
CANADA / JUDGMENT

Kuhberg v. Hall

2015 BCSC 2230

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2230 Kuhberg v. Hall

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kuhberg v. Hall,

2015 BCSC 2230

Date: 20151201

Docket: 22243

Registry: Fort St. John

Between:

Angelique Mary Kuhberg

Claimant

And

Jay Andre Hall

Respondent

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

Counsel for the Claimant:

E. Duerr

Counsel for the Respondent:

S. Specht

Place and Date of Trial/Hearing:

Fort St. John, B.C.

September 29 to October 2, 2015

and October 5 and 6, 2015

Place and Date of Judgment:

Fort St. John, B.C.

December 1, 2015

Introduction

- [1] The principal issues in dispute in this family matter are the determination and division of family assets following the dissolution of a common law relationship.
- [2] In her notice of family claim, the claimant initially sought orders for child and spousal support, but those claims were abandoned at the outset of the trial.
- [3] As the parties never married, the issues fall to be determined under the Family Law Act, S.B.C. 2011, c. 25 [FLA].

Background

The Claimant

- [4] The claimant was born in Vanderhoof, B.C. and is currently 40 years old.
- [5] She lived in Prince George in her early years and then moved with her family to Bear Lake where she lived until she was sixteen when she returned to Prince George to attend high school. She left high school two credits short of graduation.
- [6] The claimant moved to Fort St. John when she was 18 and has lived here ever since. She moved to Fort St. John with her former partner with whom she has two children: a son born in 1995 and currently 20 years old, and a son born in 1999 and currently 16 years old.
- [7] The claimant was together with her former partner until 2001 when they separated.
- [8] The claimant has worked at a variety of jobs over the course of her life. In 1996, she opened a licenced home daycare which she operated up until 2005. She typically cared for seven children at a time, including her own, ranging in age from six months to six years old.
- [9] In 2005, she started a home cleaning business with a friend that she operated until 2007. At some point, she also started doing bookkeeping for a local business.
- [10] In 2007, she started working at a local bistro opened by a friend of hers. She also continued to do bookkeeping.

- [11] In 2009, she obtained a position doing bookkeeping with a company called Northern Chemicals. She worked there until 2011. Beginning in 2010, she also did some bookkeeping work for Jay Hall Mechanical Ltd., the company operated by the respondent.
- [12] Since August 2012, the claimant has been working for Pure North S'Energy Foundation, a company involved in the health and wellness industry. She started as a receptionist but has since been promoted to office manager. She is scheduled to work 30 hours per week but says that she is regularly required to be on call and so typically works more than her scheduled hours.

The Respondent

- [13] The respondent was born in Dawson Creek, B.C. and is currently 44 years old.
- [14] The respondent lived in Dawson Creek for his early years and then moved to Penticton. He returned to Dawson Creek at the start of grade 11.
- [15] Following high school, the respondent trained as a chef in Dawson Creek and then, beginning in 1994, he began his apprenticeship as a mechanic. He completed the apprenticeship program in approximately four years then started work as a mechanic in Dawson City, Yukon.
- [16] He subsequently moved to Fort St. John and worked for a local company for three years before starting his own business in 2003.

The Relationship

- [17] The parties met in the summer of 2008 when the claimant was working at the bistro. The respondent was a customer. The claimant moved in to the respondent's house, located at 9808 - 111th Avenue in Fort St. John ("9808"), in November or December 2008. The respondent had purchased 9808 in 2005.
- [18] Prior to the claimant moving in, the respondent renovated the basement of the house. The respondent paid approximately \$60,000 for the renovations out of money he had saved.
- [19] The claimant says that the respondent lived with her for most of the renovation period whereas the respondent says that he continued to live in the upstairs part of the house and had occasional "sleep overs" at the claimant's house. This is but one of many details of the parties' relationship about which they disagree.
- [20] When the claimant moved into 9808, the claimant's children had the upstairs bedrooms and the claimant and the respondent shared the master bedroom in the basement. The master bedroom had been added as part of the renovations.
- [21] The claimant says that she helped with the upkeep of the house, including painting the trim when they moved in and doing yard work. She also helped the carpenter build a new deck.

- [22] The claimant does not dispute that the respondent paid the mortgage and property taxes on 9808 as well as many of the other expenses. However, she says that she contributed periodically to the utilities, cable and hydro expenses. She also bought groceries and household supplies for the family.
- [23] In 2011, the parties purchased a new property located in the Nurnberger sub-division ("Nurnberger"). The parties were named as joint tenants on the purchase and mortgage documents filed in the land title office.
- [24] At approximately the same time as they purchased Nurnberger, the respondent remortgaged 9808 in order to take money out of that property to put towards the purchase of Nurnberger. When he did so, the claimant was added to the title of 9808 and named as a party on the mortgage.
- [25] The parties differ in their versions of events surrounding the remortgaging of 9808 and the purchase of Nurnberger.
- [26] The claimant says that they were told that she should be added to the 9808 title so that they could remortgage the property. She says that the respondent was aware that was occurring and did not object. In terms of the purchase of Nurnberger, she says that they both agreed to move to a larger house and to keep 9808 as a rental property.
- [27] The respondent testified that the claimant demanded that they purchase a larger house when her nephew came to live with them. He says that he had no knowledge that the claimant had been added to the title to 9808 until after the parties had separated. He says that he did not receive any legal advice about the transfer of an interest in 9808 to the claimant and that it was never his intention to gift her a one-half interest in that property.
- [28] What is clear is that approximately \$120,000 of equity was taken out of 9808 and used as a down payment on Nurnberger.
- [29] The claimant testified that she and the respondent were generally happy together, although she acknowledged that they had some problems for which they sought counselling. One of the problems that she identified was the fact that the respondent was controlling and jealous and did not like her seeing her friends. As a result she stepped back from various friendships.
- [30] For his part, the respondent says that he never considered it to be a serious or long-term relationship. He says that he and the claimant never joined finances in any way, in large part because he knew that she had a bad credit rating and was often behind in debt payments.

The Respondent's Business

- [31] The respondent is the owner and operator of Jay Hall Mechanical Ltd. ("JHM"), which provides mechanic services to companies operating in the oil and gas industry. As noted above, he started the business in 2003. Initially, the respondent ran the business as a proprietorship, but he incorporated in 2008.
- [32] JHM provides heavy duty mechanic services, meaning that the respondent works on large pieces of equipment. When he started JHM, the respondent purchased and outfitted a service truck at a cost of over \$120,000.
- [33] Initially, JHM worked for a variety of customers but since 2007 or 2008, it has worked exclusively for Continental Pipelines, a pipeline construction company. JHM's role is to service the machinery used to construct pipelines. According to the respondent, this often involves staying for long periods in construction camps located where the pipeline is being built.
- [34] The respondent testified that he built JHM through his own efforts and business grew largely through word of mouth.
- [35] The parties disagree on the degree of involvement of the claimant in JHM. As noted above, she started helping with the bookkeeping in or around 2010. In 2011 she left her job at Northern Chemicals. Both parties agree that she did so at the request of the respondent who was concerned that her relationship with the principal of Northern Chemicals was straying beyond the purely professional.
- [36] According to the claimant, when she agreed to leave Northern Chemicals, she needed to earn an income so she and the respondent agreed that JHM would pay her a monthly salary of \$4,000. The respondent gave similar evidence. Both were vague on how the \$4,000 figure was arrived at.
- [37] In addition to the \$4,000 monthly salary, the claimant received periodic cheques labelled as expense reimbursements, as well as occasional bonuses. One bonus, paid in December 2012, was for \$35,400 which went towards the purchase of a luxury sport utility vehicle to replace the claimant's vehicle that had been damaged in an accident.
- [38] The claimant says that she then became more involved in assisting with the bookkeeping for JHM. She says that she spent seven to ten hours per week attending to various matters such as payroll, invoicing, tax remittances and general correspondence with JHM's accountants.
- [39] She produced a large volume of emails in which she is seen to be regularly communicating with the accountants and other professionals about matters involving JHM. Included in the emails are several in which the respondent passed on requests for information, initially directed to him, to the claimant to deal with.

- [40] One example is an email from the B.C. corporate online service sent to the respondent on July 2, 2013, reminding him to file an annual report for JHM, which he then forwarded to the claimant to deal with. The claimant notes that as of October 1, 2015, JHM was in the process of being dissolved for failure to file an annual report since July 2013. She points to this as an example confirming the extent of her responsibilities with JHM in that no annual reports were filed after the parties separated.
- [41] The claimant says further that she often socialized with clients of JHM for business promotion purposes.
- [42] The respondent submits that the claimant has overstated her role with JHM. While he admits that she did some bookkeeping, he notes that he had an outside bookkeeper on retainer as well as a firm of accountants who did most of the bookkeeping and accounting work. He says as well that he did most of the invoicing and banking himself. According to the respondent, there was no requirement for the claimant to work seven to ten hours for JHM and that she was paid the same regardless of how much work she did.
- [43] He also denies that she socialized with clients of JHM. The respondent called as a witness Mr. Klassen, the principal of Continental Pipeline, who testified that he was not certain that he had ever even met the claimant.

The Separation and Post-Separation Events

- [44] As with many aspects of the relationship, the parties disagree on the date of separation. The claimant says that it was September 15, 2013 when she moved out of the Nurnberger property. The respondent says it was June 2013 by which time he says the claimant had developed a relationship with another man. He discovered this fact, after the claimant moved out, when he came across an email exchange between the claimant and the other man stored on an iPad that the claimant left behind.
- [45] The claimant left the Nurnberger property on September 15, 2013 and moved into a rental accommodation. She says that she wanted to stay in the house because her younger son was living with them at the time and she did not want to move him. She says, however, that the respondent refused to leave so she had to move.
- [46] She acknowledges that the respondent paid the damage deposit and initial month's rent for the rental accommodation.
- [47] In early October 2013, the claimant left that accommodation and moved back into 9808. This involved evicting the tenants of 9808 which the claimant says the respondent took care of. The claimant kept the damage deposit which was returned on the rental accommodation. She says she did so because the respondent kept the damage deposit forfeited by the tenants in 9808. The respondent says that in fact he had to compensate those tenants for evicting them without notice because the claimant demanded that she be entitled to live there. He also says that when she demanded that he evict the renters and that she live there, he

learned for the first time that she had been put on title to the property.

- [48] The claimant lived in 9808 until February 2015. Throughout that period, the respondent continued to pay the mortgage, property taxes and insurance on that property, although the claimant made periodic contributions to hydro and utilities costs. The respondent also paid all of the expenses for Nurnberger, where he continued to live.
- [49] During the time that the claimant lived in 9808, the house suffered water damage due to a break in the sump pump line. As a result, mould developed in the basement. The claimant did nothing to fix the problem and the respondent subsequently paid \$2,312.73 for repairs.
- [50] When the claimant moved out in January 2015, the parties disagreed about suitable renters. Ultimately, the respondent rented the property to a Mr. Pope. However, the respondent says that tenancy terminated when the claimant entered the house when Mr. Pope was absent and removed the washer and dryer. The claimant says she did so because she had purchased those items after separation.
- [51] The respondent also says that the claimant left a considerable amount of garbage behind at 9808 as well as an abandoned truck, which apparently belonged to her new partner's son. The respondent says that this made it difficult to rent 9808, although ultimately new tenants were found.

The Parties' Positions

The Claimant

- [52] The claimant seeks an equal division of family assets including 9808, Nurnberger, various investments and JHM. She acknowledges that she is responsible for one half of the expenses paid by the respondent for 9808 and Nurnberger from the date of separation to the date of trial.
- [53] With respect to JHM, the claimant says that she made a significant contribution to the company by doing much of the bookkeeping and other administrative work for the company. She says as well that she helped grow the business by socializing with key clients.

The Respondent

- [54] It is the respondent's position that the claimant took advantage of him financially both during their relationship and after separation. He says that he arranged for his company JHM to pay the claimant a generous salary of \$4,000 per month for minimal work and that she spent that money for her own benefit and for her children. According to the respondent, he paid virtually all of the expenses, including mortgage costs, property taxes and insurance, initially for 9808 and then subsequently for both that property and Nurnberger. He continued to do so after separation even though the claimant lived in 9808 from October 2013 through until February 2015.

- [55] With respect to 9808, the respondent says that the claimant left the house in a state of disrepair and that he has incurred expenses to repair it. He also says that the claimant, through her actions, deprived him of rental income from the property. He seeks compensation for these expenses.
- [56] With respect to JHM, he denies that the claimant had any meaningful role in the company. He says that JHM was started and built by him and that it should be reapportioned 100% to him. He submits that the claimant was paid in excess of \$200,000 by JHM for minimal work which is more than adequate compensation.

Legal Framework

- [57] Part 5 of the FLA deals with the division of property and debt between separating spouses. Pursuant to s. 81(b), the starting point is that 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."

- [58] Section 84 deals with 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;

...

- (2) Without limiting subsection (1), family property includes the following:

- (a) a share or an interest in a corporation;
- (b) an interest in a partnership, an association, an organization, a business or a venture;
- (c) property owing to a spouse
 - (i) as a refund, including an income tax refund, or
 - (ii) in return for the provision of a good or service;
- (d) money of a spouse in an account with a financial institution;
- (e) a spouse's entitlement under an annuity, a pension plan, a retirement savings plan or an income plan;

- (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require its return or to direct its use or further disposition in any way;
- (g) the amount by which the value of excluded property has increased since the later of the date
- (i) the relationship between the spouses began, or
- (ii) the excluded property was acquired.

[59] Section 85 then deals with excluded property:

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

- (a) property acquired by a spouse before the relationship between the spouses began;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
- (i) loss to both spouses, or
- (ii) lost income of a spouse;

...

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

[60] Pursuant to s. 87, the value of family property must be determined as of the date of the hearing, unless an agreement or order provides otherwise, and must be based on fair market value.

[61] Section 95 permits the court to order an unequal division of family property and/or debt if an equal division would be "significantly unfair". Section 95 also sets out a number of factors that may inform the fairness analysis. The section provides:

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.
- [62] In applying these different provisions, the court must first determine the full extent of the family property and debt in accordance with ss. 84 and 85 of the FLA and then go through the notional exercise of dividing the property and debt equally. It is at that point that the court must consider whether such an equal division would be substantially unfair within the meaning of s. 95 (*Remmem v. Remmem*, 2014 BCSC 1552 at para. 43 [*Remmem*]).

Analysis

Credibility

- [63] Both parties challenged the credibility of the other. The claimant points to inconsistencies in the respondent's evidence where, for example, he portrayed himself as a prudent investor and manager of his assets yet professed not to know that he had signed over a half interest in 9808 to her. For his part, the respondent says that the claimant's evidence was often conflicting and conveniently vague on matters adverse to her interest.

[64] As will be seen below, there are aspects of each party's evidence that I accept and aspects that I reject. Rather than making a sweeping determination of each party's credibility, I have approached their evidence on the various issues in accordance with the framework articulated by Madam Justice Dillon in the well-known decision of *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296, leave to appeal *ref'd* [2012] SCCA No. 392, where she suggests that evidence must be assessed on the basis of whether it is consistent with the "probabilities affecting the case as a whole" and with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

Length of the Relationship

[65] There is no dispute that the parties lived in a marriage-like relationship however they disagree on the duration of that relationship. The claimant says that it began in November 2008 when the respondent stayed with her while 9808 was being renovated and it ended when she moved out of Nurnberger on September 15, 2013. In contrast, the respondent says that they did not begin cohabiting until mid- December 2008, when the renovations to 9808 were completed, and that the relationship was over by June 2013.

[66] Section 3 of the FLA deals with the relationship between spouses, including the commencement and termination of the spousal relationship:

3 (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.

(2) A spouse includes a former spouse.

(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.

(4) For the purposes of this Act,

- (a) spouses may be separated despite continuing to live in the same residence, and
- (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and

(ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[67] In *Campbell v. Campbell*, 2011 BCSC 1491, rev'd on other grounds, 2013 BCCA 109, Mr. Justice Groves provides a thorough analysis of the factors that the court will consider in determining whether parties live in a marriage-like relationship. He said at paragraphs 41-42:

The subjective intention of the parties is not determinative. As suggested in *Gostlin*, if one party submits that it was not their intention to commence a marriage-like relationship at that particular time, his or her statement is not conclusive if objective factors exist that suggest that a marriage-like relationship existed (see also *Takacs v. Gallo* (1998), 157 D.L.R. (4th) 623 at para. 53, 48 B.C.L.R. (3d) 265 (C.A.), leave to appeal to SCC ref'd, [1998] S.C.C.A. No. 238).

In *Molodowich v. Penttinen*, [1980] O.J. No. 1904, 17 R.F.L. (2d) 376 (Dist. Ct.), the Court delineated the type of objective factors that might point to the existence of a marriage-like relationship. Such factors include: their living and sleeping arrangements; their sexual and personal behaviour; how they divided domestic tasks; whether and how they interacted with their respective families and communities; whether they held themselves out as a "couple"; whether one spouse relied on the other for financial support; and their conduct and attitude towards children.

[68] Mr. Justice Groves goes on to note that there is no checklist of characteristics that must be present in order for there to be a marriage-like relationship and that individuals in spousal relationships, whether married or not, will structure their relationships differently (see *Austin v. Goerz*, 2007 BCCA 586 at para. 58).

[69] In the present case, the parties agree that they met and began dating in the summer of 2008. It is also not disputed that the respondent spent time at the claimant's house while 9808 was being renovated and that the parties, along with the claimant's children, moved in to 9808 on completion. I am satisfied on the evidence that when they did so it was with the intention of living as a family.

[70] The evidence was vague as to exactly when they moved back into 9808 but in the circumstances, I find that the marriage-like relationship commenced as of December 1, 2008.

[71] The more contentious issue is the date on which the parties separated or ceased living in a marriage-like relationship.

- [72] The principal basis on which the respondent asserts that the relationship was over by June 2013 are some emails dated June 18 between the claimant and another man (her former boss at Northern Chemicals and the person to whom she is now engaged) which suggest that the two were involved in a relationship. The claimant denies that such a relationship existed at that time. As noted above, the respondent only found the emails sometime after the claimant had moved out in September 2013.
- [73] Separation for the purposes of the FLA may occur at a time before spouses actually begin living apart (s. 3(4)(a)). However, in the circumstances of this case, I am satisfied that separation occurred when the claimant moved out of Nurnberger on September 15, 2013. I come to this conclusion because:
- a) the evidence does not establish that the claimant had commenced a new relationship by June 2013. While the June 18 emails suggest that possibility, the claimant denied it and there is no corroborative evidence. As such, it has not been proven that the claimant had taken an action demonstrating an intention to separate permanently within the meaning of s. 3(4)(b)(ii); and
 - b) neither party communicated an intention to separate permanently (s. 3(4)(b)(i)) until the claimant moved out on September 15, 2013. I would add that, in his own evidence, the respondent said that he did not want the claimant to leave and that he thought the relationship could still be salvaged. That evidence is inconsistent with the position that he now takes that the relationship ended in June.
- [74] Accordingly, I find that the parties lived in a marriage-like relationship from December 1, 2008 to September 15, 2013, a period of just less than five years.

Family Property

JHM

- [75] The most contentious issue between the parties is whether the claimant is entitled to an interest in JHM.
- [76] Pursuant to a consent order granted at a judicial case conference held on December 18, 2014, a joint business valuation of JHM was undertaken by Bruce Martin & Associates. The results of that valuation are set out in a report dated January 9, 2015.
- [77] The valuation report estimates a business value for JHM of \$139,450 as of November 2008 and \$496,871 as of June 30, 2013, with the difference representing an increase in value of \$357,421 over that time period. The report assumes a 50-50 division of the increase in value between the parties which would place the claimant's interest at \$178,710. That figure is then reduced to account for income tax of 30% being applied to the funds withdrawn from the company to buy out the claimant, resulting in a value of \$125,000 for the claimant's interest, assuming equal division.

- [78] The respondent takes issue with the valuation report in two respects. First, he says that there should be no goodwill attributed to the business because, on the evidence, JHM only exists if the respondent does the work personally. Second, he says that a tax rate of 43.7% should be applied to the funds withdrawn from JHM rather than the 30% used in the report.
- [79] The valuation report was again jointly obtained and the author was not required to attend the trial for cross-examination. In the circumstances, I am not prepared to go behind the report and I accept it as an accurate valuation of JHM and of the claimant's 50% interest in the increased value of the business during the relationship, assuming no reapportionment.
- [80] In my view, the issue of goodwill is one that goes to the question of whether an equal division of the increased value of JHM would be substantially unfair, which I will address below.

The Residential Properties

- [81] The claimant seeks an equal division of the equity in the two residential properties, with her share offset by 50% of the expenses incurred after separation in respect of those properties, for which she acknowledges her liability.
- [82] The respondent submits that he is entitled to retain as excluded property the equity that he had in 9808 at the time of cohabitation, which he calculates to be \$181,228. He submits further that he should be credited with the \$60,000 that he paid for renovations to the property immediately before the claimant moved in with him.
- [83] The respondent put forward appraisals of each of 9808 and Nurnberger. According to those appraisals, 9808 had a market value of \$350,000 as of June 27, 2014 and Nurnberger had a market value of \$770,000 as of the same date.
- [84] The respondent says that the appraisals were jointly commissioned by him and the claimant in order to determine values as part of trying to achieve a resolution. The claimant did not dispute this in her evidence. Counsel for the respondent says that she and the claimant's former counsel both understood that the appraisals could be put in evidence if the matter went to trial.
- [85] Current counsel for the claimant was not part of the discussions around the appraisals, but expressed concern at trial that they are not up to date and therefore are of little assistance.
- [86] The appraisals are not prepared in the form of expert reports that meet the requirements of Rules 13-2 and 13-6 of the Supreme Court Family Rules, B.C. Reg. 169/2009. Nonetheless, I admitted them into evidence on the strength of counsel's representation that the parties had agreed that the reports could be used at trial.

- [87] I am also satisfied that the reports provide some useful evidence of the value of the properties and the court has the discretion to admit them into evidence. In this regard, the Court of Appeal has acknowledged the more flexible approach to the rules of evidence often applied in family law cases: *Dosanjh v. Liang*, 2015 BCCA 18 at para. 59.
- [88] I agree with the claimant that the fact that the appraisals are not current is problematic. However, I would not accede to her request that I order updated appraisals. To do so would add additional cost for the parties and would delay the resolution of this matter. Instead, it makes sense in my view to use the 2014 appraised values as a starting point for estimating as best as possible the market values at the time of trial in 2015.
- [89] The respondent testified that, to his knowledge, the market has not changed much over the last year and it was his opinion that the values in the two appraisal reports are likely still accurate.
- [90] With respect to 9808, the tax assessed value for the property in the years 2013-2015 was as follows:
- 2013 \$261,000
- 2014 \$275,000
- 2015 \$289,000
- [91] While the assessed value is often not an accurate reflection of market value, as evidenced by the \$75,000 difference in 2014 between the assessed value and the market value according to the appraisal, it is nonetheless useful to note that the assessed value of 9808 increased by approximately 5% per year over the past three years.
- [92] Absent any evidence to the contrary, it is reasonable to assume that the market value increased at a similar rate. Accordingly, it is in my view reasonable to value 9808 in 2015 at the time of trial at \$367,500, or 5% over the \$350,000 appraised 2014 market value.
- [93] It is difficult to apply the same approach to Nurnberger because there was a significant increase in the tax assessed value of that property between 2014 and 2015. In 2014, the assessed value was \$632,000 whereas in 2015 it was \$775,000. That increase is accounted for by the fact that prior to 2015, Nurnberger was thought to be located within the Agricultural Land Reserve ("ALR") and was discounted accordingly. However, in 2015, it was determined that in fact the property was not within the ALR and thus the discount no longer applied.
- [94] Thus while it is not possible to use the increase in assessed value as a marker for estimating the increase in market value of Nurnberger, in order to be consistent, I will apply the same 5% increase as used for 9808 to the 2015 assessed value to come up with the best estimate of the 2015 market value for Nurnberger. Adding 5% to the 2014 appraised market value of \$770,000 results in a 2015 value of \$808,500.

- [95] The parties agree that as of the date of the trial, 9808 had a mortgage in the amount of \$195,000 and Nurnberger had a mortgage of \$422,000. As a result, the equity in the properties is \$172,500 for 9808 and \$386,500 for Nurnberger, for a combined amount of \$559,000.
- [96] As noted above, the claimant submits that the total equity should be divided equally between the parties whereas the respondent submits that his existing equity at the time of cohabitation is excluded property and that he should be entitled to credit for the \$60,000 in renovations.
- [97] Dealing first with the \$60,000, the investment into 9808, made just before the parties commenced cohabitation, would be reflected in the market value of the property at the time of cohabitation. Thus, to give the respondent additional credit for that amount would amount to a double credit.
- [98] In terms of the respondent's existing equity, the claimant's position, as I understand it, is that the respondent gifted her a one-half interest in the property in 2011 and, on the basis of that gift, it is the entire equity in the property that should be considered family property subject to equal division.
- [99] The claimant relies on *Wells v. Campbell*, 2015 BCSC 3 [Wells]. In that case, the claimant in 2008 transferred his interest in a cottage that he had owned since 1974 into joint tenancy with his wife, some 16 years after they married. At issue in their family law proceeding was whether the wife was entitled to an equal division of the entire property or only that portion that had appreciated since the relationship commenced.
- [100] Mr. Justice Masuhara found in favour of the respondent wife on the principal ground that the husband had transferred the property into joint tenancy as a result of which each party held an undivided equal share in the entirety of the property. Mr. Justice Masuhara stated at para. 32:

I find that Mr. Wells at the time he transferred the Hornby Property into joint tenancy he did so as a gift to Ms. Campbell. At that time, the relationship was intact and there was no evidence to suggest that it was failing. The transfer of an interest in the Hornby Property was a perfected inter vivos gift and the gift cannot be revoked: see for example the comment of Madam Justice Newbury in *Bergen v. Bergen*, 2013 BCCA 492 at para. 41. Ms. Campbell as a result obtained legal and equitable interest in the property. I do not read the Act as altering the law of inter vivos gifts. Accordingly, I cannot see how Ms. Campbell can be denied the entirety of her interest in the property, subject to the division of family property under s. 95(1).

- [101] Mr. Justice Masuhara considered a number of cases that have dealt with excluded property under the FLA as well as with the presumption of advancement between spouses. He went on to say at paras. 43-44:

It seems that the excluded property relates to property which was held by a spouse prior to the relationship and in which an interest in title was not transferred to the other during the relationship.

Given my finding that the transfer of the interest to Ms. Campbell was perfected, I cannot see how a portion of her interest, i.e., her share in the Start of Relationship Value, can be considered excluded property. She [is] the holder of a legal and equitable interest in the property. Had the policy makers intended to alter the well-established concept of a joint tenancy and/or the presumption of advancement, they [would] have done so explicitly as has been done in other jurisdictions. I do not accept that s. 85(1)(a) negates an intended disposition of an interest in land from one spouse to another. I note again that intention is a consideration under s. 83(1) of the Act; and that a gift between spouses is not included as an excluded property under s. 85(1). Further, the tracing provisions can still operate under different scenarios.

[102] For his part, the respondent relies on the decision of Mr. Justice Butler in *Remmem*. There, the claimant husband had owned a property for a number of years prior to the marriage. The parties lived in that property for a period of time then sold it and used the proceeds to purchase a new home that was registered in both their names. In the proceeding before Mr. Justice Butler, the claimant sought to retain the value of the property at the time the relationship commenced as excluded property under the FLA. The respondent argued that when the proceeds of sale from the excluded property were used to purchase a new property jointly, the claimant had gifted one-half of his interest in those proceeds to her.

[103] Mr. Justice Butler found for the claimant. He said at para. 48:

I have concluded that the purchase of property in joint names using the proceeds of excluded property does not reduce the value of the exclusion. The property provisions of the FLA are intended to be a complete code so that there is no need to examine the intention of the parties at the time of a transfer of excluded property to joint tenancy. To come to the opposite conclusion would bring uncertainty and a level of inequality into a property division structure that was intended to treat married and unmarried spouses equally and to provide for a greater level of certainty.

[104] Mr. Justice Butler considered the presumption of advancement between married spouses but held that the presumption should not apply to defeat the clear property division provisions of the FLA (at paras. 51-52).

[105] In a recent decision in *P.G. v. D.G.*, 2015 BCSC 1454 [P.G.], Madam Justice Fenlon, as she then was, noted the apparent conflict between *Wells* and *Remmem* and concluded that she should follow the analysis in *Remmem* (at para. 67). Madam Justice Fenlon gave detailed reasons for her conclusion, which I will not repeat here. However, it is worth noting her observations at paras. 85-86:

The interpretation of s. 85 adopted in Remmem is also, in my view, more consistent with the objectives of the FLA and the reality of most marriages. In a majority of cases, assets owned by one spouse before the couple comes together will be mingled with property held in both names. The cost of owning a home in many parts of British Columbia practically compels spouses to pool their assets. Registering the home so acquired in both names as tenants in common reflects the unity of the couple in marriage; placing a home in joint tenancy is a practical tool for estate planning; and placing the home in the name of one spouse is an accepted way to protect a core family asset from business creditors.

The adoption of an excluded property regime "to better fit with people's expectations about what is fair [so] that they keep pre-relationship property and gifts and inheritances given to them as individuals[,] but share property and debt that accrued during their relationship" (White Paper on Family Relations Act Reform, at 81) is effectively negated if the excluded property cannot be traced into assets placed in whole or in part in the name of the other spouse.

[106] This issue arose again in *Andermatt v. Tahmasebpour*, 2015 BCSC 1743 [Andermatt], where Mr. Justice Pearlman followed the decision of Madam Justice Fenlon in *P.G.*, primarily because it was the most recent judgment of this court on the issue and "was pronounced following a full and careful consideration of the earlier judgments" (see *Niebuhr et al. v. Vancouver (City) Board of Vancouver*, 2006 BCSC 1425, *aff'd* 2007 BCCA 528, supplementary reasons 2007 BCCA 593, leave to appeal *ref'd* [2008] SCCA No. 3).

[107] Mr. Justice Pearlman also endorsed Madam Justice Fenlon's view that the approach in Remmem is consistent with the objectives of the FLA (at para. 51).

[108] A very recent judgment (released November 18, 2015) of Madam Justice Warren (*Shih v. Shih*, 2015 BCSC 2108) endorses the approach taken in *P.G.* and *Andermatt*. In para. 59 she states:

I agree with that analysis and conclude that a transfer of excluded property from one spouse into the name of the other spouse or into the spouses' joint names does not extinguish the right of the transferor to claim the exclusion.

[109] On the strength of *P.G.*, *Andermatt*, and *Shih*, I adopt Mr. Justice Butler's analysis in Remmem and find that, in circumstances of this case, the transfer of 9808 into joint tenancy did not eliminate or reduce the value of the exclusion to which the respondent is entitled with respect to his existing equity in that property.

[110] I pause here to note that I have considerable difficulty accepting the respondent's evidence that he did not know that he was transferring an interest in 9808 to the claimant when that property was remortgaged. That evidence is inconsistent with the image of the respondent presented at trial of a careful and prudent manager of his own money and property. It is also inconsistent with the fact that he signed all of the documentation required to effect the transfer. My view in this regard does not however change the analysis because, as found by Mr. Justice Butler in Remmem, the property provisions of the FLA do not turn on the

parties' intentions.

- [111] In determining the value of the exclusion, there is unfortunately no appraisal evidence of the value of the property in 2008. The respondent estimated the value to be \$310,000 but he had no real rationale for that figure.
- [112] The mortgage on the property was \$128,772 as of January 2009. Using that figure and the respondent's estimated value results in his claimed equity at the commencement of the relationship of \$181,228.
- [113] There is evidence that the tax assessed value in 2008 was \$217,300 but again, the assessment value often bears little relationship to the market value. One approach to estimating value is to compare the ratio of the assessed value to the market value in 2014, the year in which the market appraisal was done. In that year, the market value was \$350,000 and the assessed value was \$275,000, a ratio of 1.27 to 1. Applying a similar ratio to the tax assessed value in 2008, results in a figure of \$275,971.
- [114] That figure would not however account for the \$60,000 in renovations undertaken in the fall of 2008, which would not be reflected in the 2008 tax assessment. When some additional value is added to account for the renovations, the \$310,000 market value suggested by the respondent for 2008 seems reasonable and that is the value that I adopt for determining the respondent's equity at the commencement of the relationship. It follows that I accept the respondent's calculation of \$181,228 as the appropriate amount of the exclusion relating to 9808.
- [115] Subtracting that amount from the \$559,000 total equity in the two properties at the time of trial, results in an amount of \$377,772. One-half of that amount is \$188,886 which is the claimant's share before offsetting her share of expenses.

Savings and Investments

- [116] The respondent had a Registered Retirement Savings Plan ("RRSP") with a value of \$70,088.64 as of November 30, 2008. Over the course of the relationship, he contributed a further \$84,500 and, as of June 30, 2014, the RRSP had a value of \$186,426.39. As of September 30, 2014, the RRSP was valued at \$222,106.91 and the respondent testified that its current value is approximately \$245,000.
- [117] The claimant has two investment accounts that are in issue: a CIBC RRSP and a CIBC Tax Free Savings Account ("TFSA"). The claimant's evidence about these accounts was vague and her production of supporting documents unsatisfactory. It was apparent that this was a consistent theme throughout the course of the litigation. In particular, the claimant was unable to give any clear evidence on the flow of funds into and out of these accounts. As one example, the claimant testified that she had RRSP funds prior to the commencement of the relationship but she could provide no details and she produced no supporting documents.

- [118] On the evidence available, while the balance of the RRSP fluctuated, it reached a peak of \$16,945.34 at some point in 2014. With respect to the TFSA, it too fluctuated constantly, although the claimant says that it typically had a balance of approximately \$220 which she agrees is family property that should be divided equally.
- [119] Section 87 of the FLA provides that family property should be valued for the purposes of division as of the date of the hearing respecting division unless an agreement or court order provides otherwise.
- [120] In this case, the parties in their submissions both focussed on the value of the investments at the date of separation and, as such, I take there to be an agreement to that effect. Further, the court in any event has the discretion to depart from the default valuation date established by s. 87.
- [121] In *Blair v. Johnson*, 2015 BCSC 761, Madam Justice Fleming held that this discretion should only be exercised in circumstances in which it would be significantly unfair to value the property at the date of trial (at para. 70). In my view, that threshold is met in this case where the increase in value of the respondent's RRSP after the date of separation was due solely to the efforts of the respondent, and there was a diminishment in the claimant's investments with no explanation on her part.
- [122] What then is the proper valuation of the investment accounts? In terms of the respondent's RRSP, there is no evidence of the value as of September 15, 2013, the date of separation. However, I am prepared to accept the June 30, 2013 value of \$186,426.39. The RRSP had a value of \$70,088.64 as of the commencement of cohabitation and that amount is excluded property pursuant to s. 85 of the FLA. The increase in value over the course of the relationship was \$116,337.75 which I find to be family property.
- [123] In terms of the claimant's investments, she accepts that the peak amount of her RRSP of \$16,945.34 is family property and subject to equal division. With respect to the TFSA, it would in my view be unreasonable to limit the family property to the approximately \$220 periodic balance. Rather, the evidence establishes that the claimant contributed \$3,960.00 to the TFSA in 2013 up to the end of September and, in my view, this amount should be treated as family property.
- [124] Based on the above, the claimant is entitled to a one-half interest in the increased value of the respondent's RRSP, which equals \$58,168.88. Offset against that amount is the respondent's one-half interest in the claimant's investments, which equals \$10,452.67. With that adjustment, the claimant's share amounts to \$47,716.21 which will be provided to her in the form of a spousal rollover, or such other mechanism as to be agreed by the parties.

Vehicles

[125] The claimant drives a 2009 Cadillac Escalade purchased during the relationship and the respondent drives a 2004 Dodge truck. The parties agree that they will retain their respective vehicles and that the combined value should be divided equally. However, there was no admissible evidence at trial on which the court could reasonably assess the values of the two vehicles.

[126] Accordingly, the vehicles will be excluded from the present division of property and it will be left to the parties to agree on a process for obtaining the necessary values. The party in possession of the more valuable vehicle will then pay one-half of the difference in value to the other.

Family Debt

Mortgages and other Expenses - Residential Properties

[127] The claimant acknowledges that she is responsible for one half of the mortgage, property tax and insurance payments made by the respondent on the two residential properties from the date of separation. The parties disagree on the precise amount of the mortgage payments made by the respondent based on their different views of the date of separation. Given that I accept the claimant's position that they separated on September 15, 2013, I also accept her calculation of her share of the mortgage payments.

[128] Accordingly, the mortgage, property tax and insurance costs on the two residential properties from the date of separation are as follows:

a) Mortgage payments on 9808

\$37,233.04

b) Property taxes on 9808

\$9,980

c) Insurance on 9808

\$2,560

d) Mortgage payments on Nurnberger

\$52,279.24

e) Property taxes on Nurnberger

\$9,980.00

f) Insurance on Nurnberger

\$2,560.00

[129] In addition, the parties agree that the claimant is responsible for one-half of the following expenses related to the properties:

- a) Mould repair at 9808

\$2,312.73

- b) Damage deposit to evict renters at 9808

\$3,320.00

- c) New hot water tank for Nurnberger

\$1,692.81

- d) Roof repair for Nurnberger

\$240.45

- e) Property appraisals

\$800.00

[130] There are a number of property-related expenses that the parties do not agree on:

- a) The respondent paid \$770.00 to replace the washer and dryer that the claimant removed from 9808 and he seeks recovery of one-half of that amount. The claimant submits this is not a family debt as she purchased the washer and dryer herself and the new ones were bought by the respondent after separation. In my view, the new washer and dryer for 9808 were bought for the purpose of renting out the house and thus are akin to repairs. I find that the \$770.00 is a family debt.
- b) The respondent claims \$17,000 as a family debt in respect of paving costs apparently to be levied by the City to pave the street in front of the 9808 property. The evidence was vague about both the details and timing of this levy. Whatever the details, assuming the charge is in fact levied, it will occur well after separation and after the respondent has assumed sole title to the property. Moreover, it is fair to expect that the paving will increase the value of the property, the benefit of which will accrue to the respondent. In my view, this is not a family debt.
- c) The respondent submits that there will be capital gains tax of \$12,430 associated with this property that should be characterized as a family debt. However, on the respondent's evidence, he intends to hold onto the property for an indeterminate period of time. Moreover, there was no evidence to suggest that the transfer of the property back into the sole name of the respondent will have adverse tax consequences. Accordingly, I reject this claim.

- d) The respondent asserts that he lost rental income on 9808 of \$40,000 (20 months x \$2,000 per month) and he seeks to recover half of that amount from the claimant. The 20 months cover the period from October 2013 when the claimant moved back into 9808, resulting in the eviction of the tenants, and March 2015 when the respondent was able to rent the property after the claimant moved out.

In my view, while the respondent can fairly complain that he paid all of the expenses associated with both 9808 and Nurnberger, both during and after the relationship, and that he lost a rental revenue stream when the claimant insisted on moving back into 9808, that unfairness is addressed in large measure by the property division effected by these Reasons whereby the claimant is liable for one-half of the expenses incurred in respect of the two properties. The end result is that for the period from the date of separation to the date of trial, the parties will have shared the expenses equally and each party will have occupied one of the properties. In the circumstances, there is no basis to require either party to pay rent in addition. I reject the claim that the \$40,000 lost rental income is family debt.

Miscellaneous

- [131] The claimant agrees that she must account for one-half of the \$1,000 removed from the joint line of credit.
- [132] The respondent says that he should be repaid the \$1,150 deposit that he paid towards the claimant's new rental accommodation when she moved out. The claimant subsequently received this amount back when she moved into 9808. The claimant says that the respondent paid this because she wanted to stay in the Nurnberger property but he would not move. She says it was in effect a payment to get her to move. I accept the respondent's evidence that he did not compel the claimant to move out of the Nurnberger house and that he paid the deposit to help her out. The claimant must account for the full amount to the respondent.

Summary of Family Property and Debt

- [133] Leaving aside the RRSPs which are addressed above, as well as the vehicles which will be dealt with separately, the parties are each entitled to an equal share of the equity in the two residential properties which amounts to \$188,886 each. Offset against the claimant's share is her share of the family debts and expenses, which total \$63,514.14, leaving a balance to which the claimant is entitled of \$125,371.86.
- [134] The respondent has indicated his desire to retain both 9808 and Nurnberger and the claimant takes no issue with this. Accordingly, payment to the claimant shall be in the form of a compensation payment of \$125,371.86 in exchange for the claimant transferring her interest in the two properties to the respondent.

[135] With respect to JHM, I again accept the opinion of Bruce Martin & Associates that a 50% interest in the non-excluded value of the company is \$125,000, subject to any reapportionment which I will discuss below.

Reapportionment Issues

[136] The respondent takes the position that the value of JHM should be fully reapportioned to him. Alternatively, he submits that the value of any goodwill should be backed out of the valuation amount given that the goodwill is tied directly and solely to him. This is based on his view that the business was built entirely on the strength of his own performance and reputation.

[137] I note at the outset that the principle of equal entitlement to family property as set out in s. 81 of the FLA applies "regardless of [the spouses'] respective use or contribution". That said, s. 95 does contemplate an unequal division in circumstances in which it would be "significantly unfair" to do otherwise. One of the factors that the court may consider when assessing the fairness of an equal division is "a spouse's contribution to the career or career potential of the other spouse" (s. 95(2)(c)).

[138] In *Nearing v. Sauer*, 2015 BCSC 58, Madam Justice Fleming described the approach for considering each spouses' contribution in these terms at para. 141:

Section 95(2) does not appear to allow for the wide ranging examination of each spouse's contribution to the accumulation of family assets and their respective capacities that occurred pursuant to s. 65(1)(f). Instead the court may consider a spouse's contribution to the career or career potential of the other spouse under s. 95(2)(c) or a spouse's detrimental impact on to the value of family property or potential family property under s. 95(2)(g) which appears focused on the spouse's direct actions vis-à-vis the value of family property. I interpret the words "spouse's contribution" in s. 95(2)(c) as including the full spectrum of all levels of contribution from one spouse negatively impacting on the other spouse's career to greatly enhancing the career or career potential of the other spouse.

[139] The reality of most relationships is that each partner contributes in different ways to the joint enterprise and there is unlikely to be precise equality of contribution, particularly financial contribution. As stated by Mr. Justice Savage, as he then was, in *Slavenova v. Rangelov*, 2015 BCSC 79 at para. 60:

The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.

[140] In *L.G. v. R.G.*, 2013 BCSC 983 [L.G.], Mr. Justice N. Brown said the following about the concept of "significant unfairness" at para. 71:

In my view, the term 'significantly unfair' in s. 95(1) of the FLA essentially is a caution against a departure from the default of equal division in an attempt to achieve 'perfect fairness'. Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge order depart from the default equal division.

[141] Mr. Justice Butler also discussed the meaning to be given to that term in *Remmem* at para. 44:

The FLA provisions granting the court a discretion to order other than an equal division are very different from the provisions in the previous legislative scheme. Pursuant to s. 65(1) of the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA"), courts had a discretion to divide family property in unequal shares if the court found that the division of property (pursuant to agreement or the provisions of the FRA) would be unfair having regard to the factors set out in that section. The first and obvious difference between the discretion given under the FRA and the discretion given in Part 5 of the FLA is that in order to exercise the discretion, it is no longer sufficient to find that a division of property is merely "unfair". There must be a finding that the division of property pursuant to the statutory scheme is "significantly" unfair. The Concise Oxford English Dictionary defines "significant" as "extensive or important enough to merit attention." Significantly is understood to mean more than a regular impact - something weighty, meaningful, or compelling. In other words, the legislature has raised the bar for a finding of unfairness to justify an unequal distribution. It is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2).

[See note on bottom of page 30]

[142] As noted above, the parties have very different views on the extent of the claimant's involvement in JHM. In my view, based on the evidence, the respondent has understated that involvement. While JHM maintained outside bookkeepers and accountants for much of the period in which the claimant was also doing work for the company, it is apparent that the accountants considered the claimant to be a key contact person and a source of necessary information. It is also apparent that the respondent relied on her more than he is now prepared to admit, as evidenced by the issue of the filing of the annual report in July 2013, and the failure to file a report in the two subsequent years.

[143] There were also a number of inconsistencies in the respondent's evidence on this issue. For example, while saying that she really did little for the company, he then blames her for the late payment of the accountants' invoices.

- [144] Having said that, I also find that the claimant significantly overstated her involvement. For example, she said in her evidence that she did the invoicing for JHM. In fact, the respondent handwrote invoices based on his own diary of work done. All the claimant did was enter the invoices into the accounting system. Similarly, while she testified that she attended to the payroll, there were only ever two employees of the company, she and the respondent.
- [145] The claimant also exaggerated her role in business development and socializing with customers, as evidenced by the fact that Mr. Klassen, the principal of JHM's major client, could not recall ever meeting her.
- [146] The claimant also submits that she contributed to the growth of JHM by taking care of the household, thereby freeing up the respondent to work as much as he needed to. However, this is not a case in which there was a true joint enterprise in the sense that spouses made a conscious decision whereby one spouse pursued paid employment while the other spouse assumed primary care of the children of the marriage and attended to the principal household requirements (see *Jaszczewska v. Kostanski*, 2015 BCSC 727 at para. 172).
- [147] Here, it is clear that the respondent did not have a parental role in respect of the claimant's children. Indeed, I accept his evidence that she rebuffed any suggestions that he made periodically about providing the children with more structure. Further, while I accept that the claimant made some contribution towards family expenses, it is clear that much of her income went towards her own expenses and those of her children, for example travel and other related hockey expenses. Moreover, the uncontradicted evidence is again that the respondent paid the vast majority of expenses relating to both residential properties.
- [148] On the strength of these facts, I do not find that the claimant made a meaningful contribution to the respondent's career as referred to in s. 95(2)(c).
- [149] As set out in *L.G. and Remmem*, in order for the court to depart from the principle of equal division, it must be established that equal division would be unjust or unreasonable and that the resulting unfairness would be "weighty, meaningful or compelling."
- [150] I am satisfied that this is a case in which it would be significantly unfair to divide the increased value of JHM equally between the parties and that the value should be reapportioned 100% to the respondent. I come to this conclusion for the following reasons:
- a) The parties' relationship was of a relatively short duration, which is a factor specifically referred to in s. 95(2)(a). In *A.M.D. v. K.R.J.*, 2015 BCSC 1539, Madam Justice Sharma held that a relationship of four years and three months was of "short duration" which was a "strong" factor in favour of reapportionment;
 - b) The business was started by the respondent in 2003, before the parties met, and was built solely through his efforts and expertise;

- c) To the extent that there is any goodwill attached to JHM, the evidence is clear that it is generated solely as a result of the respondent's personal involvement and efforts;
- d) JHM commenced working for Continental Pipeline, now its principal client, in 2007, again before the parties met. Contrary to the claimant's assertion, she had no role in obtaining or maintaining that client. Again, it cannot be said that the claimant made a significant contribution to the respondent's career or business within the meaning of s. 95(2)(c);
- e) While, as noted, the claimant was more involved in JHM than the respondent was prepared to acknowledge, her involvement and contribution were far less than she asserted. On this point, it is worth noting that JHM had outside bookkeepers and accountants on retainer for virtually the entire time that the claimant was involved with the company; and
- f) For her relatively minimal contribution, the claimant was paid \$4,000 per month. Between 2010 and 2013, she was paid approximately \$200,000 from JHM, an amount which significantly exceeds the value of the work done by her. The respondent's evidence was that currently he averages about \$150 per month in outside bookkeeping costs. The claimant was also reimbursed through JHM for her fuel costs, which the respondent estimates amounted to about \$21,000 between 2010 and 2013.

[151] These factors, combined with the fact that the claimant will receive a significant financial benefit from her share in the two residential properties, for which she made a minimal financial contribution, support the conclusion that it would be significantly unfair to afford the claimant an equal, or any, share of JHM. Again therefore, the value of JHM will be reapportioned 100% to the respondent.

Summary and Conclusion

[152] In summary, the following relief is granted:

- a) The respondent will complete a spousal rollover of his RRSP to the claimant in the amount of \$47,716.21;
- b) The claimant is entitled to a compensation payment in the amount of \$125,371.86 in respect of her interest in 9808 and Nurnberger;
- c) The respondent is entitled to retain 100% of the value of JHM; and
- d) The parties will each retain their respective vehicles, subject to an equalization payment upon valuation of the two vehicles.

[153] In my view, success in this action was divided and the parties should bear their own costs. However, if the parties cannot agree, they may provide written submissions, not exceeding ten pages, within 60 days of the date of this decision.

"Skolrood J."

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