse transfers excluded property to the other spouse or co-mingles excluded property with other family property, the once excluded property may lose its excluded status. What is important in assessing whether the excluded property has lost its excluded status is the transferor's intention at the time of the transfer.

[58] In *Venables v. Venables*, 2019 BCCA 281, our Court of Appeal held:

[95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: V.J.F. at paras. 74-79; *Namdarpour* at para. 46.

- [59] The Court of Appeal in *Namdarpour v. Vahman*, 2019 BCCA 153 , held that in determining a party's intention, the court should consider the following:
- [40] (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;
- [60] Further, the Court of Appeal in *Namdarpour* held that the evidentiary presumptions of advancement and resulting trust operate only where the court is unable to reach a conclusion about the transferor's actual intention at the time of the transfer.
- [61] In *Namdarpour*, the Court of Appeal was considering the proper application of evidentiary presumptions with respect to the intention of the transferor transferring excluded property to a spouse. In that context, the Court of Appeal referred to both the presumption of advancement and the presumption of resulting trust which have both been used as a tool in assessing the intention of the transferring spouse.
- [62] To complete the discussion about evidentiary presumptions, it is worth noting that the FLA was amended by the Family Law Amendment Act, S.B.C. 2023, c. 12, which received Royal Assent on May 11, 2023. The amendments made two changes to the FLA which are of interest in this case. The amendments provided:
- a) The presumptions of advancement and resulting trust must not be applied in questions respecting ownership of property as between spouses (s. 81.1); and
 - b) If property is excluded, the exclusion applies despite any transfer of legal or beneficial ownership of property from one spouse to the other spouse (s. 85(3)).
- [63] However, pursuant to the transitional provisions, these amendments to the FLA do not apply to a pre-existing proceeding (s. 24). Since the claimant filed her notice of family claim on July 8, 2020, these amendments do not apply. Accordingly, in this case, the intention of the respondent continues to be an issue in deciding whether property is excluded from family property: *Brazinski v. Brazinski*, 2023 BCCA 359 at para. 41.
- [64] Accordingly, when considering the issue of excluded property in this case, I must approach the analysis based on the following principles:
- a) The onus is upon the respondent to establish the exclusion;
 - b) The issue of excluded property depends upon the intention of the respondent at the time of the transfer of the properties;
 - c) The actual intention of the respondent is based on all of the circumstances of the case including both direct and circumstantial evidence, including circumstances that arose subsequent to the transfer; and

- d) Only if I am unable to reach a conclusion about the respondent's actual intention will it be appropriate to apply the evidentiary presumptions of advancement and/or resulting trust.

[65] In order to properly assess the respondent's claims of excluded property, I must assess that claim with respect to individual properties. Therefore, I will address the issue of whether property is excluded from family property as I address each specific piece of property in dispute.

Unequal Division

[66] The general rule, established by s. 81 of the FLA, is that:

- 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.

[67] Section 95 of the FLA, authorizes the court to vary from the general rule and order an unequal division of family property and family debt where it would be "significantly unfair" to equally divide the property or debt. The factors that the court may consider in deciding whether an equal division would be significantly unfair are set out in s. 95(2) and (3) of the FLA which provide:

Unequal division by order

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].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;

- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.
- [68] In *Jaszczevska v. Kostanski*, 2016 BCCA 286, the Court of Appeal held, at para. 41, that the legislature intended the general rule of equal division to prevail unless persuasive reasons are shown for a different result.
- [69] The Court of Appeal cited *Remmem v. Remmem*, 2014 BCSC 1552 and adopted the following definition of "significantly unfair":
- [41] As Mr. Justice Butler observed in *Remmem v. Remmem*, 2014 BCSC 1552 (B.C.S.C.), "significant" is defined as "extensive or important enough to merit attention" and the term refers to something that is "weighty, meaningful or compelling." He concluded that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)".
- [70] In *Venables*, the Court of Appeal relied on *Jaszczevska* to hold, at para. 91, that generally, the "significantly unfair" language requires "something objectively unjust, unreasonable or unfair in some important or substantial sense".
- [71] A concise summary of the interpretation of s. 95(1) of the FLA is provided by Justice Garson in *Singh v. Singh*, 2020 BCCA 21:
- [134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczevska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply

"unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.

- [72] Unlike the claims for excluded property, I can decide the question of whether I should unequally divide the family property and family debt without assessing that question with respect to each property in dispute. On that question, I find that the respondent has not met the onus on him to establish any significant unfairness in an equal division. The general thrust of his submissions on this issue is that the claimant made little or no contribution to the properties in question.
- [73] The respondent's position runs contrary to s. 81 of the FLA which provides that spouses are entitled to family property regardless of their respective use or contribution.
- [74] Further, even if I accept that the claimant's direct contribution to the properties was minimal, the respondent's position ignores the claimant's contribution to the household finances through the pooling of her employment income until she stopped work in 2015. The respondent also does not consider the claimant's contribution to maintaining the family household during their relationship.
- [75] Therefore, I find that there is no significant unfairness to an equal division of family property and family debt. Accordingly, I will divide the family property and family debt equally between the parties. I turn now to addressing the pieces of property in dispute.

Dollie Street

- [76] The respondent purchased Dollie Street in December 2002. The purchase of Dollie Street occurred after the parties began cohabitation in September 2002. The claimant testified that originally the respondent was intending to register ownership of this property in the claimant's name. However, the claimant did not agree to becoming the registered owner since she was in the midst of a family law case with her former spouse. In the result, the respondent registered ownership of Dollie Street in the name of Ruth Guerster, his mother.
- [77] In October 2007, after the respondent concluded his family law case with his former spouse, he added himself as a registered owner of the property along with his mother.
- [78] Dollie Street sold in February 2019 for \$230,000. The sale of Dollie Street generated net sale proceeds of \$199,440. Those sale proceeds are traced from a lawyer's trust account into a joint bank account held by the parties at Valley First. The banking records show the deposit of the sale proceeds on March 1, 2019, into an account named "Tom's Business - Rent". While this account is technically a joint account in which both the claimant and the respondent are owners, the account is designated as "Tom's Business - Rent" account.

- [79] On March 14, 2019, the banking records show a transfer of \$205,000 from the "Tom's Business - Rent" account to another joint account at Valley First which is labelled "Joint Household".
- [80] On March 19, 2019, the Valley First bank records show a cheque of \$200,000 drawn from the "Joint Household" account at Valley First payable to Raymond James. The cheque to Raymond James is signed by the claimant and is deposited into a Raymond James joint investment account.
- [81] The respondent claims that he did not purchase Dollie Street. He claims that it was his mother who purchased the property and that she transferred a one-half interest in the property to him as an inheritance. In support of his allegation that he became registered owner of the property as an advancement on his inheritance, he relies upon a letter signed by his mother dated October 10, 2007, stating:

This letter is to confirm that property 163 Dollie Street, Princeton, BC, having a legal description of Lot 32 Bl 13 DL 706 Y(formerly Osoyoos) DYD Plan 1459; PID:011-594-381 is for my son, Thomas Paul Guerster, his inheritance and is for his sole use only.

My name, Ruth Guerster, is on title to protect my son's inheritance from his acrimonious marital breakdown. I have no interest in any gains, losses expenses, etc with this property.

If my son should predecease me, I will hold onto the property in trust for his heir, Timothy William Guerster, until he is of legal age.

Dated October 10, 2007

"Ruth Guerster"

"Leona Jensen"

Ruth Guerster

Witness: Leona Jensen

- [82] I do not accept the respondent's claim that Dollie Street was a purchase made by his mother and that it was partially transferred to him as his inheritance for the following reasons:
- The respondent's credibility is lacking as I have found earlier in these reasons;
 - The claimant testified that upon the sale of Dollie Street in 2019, the claimant and the respondent shared the capital gains generated by the sale of the property equally. This evidence is confirmed by the parties' respective 2019 income tax returns; and
 - Even though the respondent claims that his mother owned the property, he declared the rental income from Dollie Street on his personal income tax return in 2017.

- [83] The respondent also claims that Dollie Street is excluded property because he purchased it before their relationship began. For reasons already stated, I have determined the date of cohabitation is September 2002. Therefore, the respondent purchased this property in his mother's name during the relationship.
- [84] Based on all of the foregoing, I find that Dollie Street is family property. It was family property on the date of its purchase in 2002. Therefore, the proceeds from the sale of Dollie Street are family property.
- [85] Since the proceeds from the sale of Dollie Street made their way into the joint investment account at Raymond James, I will deal with the division of the sale proceeds from Dollie Street as part of the division of the Raymond James investment account later in these reasons.

486B Corina

- [86] In July 2002, the respondent's mother, Ruth Guerster, became the registered owner of 486B Corina. The purchase price for 486B Corina was \$50,000. In October 2007, the respondent became a co-owner of 486B Corina with his mother. The respondent orchestrated both of these transactions by exercising a power of attorney that he had obtained from his mother.
- [87] On October 10, 2007, the respondent's mother signed a letter in the same form as the letter she signed for Dollie Street. In that letter, Ruth Guerster indicated that she had no interest in 486B Corina and that the property was in her name to protect the respondent's inheritance from a marital breakdown.
- [88] The sale of 486B Corina occurred in January 2012. The sale price was \$220,000, which resulted in net sale proceeds of \$191,759. After reviewing the evidence in significant detail, I have been unable to trace the net sale proceeds from 486B Corina after the solicitors paid out those funds from trust.
- [89] The respondent claims that 486B Corina is excluded property because it was his mother's property. I am not prepared to accept the respondent's claim due to his lack of credibility.
- [90] The respondent became an owner of 486B Corina in 2007 by a gratuitous transaction for the nominal amount of \$1. While the letter signed by Ruth Guerster indicates that the transaction was intended to shelter the respondent's inheritance from a previous marital breakdown, I do not find the letter convincing. As I indicated earlier, the respondent has no hesitation in manipulating the circumstances or the facts to suit his interests.
- [91] Further, the respondent alleges that 486B Corina was excluded property because he purchased it prior to his relationship with the claimant. He alleges that 486B Corina maintained its excluded status after the parties started living together because the claimant made no contribution to 486B Corina and the parties never resided there as spouses.

- [92] I accept that the respondent purchased 486B Corina before the parties began their cohabitation. However, I do not accept that the claimant made no contribution to the property. Once the parties began living together, the claimant contributed to the maintenance and preservation of 486B Corina by contributing her income and assets to the family unit and by supporting the respondent in his endeavours to purchase, renovate and resell properties. However, regardless of the claimant's contribution, s. 84(2)(g) of the FLA entitles her to share in the increase in value of 486B Corina during the relationship.
- [93] The respondent purchased 486B Corina mere months before he started living with the claimant. Therefore, it is appropriate to assess the value of 486B Corina at the start of the relationship at its purchase price of \$50,000. The parties sold 486B Corina in 2012 for \$220,000. Therefore, the increased value of the property during the relationship is \$170,000. Accordingly, \$170,000 of the 486B Corina sale price is family property and subject to equal division between the parties.
- [94] However, the claimant has not established that the respondent continues to hold the net sale proceeds from the sale of 486B Corina. As I indicated earlier in these reasons, I am unable to trace the 486B Corina sale proceeds after they leave the trust account of the solicitor who completed the sale.
- [95] In these circumstances, I find that the net sale proceeds were used to pay family expenses, to purchase other family property, or made their way into the joint investment account at Raymond James. Therefore, the division of this asset will be accomplished by the division of the other family property in dispute, including the Raymond James account.

Ridgeway

- [96] The purchase of Ridgeway occurred before the parties began their relationship. In October 1993, the respondent and his then partner, Ms. Haas, purchased Ridgeway in their joint names. In September 2006, the respondent became the sole registered owner of Ridgeway. The respondent testified that by September 2006 he had paid out Ms. Haas for her interest in the property and thereby became the sole owner of Ridgeway.
- [97] Between 2004 and 2006, the parties lived at Ridgeway as spouses. Accordingly, for those two years, Ridgeway was the parties' family home.
- [98] The respondent sold Ridgeway in December 2015 for \$250,000. The net sale proceeds from the sale of Ridgeway were \$249,410. The respondent placed the net sale proceeds from the sale of Ridgeway into the parties' joint Valley First account under a specific account labelled as "Thomas Guerster". On February 18, 2016, a cheque of \$213,040 was drawn on the "Thomas Guerster" account and paid to legal counsel for the purchase of Princeton-Summerland Road which is owned by both the claimant and the respondent.

- [99] In my view, even though the respondent purchased Ridgeway prior to the relationship, it was family property as of the separation date. The occupation of Ridgeway as the family residence and the use of the proceeds from its sale to purchase another property in the names of both parties evidence the respondent's intention to treat the property as family property.
- [100] Any exclusion the respondent had in Ridgeway ceased to exist when it became the family residence, or when the parties used the proceeds from its sale to purchase another property in joint names. As the proceeds of Ridgeway made their way into the purchase of Princeton-Summerland Road, the division of Ridgeway will be accomplished in the division of Princeton-Summerland Road.

Princeton-Summerland Road

- [101] The parties purchased Princeton-Summerland Road in 2016 for the purchase price of \$221,000. The funds required to purchase Princeton-Summerland Road came from the sale of Ridgeway.
- [102] The registered owners of Princeton-Summerland Road are both the claimant and the respondent. It is of note that while the respondent put in evidence the state of title certificates for all of the properties registered in his sole name or in the name of his mother, he did not tender the state of title certificate for Princeton-Summerland Road. It was only after a detailed review of the property tax notice for Princeton-Summerland Road that I discovered that both parties are the owners of this property.
- [103] The parties resided together at Princeton-Summerland Road from 2018 to the date of their separation. The respondent continues to reside at Princeton-Summerland Road. In my view, Princeton-Summerland Road is family property. It is property purchased in both the claimant and respondent's names and the parties resided together at this property until the date of separation. Accordingly, the claimant is entitled to an equal division of Princeton-Summerland Road.
- [104] The parties have presented an appraisal of Princeton-Summerland Road as of May 4, 2021. They have also presented an appraisal of that property as of April 11, 2024.
- [105] Section 87 of the FLA states that unless an agreement or order provides otherwise, the date for the valuation of family property is the trial date. A valuation of property at any other date may be an unequal division which is appropriate only if an equal division would be significantly unfair: *Banh v. Chrysler*, 2022 BCCA 74, at para. 26. Therefore, the value of Princeton-Summerland Road for the purposes of property division will be the appraised value as of April 11, 2024, as that is the appraisal closest in time to the trial date.
- [106] The appraised value of Princeton-Summerland Road as of April 11, 2024, is \$360,000.

- [107] The respondent has paid expenses related to Princeton-Summerland Road since the date of separation. He has the onus of proving those expenses. The only documented evidence of expenses for Princeton-Summerland Road after the separation are property taxes and propane invoices. The property taxes in evidence total \$2,226.06, after the principal residence grant, for the years 2020 to and including 2023. The propane invoices in evidence total \$609.28.
- [108] The total expenses, established by the evidence, for Princeton-Summerland Road after separation is \$2,835.34. The claimant is responsible for half of those expenses.
- [109] The value of Princeton-Summerland Road as of April 11, 2024, is \$360,000. After deducting the expenses for the property, the net value for division between the parties is \$357,164.66. The claimant is entitled to half of that net value, or \$178,582.33.
- [110] Since the respondent remains in possession of Princeton-Summerland Road, he will make an equalization payment of \$178,582.33 to the claimant.
- [111] In exchange for this equalization payment, the claimant will transfer her interest in Princeton-Summerland Road to the respondent. The parties will each pay half of the transfer costs.

Tulameen

- [112] The respondent and his former partner, Ms. Haas, purchased Tulameen in August 1992. As with Ridgeway, the respondent became the sole owner of Tulameen in September 2006, when the respondent paid Ms. Haas for her interest in the property.
- [113] The respondent sold Tulameen in October 2018 for \$400,000. The net sale proceeds generated from this sale were \$399,477. On October 26, 2018, the respondent deposited the net sale proceeds into a joint bank account at Valley First named as "Tom's Business".
- [114] On November 7, 2018, \$380,000 was transferred from "Tom's Business" account to the "Joint Household" account. From there, on November 8, 2018, the claimant wrote a cheque of \$380,000 to Raymond James. The records from Raymond James show a deposit of \$380,000 to the parties' Raymond James joint investment account on November 8, 2018.
- [115] The parties lived as spouses at Tulameen from 2006 to 2018. In my view, the sharing of the residence as a family home and the transfer of the sale proceeds to a joint account have transformed this property to a family asset. The treatment of Tulameen as the family residence and the transfer of the sale proceeds to a joint account are evidence of the respondent's intention to treat the property as a family asset.
- [116] I will deal with the disposition of the sale proceeds from Tulameen as part of the disposition of the Raymond James investment account.

Oroville Property

- [117] The parties purchased the Oroville Property in November 2012, for a price of \$113,500 USD. Based on the documents that are in evidence, it appears that the parties purchased the Oroville Property in both of their names.
- [118] The Oroville Property is clearly family property and should be divided equally between the parties.
- [119] The parties have not presented a formal appraisal of the Oroville Property. However, a County of Okanogan assessment document included in the claimant's financial statement of May 9, 2024, indicates a value of \$181,600 USD as of 2024.
- [120] The Oroville Property remains in the respondent's possession. He has paid the expenses to maintain and preserve the property since the separation. The documents submitted by the respondent establish that he has paid the total of \$11,545.80 USD for taxes, insurance, utilities and a hot water tank. The claimant is responsible for half of those costs.
- [121] Therefore, the value in the Oroville Property available for division is \$181,600 USD, less \$11,545.80 USD for the cost to preserve and maintain the property. The net value is \$170,054.20 USD.
- [122] Accordingly, the respondent will pay \$85,027.10 USD to the claimant to equalize the division of the Oroville Property. In exchange for payment, the claimant will transfer her interest in the Oroville Property to the respondent. The parties will each pay for half of the transfer costs.
- [123] The exchange rate for the American dollar fluctuates. However, for the purposes of this decision, I will fix the rate of exchange at \$1.38 CAD. Therefore, the equalization payment is the equivalent of \$117,337.40 CAD.

8th Avenue

- [124] The respondent purchased 8th Avenue in July 2017, in his name only. The purchase price was \$22,000. The respondent continues to be the registered owner of 8th Avenue.
- [125] This property is family property notwithstanding that it is registered solely in the respondent's name. The property was purchased by the respondent during the relationship. There is no reliable evidence that this property is excluded property. I find that the claimant has contributed to the purchase and maintenance of 8th Avenue during the relationship by contributing her income and assets to the family unit and by supporting the respondent in his endeavors to purchase, renovate and resell properties.
- [126] The appraised value of 8th Avenue closest to the date of trial is \$102,000 as of April 11, 2024. Therefore, I find that the value of the 8th Avenue for the purposes of property division is \$102,000.

- [127] The evidence of expenses associated with 8th Avenue are related to property taxes for 2020 to 2023, municipal utilities and gas. The documented expenses total \$6,193. The claimant is responsible for half of those expenses.
- [128] Therefore, the net value of 8th Avenue for division between the parties is \$95,807, or \$47,903.50 each.
- [129] Since the respondent continues as the registered owner of 8th Avenue, he will make an equalization payment to the claimant of \$47,903.50.

Fenchurch

- [130] In July 2002, the respondent's mother, Ruth Guerster, became the registered owner of Fenchurch. The purchase price for Fenchurch was \$46,000.
- [131] In October 2007, the respondent added himself to the title of Fenchurch to become a joint owner of the property with his mother. In and around the same time as this transaction, his mother signed a letter similar to the letters related to Dollie Street and 486B Corina.
- [132] For the same reasons I held that the letter signed by Ruth Guerster did not establish that she held an interest in Dollie Street and 486B Corina, I find that the letter relating to Fenchurch does not establish her interest in that property. In my view, all three letters were part of a scheme on the part of the respondent to shelter the properties from the respondent's previous marital breakdown.
- [133] As with 486B Corina, I find that the increase in value of Fenchurch during the parties' relationship is family property in accordance with s. 84(2)(g) of the FLA.
- [134] The value of Fenchurch as of the trial date will be its appraised value of \$270,000 as of April 11, 2024.
- [135] Since the respondent purchased Fenchurch just prior to the start of his relationship with the claimant, the value of Fenchurch at the start of the relationship will be its purchase price of \$46,000. Therefore, the increase in the value of Fenchurch during the parties' relationship is \$224,000.
- [136] The evidence of the expenses associated with Fenchurch since the date of separation are property taxes for 2021 to 2023, municipal utilities, electricity, gas and expenses for concrete. The total of the documented expenses is \$10,493.30. There is no evidence of any rental income generated by Fenchurch.
- [137] Therefore, the net value of Fenchurch for division is \$213,506.70. Since the respondent continues to be the registered owner of Fenchurch, he will make an equalization payment to the claimant of \$106,753.35.

Switzerland Property

- [138] The respondent purchased the Switzerland Property before the relationship. He testified that between 1997 and 2002 he lived on this property. When he left the Switzerland Property in 2002, he rented it to tenants. He rented the property from 2002 to 2016, but claims that since 2016 the property has remained unrented, although he does refer to a "sub-tenant" in his evidence.
- [139] There are no specific details about the purchase of the Switzerland Property by the respondent. However, he continues to be the registered owner of the property. The respondent also testified that the property is encumbered by a mortgage in the range of \$300,000.
- [140] The parties have presented no independent evidence to establish the market value of the Switzerland Property as of the date of cohabitation or as of the trial date. Pursuant to s. 84(2) (g) of the FLA, the parties are entitled to share in the increase in the value of the property during the relationship. However, without the appropriate evidence on value, it is impossible to assess the value of the increase, if any.
- [141] If the claimant seeks to have her interest in the Switzerland Property assessed and divided, the onus is on her to establish the valuation. However, it appears from the claimant's submissions that she does not seek any division of the Switzerland Property on the basis that the respondent assumes sole responsibility for the debts and liabilities associated with that property and she retains Wyndhaven Place without division.
- [142] Accordingly, the respondent will retain the Switzerland Property without division. However, the respondent will be solely responsible for all debts and liabilities associated with that property.

Wyndhaven Place

- [143] The claimant purchased Wyndhaven Place after the separation. She purchased the property using funds she obtained from the parties' Raymond James joint investment account. Later in these reasons I conclude that the claimant is entitled to half of the Raymond James investment account. Based on that conclusion, the claimant was entitled to the funds she obtained from the Raymond James account as her share of the property division. It follows that the respondent has no claim to an interest in Wyndhaven Place.

Raymond James Investment Account

- [144] When the claimant worked at Valley First, she worked with a financial advisor by the name of Hugh Desjardins. Mr. Desjardins left Valley First to become an investment advisor at Raymond James.

- [145] When the claimant left Valley First, she consulted with Mr. Desjardins to take over management of the parties' investments. By this time, the claimant had established various joint accounts for her and the respondent at Valley First. Most, if not all, of the financial transactions conducted by the parties flowed through the Valley First accounts. After consulting with Mr. Desjardins, the parties instructed him to establish a joint investment account at Raymond James.
- [146] Mr. Desjardins opened the joint account at Raymond James in May 2014, after a meeting with the parties. Mr. Desjardins testified that the account he opened for the parties was a joint account with a right of survivorship. He testified that he set up the account in that fashion because the respondent advised him that if something happened to the respondent, the claimant got the money.
- [147] On cross-examination, the respondent challenged Mr. Desjardins about whether Mr. Desjardins explained the meaning of a "joint account" to him. Mr. Desjardins could not recall if he specifically explained to the respondent what was meant by a "joint account".
- [148] While the respondent challenged Mr. Desjardins about whether he gave him an explanation of a joint account, the respondent did not specifically claim that he did not know what a joint account was. In my view, the respondent was well aware that the claimant had authority to conduct transactions from their joint account, including the withdrawal of funds. She had been conducting transactions on behalf of both parties for many years starting at Valley First. Therefore, I find that the respondent understood what a joint account was and that he understood and consented to opening a joint investment account at Raymond James.
- [149] I also find that the parties established the joint investment account at Raymond James at a time when there was no discord in their relationship and no sign of an impending separation.
- [150] In the years following May 2014, the parties deposited funds in their Raymond James joint investment account. Those funds came from various sources, including funds from their joint accounts at Valley First and funds from the sale of properties. By the time that the parties separated, the Raymond James joint investment account had grown to just over \$1M.
- [151] The claimant ended the parties' relationship on May 2, 2020. However, before the final separation, the claimant left the respondent on two occasions.
- [152] The first separation was in February 2020 for approximately two weeks when the claimant went to Clearwater, B.C. to be with her parents. After two weeks, the parties reconciled and the claimant returned to Princeton.

- [153] The second separation occurred in March or April 2020, when the claimant left again for approximately two weeks. During this time, the parties were in communication and when the respondent agreed to participate in counselling, the claimant returned to the family home. The event that led to the claimant finally leaving the respondent was the respondent's refusal to participate in the counselling he had agreed to.
- [154] On May 2, 2020, the claimant left the respondent permanently.
- [155] On May 5, 2020, the claimant instructed Mr. Desjardins to transfer \$500,000 from the parties' Raymond James joint investment account to her. The claimant transferred those funds to a sole Valley First account. The claimant did not advise the respondent that she was transferring the funds to herself because she was afraid of his reaction.
- [156] The claimant used part of the funds taken from Raymond James to purchase Wyndhaven Place in Clearwater.
- [157] The respondent claims that all of the transactions involving Raymond James, were part of a scheme, orchestrated by the claimant, to gain control over the respondent's assets and finances. The respondent claims further that Mr. Desjardins assisted the claimant in her scheme to gain control.
- [158] The respondent further alleges that, with the assistance of Mr. Desjardins, the claimant defrauded him of \$500,000 when she withdrew one-half of the Raymond James investment account immediately upon the parties' separation without notice to him.
- [159] There is no evidence from which I can reasonably infer that the claimant established the account at Raymond James for the purpose of gaining control over the respondent's assets and finances. She already had the same signing authority over the parties' Valley First accounts, as she did with Raymond James. Further, the parties established the Raymond James account in May 2014 when their relationship was stable and there was no threat of separation.
- [160] In addition, I accept Mr. Desjardins' evidence that when he met the respondent to establish the Raymond James account, the respondent stated that should anything happen to him, the claimant would get everything. Accordingly, Mr. Desjardins established a joint account in the name of both parties and with a right of survivorship.
- [161] There is also no evidence upon which I can conclude that the claimant defrauded the respondent of funds held in the Raymond James account. The claimant denies the respondent's allegations of fraud and testified that she withdrew half of the Raymond James investment account in order to protect herself financially as a result of the separation. When the claimant left the respondent, there was no legal impediment to her removing funds from the joint account at Raymond James. The respondent had given her the necessary authority to withdraw funds and no order restraining her from doing so existed at that time.

- [162] While I find that there was no scheme on the part of the claimant to defraud the respondent out of his assets, the actions of the claimant in withdrawing one-half of the value of the Raymond James investment account, without consultation with the respondent, created suspicion and fostered animosity on the part of the respondent. The claimant's actions in this regard have made the resolution of these family law issues and the conduct of the trial significantly more difficult than it ought to have been.
- [163] Based on my assessment of the evidence and my findings on the disposition of the real estate, I find that the Raymond James investment account was family property. I also find that the appropriate disposition of those funds is to divide the value of the investment account equally between the parties.
- [164] The claimant received her half interest in the Raymond James account when she withdrew \$500,000 on May 5, 2020. The respondent received his half interest in the account when he withdrew the remaining balance after he discovered that the claimant had withdrawn \$500,000. Therefore, there is no need for a further division of this asset or an equalization payment.

Vehicles

- [165] The claimant seeks to recover a share of a number of motorized vehicles. Those vehicles are a 2014 Jeep Wrangler, a 2015 Polaris Slingshot, dirt bikes, all terrain vehicles and a motor boat. The respondent declares the total value of those vehicles to be \$18,700. The claimant claims half of their value or \$9,350.
- [166] Neither party tendered evidence to fully explain the history of the vehicles or their actual value. It is clear that the respondent came into possession of the vehicles during the relationship and, as such, the claimant has an interest in them as family property.
- [167] The claimant is prepared to accept the value placed on those vehicles by the respondent and seeks an equalization payment of \$9,350. However, rather than order an equalization payment to the claimant, I will off-set the value of the vehicles against the claimant's scrapbooking collection.

Claimant's Scrapbooking Collection

- [168] The respondent makes a claim for a share of the claimant's collection of scrapbooking equipment and materials. He maintains that the claimant accumulated her scrapbooking equipment and materials during their relationship and that such collection has some value.
- [169] The claimant suggests that she acquired her scrapbooking equipment and materials before the relationship began and as gifts from her mother. While I am prepared to accept that some of these items were accumulated before the relationship or as gifts, I am not prepared to accept that all of the items were acquired in that way. Accordingly, the respondent likely has an interest in at least part of the collection.

- [170] The respondent sought to establish the value of the scrapbooking equipment and materials through the evidence of the claimant's previous friend and participant in the claimant's scrapbooking sessions. Unfortunately, the witness's attempt to value the scrapbooking collection is not reliable. It is based upon an inventory provided to her by the respondent and on her personal observations while participating in sessions of scrapbooking with the claimant. In my view, the inventory of items appraised by the witness is not sufficiently reliable to place any weight on the valuation.
- [171] Further, the witness had no specific qualifications for valuing the items in question. Her opinion on value is based only on her long-time participation in scrapbooking activities. Therefore, much like the valuation of the vehicles, I am left with no reliable evidence about the value of the scrapbooking equipment and materials.
- [172] Accordingly, the respondent's claim for a share in the claimant's scrapbooking equipment and materials is off-set against the claimants claim for a share in the respondent's vehicles.

Remaining Financial Assets and Debts

- [173] The parties had other miscellaneous accounts and registered assets. In particular, they both held Tax Free Savings Accounts ("TFSA") and Registered Savings Plans ("RSP"). There does not appear to be a significant difference between the remaining financial accounts held by the parties individually.
- [174] Therefore, each of the parties will retain the remaining financial assets, including TFSAs and RSPs, which are in their individual names without equalization.

Family Debts

- [175] Neither party made submissions or directed me to evidence of family debts. Accordingly, there will be no order with respect to the division of family debts and each of the parties will be responsible for any remaining debts in their individual names.

Summary of Property Division

- [176] The resolution of the property division issues in this case are summarized as follows:

- a) The respondent will retain the following properties:
 - i. Princeton-Summerland Road;
 - ii. Oroville Property;
 - iii. 8th Avenue; and
 - iv. Fenchurch.
- b) The claimant will transfer her interest in Princeton-Summerland Road and the Oroville Property to the respondent and the parties will share the transfer costs equally;

- c) The respondent will pay the claimant the sum of \$450,576.58 to equalize their respective interests;
- d) The respondent will retain the Switzerland Property without equalization and will assume sole responsibility for the debts and liabilities associated with that property;
- e) The claimant will retain Wyndhaven Place without equalization;
- f) The Raymond James investment account is divided equally with each party having already received their share of the account;
- g) The respondent will retain his vehicles and the claimant will retain her scrapbooking equipment and materials without equalization;
- h) The parties will retain all other remaining assets in their own names without division;
- i) There is no family debt to divide.

Spousal Support

- [177] Both the claimant and the respondent sought spousal support from the other at the start of this trial. However, during submissions, the claimant's position was that neither party had established entitlement to spousal support.
- [178] Section 15.2(1) of the Divorce Act, R.S.C. 1985, c. C-46 [DA], authorizes the court to order spousal support payable by one spouse to another.
- [179] The Court of Appeal in *Marquez v. Zapiola*, 2013 BCCA 433, held at para. 32, that the statutory factors and objectives set out in s. 15.2 of the DA include both compensatory and non-compensatory principles. The Court, at paras. 33-34 of *Marquez*, describes compensatory support as recognizing the need to compensate a spouse for the economic disadvantage arising from the marriage and to account for the economic advantages that are conferred on a spouse as a result of the marriage.
- [180] As I said in *Jourabchi v. Masbough*, 2024 BCSC 1813:
- [195] The economic disadvantages typically considered in the compensatory support principle include the withdrawal of one spouse from the workforce to assume responsibilities for childcare and household management. Compensatory support acknowledges that withdrawing from the workforce often results in an impairment of that spouse's economic opportunities
- [181] In this case, the respondent has not established a claim for support on the compensatory principle. He did not withdraw from the workforce as a result of the marriage to assume household management responsibilities. The evidence suggests that the respondent continued on in his business of purchasing, renovating, renting and re-selling properties. There is no evidence that he left or slowed down his business to accommodate family needs. Therefore, the respondent is not entitled to spousal support on the compensatory

principle.

[182] The Court in *Marquez* defines non-compensatory support as acknowledging the interdependency that marriage creates and which often "cannot be easily unravelled". The non-compensatory support principle allows the court to assess the level of entitlement to meet a spouse's needs after separation. The measure of a spouses needs must consider the standard of living enjoyed by the parties during their relationship.

[183] In this case, the respondent presented no reliable evidence that he is in need of financial support to maintain the standard of living he enjoyed during the relationship. Accordingly, I find that the respondent has also not established an entitlement to support on the non-compensatory support principle.

[184] The claimant concedes that she has not established an entitlement to spousal support on either the compensatory or non-compensatory principles.

[185] Therefore, I deny the claims for spousal support by each of the parties in this action.

Divorce

[186] The parties separated on May 2, 2020. They have lived separate and apart since that date. I am satisfied that there is no prospect of reconciliation between the parties and that all other requirements for divorce have been satisfied.

[187] Accordingly, I order that the parties be divorced from one another and that the divorce take effect on the 31st day following the date of this order.

Costs

[188] If the parties cannot agree on costs, they have leave to make submissions on that issue. I will entertain oral submissions from the parties on costs provided that a hearing on the issue of costs be scheduled within 60 days.

"D.K. Hori J."

HORI J.

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