

CANADA / JUDGMENT

Kaur v. Singh

2023 BCSC 1736

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1736 Kaur v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kaur v. Singh,

2023 BCSC 1736

Date: 20231005

Docket: E59962

Registry: New Westminster

Between:

Manjit Kaur

Claimant

And

Hardev Singh

Respondent

Corrected Judgment: The text of the judgment was corrected on the cover page on October 12, 2023.

Before: The Honourable Justice Baker

Reasons for Judgment

Counsel for the Claimant:

P.I. Sahota

Counsel for the Respondent:

R.K. Bassi

Place and Date of Trial/Hearing:

Abbotsford, B.C.

September 12-16, 20-23, 2022

and April 3-4, 2023

Place and Date of Judgment:

New Westminster, B.C.

October 5, 2023

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Introduction

- [1] This is a matrimonial proceeding, in which the primary issue is the division of family assets and debts. The claimant Ms. Kaur seeks an unequal division of assets and debts, while the respondent Mr. Singh seeks an equal division.
- [2] Ms. Kaur was born April 13, 1987. Mr. Singh was born May 12, 1979. The parties were married on February 20, 2009 in India, and separated on March 12, 2020 in Canada. They have one child, who was born on May 24, 2013. The issues relating to the parties' child were resolved by consent at the end of the trial. The parties agree to a divorce.

Issues

- [3] The primary issue between the parties relates to the sharing of family debt. Mr. Singh argues that all lines of credit, credit cards, and a personal loan payable to a relative are family debts to be shared equally. Ms. Kaur argues that throughout the marriage Mr. Singh transferred money to his friends and relatives in India and Canada, incurring much of the debt at issue, and that he should be solely responsible for the bulk of the debt.

Background

- [4] At the time of this arranged marriage, Mr. Singh was living and working in Dubai. Mr. Singh came back to India for the marriage. After they were married in February 2009, Mr. Singh returned to Dubai at the beginning of April. Ms. Kaur testified that she moved in with her in-laws, and Mr. Singh sent money to support the extended family. She did not know how much money he sent, but she understood he was helping his brother and parents to buy something.
- [5] Mr. Singh came to Canada on a work permit in 2010, and sponsored Ms. Kaur to come to Canada on an open work permit in 2012. They lived together in a one bedroom apartment in Surrey. Mr. Singh was working as a long haul trucker, and was often gone for extended periods of time.

- [6] Ms. Kaur arrived in Canada in January 2012, and started working at Windsor Greenhouses in March 2012. She did not speak English. She was employed by a contractor to Windsor Greenhouses, who would pick her up at 5:00 am to start work at 6:30 am. She earned \$9.75/hour, and often worked more than 8 hours a day. Her pay cheques were deposited into her personal account at TD bank, which Mr. Singh helped her to open. Ms. Kaur knew nothing about banking, and relied on Mr. Singh to help her. He told her they would have separate accounts, and throughout the marriage this remained the case.
- [7] Ms. Kaur continued to work until November 2012, when she was pregnant. She began receiving maternity benefits in May 2013, after their child was born. The maternity benefits and child tax credits were deposited into her account. She did not return to work until 2017, because they had nobody to look after their child.
- [8] In early 2017, Mr. Singh's parents came to Canada and Mr. Singh told Ms. Kaur she needed to go back to work and his parents would look after their child. Ms. Kaur started working at Nana's Kitchen, making samosas. She was paid \$11.50/hour, and worked from 6:00 am to 2:30 pm, 5 days a week. After 7 months, her in-laws returned to India, and Ms. Kaur stopped working for a period of time.
- [9] In April 2019, Ms. Kaur began working at the Best Western on King George Avenue, where she continued to work at the date of trial.
- [10] In July 2013, Mr. Singh purchased his own truck, and began working for himself as a trucker. On December 12, 2013 Mr. Singh incorporated a company known as TST Transport Ltd. Mr. Singh was the sole shareholder and director. The trucking business continued under the auspices of TST until 2020, when Mr. Singh resumed working as an employee of another trucking company. Mr. Singh testified that he was in a car accident in November 2020, which resulted in him being fired. He said that he was in pain from the accident, and wasn't able to work for a number of months. In April 2021, Mr. Singh began working again as a truck driver for another company.
- [11] In 2015 Mr. Singh purchased a home. He testified that Ms. Kaur would not qualify for a loan, so he asked his brother Harpreet Singh to become a co-owner, to assist him in qualifying for a mortgage. The house was purchased in the joint names of Mr. Singh and Harpreet Singh. In 2017 Harpreet Singh was removed from title. The house was sold in 2021, and the sale proceeds remain in trust pending the outcome of this litigation.
- [12] In March 2020 the parties separated and they have not lived together since. Their child lives primarily with Ms. Kaur.

- [13] During the marriage, Mr. Singh had a large number of bank accounts. His first bank account was with Coast Capital. However, he soon moved his banking to TD and RBC. At TD he had a personal chequing account (048), a personal line of credit (088), a personal savings account (218), two TD VISA cards (368) and (397), and a TST deposit account (570). At RBC he had a personal line of credit (351), and a personal chequing account (587). He also had a President's Choice Mastercard (716).
- [14] There is no question that Mr. Singh treated the TST account as a personal account, and moved funds in and out of that account for business and personal purposes. I consider the TST account to be a family asset in this litigation.
- [15] Mr. Singh was cross-examined at length on transactions in and out of these accounts, and between these accounts. Suffice it to say, the cross-examination was extremely detailed and ultimately very confusing. It was conducted more in the nature of an unfocussed discovery, than a focussed cross-examination at trial. Mr. Singh was asked about many small transactions, and often resorted to very general answers, unsurprisingly given the small amounts and the passage of time. However, for larger transactions, Mr. Singh's answers were more problematic. His answers at times varied between direct and cross-examination. He clearly moved funds between accounts routinely, making it very difficult to trace where money was coming from and where it was going. Deposits and withdrawals were often unexplained or contradictory explanations were provided.
- [16] I found large portions of Mr. Singh's evidence to not be credible or reliable. At times, he was evasive, putting his credibility into issue. At other times he simply could not remember and would provide different explanations for money transfers, making his answers unreliable. Generally speaking, I required corroborative evidence in order to accept Mr. Singh's evidence.
- [17] On the other hand, I found Ms. Kaur to be very credible. She was unshaken under cross-examination. She was consistent in her evidence. She was not argumentative or evasive. Some of her answers were not reliable, in particular with respect to certain dates which were contradicted by the documentary evidence. However, I find these discrepancies were not material and did not detract from the overall reliability of her evidence on the central issues before me. She described a relationship where Mr. Singh controlled her and everything she did. I accept this as fully credible.
- [18] In argument, Ms. Kaur focussed on several transactions which she said were evidence of Mr. Singh's manipulation of their accounts to his personal advantage. The transactions upon which Ms. Kaur focussed are the following:
- a) Mr. Singh used Ms. Kaur's bank accounts for his own purposes;
 - b) Mr. Singh transferred \$6,000 and \$10,000 to his nephew Harjit Singh;
 - c) Mr. Singh transferred \$22,000 to Bhupinderjeet Singh;

- d) Mr. Singh transferred \$11,000 to Manjit Thind;
- e) Mr. Singh was untruthful about the values of trucks he purchased, the sources of funds for the trucks, and the amounts he received from his sale of the trucks;
- f) Mr. Singh sent money to India to help his family buy land and build a new house, and to benefit his family in India;
- g) Mr. Singh sent money to his niece to assist her in coming to Canada as a student;
- h) Mr. Singh required Ms. Kaur to pay the majority of the household expenses, sending his own funds to India to assist his family;
- i) Mr. Singh has not accounted for rents received from tenants in the family home; and
- j) Mr. Singh said he transferred his trucking company to his nephew.

[19] Counsel for Ms. Kaur spent more than four days cross examining Mr. Singh on his banking records in great detail. Notwithstanding this extensive cross-examination, counsel was unable to produce a meaningful, coherent summary of what he said the results of his cross-examination meant. I was left with schedules of deposits and withdrawals from the many accounts held by Mr. Singh, and no real roadmap as to how they tied together, if at all. I was left with overly broad submissions, and arguments in support of inferences, many of which were not borne out on the evidence.

[20] In addition to the issues raised by Ms. Kaur, Mr. Singh asserts that Harpreet Singh lent \$15,000 to him, and that loan is a family debt. Mr. Singh asserts that all lines of credit and credit cards are family assets to be divided equally. Mr. Singh seeks to be reimbursed for the post separation mortgage payments, property taxes, and house insurance which he paid while Ms. Kaur had exclusive occupation of the family home.

Use of Ms. Kaur's bank accounts

[21] Ms. Kaur testified that Mr. Singh helped her set up a TD bank account in or about March 2012. She testified that she did not know how to open a bank account or do any banking when she arrived in Canada. She was extremely unsophisticated when she arrived in Canada in 2012, her English language skills were very poor, and I accept that she relied on Mr. Singh completely when it came to banking arrangements.

[22] Ms. Kaur deposited her pay cheques into her TD account. Ms. Kaur testified that Mr. Singh withdrew money from her account throughout the marriage. He would go with her to the bank and have her put her bank card and PIN in the ATM, and he would then withdraw cash for himself. I accept this evidence.

[23] Beginning in January 2018, Mr. Singh's brother Amandip Singh began transferring large amounts of money into Ms. Kaur's account. She received approximately \$400,000 between January and March 2018, and on March 20, 2018 a bank draft was issued out of her account

in the amount of \$400,000. Ms. Kaur testified that Mr. Singh told her that the deposits would be made into her account, and he told her to issue the draft to be made out to his brother. Ms. Kaur complied with Mr. Singh's demand. Under cross-examination, Mr. Singh agreed the monies from Amandip Singh were transferred to Ms. Kaur's account. First Mr. Singh said he did not know why the funds were placed in Ms. Kaur's account. Then, less than five minutes later, Mr. Singh testified that he told Amandip Singh to put the money in Ms. Kaur's account. Mr. Singh was very evasive around this line of questioning. I find that Mr. Singh directed the deposit of funds into Ms. Kaur's account, and the issuance of the bank draft out of her account.

- [24] Ms. Kaur testified that in March 2015 Mr. Singh took her to TD to open a line of credit. She said she did not know why the account was being opened, and simply did what Mr. Singh told her to do. Ms. Kaur testified that on March 18, 2015 Mr. Singh caused a bank draft in the amount of \$11,000 to be issued out of the line of credit. She testified Mr. Singh told her that the money was being sent to Dubai, but she did not know to whom or why. A draft in the amount of \$11,000 payable to the UAE Exchange supports a finding that the funds were transferred to Dubai.
- [25] In final argument, Mr. Singh submitted that these funds were actually sent to Ms. Kaur's family in Dubai; however, I reject entirely this submission. In his testimony, Mr. Singh did not dispute that he used Ms. Kaur's line of credit to obtain a bank draft in the amount of \$11,000. However, he testified that he repaid this through two deposits made March 20, 2015. One of these deposits was a transfer from Mr. Singh's account, which is shown on his own banking records. The source of the other deposit was not established.
- [26] I find that Mr. Singh directed the transfer of \$11,000 to Dubai to the benefit of his friend or family member, and not for a family purpose; however, I also find that these funds were returned to Ms. Kaur's line of credit shortly thereafter.
- [27] A further \$10,800 was transferred out of Ms. Kaur's line of credit on March 27, 2015. Ms. Kaur testified she had no knowledge of this transfer. She began making payments towards the principal and interest in April 2015. Ms. Kaur's payments are not disputed by Mr. Singh.
- [28] Ms. Kaur testified that on June 15, 2015, Mr. Singh caused a transfer from her line of credit to Mr. Jagjit Singh in the amount of \$15,000. This is confirmed by a transfer slip produced at trial. Ms. Kaur testified that this was done by Mr. Singh to assist Mr. Jagjit Singh in purchasing a truck. She recalls Kamaljit Kaur, Mr. Jagjit Singh's wife, thanking her for the money. Mr. Singh denied any knowledge of this transfer. I find Mr. Singh is not credible on this point, and deliberately played down his relationship with Mr. Jagjit Singh.

- [29] I prefer the evidence of Ms. Kaur over than of Mr. Singh with respect to the opening and use of Ms. Kaur's bank accounts. While Ms. Kaur used her accounts to deposit her pay cheques and pay for expenses, I find that Mr. Singh also treated Ms. Kaur's bank accounts as an extension of his own bank accounts, withdrawing funds as he saw fit, and directing transfers to his friends, family and associates.
- [30] I make no findings regarding the use of funds taken from Ms. Kaur's TD chequing account, as the evidence was too vague to establish the purposes for which Mr. Singh took funds from Ms. Kaur's account.
- [31] However, in relation to Ms. Kaur's TD line of credit, I find Ms. Kaur's evidence to be credible. I find that Mr. Singh caused \$15,000 to be transferred out of Ms. Kaur's line of credit to the benefit of his friend, which funds were not repaid. I also find that Mr. Singh caused \$10,800 to be transferred out of Ms. Kaur's line of credit to his own benefit, which funds were not repaid. Other than these transactions, a few small withdrawals from the line of credit were made, all of which total \$4,500. Ms. Kaur testified that approximately \$1,500 were taken by her, and the remaining were taken by Mr. Singh. I accept Ms. Kaur's evidence regarding her line of credit.
- [32] Ms. Kaur repaid the entirety of her TD line of credit over the course of six years. She repaid principal in the amount of \$25,287.26 and interest in the amount of \$19,263.40, for a total of \$44,550.66.
- [33] I find that the advances taken by Mr. Singh from Ms. Kaur's line of credit were not taken for a family purpose, and are not a family debt; rather, these are Mr. Singh's sole debts. Ms. Kaur is entitled to a repayment of \$43,000 from Mr. Singh, which amount accounts for the small amount that Ms. Kaur agreed she withdrew from the line of credit.

Mr. Singh transferred \$6,000 and \$10,000 to his nephew Harjit Singh

- [34] In direct evidence, Mr. Singh said he borrowed \$6,000 from his nephew Harjit Singh on July 4, 2013, to allow him to purchase a truck. Under cross-examination, Mr. Singh did not know where the \$6,000 he received on July 4, 2013 came from. Harjit Singh testified that he lent Mr. Singh \$6,000 in 2013, and he was repaid in approximately May 2014. Mr. Singh's financial records show a deposit of \$6,000 on July 4, 2013, but no corresponding payment to Mr. Harjit Singh in May 2014. While Mr. Singh's evidence on this loan was not entirely reliable, I am satisfied based on the testimony of Harjit Singh that he did loan \$6,000 to Mr. Singh, which was repaid in or about 2014.
- [35] I am satisfied that the evidence established that Harjit Singh transferred \$10,000 to Mr. Singh on March 25, 2015. Mr. Singh testified that he borrowed this money to establish a down payment to purchase the family home. I accept this evidence.

[36] On May 2, 2017 Mr. Singh transferred \$40,350 from his RBC line of credit to his RBC chequing account. From that money, he transferred \$10,350 to Harjit Singh. When Mr. Singh purchased the family home, his brother was on title as a co-owner. Mr. Singh testified he did this to ensure he would be able to get financing. In 2017 his brother was taken off title. The notary's cost to remove his brother from the title was \$350. Mr. Singh testified that his brother asked him to give the \$350 to his nephew, Harjit Singh, along with the \$10,000 Mr. Singh was repaying Hargit Singh. Mr. Harjit Singh testified at trial and confirmed this evidence. While Ms. Kaur urges me to reject the evidence regarding the \$10,000 transaction with Harjit Singh, I find it is supported on the evidence. I find that Mr. Singh borrowed \$10,000 from Harjit Singh in 2015, which he repaid in 2017.

Mr. Singh transferred \$22,000 to Bhupinderjeet Singh

- [37] The evidence established that Bhupinderjeet Singh transferred \$22,000 to Mr. Singh on March 12, 2015. Mr. Singh testified that he borrowed this money to establish a down payment to purchase the family home. I accept this evidence.
- [38] Mr. Singh testified that he repaid Bhupinderjeet Singh in June 2017. His bank records show a withdrawal of \$20,300 on June 27, 2017, which he says represents repayment to Bhupinderjeet Singh. Bhupinderjeet Singh testified at trial and confirmed the loan in March 2015 and that he was repaid in June 2017. While Ms. Kaur urges me to reject the evidence regarding the transaction with Bhupinderjeet Singh, I find it is supported on the evidence. I find that Mr. Singh borrowed \$22,000 from Bhupinderjeet Singh in 2015 and repaid it in or about June 2017.

Mr. Singh transferred \$11,000 to Manjit Thind

- [39] In direct examination, Mr. Singh testified that he borrowed \$8,000 and \$3,000 from Manjit Thind to pay for paperwork and expenses in coming to Canada. He was shown two transfers at the end of March 2010 from UAE Exchange to a TD account in the name of Overseas Carrier and Consulting, which he said were sent from Manjit Thind in Dubai. Mr. Singh said he did not have a bank account at that time, and so the funds were transferred to a friend's account and then given to him. These were in the amount of \$5,000 and \$3,000. He was also shown two transfers in May and April 2010 into his own account at Coast Capital, in the amount of \$1,500 each, from Manjit Thind. The documentary evidence supports Mr. Singh's testimony that he received a total of \$11,000 from Mr. Thind.
- [40] Under cross-examination, Mr. Singh stated he repaid Manjit Thind in 2014 by making a payment into an account held by Mr. Thind and Mr. Thind's wife. The exact amount he paid back was unclear. First, he said he paid \$7,500 and \$3,500. The following week under continued cross-examination, he said he paid \$7,000 and \$3,700, and gave Mr. Thind a deposit owing to Mr. Singh on the apartment Mr. Singh had lived in in Dubai. Mr. Singh said the amount totalled \$11,000. Mr. Singh's bank records show two drafts being issued in January 2014, one in the amount of \$3,507.50 and the other in the amount of \$7,307.50. It is

common ground that the cost of a bank draft is \$7.50, which is taken from the account at the same time as the draft. Copies of the actual drafts were not available, but Mr. Singh testified these were sent to Mr. Thind.

- [41] Ms. Kaur argues these funds sent to Mr. Thind were not a legitimate repayment of debt, and asks me to make the inference that in 2010 Mr. Thind simply forwarded to Mr. Singh his own money from Dubai. He asks me to infer that the monies paid to Mr. Thind in 2014 were held to the benefit of Mr. Singh or his family in India.
- [42] I decline to make the inferences sought by Ms. Kaur. I find the evidence establishes that in 2014 Mr. Singh repaid monies Mr. Thind loaned to him in 2010.

Mr. Singh's trucks

- [43] Ms. Kaur submits that, before their marriage, Mr. Singh told her family he owned two trucks and a trailer in Dubai. Ms. Kaur asked me to infer that the monies sent by Mr. Thind in 2010 were actually monies received by Mr. Thind on the sale of Mr. Singh's equipment in Dubai. At trial, Mr. Singh denied he owned any equipment in Dubai. For the reasons already expressed, I accept that the monies sent by Mr. Thind to Mr. Singh in 2010 were a loan, repaid by Mr. Singh in 2014.
- [44] Mr. Singh testified that once he had been in Canada a few years, he borrowed money from friends and relations to allow him to purchase a truck. I am satisfied that on July 12, 2013 Mr. Singh purchased a truck for USD\$29,100. Mr. Singh testified he received \$10,000 from his brother Amandip Singh on May 13, 2013, which he used towards the purchase of the truck. This transfer is supported by the evidence at trial. Mr. Singh gave a range of explanations as to the repayment of these monies. He testified that he repaid Mr. Amandip Singh in early 2014. He also testified he repaid Mr. Amandip Singh from his RBC chequing account in 2017, pointing to a withdrawal of \$10,000. However, the transaction Mr. Singh pointed to was actually a transfer to another account, and no evidence was led as to the ultimate recipient of the funds other than Mr. Singh's bald statement. I cannot determine from the evidence at trial when Mr. Singh repaid the \$10,000 loan he received from Amandip Singh; however, I do accept that the loan has been repaid, and is not a continuing family debt.
- [45] Mr. Singh testified he received \$5,000 from Bhupinderjeet Singh towards the purchase of the truck, and pointed to a line in his bank account statement which he said represented the money he received from Mr. Bhupinderjeet Singh. Mr. Bhupinderjeet Singh did not confirm this loan when he testified in this trial. I do not accept that Mr. Singh borrowed \$5,000 from Mr. Bhupinderjeet Singh for the purchase of his first truck.
- [46] Mr. Singh testified Harjit Singh lent him the final \$6,000 in 2013, which I have already referred to above. I accept that Mr. Singh borrowed \$6,000 from Mr. Harjit Singh for the purchase of his first truck, which has since been repaid.

- [47] Mr. Singh testified he sold this truck in December 2015 for \$17,200, and deposited the sale proceeds into his corporate account for TST. I accept this evidence.
- [48] Mr. Singh testified that in November 2015, he purchased a new used truck for \$55,000, as supported by a purchase agreement. The new truck was also subject to a lease, which was transferred to Mr. Singh in December 2015. Mr. Singh testified he paid out the lease by transferring \$21,815 to Mr. Harbir Waraich (the previous lessee) on December 1, 2015, from his corporate account. Mr. Singh's evidence with respect to the purchase of the second truck was extremely confusing. He testified that he purchased it through his corporate account, and described how he took funds from his chequing account, from a friend, and from his line of credit. His banking records show a transfer of \$9,000 from his line of credit to his chequing account on December 1, 2015, and a transfer of \$13,000 from his chequing account to his corporate account on December 1, 2015. A deposit of \$10,000 from an unidentified source is made into the corporate account on December 1, 2015. A draft of \$21,822.50 is then made out from the corporate account on December 1, 2015. This evidence supports a finding that Mr. Singh purchased the second truck for the value of the remaining lease, in the amount of \$21,815, on December 1, 2015. The evidence does not support a finding that Mr. Singh paid \$55,000 for the second truck, notwithstanding the purchase agreement. It is likely that the purchase agreement was executed as part of the transfer of the lease, and does not reflect the actual value paid by Mr. Singh. The source of the purchase proceeds is, in part, Mr. Singh's TD line of credit.
- [49] Mr. Singh testified that he drove the second truck until 2020, when it needed repairs which were estimated at over \$30,000. He testified that he could not afford the repairs, and sold the car in June 2020 for \$6,500. This sale was supported by a bill of sale to Jagjit Singh, in the amount of \$6,500, dated June 17, 2020. There is no record of a deposit in the amount of \$6,500 in any of Mr. Singh's bank records in or around June 17, 2020.
- [50] Mr. Singh agreed under cross-examination that Jagjit Singh was a friend of his from his village in India, who he also knew during their time in Dubai. Mr. Singh agreed under cross-examination that when the truck was transferred to Mr. Jagjit Singh through ICBC, no value for the truck was written on the transfer documents.
- [51] Under cross -examination, Mr. Singh denied transferring \$15,000 from Ms. Kaur's line of credit in 2015 to the benefit of Jagjit Singh and his wife Kamaljit. Mr. Singh testified that Jagjit Singh's wife's name was Kiran. Mr. Singh was shown the title search for a house owned jointly by Jagjit Singh and his wife Kamaljit Kaur, and agreed that the address on the title search matched the address for Jagjit Singh on the bill of sale. I find that Mr. Singh and Mr. Jagjit Singh were close and long standing friends.

- [52] Ms. Kaur urges me to find that Mr. Singh was not credible with respect to the sale of the truck. She argues that the ICBC transfer document in relation to the truck does not show a value, and therefore I should find that the transfer was non-arms length, for no value, and was done simply to place the truck out of reach of Ms. Kaur. Ms. Kaur argues there was no true sale of the truck and the transfer to Mr. Jagjit was a dissipation of a family asset.
- [53] I find Ms. Kaur has raised a significant credibility concern with respect to Mr. Singh's evidence regarding the sale of the truck. I find that Mr. Singh was evasive regarding the sale of the truck to Mr. Jagjit Singh. Both the ICBC transfer document and the absence of any deposit to a banking account around the time of the purported sale support a finding that Mr. Singh did not transfer the truck to Mr. Jagjit Singh for fair value on June 17, 2020. I find that Mr. Singh transferred the truck to Mr. Jagjit Singh in June 2020 for no value, and such transfer was done with the intention of placing the truck out of reach of Ms. Kaur, following their separation several months earlier.
- [54] No evidence as to the value of the truck was led by Ms. Kaur. The only evidence of value is that offered by Mr. Singh, namely \$6,500. I find that Mr. Singh has dissipated this family asset, valued at \$6,500, which must be accounted for.

Money sent to Mr. Singh's friends and family

- [55] Ms. Kaur testified that, before 2015, Mr. Singh asked her for \$6,000, which he sent to India, along with some of his own money. Ms. Kaur testified that their money was used to buy property in India. Ms. Kaur did not know whose name was on title to the property in India. In 2015 she returned to India for a visit and saw the house, which was very old. Since that time, the family has built a new house on the property. A photograph of the new house was introduced into evidence. Ms. Kaur testified that Mr. Singh's family did not have the financial resources to build a new house without the funds from Ms. Kaur and Mr. Singh. I accept Ms. Kaur's evidence that Mr. Singh transferred \$6,000 of family assets to his family in India to be used in the purchase and construction of a new home for his family.
- [56] Mr. Singh agreed that he sent \$26,144 to India by way of the following: \$8,000 on August 10, 2015 from his TST chequing account, \$7,507 on December 28, 2016 from his TST chequing account, and \$10,637 on May 8, 2017 from his RBC chequing account. Mr. Singh's explanations for these transfers were confused and uncorroborated. I am unable to accept his explanations and find that Mr. Singh transferred family assets valued at \$26,144 to his own family in India, and this must be accounted for.
- [57] Other than these specific transactions, Ms. Kaur's counsel prepared tables of deposits and withdrawals from Mr. Singh's different accounts. Ms. Kaur asks me to infer that all or most of the monies "unaccounted for" in Mr. Singh's accounts had been sent to India to benefit Mr. Singh and other members of his family. While I have concerns about the evidence given by Mr. Singh generally, I am simply unable to draw the inference urged on me by counsel for Ms. Kaur. On the evidence before me, I cannot simply find that any number of entries in

bank accounts must necessarily be transfers of family assets to Mr. Singh's family and friends.

- [58] Ms. Kaur argues that Mr. Singh did not produce banking records in a timely way, and this has hampered Ms. Kaur's ability to challenge his banking records. I do not agree that Mr. Singh has failed to comply with his disclosure obligations. A detailed disclosure order was made at a judicial case conference on August 5, 2021. If Ms. Kaur was not content with the disclosure made by Mr. Singh, she had two years before trial to address any deficiencies. No applications were made by Ms. Kaur.

Money sent to Mr. Singh's niece

- [59] I am not satisfied on the evidence before me that Mr. Singh sent any funds to his niece to assist her in coming to Canada.

Ms. Kaur paid the majority of household expenses from her earnings, and Mr. Singh's earnings went to India

- [60] Ms. Kaur testified that when she first started working, Mr. Singh told her that they would pay the rent out of her income, and his income would be saved. In addition to paying the rent, Ms. Kaur generally purchased food for the family, and other household expenses would generally be paid by Mr. Singh. By 2017 Mr. Singh had been able to save enough funds to allow them to buy a house. After the purchase of the house, Mr. Singh was responsible for paying the mortgage.
- [61] I find that Ms. Kaur's earnings were all spent on household expenses, and repayment of the line of credit in her name. However, I cannot find that Mr. Singh did not contribute to household expenses. His accounts demonstrate ongoing payments for things such as grocery store purchases, telephone accounts, gas, housewares, restaurants, mortgage payments, and other routine household expenses. He routinely made payments for household expenses using his various credit facilities.
- [62] I find that both parties contributed to household expenses.

Mr. Singh has not accounted for the rents received

- [63] The parties rented a suite in their home. On his income tax returns in 2017 and 2018, Mr. Singh reported rental income of \$8,400. This is equal to \$700/month. Ms. Kaur testified that they received the rent in cash. She stated that the rent money always went to Mr. Singh, and he sometimes returned \$100 or \$200 to her for expenses.
- [64] Other than as stated above, the evidence regarding rent receipts over the years was quite contradictory, and I am unable to draw an inference that Mr. Singh spent the rental monies on anything other than family expenses.

Transfer of company to nephew

- [65] Mr. Singh testified that he transferred the company, TST Transport, to his nephew Harjit Singh, in 2019. He stated he transferred the company to his nephew first in July or August 2019, and then intended to transfer his truck to Harjit Singh. Mr. Singh testified that he was not going to get any money for the company because the company had no assets and was running a loss. He stated that his nephew changed his mind and reneged on the deal.
- [66] Mr. Singh agreed under cross-examination that he continued to use the corporate accounts after this purported transfer to Harjit Singh, and he continued to operate the company, received accounts receivable, ran the truck, etc.
- [67] The corporate records for TST show a transfer of shares from Mr. Singh to Harjit Singh on July 31, 2019, and Harjit Singh replaced Mr. Singh as a director the same day. However, on the tax filings for TST, Mr. Singh continued to represent himself as the president of TST in both 2019 and 2020.
- [68] Harjit Singh was not questioned about TST when he was a witness at trial.
- [69] On December 31, 2019 TST reported retained earnings of \$33,699. Mr. Singh was questioned about this, and testified that he did not understand what this meant, and he did not have this money in his account. Although the tax return of TST a few months before separation does show the retained earnings, Ms. Kaur has not established that Mr. Singh actually had access to any such funds at the end of December 2019. The TST bank accounts certainly do not support a finding that the company was holding assets at that time. I accept that Mr. Singh relied on his accountant to prepare the tax return, and did not necessarily understand what it meant.
- [70] On balance, I accept that on the date of separation, the company had no value.

Loan from Harpreet Singh

- [71] Mr. Harpreet Singh testified that he lent Mr. Singh \$10,000 on February 25, 2021, and \$5,000 on July 6, 2021, and he has not been repaid. Mr. Singh testified that he borrowed \$10,000 in February to make the outstanding mortgage payments which Ms. Kaur was not able to pay. He suggested that the \$5,000 was also used for mortgage payments, but conceded that he used some of the money for his own purposes.
- [72] I am not satisfied that the \$5,000 loaned by Harpreet Singh was used for family purposes. However, I find the \$10,000 loan from Harpreet Singh was used for mortgage payments, and is a family debt.

Events following separation

- [73] The reasons for the parties' separation are not material to the issues before me. Suffice it to say, the relationship had severely deteriorated. Ms. Kaur testified that Mr. Singh abused her, threatened her, insulted her, and made her feel that she was worthless. The police were called to the home on at least one occasion. Mr. Singh denies much of the allegations made by Ms. Kaur. It is not necessary for me to determine who was responsible for the breakdown of the marriage, or the circumstances under which they finally separated. There is no question that there has been a significant and total breakdown of the marriage, and the parties have lived separate and apart since March 12, 2020.
- [74] At the time the parties separated, they had a renter in the basement suite. Ms. Kaur testified that Mr. Singh continued to receive the rents from the basement suite, even after they separated. Ms. Kaur paid the mortgage for two months, but was unable to continue and Mr. Singh took over the mortgage payments again. In early 2021, Mr. Singh stopped making payments because he was not working. It was at this time that he borrowed funds from Harpreet Singh, which I referenced above.
- [75] In 2021, Ms. Kaur rented the upstairs of the house for two months, and then was unable to find new tenants when those tenants moved out after two months. She testified that she used the rental income to make the two mortgage payments that she did make. When she was not able to find new renters, she told Mr. Singh that she wanted to sell the house, and it was listed and sold at the end of October 2021. Ms. Kaur continues to live in the house, renting the basement suite from the new owners.
- [76] Mr. Singh was homeless for a period of time after separation. He was no longer homeless at the time of trial.

Conclusion on family assets and debts

- [77] Pursuant to s. 81 of the Family Law Act, S.B.C. 2011, c. 25, each party is entitled to an undivided half interest in all family property and shares equal responsibility for all family debt, subject to an agreement between the parties or an order of the court. Pursuant to s. 95 of the FLA, the court may order an unequal division if an equal division would be significantly unfair.
- [78] Ms. Kaur argues that Mr. Singh has sent significant funds to his friends and family in India, depriving her of access to these family assets. She argues that the family assets ought to be reapportioned 70% in her favour, and the family debts ought to be reapportioned 70% in favour of Mr. Singh. The basis for this reapportionment is Mr. Singh's alleged transfer of substantial family assets to family and friends. As I have already found, I do not agree that Ms. Kaur has met the burden of proof to establish that Mr. Singh has transferred family assets out of the country or to family and friends, except in certain limited transactions.

- [79] The only family property at issue is the proceeds of sale of the family home. Subject to certain adjustments, which are set out below, I find that each party is entitled to half the proceeds which are held in trust following the sale of the family home.
- [80] In arguing for reapportionment of the family debt, Ms. Kaur relies on *L.A.M. v F.B.M.*, 2022 BCSC 2187. Again, such orders are not made lightly. The party seeking such an order has a heavy onus of establishing that it would be significantly unfair for one party to share equally in the family debt. A party must establish a real sense of injustice would arise if an equal division was ordered. I have found that Ms. Kaur's TD line of credit is not a family debt, and she must be compensated by Mr. Singh for her payment of this debt. All other debts are family debts and will be shared equally, as set out in detail below.

Mr. Singh's RBC line of credit

- [81] I am satisfied that Mr. Singh used his RBC line of credit for family purposes, except as specifically outlined in these reasons. The RBC line of credit was a family debt, which was properly paid out on the sale of the house, in the amount of \$105,103.79. No further adjustment is required.

Mr. Singh's TD bank line of credit, TD VISA, and President's Choice Mastercard

- [82] I am satisfied that Mr. Singh used his TD bank line of credit, TD VISA, and President's Choice Mastercard for family purposes, except as specifically outlined in these reasons. Subject to the adjustments I will discuss below, all these family debts are to be shared equally.
- [83] The value of these credit facilities to be divided equally are:
- a) TD Line of credit in the amount of \$9,633,
 - b) TD Visa in the amount of \$19, 512 (\$18,272 at the date of separation, plus \$1,240 for house insurance paid on April 15, 2020), and
 - c) President's Choice Mastercard in the amount of \$4,495.28.
- [84] The total value of these family debts is \$33,640. \$16,820 will be deducted from Ms. Kaur's share of the net proceeds of sale of the family home, and paid to Mr. Singh in compensation for his payment of these family debts.

Loan from Harpreet Singh

- [85] The parties will share equally the loan from Harpreet Singh in the amount of \$10,000. \$5,000 will be deducted from Ms. Kaur's share of the net proceeds of sale of the family home, and paid to Mr. Singh in compensation for his obligation to pay this family debt.

Household expenses post separation

- [86] Mr. Singh paid the mortgage, the property taxes, and the house insurance after separation. Unlike living expenses such as utilities, the amounts paid by Mr. Singh were necessary to maintain the value of the largest family asset - namely the family home. Both parties benefit from these expenditures and, as such these are all family debts which are properly shared.
- [87] Mr. Singh testified that he used his RBC line of credit to make these payments towards the family home, along with the \$10,000 he borrowed from Harpreet Singh. In the result, the household expenses post separation are included in the family debt I have already dealt with.
- [88] The sole expense which will require an adjustment, is the amount of \$735 in relation to the cost of painting required to sell the property. At a judicial case conference, the parties agreed to share this cost equally, with Mr. Singh paying up front and Ms. Kaur's share to be deducted from her share of the net proceeds of sale. No further adjustments will be made in relation to household expenses post separation.

Delay in selling house

- [89] Mr. Singh urges me to find that Ms. Kaur resisted selling the house, thereby increasing the family debt after separation. I am not satisfied that Ms. Kaur acted unreasonably in the listing and sale of the house. The parties agreed at a judicial case conference on August 5, 2021 to list the property for sale.
- [90] Unlike *J.D.R. v L.J.R.*, 2019 BCSC 289, relied on by Mr. Singh, this is not a case where one party unreasonably delayed a sale resulting in foreclosure and a failure to pay municipal taxes. In this case, I find the parties acted relatively swiftly in the circumstances to place the house on the market, and I find Ms. Kaur cooperated in the sale. The parties ensured the mortgage and taxes were paid.
- [91] Payment of the mortgage in this case did not increase family debt. Rather, it repaid family debt and both parties share in the resulting increased equity in the house.
- [92] There will be no adjustment to the net sale proceeds in relation to any conduct of Ms. Kaur in the sale of the home.

Ms. Kaur's TD line of credit

- [93] \$43,000 will be deducted from Mr. Singh's share of the net proceeds of sale of the family home, and paid to Ms. Kaur in compensation for his use of her TD line of credit for non-family related purposes. Mr. Singh is 100% responsible for payment of this personal debt which I have found is not a family debt.

Mr. Singh's transfers to his family and friends

[94] Mr. Singh transferred \$32,144 in family assets to his friends and family in India. 50% of these funds (i.e. \$16,072) will be deducted from Mr. Singh's share of the net proceeds of sale of the family home, and paid to Ms. Kaur in compensation for his transfer of Ms. Kaur's share of these family assets to his family in India.

Truck

[95] Mr. Singh transferred a family asset worth \$6,500 to his friend, for no value. Mr. Singh must compensate Ms. Kaur for 50% of the value of this asset, namely \$3,250. \$3,250 will be deducted from Mr. Singh's share of the net proceeds of sale of the family home, and paid to Ms. Kaur in compensation for this transfer.

Orders respecting the child and divorce

[96] On the last day of trial, the parties advised that they had reached consent with respect to all issues relating to their child, who resides primarily with Ms. Kaur. In addition, I made orders with respect to the divorce sought by the parties. These terms have now been entered as a final order, and I will not address them further in these reasons.

Costs

[97] The parties have leave to make further submissions on costs, in writing, within 45 days of these reasons.

"Baker, J."

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